

**LOCAL GOVERNMENT LAW MAKING: LOCAL
GOVERNMENT ACT 1993 (QLD) AND
PROPOSED AMENDMENTS**

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KELLY-ANNE COLLINS

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1. INTRODUCTION

When the *Local Government Act 1993 (Qld)* commenced in March 1994, it replaced a law making process, that had operated since 1936, with a modernised framework designed to give Queensland local governments greater autonomy and responsibility to guide the future of their communities. Since that time, a review and evaluation process, by State and local governments, has continued to ensure that the *Local Government Act 1993 (Qld)* continues to meet these objectives. As a result of this process, the Local Government and Other Legislation Amendment Bill 1999 was introduced on 29 April 1999 following an extensive consultation period. This Bulletin will focus specifically on the current procedures for local government law making and outline the amendments proposed to those procedures.

2. PRE-LOCAL GOVERNMENT ACT 1993 (QLD)

Prior to the passing of the *Local Government Act 1993 (Qld)* (the LGA), the previous legislation governing the conduct of local government was the *Local Government Act 1936 (Qld)*. Although amendments had been made to the 1936 Act, it was a widely held view that the old Act was not adequate to deal with the modern role local government was now expected to play. As the Minister stated in 1993,

*The present Local Government Act was introduced in 1936 when the principal focus of local government services was on providing basic community infrastructure and property related services. Whilst these functions are still crucial, there is a growing expectation that councils should play a much greater role in the social, economic and environmental well-being of their communities.*¹

This situation was similar to that existing in the other States of Australia at the time and so, in the late 1980s and early 1990s, all Australian States undertook “substantial reviews” of the Acts administering their local governments.² In Queensland, the outcomes of the Fitzgerald Inquiry also pointed directly to the need to reform the conduct of government at both State and local levels.³ With respect to the local law making process, the main aims of the legislative proposals, that emerged from these Australia-wide reviews, included:

- *providing scope for councils to have a strong capacity for local decision making by increasing their autonomy and granting them with general competence powers to provide for the peace, order and good government of the municipal area; ... [and]*
- *introducing or widening transparent and open procedures for decision making to better inform local communities about council actions and decisions, and generally encouraging community participation.*⁴

In addition, the then Queensland Minister stated that one of the aims of the 1993 Act was “to have a local government system that is open, accountable and has the confidence of the people”.⁵ Therefore, with respect to the law making

¹ Hon T Mackenroth MLA, Minister for Housing, Local Government and Planning, Second Reading Speech, *Queensland Parliamentary Debates*, 18 November 1993, p 5984.

² Ed Wensing, ‘The Process of Local Government Reform: Legislative Change in the States’, in *Australian Local Government: Reform and Renewal*, eds Brian Dollery and Neil Marshall, Macmillan, South Melbourne, 1997, p 90. See also **Appendix A** for a comparison of Queensland and interstate local government law making provisions.

³ Wensing, pp 92-93.

⁴ Wensing, p 96.

⁵ Hon T Mackenroth, 18 November 1993, p 5984.

process of local government, the LGA introduced certain significant features, as follows:

- the maintenance of a general jurisdiction for local government but without the explicit designation of a large number of specific functions;⁶
- the requirement to review all pre-existing by-laws within a 3 year period after the LGA became effective (this was later extended to 1 July 1999);⁷
- increased decision-making autonomy for local government and the power to bring their laws into effect. The State Government is limited to intervening in local laws to matters of State interest (This was extended, later, to include ensuring compliance with the National Competition Policy);⁸ and
- increased accountability in the law making process, including a public consultation process prior to the making of local laws and open local government and committee meetings when resolutions are to be passed.⁹

The provisions considered in this Bulletin also apply to the Brisbane City Council by virtue of **section 3A** of the *City of Brisbane Act 1924* (Qld).

3. LOCAL GOVERNMENT ACT 1993 (QLD)

3.1 THE LEGISLATIVE POWERS OF LOCAL GOVERNMENT

One of the most significant developments for local government law making in the LGA was the widening of a local government's jurisdiction to make laws. So while Queensland local governments had been given a wide general jurisdiction in the 1936 Act, the courts had given that jurisdiction a narrow interpretation because the Act then went on to subsequently list particular local government responsibilities.¹⁰ This listing of specific functions of local government was used to limit the jurisdiction of local governments to these matters only. This narrow interpretation was known to have caused problems for local governments because often matters of current interest to them were simply not detailed in the out-of-date 1936 Act. For

⁶ See *Local Government Act 1993* (Qld), s 25. (Hereafter referred to as LGA)

⁷ LGA, ss 1214 and 1215.

