

LOCAL GOVERNMENT
ASSOCIATION
OF QUEENSLAND INC.

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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

3 October 2002

Karen Struthers MP
Chair

Legislative Assembly of Queensland - Legal Constitutional and Administrative Review
Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Struthers

The Queensland Constitution: Entrenchment, Proposals For Comment

Thank you for the opportunity to provide comment on the "proposals for comment" paper entitled "The Queensland Constitution: Entrenchment". The Association's main interest is in supporting any action which will secure recognition of the existence and status of Local Government and ensure its continuance. This is in accord with the Association's adopted Policy relating to Inter-Governmental Relations.

Recognising that this is the second stage of the review process, the Association confirms the essence of its submission to the first stage, which was:

"That the *Constitution of Queensland 2001* should include a provision stating that a fresh election of the councillors of a local government that has been dissolved should be held as soon as possible after the dissolution of the local government".

Consultation with Local Government

Before proceeding to the matter of "entrenchment", I would like to raise with you another issue in relation to the Constitution of Queensland Act. Currently Section 77 provides for consultation in relation to a Bill administered by the Minister responsible for the Local Government Act 1993. When the provision was originally introduced in 1989, the Association argued that it should apply to all Ministers or members introducing a Bill that affected local governments generally.

We have raised this point on a number of occasions since then and most recently in a letter dated 2 October 2001, addressed to the President of the Association Cr Noel Playford, the Premier indicated that the provision would recognise that legislation from portfolios other than the Minister for Local Government might "affect local governments generally or any of them". (Copy attached).

It is important that this matter is addressed to ensure that the position favoured by Local government, and agreed to by the Premier, is established in the Constitution of Queensland Act.

Entrenchment

LGAQ strongly supports "double entrenchment" of ss 70 and 78, so that a referendum will be required either to abolish the system of local government, or to amend s 78 so as to remove the referendum requirement.



Recognising that entrenchment is a serious matter, LGAQ does not submit that referendum entrenchment of subsidiary matters such as the consultation requirement is essential, although we are obviously desirous of achieving as strong as possible a position and recognition of Local Government by other spheres of Government. "Parliamentary entrenchment", which requires specific public notice before an amendment or repeal is passed, and an absolute majority of Parliament, is sufficient for those other provisions.

We recognise that only the most fundamental elements of our system of government should be double entrenched so as to take them out of the (sole) control of the Parliament.

What the LCARC proposes in the paper is the appropriate outcome, (provided the consultation provisions mentioned above are addressed) and one that LGAQ fully supports.

A circular advising member Councils of the review has resulted in responses from some Councils, all in support of entrenchment of provision relating to Local Government.

The Association's contact officer on this matter is Finance and Governance Advisor, Mark Leyland, who can be contacted by e-mail at mark_leyland@lgaq.asn.au or by telephone on 3000 2201.

Yours sincerely



Greg Hallam PSM
EXECUTIVE DIRECTOR

gth:mjl

attach



Queensland
Government

Please quote: P2271/DR06/CALS/SA

Premier of Queensland

02 OCT 2001

Cr Noel Playford OAM
President
Local Government Association
of Queensland
P O Box 2230
FORTITUDE VALLEY BC QLD 4006


Dear Cr Playford

I refer to my letter to you of 9 August 2001 in which I confirmed that the Constitution of Queensland 2001 I plan to introduce into Parliament later this year will maintain Queensland's current constitutional position for local government. It will do this by providing that approval at a referendum is required in order to pass an Act to abolish a system of local government in Queensland.


As I said in my statement to the Parliament on 9 August 2001, this Government considers it is important that the status of our system of local government is recognised in the Constitution of Queensland.

I now enclose, for consideration by your association, a revised draft of chapter 7 of the proposed Constitution of Queensland 2001 which contains the provisions concerning local government. Clause 83 of the draft Bill sets out the procedure for a referendum currently contained in section 56(2) to (6) of the *Constitution Act 1867*.

