3 October 2014

Mr Trevor Rothenberg MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Chair

The Local Government Association of Queensland (LGAQ) would like to thank the Committee for the opportunity to provide comment on the *Health Legislation Amendment Bill 2014*.

The LGAQ appreciates the consultation undertaken by the Government of the implications surrounding its decision to devolve the administration and enforcement of routine domestic asbestos matters (**Attachment 1**). The time provided by the Government for LGAQ to consult with its members has allowed issues to be identified and addressed in a timely and appropriate fashion.

The LGAQ particularly commends and thanks the Minister for Health, the Attorney-General and Minister for Justice, the Minister for Environment and Heritage Protection and the Minister for Local Government, Community Recovery and Resilience and their respective Offices for their engagement directly with the LGAQ on this matter. The Partners in Government Agreement (**Attachment 2**) outlines the local government sector's expectations in relation to devolution of responsibilities. This includes, for example, ensuring prior consultation that adequately takes into account financial implications for councils, including identification and availability of ongoing revenue sources. While the Government has the power to devolve the responsibility without notice to councils, the LGAQ appreciates the Government's collaborative approach to ensure the seamless delivery of services in partnership.

The key issues consistently raised by the LGAQ regarding the devolution of the administration and enforcement of routine domestic asbestos public health matters are:

1. Legal protection via a statutory indemnity for council officers administering the asbestos provisions of the public health legislation;
2. Appropriate and ongoing training for council; and
3. Appropriate cost recovery options including a standalone fund in certain circumstances.

In regard to the Bill, the LGAQ has focussed particularly on the scope of the indemnity and is supportive of the provisions.

However, member councils have raised a number of operational/resource issues, and the LGAQ respectfully requests that the Committee give further consideration to:

- 70 years for the preservation of records. This is a significant period of time and will impose considerable cost on councils in maintaining these records. While the LGAQ appreciates the latency periods for asbestos related diseases to be diagnosed, councils are currently required to comply with a number of strict record keeping schedules, for example, *Local Government Sector Retention and Disposal Schedule: QDAN 480v.4* and *General Retention and Disposal Schedule for Administrative Records*. Consideration is sought to ensure consistency between the Bill's provisions and existing local government record keeping requirements.
- Annual compliance certificate. The annual compliance certification system, aimed at ensuring a timely response to council record keeping, is likely to be an imposition to varying degrees on council depending on their size. In addition to ensuring a minimalist approach to the content of the certificate, consideration should be given to imposing a positive obligation

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on the portfolio agency administering the Act to maintain a portal that can be used by local councils to update their registers online. This process will satisfy the annual compliance certification requirement as well as enable better information sharing between councils and the Government, and could be modelled on sections 172-176 *Registers kept by chief executive* of the Animal Management (Cats and Dogs) Act.

- Training. The collaborative approach requires councils to be supported through ongoing training by the Government to ensure a high quality consistent approach to the management of asbestos related issues. In this context, the LGAQ will seek a commitment from the Minister for Health and the Attorney-General and Minister for Justice to clarify councils' ability to obtain further training that meets the requirements of the indemnity after the first tranche of training concludes in March 2015.

Another important issue, and one that requires careful consideration, is recovery of asbestos clean-up costs by contractors that need to be engaged by councils where the owner/occupier is unwilling or unable to comply with their obligations. While the LGAQ acknowledges that cost recovery options under the Public Health Act are adequate in most circumstances, the provisions are simply deficient where owners or occupiers have no assets, or alternatively the owner/occupier has absconded and refuses to cover clean-up costs or the damage is caused by an unknown third party. For example, a large regional council recently became (unavoidably) involved in a domestic asbestos matter and incurred a clean-up bill of $150,000. In addition to the extra costs incurred by local government absorbing this devolved responsibility, which may lead to reprioritisation of existing services, it is simply impossible for local councils to absorb clean-up costs of this magnitude on either a one-off or recurring basis.

