



Queensland

Local Government (De-amalgamation Implementation) Regulation 2013

Explanatory Notes for SL 2013 No. 48

made under the

Local Government Act 2009

General outline

Short title

Local Government (De-amalgamation Implementation) Regulation 2013.

Authorising law

Section 260F of the *Local Government Act 2009*

Policy objectives and the reasons for them

For the 2012 State election the Queensland Government made an express commitment in its *Empowering Queensland Local Government Policy 9.4* to enable communities to explore the feasibility of de-amalgamation. Specifically, *Empowering Queensland Local Government Policy 9.4.9* provided that when establishing any new local government boundary, there needed to be appropriate transitional and financial arrangements in place to support the change.

Section 260F of the *Local Government Act 2009* provides that a regulation can be made to provide for anything that is necessary or convenient to facilitate the implementation of the de-amalgamation of a local government area.

Achievement of policy objectives

The proposed *Local Government (De-amalgamation Implementation) Regulation 2013* achieves the policy objectives by implementing the de-amalgamation for the former Douglas, Livingstone, Mareeba and Noosa local government areas following the majority of electors voting in favour of de-amalgamation at advisory polls held on 9 March 2013.

The proposed regulation provides for the following processes to be established to facilitate the de-amalgamation of the local government areas.

Establishment of new councils

The proposed regulation creates new local government areas for Douglas, Livingstone, Mareeba and Noosa to take effect on 1 January 2014 (the 'changeover day'). The regulation will also amend the areas of the existing Cairns, Rockhampton, Sunshine Coast and Tablelands Regional Councils to reflect the creation of the new local governments. The proposed regulation also directs that elections for the mayor and councillors of the new local government areas will occur at a time prescribed in the gazette. For the existing councils, the mayor and those councillors whose divisions do not make up the new local government areas will continue in their positions. The remuneration for the mayor and councillors of the existing councils will remain the same but the proposed regulation will set the remuneration for the mayor and councillors of the new councils.

Transitional decisions

The proposed regulation provides for the Minister for Local Government to appoint transfer managers to each de-amalgamated area to collaborate with the chief executive officers (CEOs) of the existing councils to make the necessary decisions to implement the de-amalgamation. The decisions of the transfer managers and existing CEOs will be subject to review by the Minister.

Employees

The proposed regulation provides that any employees who transfer to the new local government after the changeover day have all their existing and accruing rights and entitlements continue after the transfer. The new local

government will be responsible for determining the terms and conditions of its employees post changeover day.

The proposed regulation also provides that if there are any employees that are made redundant as a result of the de-amalgamation process, then the new local government may decide to employ those staff rather than making them redundant. However, if the new local government does not decide to employ any redundant staff, then the new local government is responsible for the costs associated with the redundancies.

Rates and Charges

The proposed regulation provides that any rates, charges or fees levied on properties in the area to be de-amalgamated by the existing council continue to apply and can be recovered by the new local government.

Instruments and decisions

The proposed regulation provides that instruments and decisions of the existing local government that impact on the area to be de-amalgamated continue to apply after the changeover day until changed by the new local government. The types of instruments covered by the proposed regulation include local laws, planning schemes, applications, approvals, licences, authorisations, delegations, policies, plans, contracts etc.

General

The proposed regulation also provides a general duty on the existing local government to facilitate the de-amalgamation process and to continue to provide local government services and functions to the de-amalgamated area until the changeover day.

Consistency with policy objectives of authorising law

The proposed regulation is consistent with the main objects of the *Local Government Act 2009*, that is to ensure there is a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Inconsistency with policy objectives of other legislation

The proposed regulation is consistent with the policy objects of other legislation.

Alternative ways of achieving policy objectives

The proposed regulation establishes new local governments, amends existing local governments and establishes implementation processes to enable the de-amalgamation of local governments to occur which could not be achieved without legislation.

Benefits and costs of implementation

As the proposed regulation's objectives are to enable the de-amalgamation of local governments, any costs to the Government are expected to be minimal.

The proposed regulation provides the new local governments are required to pay all the costs associated with the de-amalgamation process which is consistent with clause 9.4.1 of the Governments *Empowering Queensland Local Government Policy*. The electors in these areas were aware that they would be responsible for these costs when the majority voted in favour of de-amalgamation.

Consistency with fundamental legislative principles

The proposed regulation provides for the existing councillors for the new local government area to vacate their positions on the changeover day which could be seen as a breach of fundamental legislative principles by not having sufficient regard for the rights and liberties of those individuals. The potential breach is considered justified in that the decision to de-amalgamate was made by a vote of the majority of the electors in the area and that it is necessary to allow those voters to decide who will be the elected representatives on the new local government.

The proposed regulation does not guarantee the continuation of the employment conditions for employees that are transferred to new local governments post the changeover day. While there is the potential for new local governments to make decisions that could diminish the employment conditions of transferred staff, the absence of a guarantee does not

necessarily mean that the new local government would do so. The policy intent is that the new local government should be able to decide the most appropriate organisational structure and employment conditions to deliver local government services to its area without limitations on conditions imposed by the former local government.

The proposed regulation allows for the Minister to overturn a decision of an existing local government to enter into a contract that would bind the new local government past the changeover day which would not be giving sufficient regard to the decision of a democratically elected body. The potential breach is considered justified because the new local government will be voted in by the majority of electors in the new local government area to represent them and should not be unnecessarily burden with obligation from the existing local government.

The remaining provisions of the proposed regulation are considered to be consistent with the fundamental legislative principles, as defined in the *Legislative Standards Act 1992*.

Consultation

The Local Government Association of Queensland, Local Government Managers Australia, Cairns, Rockhampton, Sunshine Coast and Tablelands Regional Councils, the Department of the Premier and Cabinet, the Department of Energy and Water Supply, the Department of State Development, Infrastructure and Planning, Queensland Treasury Corporation and Queensland Treasury and Trade were consulted during the development of the proposed regulation. Feedback from these stakeholders was considered during the drafting of the regulation.

The Regulatory Review Branch of Queensland treasury and trade was consulted in relation to the proposed regulation and confirmed that a Regulatory Impact Statement is not required.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Local Government, Community Recovery and Resilience.

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