In addition to the inclusion of clause 83, a number of minor drafting changes have been made to the provisions of chapter 7 and the consequential amendments that are proposed to be made to local government legislation. These changes, together with a brief explanation, are outlined in the attached table. You will note that the clause numbers are different to the clause numbers in the exposure draft version of the Bill.

I would be pleased to receive any comments you may wish to make about the revised draft provisions that are enclosed. Could you please ensure that any comments reach my office by close of business on **Wednesday, 10 October 2001** and are also faxed to (07) 3229 7494.

Yours sincerely


Peter Beattie MP
Premier and Minister for Trade

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Changes to Chapter 7 – Local Government

Clause	Change	Explanation
77(2), (3)	“Other legislation, whenever made, decides the way” has been replaced with “Another Act, whenever made, may provide for”	Consistency of terminology throughout the Act.
77(3)	“Other legislation” has been replaced with “Another Act”	Consistency of terminology throughout the Act.
77(3)	“appointment of 1 or more appointed bodies ...”	‘Appointment of ... appointed bodies’ is a tautology.
78A	A definition of “Minister” for the part has been included.	This is to assist in identifying the Minister required to move the ratification of the dissolution of a local government. The definition acknowledges that Ministers are responsible for local governments through the administration of local government legislation and that not all local governments are administered by the Minister for Local Government and Planning (that is, Aboriginal or Island councils).
79(2)	“appointed accordingly to law” has been replaced with “appointed under an Act”	Consistency of terminology throughout the Act.
80(1) and 81(1)(b)	“Minister responsible for local government” has been replaced with “Minister”.	Consequential amendment due to inclusion of definition of ‘Minister’ in 78A.
82(1)	The requirement for an Act to be administered by the Minister for local government for this clause to apply has been removed.	This clause recognises that: <ul style="list-style-type: none"> Aboriginal and Island councils are not currently administered by the Minister for Local Government and Planning; and legislation from other portfolios might “affect local governments generally or any of them”.
83(4)	(compared to LCARC report 24, clause 77(4)) The requirement for the day for the referendum vote to be prescribed by regulation has been removed.	Under section 6 of the <i>Referendums Act 1997</i> , the writ issued for the referendum is required to specify the day for the referendum vote.

74 Governor's recommendation required for appropriation

(1) The Legislative Assembly must not originate or pass a vote, resolution or Bill for the appropriation of—

- (a) an amount from the consolidated fund; or
- (b) an amount required to be paid to the consolidated fund;

that has not first been recommended by a message of the Governor.

(2) The message must be given to the Legislative Assembly during the session in which the vote, resolution or Bill is intended to be passed.

CHAPTER 6—LANDS**75 Lands**

(1) The *Constitution Act 1867*, section 30¹⁹ gives the Parliament law-making power in relation to the waste lands of the Crown in Queensland.

(2) The *Constitution Act 1867*, section 40 vests particular rights in relation to the waste lands of the Crown in Queensland in the Parliament.

CHAPTER 7—LOCAL GOVERNMENT**PART 1—SYSTEM OF LOCAL GOVERNMENT****76 System of local government**

- (1) There must be a system of local government in Queensland.
- (2) The system consists of a number of local governments.

19 See attachment 4 for a copy of the *Constitution Act 1867*, sections 30 and 40.

77 Requirements for a local government

(1) A local government is an elected body that is charged with the good rule and local government of a part of Queensland allocated to the body.

(2) Another Act, whenever made, may provide for the way in which a local government is constituted and the nature and extent of its functions and powers.

(3) Despite subsection (1), another Act, whenever made, may provide for the appointment of 1 or more bodies or persons to perform all or any of a local government's functions and to exercise all or any of a local government's powers and to be taken to be a local government—

- (a) during a suspension of a local government's councillors under section 79; or
- (b) if a local government is dissolved or unable to be properly elected, until a local government has been properly elected.

(4) In subsection (3)—

“local government” includes a joint local government.

**PART 2—PROCEDURE LIMITING DISSOLUTION OF
LOCAL GOVERNMENT AND INTERIM
ARRANGEMENT****78A Definition for pt 2**

In this part—

“Minister” means the Minister who administers the provision under which the local government may be dissolved.

