

Local Government and Other Legislation Amendment Bill 2006

Explanatory notes for amendments to be moved during consideration in detail by the Honourable Andrew Fraser MP

Title of the Bill

Local Government and Other Legislation Amendment Bill 2006

Objectives of the Amendments

The primary objective of the proposed amendments for consideration in detail is to amend the *Local Government Act 1993* (LGA) to establish a legislative framework that allows, on a state-wide basis, a restructure of Queensland local governments to improve sustainability of and service delivery to all Queensland communities. The objectives of the review are to establish local governments that:

- facilitate optimum service delivery to Queensland communities;
- effectively contribute and participate in Queensland's regional economies;
- better manage economic, environmental and social planning consistent with regional communities of interest; and
- effectively partner with other levels of government to ensure sustainable and viable communities.

The objectives of the other amendments for consideration in detail are to:

- remove unnecessary provisions relating to the *Size, Shape and Sustainability* (SSS) review process from the Bill; and
- give effect to a recommendation from the Scrutiny of Legislation Committee, relating to drafting style.

Achievement of the Objectives

The objective for the state-wide review of local governments will be achieved by:

- establishing the Local Government Reform Commission (LGRC) and its mandate to review the structure of local government in Queensland and make recommendations for change in a manner consistent with SSS principles;
- ceasing the application of existing local government boundary change provisions that are inconsistent with the proposed State wide reform of local government boundaries;
- establishing a process to create new local governments in Queensland; and
- establishing a process to facilitate the transition of existing local governments into new local governments.

Estimated Cost for Government Implementation

To maximise the effectiveness of the proposed restructure, it will be necessary to assist new councils to transition from existing arrangements. The Regional Collaboration and Capacity Building Program, which formerly supported the SSS initiative, will be used to:

- establish the LGRC and fund its review and report to the Minister; and
- support transitional committees and managers and facilitate change management.

Additional transition or establishment costs on councils will be further considered by Government when the new councils are established.

Consistency with Fundamental Legislative Principles

The amendments are generally consistent with fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992*. The one departure from these principles is necessary within the context of the tension between the principles and the desire to ensure certainty for whole communities affected by changes to local government structures.

The amendments allow for a substantial restructure of local government which will cause uncertainty for many people affected by the anticipated changes. It is important that this uncertainty is not prolonged by attempts

to delay implementation through litigation as has occurred previously by councils facing dissolution or amalgamation.

The overriding public interest in the matter is to provide certainty to Queensland communities about local governance arrangements. Local governments perform critical public services on a daily basis and it is vital to ensure that the local government system can proceed with minimum disruption. Judicial review, or legal challenge, of any element of the review process could delay decisions and increase uncertainty about local governance arrangements for an extended period and has the potential to have negative impacts for whole communities.

It is important to weigh this against the intention of judicial review which is to protect the interests of individuals with respect to administrative decisions made by government that affect a person in some way over and above the general populace. In this matter, the administrative decisions will be recommendations for change by the Local Government Reform Commission and the Minister. Whilst the recommendations will impact upon groups of individuals they will largely affect groups of people in a similar manner. It is also important to note that the recommendations of the Commission do not bind the Government and the final determination of new local government structures will be through regulation and will be debated in the Parliament before they come into effect.

Consultation

The Office of the Queensland Parliamentary Counsel, the Department of the Premier and Cabinet and Queensland Treasury have been consulted in preparing the amendments. Other agencies, including the Departments of Communities and Justice and Attorney General have been consulted on certain provisions of the amendments.

Notes on Provisions

Amendment 1 amends clause 4 of the *Local Government and Other Legislation Amendment Bill 2006* (the Bill).

The existing provisions of clause 4 are omitted. These provisions relate to the SSS review process. The amendments for consideration in detail

establish a state-wide review of local governments which makes the SSS provisions redundant.

The replacement provisions for clause 4 amend section 18 of the *Local Government Act 1993* (LGA). The amendment of section 18 enables a further class of local government to be prescribed by a regulation. This is in addition to the current provisions in section 18 for local government classifications of city, town or shire. This amendment will allow the Local Government Reform Commission to make recommendations for other classes of local government when proposing new local government areas (eg. regional local government).

Amendment 2 inserts a new clause 4A (Insertion of new ch 3, pt1A, ss 159-159Y) into the Bill.

New clause 4A inserts new pt 1A (Whole of Queensland local government boundaries reform) into chapter 3 of the LGA to provide for a reform of Queensland local governments on a state-wide basis.

New section 159A exempts Brisbane City Council from the state-wide reform process and make clear that the commission established to review this council's electoral wards is to continue unaffected by these amendments.

This section also applies the review provisions of pt 1A to:

- community governments under the *Local Government (Community Government Areas) Act 2004* (LGCGAA), and
- the Shires of Aurukun and Mornington under the *Local Government (Aboriginal Lands) Act 1978*, and
- Torres Strait Islander local governments under the *Community Services (Torres Strait) Act 1984*.