A standalone fund initially provided by the State Government modelled on the Orphan Spill fund administered by the Department of Environment and Heritage Protection will adequately address councils' concerns in relation to this matter. The LGAQ has raised this matter with the Government for consideration, and is more than willing to facilitate negotiation between its members and the Government on how a useful and effective model could be developed. It is essential that any model agreed is sustainable in the long term.

In relation to amendments giving effect to smoking policy reform, the LGAQ was consulted during development of this policy. The LGAQ notes that section 26ZM of the *Tobacco and Other Smoking Products Act 1998* (TA) does not impose a duty on local governments to administer the existing provisions and ipso facto the proposed provisions. However it seems clear that community expectations will increase post the passage of these amendments. It is arguable that citizens will contact their local government expecting it to enforce the new smoking bans at schools and health facilities; this may amount to a de facto devolution/cost shift. Should this situation occur then funding and resource issues will inevitably arise. The LGAQ wishes that this concern is noted by the Committee.

Should you have further queries regarding these matters please contact Mr Logan Timms, Strategic Policy and Intergovernmental Relations, on (07) [redacted] or at [redacted] who will be pleased to assist.

Yours sincerely

[redacted]

Greg Hoffman PSM
GENERAL MANAGER - ADVOCACY

Department of Local Government

Partners in Government Agreement

An agreement for the partnership and the relationship between the State Government and Local Government in Queensland

State of Queensland
Local Government Association of Queensland on behalf of Queensland local governments

QUEENSLAND GOVERNMENT

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Signing page

Signed by the Honourable Campbell Newman, MP, Premier and the Honourable David Crisafulli, MP, Minister for Local Government, for and on behalf of the Queensland State Government.

[redacted]

Campbell Newman, MP
Premier

[redacted]

David Crisafulli, MP
Minister for Local Government

Signed by Councillor Paul Bell, AM, President of the Local Government Association of Queensland Ltd. by Greg Hallam, PSM, Chief Executive Officer of the Local Government Association of Queensland Ltd. for and on behalf of Queensland Local Governments.

[redacted]

Councillor Paul Bell, AM
President of the Local Government Association of Queensland Ltd.

Greg Hallam, PSM
Chief Executive Officer of the Local Government Association of Queensland Ltd.

this 4th day of July 2012.

An agreement for the partnership and relationship between the state government and local government in Queensland

This Agreement does not limit the autonomy of state government or local government (the Parties) in making decisions that affect local communities across Queensland, nor does it limit the capacity of the Parties to enter into agreements with other parties, within the context of their respective jurisdictions.

Background

Queensland's state and local governments have historically had a long history of cooperation based on mutual respect and trust and the desire to improve the outcomes for all Queenslanders.

On 2 March 2006, the state government and local government formalised this historic relationship through the execution of '*A Protocol – establishing roles and responsibilities of the state government and local government in the Queensland System of local government*'.

In April 2007 and based on the then government's actions over the prior year, local government suspended the protocol. There was no subsequent attempt by the then state government and local government to reinvigorate the protocol.

The new state government and local governments are committed to reinvigorating this historic and mutually beneficial relationship through the execution of this Agreement. In executing the Agreement, the ultimate aim of both parties is to continue to improve the quality of life Queenslanders enjoy.

Queenslanders demand a range and quality of services provided by both levels of government and, at the same time, demand greater accountability.

Within this context, the Queensland Government and the Local Government Association of Queensland (which is the peak body for Queensland local governments) as signatories to the agreement commit to developing and maintaining a process of negotiation and engagement based on:

- a set of principles, including mutual respect and cooperation, which underpins the relationship between state government and local governments;
- open and timely communication and consultation; and
- an understanding of each other's roles and responsibilities in situations where they may overlap.

It is necessary that both the administrative and political levels of state and local government are committed to improving outcomes for the community and that this will be in part achieved through regular meetings to discuss issues of mutual interest and to resolve differences.

Local government is recognised as being efficient and effective in the allocation of resources at local and community levels. In undertaking its role, local government

requires that the *Local Government Act 2009* and the *City of Brisbane Act 2010* provide sufficient flexibility, autonomy and adequate resources and a sound governance framework to facilitate effective and efficient local decision making.

