



Department of Local Government,
Racing and Multicultural Affairs

Our ref: OUT18/5113

24 JUL 2018

Mr Linus Power MP
Chair
Economics and Governance Committee
egc@parliament.qld.gov.au

Dear Mr Power

Thank you for the opportunity for the Department of Local Government, Racing and Multicultural Affairs to brief the Economics and Governance Committee on 20 July 2018 about the draft Local Government (Dissolution of Ipswich City Council) Bill 2018 (the draft Bill).

During the briefing Ms Josie Hawthorne, Director, Legislation Services agreed to take the following question on notice:

- Can you advise the longest period that an interim administrator has been appointed to replace a Council in Queensland?

Response:

Based on information available to the Department, the longest period for which an administrator has been appointed is approximately thirty-nine (39) years for the Torres Shire Council.

The administrator was appointed to the Torres Shire Council from 1952 until 1991, which then reverted to an elected Council at the March 1991 Local Government election. It is understood the purpose of the long-term appointment to the Torres Shire Council was to provide the requisite level of expertise and capacity for Local Government of the region. Other Councils including Burke, Cook and Aurukun Shire Councils had similar long-term administrator appointments to improve their capacity.

By way of comparison with the proposed dissolution of the Ipswich City Council, administrators were appointed to the following Councils for failures to perform their responsibilities satisfactorily:

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- the former Johnstone Shire Council from 8 February 2007 to 15 March 2008, being a total duration of thirteen (13) months
- the Gold Coast City Council from 4 March 1978 to 31 March 1979, being an approximate duration of thirteen (13) months.

In the cases of the former Johnstone Shire and Gold Coast City Councils, the administrators were each appointed until the following scheduled Local Government elections.

To assist the Committee, the Department seeks to further clarify certain information provided by the Departmental officers. During the briefing you asked Ms Hawthorne the following question (page 7 of the proof transcript):

'I have a question about clause 5(8). The draft bill has a provision that if the interim administrator is absent and cannot perform their duties the minister can appoint someone to act as the interim administrator until the Governor in Council appoints a new administrator, if that is required. That seems to be on the presumption that that is required—that it is being replaced. What happens if there are short-term absences owing to illness or leave of that nature that would need some kind of replacement?'

In her response Ms Hawthorne stated (page 7 of the proof transcript):

'If that is the case, under the Acts Interpretation Act there is provision for the interim administrator to appoint an acting administrator. This provision is in relation to if the interim administrator resigns—those sorts of circumstances.'

You then asked a follow up question (page 8 of the proof transcript):

'In that circumstance, an interim administrator appoints an acting administrator on their own power? The minister's power is not required?'

Ms Hawthorne answered (page 8 of the proof transcript):

'That is correct.'

As Ms Hawthorne informed the Committee, the *Acts Interpretation Act 1954* provides the power to appoint a person to act as the interim administrator. The *Acts Interpretation Act 1954* section 24B and section 25 provide that the person authorised to make an appointment to an office may appoint a person to act in the office. Under the draft Bill clause 5(1), the person authorised to appoint the interim administrator is the Governor in Council.

Further, as the interim administrator has all the powers and responsibilities of the Local Government under the draft Bill clause 5(4) and the *Local Government Act 2009* (LGA) section 124(2), the interim administrator may under the LGA section 257 delegate a power of the Local Government. This would allow delegated functions of the Local Government to continue during a short-term absence of the interim administrator.

Also during the briefing Mr Jon Krause MP, Member for Scenic Rim asked the following question (page 6 of the proof transcript):

'..... In relation to the administrator, given that the government is sacking all councillors without due process, what powers will the administrator have to hire and fire council staff?'

In response to this question, Mr Tim Dunne, Manager stated (page 6 of the proof transcript):

'..... the current council is not responsible for the hiring and firing of staff of the Ipswich City Council other than the chief executive officer of the council. The chief executive officer is responsible for the employment of all other employees. The interim administrator would not be looking at hiring staff other than perhaps the chief executive officer if that came to pass.'

In addition, Mr Dunne stated (page 6 of the proof transcript):

'..... the chief executive officer is the officer under the Local Government Act responsible for the employment of staff, but there are other things that the council can do, or the interim administrator can do, such as looking at corporate structures, organisational structures, budgets and things like that. Ultimately, no, not directly, but policies, procedures, codes of conduct and things like that could effect other changes throughout the organisation. The chief executive officer is responsible for staffing matters.'

While the LGA section 197 provides that the Chief Executive Officer is responsible for disciplining Local Government employees, section 196 of the LGA deals with the appointment of employees.

The LGA section 196(3) provides that the Chief Executive Officer appoints Local Government employees other than senior executive employees. Senior executive employees are employees of the Local Government who report directly to the Chief Executive Officer and whose position ordinarily would be considered to be a senior position in the Local Government's corporate structure. Section 196(4) of the LGA provides that a panel of the Mayor, Deputy Mayor (or relevant committee chair) and Chief Executive Officer appoint senior executive employees.

If you require further information, I encourage you to contact [REDACTED], Director, Legislation Services in the Department on [REDACTED] or by email at [REDACTED].

Yours sincerely



Warwick Agnew
Director-General