⁸ Hon T Mackenroth, 18 November 1993, p 5986 and LGA, s 886.

⁹ Hon T Mackenroth, 18 November 1993, p 5986 and see LGA, particularly, ss 868, 878, Chapter 6, Part 1, Division 2 & 3 and s 463.

¹⁰ Doug Tucker, Alan Morton and Lorell Edwards, *Queensland Local Government: Moving Ahead, Volume 1, Main Report*, Local Government Association of Queensland, Brisbane, January 1995, p 30.

example, a study of local government economic development, for the Local Government Association of Queensland, found that many local governments had received legal advice that certain projects they wished to proceed with may have been outside the scope of their power. Thus, many economic development projects did not proceed.¹¹

The LGA states that:

*Each local government has jurisdiction ... to make local laws for, and otherwise ensure, the good rule and government of, its territorial unit.*¹²

A local government has “a law-making role” and “an executive role”, including the “adoption and implementation of policy”, the “administration of local government” and the ability to enforce its own laws.¹³ However, a local government cannot make laws which a State Parliament cannot make or which attempt to limit the future law making role of the local government.¹⁴ Where any inconsistency occurs between a State law and a local law, the State law will prevail to the extent of that inconsistency.¹⁵

An examination of the functions of local governments is, however, some indication of the matters that may be covered by local laws. Broadly, they can be grouped into five categories:

- Service Function - providing “a wide range of property and ‘people’ services”;
- Regulatory Function - controlling and administering the physical environment of the local area;
- Representative Function - representing and acting “in the interests of the community and electors”;
- Community Planning and Co-ordinating Function - directing the provision of “services and facilities ... by Government agencies, voluntary and community groups”; and

¹¹ For example, Warwick City Council did not proceed with a proposal to assist in the “establishment, promotion and management of industrial buildings” to be used by “small scale business and industry” in their local government area. See Tucker, Morton and Edwards, p 30.

¹² LGA, s 25.

¹³ LGA, s 20.

¹⁴ LGA, s 30.

¹⁵ LGA, s 31.

- Participatory Function - providing channels for the local community to participate in matters affecting them.¹⁶

3.2 LOCAL LAW MAKING PROCESS¹⁷

The *Local Government Act 1993* (Qld) provides procedures for local governments to pass four kinds of local laws. They are:

- model local laws;
- interim local laws;
- other local laws; and
- local law policies.

When the LGA became effective in March 1994, it established what was intended to be a common process for the development and implementation of Council by-laws and town planning schemes.¹⁸ However, since the development of the *Integrated Planning Act 1997* (Qld), this LGA process has been confined to cover only what were known as council by-laws. These by-laws became known as ‘local laws’ under the LGA.¹⁹

The procedures set out in the LGA must be followed to ensure the validity of a local law.²⁰ Once they become effective, local laws have the force of law and local law policies are binding on the local government and the community to the extent stated in the authorising local law.²¹

It is important to note also that the review requirements of the National Competition Policy also apply to local laws.²² This process occurs simultaneously with the making of a local law or local law policy.

¹⁶ Local Government Training Council of Queensland Inc, *The Councillor Handbook: A Guide to Local Government in Queensland*, Brisbane, 1994, p 10.

¹⁷ See **Appendix B** for flow charts of the local law making procedures under the LGA.

¹⁸ Hon T Mackenroth, 18 November 1993, p 5986.

¹⁹ LGA, s 1212.

²⁰ LGA, ss 856, 859, 865 and 876.

²¹ LGA, ss 896 and 897.

²² LGA, ss 886 and 887.

3.2.1 Model Local Laws

As part of the process of modernising local law making, it was felt that, to assist local governments, the then Department of Housing, Local Government and Planning (the Department) would develop a set of model local laws that local governments could adopt if they wished. The hope was that this development would allow local governments to more quickly modernise their local laws and, at the same time, attempt to gain some uniformity in local laws operating throughout the State.²³ Therefore, the model local laws were designed to cover “*core matters necessary to be regulated by most local governments*”.²⁴

The current procedures to adopt such laws, firstly, involves the local government, by resolution, adopting the model local law and then, secondly, being required to publish a notice of this action.²⁵ While this process contains no requirement for local government consultation with the public, the Department does undertake such steps when drafting the model set of local laws. This consultation involves the:

- publication of the draft model local laws in major newspapers throughout the State, including an invitation for the public to make submissions;
- distribution of the model local laws to local governments for comment; and
- establishment of steering or reference groups to consider the particular subject matter involved.²⁶

3.2.2 Interim Local Laws

In order to make a local law, a local government must, firstly, undertake a public consultation process. The purpose then of interim local laws is to provide a short-term regulation to ensure that transgressions of the proposed permanent local law are restricted while the consultation process takes place.²⁷ Queensland is the only state in Australia to have such interim local laws.²⁸ Examples of their use to date have included the adoption of interim local laws dealing with vegetation management matters and traffic matters, such as road side vending, regulated

²³ Hon T Mackenroth, 18 November 1993, p 5987.

