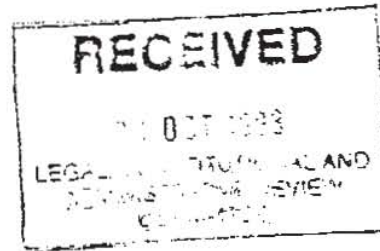


LOCAL GOVERNMENT
ASSOCIATION
OF QUEENSLAND INC.



Local Government House
60 Edmondstone Road Mayne Qld 4006
PO Box 2230 Fortitude Valley BC Qld 4006
Phone (07) 3334 2222 Fax (07) 3252 4473



12 October, 1998

Mr Gary Fenlon MLA
Chairman
Legal, Constitutional and Administrative Review Committee
Parliament House
BRISBANE Q 4000

Dear Mr Fenlon *Gary*

Consolidation of the Queensland Constitution

Please find attached the submission of the Local Government Association of Queensland in relation to the consolidation of the Queensland Constitution.

Thank you for this opportunity to comment on the work of the Legal, Constitutional and Administrative Committee. The Consultation Draft of the Constitution of Queensland Act 1998 (Reprint) is clearly an improvement on our constitutional laws as they presently stand.

The Association recognises the desire of the Committee to consolidate existing provisions, and as such we have resisted the temptation to suggest extensive reform. Instead our submission merely proposes some minor amendments to the Consultation Draft.

These modest suggestions are in accord with the intentions of the sections referred to. The key suggestions merely involve:

- The explication of the currently implicit requirement to expedite the achievement of a proper election of a local government previously dissolved or unable to be elected.
- The clarification of the moment at which the Councillors of a local government are suspended from office, and the clarification of the role of the Minister responsible for local government in such a suspension.
- The proper reflection in the Act of the intention of the Committee with respect to the requirement for consultation with the Association.
- The removal of the inconsistency relating to the referendum requirements for the abolition of a system of local government.

I hope you can recognise the modest but important gains that would be achieved through the adoption of these suggestions. If you wish to discuss any of the suggestions, please do not hesitate to contact me.

Thank you in advance for your consideration.

Yours sincerely

GREG HOFFMAN
DIRECTOR - POLICY AND RESEARCH

gth:dpjs



LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

Consolidation of the Queensland Constitution

**Submission to the Legal, Constitutional and Administrative
Review Committee**

October 1998

Introduction

The Association recognises the Committee's desire to consolidate existing constitutional provisions, rather than propose extensive reform of the State's constitutional arrangements. As such, the Association herein provides a modest list of suggested improvements. As requested, the comments refer to specific sections of the Constitution of Queensland Act 1998 (Reprint).

The submission focusses on the proposed chapters six and seven. The suggestions are minor and do not alter the intention of any of the sections. Indeed the suggestions actually improve the likelihood of the intentions of the various sections being met.

Chapter 6, Part 1

Section 64.(3) involves a necessary qualification of the democratic principle outlined in section 64.(1). In order to maintain adherence to section 64.(1), section 64.(3) must limit any deviation from the principle of local government democracy by making explicit the requirement to achieve as soon as practicable the proper election of a local government previously dissolved or unable to be properly elected.

In section 64.(3) the intent of section 64.(2) is applied to the administrator, but the intent of section 64.(1) is not. In other words, the administrator has the functions and powers as outlined in section 64.(2), but is not charged with the good rule of the relevant area as outlined in section 64.(1). This is a concern that could easily be remedied.

Section 64.(4) is of considerable concern. An administrator should not be defined as a local government for the purposes of section 64.(3), for the following reasons:

- It is unnecessary because of the presence of section 66.(2).
- It is nonsensical, as shown by the following substitution of the word 'administrator' for the words 'local government' throughout section 64.(3):
 - (3) Despite subsection (1), if an administrator is dissolved or is unable to be properly elected, other legislation (whenever made) may provide for all or any of the administrator's functions to be performed and all or any of the administrator's powers to be exercised by 1 or more appointed bodies or persons until the administrator has been properly elected.*
- It contradicts a purported principle of the consolidation, in that instead of referring to a local government section 64.(4) refers to the council of the local government.

Given the above concerns, the LGAQ believes that section 64.(4) should read as follows:

(4) In subsection (3)—
"local government" includes a joint local government.

The LGAQ notes that this definitional flaw is limited to one subsection. Thus the consolidated version is an improvement on the current situation where section 54.(5) of the Constitution Act 1867 includes administrators in the definition of local government for the entire section which outlines the system of local government.

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Chapter 6, Part 2

Sections 65, 66.(1), and 68.(1)(a) in combination with 68.(3), imply that the suspension of the councillors of a local government begins from the moment of the making of an instrument purporting to dissolve a local government. It would be beneficial if this provision were made explicit, as below:

The councillors of a local government are suspended from office once an instrument purporting to dissolve a local government is made.

Such a clarification would highlight the fact that, under the consolidated Act, the making of an instrument purporting to dissolve a local government is not limited to the Minister responsible for local government (although the instrument's tabling is limited to Parliamentarians and the instrument's moving is limited to the Minister). Given the fact that the making of an instrument is sufficient for suspension, this is an important oversight: the power to suspend must be limited to the Minister. Therefore the above suggestion should be expanded as follows:

The councillors of a local government are suspended from office once an instrument purporting to dissolve a local government is made by the Minister responsible for local government.

Section 66.(1) becomes superfluous given the above clarification.

In the previous discussion on section 64.(3) it was recommended that an administrator appointed because of dissolution or an inability to properly elect a local government be subject to the 'good rule' condition of section 64.(1). By the same principle an administrator appointed due to a suspension, as discussed in section 66.(2), should similarly be subject to the 'good rule' condition.

Chapter 6, Part 3

Section 69 is unnecessarily circumscribed. Instead 69.(1) could read as follows:

69.(1) This section applies for a Bill for an Act that would-

- (a) be administered by the Minister responsible for local government; or
- (b) affect local governments generally.

The adjustment is minor given the maintenance of the caveat in section 69.(2) that the member provides a summary of the Bill only where the member considers it practicable.

The adjustment reflects the Committee's interpretation of the section. In the Explanatory Notes for the reprint (p.29) the Committee refers only to 'a member', not just the Minister responsible for local government.

The adjustment merely describes the current practice, where Departments consult with the Association where their Bills would affect local governments generally.

Chapter 7

Section 70 outlines the intention to entrench a system of local government in the governance of Queensland.

Section 71.(1) states that Bills that affect certain sections must be put to referendum before their assent. In other words, the sections listed in section 71.(1) are the only sections to be truly entrenched.

Given the intention of section 70, it is duplicitous to exclude section 70 from the list outlined in section 71.(1). Without inclusion in this list, section 70, and indeed the range of sections from 63 through 70, becomes pointless symbolism.

Given that the Committee recognises this flaw (Explanatory Notes p.29), and given that a purpose of the consolidation is to remove such flaws, it would be incongruous to exclude section 70 from the list in section 71.(1).

Summary

The key concerns of the Association are as follows:

- ❖ The explication of the currently implicit requirement to expedite the achievement of a proper election of a local government previously dissolved or unable to be elected.
- ❖ The clarification of the moment at which the Councillors of a local government are suspended from office, and the clarification of the role of the Minister responsible for local government in such a suspension.
- ❖ The proper reflection in the Act of the intention of the Committee with respect to the requirement for consultation with the Association.
- ❖ The removal of the inconsistency relating to the referendum requirements for the abolition of a system of local government.