New section 159B sets out the objective of pt 1A as organising local government in a way that:

- facilitates optimum service delivery to Queensland communities;
- ensures their effective contribution and participation in Queensland's regional economies;
- manages economic, environmental and social planning consistently with regional communities of interest; and
- effectively partners local government with other levels of government to ensure sustainable and viable communities.

These objectives are the basis for reforming Queensland local government.

New section 159C sets out that these objectives are to be achieved by:

- establishing a Local Government Reform Commission that reviews and makes recommendations about the boundaries, names, classes and electoral arrangements for Queensland local governments and their implementation;
- the Minister's consideration of these recommendations; and
- the suspension of references and implementation of reviewable local government matters under part 1 during the state-wide review process.

It is anticipated that the new local government areas be established by an Act of Parliament to reflect the importance of this significant local government reform. Further amendments of the LGA would also be required to implement and transition new local governments from current arrangements.

New section 159D defines the terms:

- *chairperson*
- *reform commission*;
- *reform commissioner*; and
- *SSS review process*.

New section 159E suspends particular actions provided by part 1 of the LGA and section 19 of the LGCGAA while the new part 1A processes are in operation. The intention is to prevent reviewable local government matters being referred, progressed or implemented under these provisions, while the state-wide review of local government is being progressed.

Current provisions in ch 3, pt 1 of the LGA provide for a Local Government Electoral and Boundaries Review Commission to be established to examine reviewable matters under the LGA. Reviewable matters include, but are not limited to, matters such as creating new local government bodies, naming of new local government bodies and changing the external boundaries of local government bodies.

The ch 3, pt 1 provisions require a commission be established for each reference of a reviewable local government matter and do not envisage nor would they in a practical sense allow for a whole of state examination of the boundaries of local government in Queensland. There is also a referendum requirement for amalgamation proposals that will not apply to the state-wide review. Therefore the provisions and actions which would be inconsistent with the purpose of the state-wide review are suspended while the state-wide review is in progress.

New section 159F establishes the Local Government Reform Commission.

New section 159G provides for appointment by Governor-in-Council of seven members for the Local Government Reform Commission and that they may be appointed full-time or part-time.

New section 159H sets out the eligibility requirements for members of the Local Government Reform Commission as having knowledge of and experience in 1 or more of the following – local government, public administration, law, public finance, community affairs or other knowledge and experience considered appropriate by Governor-in-Council.

New section 159I allows the instrument of appointment to set out how long a commissioner will hold office and allows a commissioner to be reappointed.

New section 159J allows Governor-in-Council to decide for each commissioner – remuneration and allowances to be paid and other terms and conditions not provided for by the LGA.

New section 159K allows a commissioner to resign by signed notice given to the Minister.

New section 159L allows Governor-in-Council to end a commissioner's appointment for misbehaviour or for physical or mental incapacity. The section also specifies that a commissioner's appointment will end with the expiry of pt 1A, unless it is already ended.

New section 159M provides that the work of the commission continues even if there is a change in the members comprising the commission. It means that the work of the commission is not compromised by changes of commission members.

New section 159N requires a commissioner to disclose direct or indirect pecuniary interest in matters they are considering and to not participate in the consideration of the matter.

New section 159O allows the commission to conduct its business as it considers appropriate.

New section 159P requires decisions made by the commission outside of its meetings to have written agreement of at least 2 commissioners and for a record to be kept of any decisions made this way.

New section 159Q provides administrative support for the commission, including officers and employees, will be provided by the Department of Local Government, Planning, Sport and Recreation.

New section 159R requires information about reviewable local government matters is to be made available to the commission by the Electoral Commissioner of Queensland and the relevant Local Government Electoral and Boundaries Review Commission. The section also exempts the application of this requirement to reviewable local government matters that are the subject of a special reference, eg the review of Brisbane City Council's electoral arrangements.

New section 159S sets out the functions of the Local Government Reform Commission as:

- carrying out a structural review of all local government areas
- making recommendations to the Minister for boundaries, names, classes, and electoral arrangements of local governments and matters for implementation by 1 August 2007.

The section allows the Minister to declare by gazette notice, a later date for receipt of recommendations and also allows the Minister to receive a recommendation after the time provided for.

New section 159T requires the commission to consider the objective of this part (s 159B), terms of reference given to it by the Minister and the terms of reference set out in s 159U. The section also allows the Minister to require the commission to provide sequenced recommendations for different parts of the state-wide review. In practical terms, the commission in reviewing local governments on a state-wide basis, may proceed to make recommendations for different parts of the state and forward these to the Minister.

The section also sets out a requirement for the commission to invite suggestions for structural reform of local government and to consider all properly made suggestions in making its recommendations.