²⁴ Queensland. Department of Local Government, Planning, Regional and Rural Communities, *Local Law Making - an evaluation*, Discussion Paper, Brisbane, March 1998, p 7.

²⁵ See LGA, Chapter 12, Part 2, Division 1.

²⁶ Department of Local Government, Discussion Paper, p 18.

²⁷ Department of Local Government, Discussion Paper, p 7.

²⁸ Department of Local Government, Discussion Paper, p 7.

parking and touting.²⁹ An interim local law will expire six months after it is made unless the Minister agrees to otherwise extend the time period.³⁰

In order to make use of this process, the local government requires the agreement of the Local Government Minister that, because of “*the nature of the law*”, it is considered appropriate to use this shortened procedure.³¹ The proviso for using the interim local law making procedure is that upon the adoption of the interim local law, the local government must immediately begin the process to develop a replacement permanent local law.³²

Therefore, the interim local law making process includes the following steps:

- 1) The passing of a resolution proposing an interim local law;³³
- 2) Ministerial approval (which may be subject to conditions) is given to proceed with this process;³⁴
- 3) The passing of a resolution to make the interim local law;³⁵ and
- 4) A public notification of the interim local law in the Government Gazette.³⁶

3.2.3 Other Local Laws

This section details the general process used by local governments to make local laws. It should be noted that local governments can choose to use this process to pass model local laws, also.³⁷

The procedure is as follows:

- 1) A resolution is passed by the local government proposing to adopt the local law;³⁸

²⁹ Department of Local Government, Discussion Paper, p 17.

³⁰ LGA, s 860(2).

³¹ LGA, s 852.

³² LGA, s 861(4)(c).

³³ LGA, s 860(1).

³⁴ LGA, s 861.

³⁵ LGA, s 862.

³⁶ LGA, s 863.

³⁷ LGA, s 865(2).

³⁸ LGA, s 866.

- 2) This is the ‘State interest’ check stage when the Department proceeds to determine whether or not the proposed local law satisfactorily deals with any ‘state interest’ by consulting other State Departments that are relevant considering the subject matter of the proposed local law.³⁹ The Act defines ‘state interest’ as:
- i) *an interest that, in the Governor in Council or Minister’s opinion affects an economic, social or environmental interest of the State or region; or*
 - ii) *an interest in ensuring there is an efficient, effective and accountable system of local government; or*
 - iii) *an interest prescribed by regulation;*⁴⁰
- 3) In approving the proposed local law, the Minister may attach any conditions considered appropriate, including the ability to permit the local government to by-pass the consultation process if the proposed local law only seeks to make minor amendments to existing local laws;⁴¹
- 4) In order to facilitate the public consultation process, a local government is obliged to advertise the proposed local law in a local newspaper and display it in their public offices for the community to view.⁴² The public must have the opportunity to view the proposed local law and make written submissions.⁴³ Certain details are to be provided to the public to ensure this. These are set out in the LGA.⁴⁴ The consultation process must last for a period of at least 21 days.⁴⁵ The public must also be able to inspect and purchase a copy of the proposed local law if they wish.⁴⁶
- 5) The local government is then obliged to “*consider every submission properly made to it*”.⁴⁷ A ‘properly made’ submission must be written, state the grounds of the submission and the facts and circumstances relied on and be

³⁹ LGA, s 867.

⁴⁰ LGA, s 4.

⁴¹ LGA, s 867(4).

⁴² LGA, s 868(4).

⁴³ LGA, ss 868(4), (5) and s 869.

⁴⁴ LGA, s 868(5).

⁴⁵ LGA, s 868(1).

⁴⁶ LGA, s 869.

⁴⁷ LGA, s 870(1).