State government has responsibility for issues of state interest and for providing state-wide solutions to issues affecting all Queenslanders. To ensure the best outcome, local government will have the opportunity to provide input into state policies and legislation where the outcomes impact local communities, as well as to the strategies and programs that directly impact on local government.

Local government is also able to assist in delivering state initiatives both locally and regionally. Partnerships and strategic alliances between the state government and local governments are extremely valuable in facilitating the delivery of these initiatives.

Objective

The Agreement:

- formalises a set of principles underpinning the relationship between the Parties
- encourages positive and productive relations between the Parties based on mutual respect and achieved through partnership and co-operation; and
- provides a process to implement other agreements between the Parties, covering specific services and functions.

Fundamental basis of relationship

- Both Parties agree with the principles of empowerment and of subsidiarity, which holds that decisions should be made by the lowest level of government capable of properly doing so. Both Parties agree that relations between the parties should be conducted in a spirit of mutual respect and cooperation with an emphasis on partnership—a commitment to timely and frequent communication and with recognition of each other's roles and responsibilities.

Underlying principles

Overarching

Within the context of local and state jurisdictional responsibilities, local government should enjoy maximum autonomy and be subject to minimum state intervention.

Jurisdiction

- It is recognised that both local government and state government have legitimate interests and jurisdictional responsibilities.
- Local governments' legitimate interests and autonomous jurisdiction responsibilities are for the good rule and government of their local areas.

- The state government's legitimate interests and jurisdiction responsibilities are for the good rule and government of the entire state. In exercising this jurisdiction the state has the responsibility to set, regulate and enforce appropriate policies and standards for the good of the entire community and which have state-wide and regional impacts and implications. In doing so, the state regulates activities and functions which may involve local government. During the development, regulation and enforcement of appropriate community standards, local government will not be the specific focus of the state, even though in some areas of activity local governments may be the sole providers or the only entities operating in this sector or area of activity.

Intervention

- Local government will be subject to minimum intervention from state government in respect of its legitimate interests and jurisdictional responsibilities (including revenue raising, local laws and land use planning).
- State government interest will be only exercised where legitimate state government interests exist.

Compliance requirements

- To ensure that appropriate standards are maintained for the benefit of the entire community, local governments have a responsibility to comply with any applicable legislative, industry or professional requirements.
- Where local governments enforces community regulatory standards on behalf of the state government, these standards will be, to the greatest extent possible, performance-based rather than prescriptive to ensure local autonomy, interests and conditions.

Governance arrangements

- To ensure the system of local government is accountable, democratic, effective, efficient, sustainable and transparent; local governments have a responsibility to comply with any appropriate standards relating to governance arrangements applicable to the system of local government. This includes boundaries, electoral arrangements, financial accountability and reporting, integrity and ethical standards, and oversight by independent bodies including the Queensland Audit Office, Ombudsman, Remuneration and Discipline Tribunal and the Crime and Misconduct Commission.
- The governance arrangements that apply to local government should, where appropriate, be consistent with those applying to the state government—the obligations placed on local government will generally not be higher or lower than those applying to the state government.

Indigenous local governments

- Within the system of local government in Queensland, Indigenous local governments are respected as local governments in their own right and are recognised as having the same status and responsibilities as non-Indigenous local governments.

- At the same time, Indigenous local government leaders are recognised as having additional significant legal, social and cultural responsibilities within their communities.

Devolution/delegation of responsibilities

- The devolution or delegation of new responsibilities, roles and functions to local government should generally only occur in the following circumstances where:
  - there has been prior consultation
  - the financial implications and other impacts on local government are taken into account and
  - the identification and availability of an ongoing revenue source—eg user charges—has been considered.

Funding

- Local government should endeavour to generate a proper and reasonable level of own source revenue to meet the funding requirements of their own legitimate interests and jurisdictional responsibilities.
- The state government can apply appropriate conditions to funding provided by the state.

