

Local Government (Dissolution of Logan City Council) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 63

made under the

Local Government Act 2009

General Outline

Short title

Local Government (Dissolution of Logan City Council) Amendment Regulation 2019

Authorising law

Sections 123 and 270 of the *Local Government Act 2009*.

Policy objectives and the reasons for them

The policy objective of the regulation is to give effect to the recommendation of the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs to dissolve the Logan City Council and appoint an interim administrator to act in place of the councillors.

Section 123 of the *Local Government Act 2009* (LGA) provides that if the Minister reasonably believes that a local government is incapable of performing its responsibilities, the Minister may recommend that the Governor in Council dissolve the local government and appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors. The Governor in Council may give effect to the Minister's recommendation under a regulation.

Section 123(5) of the LGA provides that a regulation dissolving a local government has effect in accordance with the requirements of the *Constitution of Queensland 2001*, chapter 7, part 2. Under sections 74 and 75 of the *Constitution of Queensland 2001*, the instrument of dissolution only suspends the local government councillors until the instrument is subsequently ratified by the Legislative Assembly or the effect of the instrument ends under section 76. If the Legislative Assembly ratifies the dissolution, the local government is dissolved in accordance with the instrument from the time of ratification. It is intended to seek ratification of the dissolution by the Legislative Assembly urgently after the making of the Regulation.

Under section 120 of the LGA, the Minister must give the local government in question a written notice of the proposal to exercise the power to recommend that the Governor in Council dissolve the local government and appoint an interim administrator, before the power is exercised, unless one of the prescribed exceptions applies. The exceptions include that the Minister considers that giving notice is likely to defeat the purpose of the exercise of the power or would serve no useful purpose.

The Logan City Council has 12 councillors and a mayor. The mayor and one councillor were automatically suspended from office under section 182A of the LGA in May 2018. A further seven councillors were automatically suspended on 26 April 2019 following the Crime and Corruption Commission charging the councillors with criminal offences.

The automatic suspension of the seven councillors leaves the Logan City Council with only four serving councillors, removing the ability of the local government to constitute a quorum, conduct business at a council meeting and pass resolutions. Consequently, the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs believes that the Logan City Council is incapable of performing its responsibilities.

The Logan City Council was not issued with a written notice under section 120 of the LGA on the grounds that giving the notice would serve no useful purpose.

Accordingly, under section 123(3) of the LGA, the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs decided to recommend that the Governor in Council dissolve the Logan City Council and appoint Ms Tamara O'Shea as the interim administrator to act in place of the councillors.

Subject to the making of the regulation by the Governor in Council, the Minister intends to immediately table the regulation and seek ratification of the regulation by the Legislative Assembly. Dissolution of the Logan City Council is proposed to take effect on notification. The appointment of the interim administrator is proposed to take effect on the same date.

Achievement of policy objectives

The regulation gives effect to the recommendation of the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs to the Governor in Council to dissolve the Logan City Council and appoint Ms Tamara O'Shea as the interim administrator to act in place of the councillors of the Logan City Council.

The regulation inserts new section 239AA under chapter 7, part 4, division 2 of the *Local Government Regulation 2012* to provide that, on the commencement of the section, the Logan City Council is dissolved and Ms Tamara O'Shea is appointed to act in place of the councillors of the Logan City Council until the conclusion of a fresh election of councillors for the Logan City Council. Section 2 of the regulation provides that the regulation commences on notification. New section 239AA expires on 30 June 2020.

The interim administrator has all the responsibilities and powers of the local government and the mayor, in accordance with section 124 of the LGA.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the LGA.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefits of the regulation are to ensure the responsibilities and powers of the Logan City Council under the LGA can continue to be exercised and provide certainty to the Logan City community.

The Government will fund the costs and expenses of the Interim Administrator, however it is proposed that the costs and expenses will be paid by the Logan City Council to the Minister on a monthly basis in accordance with section 124 of the LGA.

Consistency with fundamental legislative principles

The regulation is generally consistent with fundamental legislative principles (FLPs). Potential breaches of FLPs set out in the *Legislative Standards Act 1992* (LSA) are addressed below.

Sufficient regard to the rights and liberties of individuals and natural justice

The proposal to dissolve Logan City Council constitutes a potential breach of sections 4(2)(a) and 4(3)(b) of the LSA, that legislation should have sufficient regard to the rights and liberties of individuals and that legislation should be consistent with the principles of natural justice.

Any potential breach of the FLPs is considered justified because in the absence of a quorum the Logan City Council cannot hold council meetings or pass resolutions and consequently is incapable of discharging its responsibilities.

Also, the *Constitution of Queensland 2001* provides that the Minister must table the regulation in the Legislative Assembly within 14 days of the regulation being made, and that the Legislative Assembly may, on the Minister's motion, ratify the dissolution of the local government within 14 sitting days of the tabling of the regulation. Until it is ratified, the regulation will only have the effect of suspending the local government councillors from office.

Consultation

Due to the urgency of the making of the regulation no consultation was undertaken. The Department of Local Government, Racing and Multicultural Affairs determined that the proposal met exclusion category (g) 'Regulatory proposals that are of a machinery nature' under the Queensland Government Guide to Better Regulation.