- received by the local government on or before the last day of the consultation period.⁴⁸
- 6) The sixth step is for the local government to make a decision on how to respond to the consultation process. They can either:
 - (i) proceed with the advertised proposed local law;
 - (ii) proceed with the proposed local law but with amendments; or
 - (iii) not proceed with the making of the proposed local law.⁴⁹
 - 7) A 'state interest' check is to be conducted again⁵⁰ especially if amendments have been made.
 - 8) The next stage requires the local government to pass a resolution adopting the proposed local law.⁵¹
 - 9) Finally, the local government must notify the public of the making of the local law by placing the details in the Government Gazette. The Minister is also notified.⁵²

3.2.4 Local Law Policies

The role of local law policies is “*to assist the detailed implementation of a local law’s objects*”.⁵³ They also provide a mechanism to help adapt model local laws to the specific conditions of the local government area.⁵⁴ A local law policy derives its force from its authorising local law. The authorising local law must provide for the making of such a policy and the policy must only deal with those matters specifically permitted by that local law.⁵⁵ For example,

- The local law may state that it regulates road side vending. The local law policy can then specify “*the distance that a road side vendor can*

⁴⁸ LGA, s 870(2).

⁴⁹ LGA, s 871.

⁵⁰ LGA, s 872.

⁵¹ LGA, s 873.

⁵² LGA, s 874.

⁵³ LGA, s 848(3).

⁵⁴ Department of Local Government, Discussion Paper, p 11.

⁵⁵ LGA, s 853.

*legitimately operate from the location of a retail establishment selling similar goods”.*⁵⁶

- Where a local law states that the local government may make a policy about the management and use of library resources then the policy can include details about the libraries’ hours of operation or the use of its facilities.⁵⁷
- On the contrary, if a local law states that it may make policy on the restrictions of borrowing rights or the suspension of membership to a local library, the policy cannot detail the hours of operation of the library.⁵⁸

The process of adopting a local law policy can begin prior to the end of the process for making the local law under which the policy will be made.⁵⁹ A local government must also keep a register of all its local law policies which must be open for public inspection.⁶⁰

The procedure for making local law policies is very similar to that provided for ‘other local laws’ (See Part 3.2.3 of this Bulletin). However, firstly, there is no requirement that these proposals be subject to a ‘state interest’ test. Secondly, where substantial amendments are made to a proposed local law policy, following the local government’s consideration of public submissions, the public consultation process must be carried out again.⁶¹ Thirdly, notification of the adoption of the local law policy need only be placed in a local newspaper.⁶²

4. DEVELOPMENTS SINCE THE LOCAL GOVERNMENT ACT 1993 (QLD)

A number of problems have emerged with the local law making process since the LGA commenced in March 1994. The introduction of other legislation has meant some changes to the local law making process. The National Competition Policy guidelines now apply to local government laws and the *Integrated Planning Act 1997* (Qld) has meant that local governments are now not

⁵⁶ *Explanatory Notes*, Local Government Bill 1993 (Qld) in Paul Newman, *Local Government Queensland*, looseleaf service, Law Book Company, Brisbane, 1994, p 16,051.

⁵⁷ Newman, p 16,001.

⁵⁸ Newman, p 16,001.

⁵⁹ LGA, s 883.

⁶⁰ LGA, s 895.

⁶¹ LGA, ss 881(2), (4).

⁶² LGA, s 882(1).

able to establish processes regarding matters of development.⁶³ In addition, during this time, both the Department and local governments have been continually reviewing and evaluating the effectiveness of the procedures introduced by the LGA.

4.1 REVIEW OF PRE-EXISTING LAWS

At the time of the commencement of the *Local Government Act 1993* (Qld), there were more than 5000 local laws in place.⁶⁴ One of the major requirements of the LGA was that each local government review all its pre-existing laws, that is, any law which was in force when the LGA commenced, and determine whether the local law or any provision in that law, was of any continuing use to the local government and the community.⁶⁵ To ensure this was done, any pre-existing law which is not reviewed, and either repealed or had a notice printed in the Government Gazette affirming the law, will expire on 1 July 1999.⁶⁶ A Discussion Paper, released in March 1998, in relation to the local law making process, stated that, up to that time, 91% of all pre-existing local laws reviewed had been repealed (that is, 46% of all pre-existing laws), 4.6% had been partly repealed and 4.4% had been saved.⁶⁷

The question then raised by this review was how to go about ensuring that current local laws were relevant and best met the needs of the local community. Queensland is currently the only Australian State that does not have any legislative provisions requiring local governments to conduct periodic reviews of their local laws for any matters other than anti-competitive provisions. These interstate procedures require reviews to be carried out at the end of periods of time ranging from every seven to every ten years.⁶⁸

The arguments made in favour of a periodic review of local laws include:

⁶³ See Schedule 9, *Integrated Planning Act 1997* (Qld).