Roles and responsibilities

Joint roles and responsibilities

- Acknowledge that the state government and local governments have shared and overlapping jurisdictions and the need to co-operate to achieve the most effective outcome. Where there are shared policy interests, agreements and alliances may need to be negotiated.
- Ensure Queensland's need to grow the four pillars of its economy is taken into account whenever a planning decision is made.
- Agree to work together on the development and implementation of matters—including legislative proposals, which affect the interests, roles and responsibilities of the other party.
- Work with each other to provide a more efficient, planning and development system which better reflects community expectations.
- Agree to work together on matters raised by the commonwealth which impact on local governments—particularly in the context of COAG—or on the state government's relationship and interests with respect to local government.

- All agreements between the state government and local government will be developed in accordance with the intent and principles of this Agreement.

State government roles and responsibilities

- The state government will:
  - Continue to provide for a system of local government under which local governments are constituted and democratically elected and will maintain the constitutional recognition of local government currently provided for in the *Constitution of Queensland 2001*.
  - Establish and maintain a flexible and responsive legislative framework for local government which meets community needs and expectations and reflects the underlying principles espoused in this Agreement.
  - Undertake timely, cooperative, proper and meaningful engagement on all policy, legislation, strategy and program initiatives where local government has an interest—including in the early stages of policy formulation, with where practicable minimum consultation periods of four weeks to enable Local Government Association of Queensland to engage meaningfully with its members.
  - Commit to repealing legislation and regulations which slow the approval process for development applications and which have limited benefit from a planning perspective.
  - Commit to providing local government greater input into regional planning with regional planning aiming to achieve an appropriate balance between economic development and industry, community and social needs, services and environment protection and which has local community support.
  - Undertake to seek the advice of local government before appointing representatives of the sector to state government bodies.
  - Consider and engage with local government regarding financial and other resourcing implications, that flow from policy or legislative changes that could result in additional functions and responsibilities for local government.
  - Commit to consulting with local government before introducing legislation or making regulations which impose the provision of a new service or function on local government or a variation to an existing service or function.

Local government roles and responsibilities

- Local governments will seek to achieve the highest levels of good governance and compliance with the local government principles which underpin the *Local Government Act 2009* and *City of Brisbane Act 2010*.

- Local governments recognise the state government's interest in matters of consequence to its interests, roles and responsibilities and the need for collaboration, cooperation and joint action on matters of consequence to both parties.

- Local governments agree to collaborate and cooperate with respect to issues of mutual interest to both the state government and local government.

- Local governments will undertake timely, cooperative, proper and meaningful engagement with the state government, where practicable, on all policy initiatives and strategies where the state government has an interest.

- Local government will commit to improving the time taken to approve development applications by streamlining local government processes however at the same time maintaining the transparency of decision-making.
- Local government will work with the state government to optimise economic development opportunities for the State and its communities.

Operation and review

- This Agreement will remain in operation for three years from the date of signing.

- Following the commencement of this Agreement the state government will meet with the Local Government Association of Queensland to discuss priority action items for the coming year. Thereafter, the state government will meet with the Local Government Association of Queensland annually to review the implementation of the priority action items and the consideration of new priorities.

- The Premier will meet with the Executive of the Local Government Association of Queensland at least once a year.

- The Minister for Local Government will meet with the LGAQ executive a minimum of four times per year.

- The LGAQ will have access to other ministers on an as required basis.

- Meetings to discuss specific matters may be held as required at the request of the state government or the Local Government Association of Queensland.

- Meetings to review the operation of the Agreement may be held as required at the request of the state government or the Local Government Association of Queensland.

- Meetings between the Minister for Local Government and the President of the Local Government Association of Queensland to discuss disputes about the Agreement may be held as required at the request of either party.

- Prior to 31 August of each year, the State Government and LGAQ will prepare a report which discusses the outcomes achieved under this agreement for the year to 30 June. This report will be certified by the Premier, the Minister for Local

Government, the President of the LGAQ and the Executive Director of the LGAQ. The first report will be provided by 31 August 2013 for the year to 30 June 2013.