78 Dissolution of local government must be tabled

A copy of an instrument purporting to dissolve a local government must be tabled in the Legislative Assembly within 14 sitting days after the instrument is made.

79 Suspension until dissolution ratified

(1) From the time an instrument purporting to dissolve a local government is made until it is ratified under section 80 or its effect ends under section 81, it has the effect only of suspending the local government's councillors from office.

(2) During the suspension, 1 or more bodies or persons appointed under an Act to perform the functions and exercise the powers of the local government because of its purported dissolution may be taken to be the local government and to perform its functions and exercise its powers.

80 Ratification of dissolution

(1) The Legislative Assembly, on the motion of the Minister, may ratify the dissolution of the local government within 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled.

(2) If the Legislative Assembly ratifies the dissolution, the local government is dissolved in accordance with the instrument from the time of ratification.

81 No tabling or ratification of dissolution

(1) This section applies if—

- (a) a copy of the instrument purporting to dissolve the local government is not tabled under section 78;²⁰ or
- (b) the Legislative Assembly refuses to ratify the dissolution of a local government moved by the Minister; or
- (c) at the end of 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled—
 - (i) the Minister has not moved that the dissolution be ratified; or
 - (ii) the Legislative Assembly has not ratified the dissolution, even though the Minister has moved that it be ratified.

(2) The effect of the instrument purporting to dissolve the local government ends.

²⁰ Section 78 (Dissolution of local government must be tabled)

(3) The suspension from office of the local government's councillors ends and they are reinstated in their respective offices.

(4) The appointment of a body or person appointed to perform the functions and exercise the powers of the local government because of its purported dissolution ends.

PART 3—SPECIAL PROCEDURES FOR PARTICULAR LOCAL GOVERNMENT BILLS

82 Procedure for Bill affecting a local government

(1) This section applies for a Bill for an Act that would affect local governments generally or any of them.

(2) The member of the Legislative Assembly who proposes to introduce the Bill into the Legislative Assembly must, if the member considers it practicable, arrange for a summary of the Bill to be given to a body representing local governments in the State a reasonable time before the Bill is introduced in the Legislative Assembly.

83 Procedure for Bill ending system of local government

(1) This section applies for a Bill for an Act ending the system of local government in Queensland.

(2) The Bill may be presented for assent only if a proposal that the system of local government should end has been approved by a majority vote of the electors voting on the proposal.

(3) The Bill has no effect as an Act if assented to after presentation in contravention of subsection (2).

(4) The vote about the proposal must be taken on a day that is more than 1 month but less than 6 months before the Bill is introduced in the Legislative Assembly.

(5) The vote must be taken in the way prescribed by an Act.

(6) An elector may bring a proceeding in the Supreme Court for a declaration, injunction or other remedy to enforce this section either before or after the Bill is presented for assent.

(7) In this section—

“**elector**” means a person entitled to vote at a general election of members of the Legislative Assembly.

CHAPTER 8—MISCELLANEOUS

84 Issue of compliance not justiciable

Without affecting the justiciability of any other issue under this Act, it is declared that the issue of compliance with section 34, 44, 45, 54 or 56²¹ is not justiciable in any court.

85 Continued holding of office under the Crown despite end of Sovereign’s reign

(1) This section applies if the Sovereign’s reign ends and a person is holding an office under the Crown immediately before the end of the Sovereign’s reign.

(2) The person continues holding the office for as long as the person would have held the office if the Sovereign’s reign had not ended.

(3) If, before the end of the Sovereign’s reign, the person had taken any oath or made any affirmation provided for under an Act, the person is not required, because the Sovereign’s reign has ended, to again take the oath or make the affirmation.

(4) If the oath taken or the affirmation made before the end of the Sovereign’s reign related only to the then reigning Sovereign, the oath or affirmation is taken to relate to the then reigning Sovereign and the Sovereign’s heirs and successors.

21 Section 34 (Requirements concerning commission and oaths or affirmations of allegiance and office), 44 (Delegation by Governor to Deputy Governor), 45 (Administration of Government by Acting Governor), 54 (Executive Council) or 56 (Meetings of Executive Council)