⁶⁴ The Hon D McCauley MLA, Minister for Local Government and Planning, 'Local Law Review - Getting on with the Job', *Locally Speaking*, No 21, Local Government Services, Queensland. Department of Local Government and Planning incorporating Rural Communities, Brisbane, March 1998, p 1.

⁶⁵ LGA, s 1214.

⁶⁶ LGA, s 1215.

⁶⁷ Department of Local Government, Discussion Paper, p 8.

⁶⁸ Department of Local Government, Discussion Paper, p 19.

- ensuring that local laws remain up-to-date;⁶⁹
- reducing the need for large-scale future reviews, similar to the one being completed, to comply with the LGA, that was, according to the Department, “*resource intensive and time-consuming*”;⁷⁰ and
- allowing an opportunity for local governments to consider using “*emerging alternatives to traditional regulatory procedures*”, for example, the use of negative licensing.⁷¹

4.2 DRAFTING STANDARDS

There have been additional problems caused as a result of the lack of legislative provisions setting out any drafting standards for local laws and local law policies. This is despite the development of a Local Law Manual which provides information to local governments in this regard. The only requirement currently to ensure that local laws and local law policies are drafted appropriately is that a certificate is provided to the Department stating that the proposals are within the power of the local government to make and that the certificate is signed by the local government’s solicitor attesting to this.⁷² The drafting of local laws is not subject to the *Legislative Standards Act 1992* (Qld), which includes the ‘Fundamental Legislative Principles’,⁷³ nor to the *Statutory Instruments Act 1992* (Qld), requiring the policies to be gazetted after being passed and subject to disallowance by Parliament.⁷⁴ The expertise of the Office of Queensland Parliamentary Counsel is also not used to draft the laws.⁷⁵ These problems are also hindered by the difficulties faced by local governments in finding solicitors and legal advisers with sufficient expertise to give appropriate information on the relevant issues.⁷⁶ All this has meant significant delays are often encountered in the local law making process

⁶⁹ Department of Local Government, Discussion Paper, p 20.

⁷⁰ Department of Local Government, Discussion Paper, pp 19 and 20.

⁷¹ Department of Local Government, Discussion Paper, p 20.

⁷² Department of Local Government, Discussion Paper, p 12.

⁷³ Queensland. Parliament. Legal, Constitutional and Administrative Review Committee, *Report on the Preservation and Enhancement of Individuals’ Rights and Freedoms in Queensland: Should Queensland Adopt a Bill of Rights?*, Report No 12, Brisbane, November 1998, p 71.

⁷⁴ PLCARC, p 71.

⁷⁵ PLCARC, pp 71-72.

⁷⁶ Department of Local Government, Discussion Paper, p 12.

because of the time the Department needs to take to ensure that local laws are adequately drafted.⁷⁷

There is also concern regarding the development of local law policies to complement the local laws from which they derive their effectiveness. The problems include that the content of policies does not always relate to the matters stated in the local law that the policy is authorised to deal with.⁷⁸ It must do so to be valid. And, often, details which should be in the local law itself are put into the policy.⁷⁹ This is despite the Department providing copies of sample local law policies to assist in this process.⁸⁰ It is necessary that local law policies are drafted correctly in these cases, because of their importance when implementing a model local law. The policy provides the details of the modal local laws and aims to address the individual circumstances of each local government.⁸¹

Proposals to assist this situation involve both legislative and non-legislative responses. These suggestions include:

- the provision of information and training seminars held to target those specifically involved in preparing local laws;⁸²
- assistance to be given to develop a local law drafting and making service as an alternative to the service currently being performed by the Department;⁸³
- accreditation schemes for those involved in the drafting of local laws, including ensuring that such people are available to all local governments throughout the State;⁸⁴
- giving the Office of Parliamentary Counsel a role in either drafting or reviewing local laws. The review task could, alternatively, be performed by a Parliamentary Committee or Parliament, itself, could be given the power to

⁷⁷ Department of Local Government, Discussion Paper, p 10.

⁷⁸ Queensland. Department of Local Government and Planning incorporating Rural Communities, Local Government Services, *Locally Speaking*, No 18, Brisbane, June 1997, p 4.

⁷⁹ *Locally Speaking*, No 18, p 5.

⁸⁰ See Queensland. Department of Communication and Information, Local Government, Planning, *Sample Local Law Policies*, Brisbane, April 1999.

⁸¹ Department of Local Government, Discussion Paper, p 11.

⁸² Department of Local Government, Discussion Paper., p 13.

⁸³ Department of Local Government, Discussion Paper, p 13.