New section 159U sets out the terms of reference for the commission in its review of and development of recommendations for local government structures. The commission is to:

- consider grouping of like communities of interest to maintain the social fabric and character of communities and areas of the State and in particular consider the review areas of Size, Shape and Sustainability and the Regional Planning Advisory Committee boundaries;
- create local governments with improved financial sustainability;
- consolidate where possible regional natural resource management (e.g. water catchments) and environmental (e.g. coastal wetlands) areas;
- give preference to including whole local government areas rather than parts of areas when recommending amalgamations;
- identify options for community representation that reflect the diversity of Queensland's regions and promote representation of discrete communities; and
- identify issues requiring further consideration for successfully establishing new arrangements.

New section 159V provides the commission with powers necessary in carrying out its work. This is a necessary clause to maintain the independence of the commission.

New section 159W sets out the role of the Minister in the state-wide review as:

- providing terms of reference to the commission that are consistent with the objective of the part (s 159B);
- considering recommendations given by the commission; and
- making public the commission's recommendations.

This section does not bind the Minister to accept any recommendation of the commission.

New section 159X exempts the terms of reference to the commission, the deliberations and recommendations made by the reform

commission to the Minister and the Minister's consideration of these recommendations from the provisions of the *Judicial Review Act 1991* and other legal processes. The impact of this in relation to fundamental legislative principles has been addressed on pages 2-3 of these Addendum Explanatory Notes.

New section 159Y provides for the expiry of ch 3, pt 1A on 31 December 2008 or at an earlier time fixed under regulation. Following the expiry of these provisions, the suspension of provisions under ch 3, pt 1A will cease and the arrangements for reviewable local government matters will revert to those in place prior to the state-wide review.

Amendment 3 amends clause 10 (Amendment of s 248 [Access to registers]) of the Bill to directly specify (in lieu of a reference to a regulation) the information that must be made available to the public, from a councillors' register of interests. This amendment responds to a recommendation of the Scrutiny of Legislation Committee.

Amendment 4 amends clause 10 (Amendment of s 248 [Access to registers]) of the Bill to renumber the proposed subsection 5(C) as 5(B) as a consequence to the previous amendment.

Amendment 5 amends clause 10 (Amendment of s 248 [Access to registers]) of the Bill to omit the reference to a regulation as prescribing the information from councillors' registers of interest that is to be made publicly available.

Amendment 6 amends clause 11 (Amendment of s 250 [Improper use of information by councillors]) of the Bill to provide for the omission of section 250(2)(b) instead of section 250(1)(b).

Amendment 7 inserts new clause 51A and new clause 51B into the Bill.

New clause 51A inserts a new section 473A into the LGA to provide for community boards.

New section 473 provides for the establishment of community boards as a means to support representation of discrete communities within a local government area. Community boards may be appointed by the council to represent a local community and to advise the council about matters relating to that community. For example, community views about service priorities for that part of the local government area. A community may cover a town area or a broader area under a regional local government.

The section also provides:

- for a regulation to set out matters for establishing and operating community boards;
- for a community board to conduct its business in the way it considers appropriate subject to being consistent with the regulation; and
- that the regulation must not require a local government to remunerate community board members.

The operation of community boards will ideally be used by local governments as a means of engaging with local communities in their area. Setting the parameters of their operation and appointment by regulation will allow greater flexibility to establish different structures to reflect the diversity of local communities and how best they link to their local government.

New clause 51B amends section 899A (Definitions for pt 5) to change dates in the definitions for:

- *expiry date* – from 2010 to 2012
- *first review date* – from 2008 to 2010
- *subsequent review date* – from 2008 to 2010

These amendments will allow the requirements for the local laws redundancy review, required under ch 12, pt 5 of the LGA, to be postponed for two years to allow for the restructure of local governments and the more extensive reviews anticipated by the restructure.

Amendment 8 inserts a new pt 6 to amend the *Integrated Planning Act 1997* and a new pt 7 to amend the *Judicial Review Act 1991*.

New pt 6, clause 67 provides that part 6 of the *LGOLA Bill 2006* amends the *Integrated Planning Act 1997*.

New clause 68 amends s 6.1.20 (Planning scheme policies for infrastructure) to extend the ability of local governments to use planning scheme policies to charge for infrastructure without a priority infrastructure plan. The extension is from 30 June 2007 until 30 June 2008.

New clause 69 amends section 6.1.31 (Conditions about infrastructure for applications) to extend the local government's ability to use their conditioning powers to charge for infrastructure without a priority

infrastructure plan. The extension is from 30 June 2007 until 30 June 2008.

New pt 7, clause 70 provides that part 7 of the *LGOLA Bill 2006* amends the *Judicial Review Act 1991*.

New clause 71 amends sch 1 to exempt the deliberations and decision making processes of the commission and the Minister from judicial review consistent with proposed new section 159Y in the LGA.

The amendments to the LGA provide for a substantial restructure of local government which will cause uncertainty for many people affected by the anticipated changes. It is important that this uncertainty is not prolonged by attempts to delay implementation through litigation as has occurred previously by councils facing dissolution or amalgamation.

This exemption will cease to have effect with the expiry of pt 1A.