⁸⁴ Department of Local Government, Discussion Paper, p 13.

disallow local government laws as is the case in other Australian States;⁸⁵ and

- the development of a network of, and for, professionals responsible for drafting local laws.⁸⁶

4.3 THE ROLE OF THE DEPARTMENT

The above options for change seem to suggest there is the possibility for a review of the sort of role the Department should actually be playing in this process. One of the objectives of the LGA was to give greater law making autonomy to local governments so that they would be a distinct level of government operating in their own right and, thus, directly accountable and responsible for any decisions or actions they take.⁸⁷ Currently, the role of the Department includes the:

- processing of local laws, including conducting a ‘State interest’ check;
- providing advice to ensure compliance with the procedures;
- developing model local laws;
- processing interim local law requests;
- conducting training and information dissemination; and
- establishing a database recording all local laws and policies.⁸⁸

The Department’s assessment of their work in redrafting local laws is that it is an “*inefficient application*” of their resources.⁸⁹

The option then is for the Department to move “*toward a more strategic function*” now that “*the transitional period*”, following the introduction of the LGA, is slowing down.⁹⁰ This new function would involve encouraging local governments to take greater responsibility for the quality of drafting of their local laws.⁹¹ For example, in Western Australia, the relevant Department advises the local government of any drafting problems but it is the responsibility of the local

⁸⁵ PLCARC, p 75.

⁸⁶ Queensland. Department of Communication and Information, Local Government and Planning, ‘Local Law Making Process’, in *Local Government Act 1993: Draft Legislative Proposals Consultation Kit*, Chapter 3, Brisbane, 1998, p 4.

⁸⁷ Hon T Mackenroth, 18 November 1993, p 5986.

⁸⁸ Department of Local Government, Discussion Paper, p 14.

⁸⁹ Department of Local Government, Discussion Paper, p 13.

⁹⁰ Department of Local Government, Discussion Paper, pp 14 and 15.

⁹¹ Department of Local Government, Discussion Paper, p 15.

government to correct them. The WA Department notes that the local governments have, thus, shown greater levels of interest in their laws. In addition, the WA Municipal Association provides a 'Local Laws WA' service to give advice with respect to the drafting and making of local laws.⁹²

4.4 INTERIM LOCAL LAWS

Questions have been raised about the necessity of interim local laws and that, if they remain in the LGA, whether the current procedures in that Act are flexible enough. Only 28 interim local laws have been made since the LGA was introduced.⁹³ In addition, the local laws which replaced them have often not reflected the intent of the interim local law.⁹⁴ However, the Department does point out that, for the purposes for which these interim local laws have been used, there is no obvious alternative.⁹⁵

There have been additional difficulties in that the six month period provided, before the interim local law expires, does not seem to leave enough time to undertake the whole consultation process in order to make the permanent local law to replace the interim one, "*particularly where the subject matter [of the permanent local law] is controversial*".⁹⁶

4.5 MODEL LOCAL LAWS

Model local laws make up 94 % of all local laws which have come into effect since 1994 and 26% of all local laws.⁹⁷ Thus, while the provision of model local laws has proven very popular, one issue raised by local governments has been their inability to be able to make amendments to these laws, which don't change the basic intent of the law, without then having to use the extended process set down for the making of 'other local laws'.⁹⁸ The arguments of local government would seem to be based on the fact, that in the development of these model local laws, extensive consultation already takes place. For example, the Department will:

⁹² Department of Local Government, Discussion Paper, p 15.

⁹³ Department of Local Government, Discussion Paper, p 17.

⁹⁴ Department of Local Government, Discussion Paper, p 17.

⁹⁵ Department of Local Government, Discussion Paper, p 17.

⁹⁶ Department of Local Government, Discussion Paper, p 17.

⁹⁷ See Table 1, 'Queensland Local Laws (as at 10 February 1998)', Department of Local Government, Discussion Paper, p 8.

⁹⁸ Department of Local Government, Discussion Paper, p 18.

- publish the proposal in major newspapers distributed throughout the State along with an invitation for submissions;
- distribute them to local governments for comment; and
- allow the proposed model local law to be considered by steering/reference groups established by the Department.⁹⁹

The Department has also on occasion developed two model local laws on a particular subject matter where appropriate but the cost effectiveness of this process for the Department may be questionable.¹⁰⁰

4.6 PUBLIC CONSULTATION

The relevant issue here is whether consultation, occurring after the resolution to propose the local law but before it is drafted, would be a better way to ensure the maximum effectiveness of community input into the local law making process.¹⁰¹ In response, it has been pointed out that a local government is currently free to conduct additional consultation at any time it wishes but that any additional consultation period could make the local law making procedure “*too cumbersome*”.¹⁰² However, such a change would allow public consultation on questions of whether the development of a local law is the most effective way to deal with a particular issue.¹⁰³

5. THE LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL 1999

As the Minister stated in his Second Reading Speech, the overall aim of these proposed amendments is to ensure that the framework, in the LGA, for the local law making process is improved to assist its workability for local governments and the public.¹⁰⁴

⁹⁹ Department of Local Government, Discussion Paper, p 18.

¹⁰⁰ Department of Local Government, Discussion Paper, p 18.

¹⁰¹ Department of Local Government, Discussion Paper, p 16.

¹⁰² Department of Local Government, Discussion Paper, pp 15 and 16.

¹⁰³ Department of Local Government, Discussion Paper, p 16.

¹⁰⁴ Hon T Mackenroth MLA, Minister for Communication and Information and Minister for Local Government, Planning, Regional and Rural Communities, Second Reading Speech, *Queensland Parliamentary Debates*, 29 April 1999, p 1592.

5.1 PERIODIC REVIEW PROCESS

This Bill provides for a periodic review process to be completed every ten years with three years provided for, prior to the end of the period, during which the review can occur. The provisions outlining this process are set to commence on 1 January, 2000. **Clause 70** of the Bill proposes to insert a new **Chapter 12, Part 5** into the LGA. These clauses propose that all local laws and local law policies in force at ‘the review date’ must be reviewed prior to their expiry to identify any redundant provisions, that is, any provision that is determined to have no useful purpose (**Proposed new section 889C(1)**). The decision as to the redundancy of a provision will be made by a local government resolution (**Proposed new section 889C(2)**). The first ‘review date’ will be 1 January 2008 and then 1 January in each tenth year after that (**Proposed new section 889A**).

It is proposed that all local laws and local law policies will expire at the specified date at the end of the review period unless a notice is gazetted stating that it is not a redundant law (**Proposed new section 889B**). The Minister will also need to be informed of the details of these reviews (**Proposed new section 889C(4)**). The first expiry date will be 31 December 2010 and then every ten years after that date (**Proposed new section 889A**).

Proposed section 889D(2) states that a local government, in order to repeal a redundant provision, must pass a resolution making a local law that states that the local government repeals the provision, rather than a local law which simply states that the provision is redundant.

5.2 DRAFTING COMPLIANCE CERTIFICATES

The proposed provisions dealing with these new certificates will apply to the process of making any local laws or local law policies, except model local laws. **Clause 68** sets out a regime which requires the local government to lodge a drafting compliance certificate with the Department, as part of the ‘State interest’ check, stating that the proposed local law or policy has been drafted substantially in accordance with certain standards. Where an interim local law is proposed, the certificate must be lodged when the local government seeks approval to use this interim local law making process (**Clause 67**). When it is a local law policy, lodgement occurs when notice of the policy is published (**Clause 69**). The drafting certificate is to be signed by the CEO of the local government and a lawyer (**Clause 65**). These provisions will commence on 1 January 2000 to give the Department and local governments time to develop what standards will apply.¹⁰⁵

¹⁰⁵ Hon T Mackenroth, 29 April 1999, pp 1591-1592.

Clause 72 provides that these standards will be prescribed by regulation and may include statements on the following:

- the citation and numbering of the laws;
- the use of gender-neutral language;
- the application of the fundamental legislative principles; and
- the printing and drafting style to be used.

5.3 OTHER AMENDMENTS TO COMMENCE ON ASSENT

Amendments are made to the LGA, by this Bill, to commence on assent.

5.3.1 Model Local Laws

Under **Clause 49** of the Bill, it is proposed that local governments will have to pass a resolution proposing the adoption of model local laws but there are no changes regarding the process to pass model local laws with amendments made to them.

5.3.2 Interim Local Laws

Interim local laws are retained in the LGA and are now subject to a ‘State interest’ test proposed to occur at the Ministerial approval stage (**Clause 53, Proposed new section 861(2)**). This previously occurred administratively only.¹⁰⁶ When the local government proceeds to making an ongoing local law after the interim local law is made, **proposed new section 861(6)** will allow the local government to proceed directly to the public consultation process.

Clause 62 (Proposed new section 896A) clarifies, that where an interim local law repeals or amends a local law, upon the expiration or repeal of the interim local law, any effect that interim local law had will cease. There had been suggestions that this situation was unclear legally.¹⁰⁷ Therefore, the applicable law will simply be that which existed prior to the introduction of the interim local law (**Clause 62, Proposed new section 896A**). The same will apply to any policy made under that interim local law (**Clause 62, Proposed new section 896A(4) and (5)**).

5.3.3 Other Local Laws

Clause 57 proposes that the Minister must now also receive a copy of the proposed law at the ‘State interest’ check stage.

¹⁰⁶ Queensland. Department of Communication and Information, Local Government and Planning, *Local Government Act 1993: Draft Legislative Proposals Consultation Kit*, Chapter 3, p 5.

¹⁰⁷ *Local Government Act 1993: Draft Legislative Proposals Consultation Kit*, Chapter 3, p 5.

5.3.4 Local Law Policies

Clause 61 outlines that the process to develop a local law policy, under a model local law, can now start earlier as is the case with respect to the process for other local laws. **Clause 63** clarifies that a local law policy is only effective so long as the local law from which it derives its effectiveness is current.

5.4 OTHER AMENDMENTS TO COMMENCE 1 JANUARY 2000

Clause 66 proposes to change the name of ‘local law policy’ to that of ‘subordinate local law’ in order to clarify that these laws have the force of law and are binding on the local government and the community.¹⁰⁸ The changeover is proposed to occur automatically on 1 January 2000. Any process, begun prior to the commencement of these provisions, to make a local law policy will simply transfer to the process provided for a ‘subordinate local law’ (**Clause 73**). Any steps already taken will not have to be redone.

6. CONCLUSION

The Local Government and Other Legislation Bill 1999 seeks to address the major concerns, identified by the recent review process, with local government law making. Thus, provisions have been developed for the periodic review of local laws by local governments and for encouraging a better quality of local laws. It is hoped that with these changes Queensland local governments and communities will be equipped with a more ‘workable’ system for local law making.

¹⁰⁸ *Explanatory Notes*, Local Government and Other Legislation Amendment Bill 1999 (Qld), p 20.

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APPENDIX A - LOCAL LAW MAKING IN AUSTRALIA (AS AT MARCH 1998)

Source:

Queensland. Department of Local Government, Planning, Regional and Rural Communities, *Law Making - an evaluation - Discussion Paper*, March 1998.

Queensland	New South Wales	Victoria	South Australia	Western Australia	Tasmania	Northern Territory
Can local govts initiate local laws						
yes	no Local govts in New South Wales are not empowered to make local laws. The NSW <i>Local Government Act 1993</i> prescribes the approvals which a local govt may give and the orders it may issue. *	yes	yes	yes	yes	yes. (drafted by Office of Parliamentary Counsel).
Model laws (number)						
yes (23)	no	yes (7)	yes	yes	yes (approx. six)	The legislation provides for the approval of a set of model provisions for by-laws. To date no model provisions have been approved.

*The Act provides in the introduction to Chapter 7 "A council is not given power to regulate activities by other means. For example, the Chapter does not confer powers to require a person to hold a periodic licence." Section 158 empowers local governments to make local policies in respect of administering approvals and orders. Local governments are required to give public notification when proposing to make local policies. An example of a local policy might be the specification of circumstances which makes an approval unnecessary.

Appendix A - LOCAL LAW MAKING IN AUSTRALIA (as at March 1998) (continued)

Involvement of local government association or equivalent						
No direct involvement. The LGAQ solicitor provides fee for service contracts with local govts.	No involvement	MAV has prepared model local laws, has undertaken fee for service contracts with local govts.	LGASA able to prepare model laws.	WAMA provides <i>Local Laws</i> WA service. This service is used by 103 of the 144 local govts. In addition to providing a regularly updated manual, local govts have access to a central, competent drafting service which includes consultation with appropriate stakeholders in the drafting stages. Local govts are able to make adjustments to the drafts provided as considered appropriate.	No involvement, although there is a current proposal for LGAT to identify main areas of need for by-laws and develop appropriate set of by-laws.	No involvement.
Responsibility for Processing						
Minister	N/A	local govts	local govts	local govts	moving from Ministerial responsibility to local govt.	Minister
General competence power						
Yes, local govts can make local laws for, & otherwise ensure, the good rule and government of, its territorial unit; local laws and local law policies are statutory instruments. Note: Ministerial approval to make a local law is required in progressing local law.	No, local govts restricted to making approvals and issuing orders as prescribed.	Yes, local govts may make local laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under the Local Government or any Act. Local Laws are subordinate instruments.	No, the Local Government Act limits the power to make by-laws to purposes specified in the Act. By-laws are subordinate legislation.	Yes, the Act states the general function of local govt is to provide for the good government of persons in its district and empowers local govts to make local laws required, permitted, necessary or convenient to perform any of its functions. The State government is able by regulation to prescribe matters on which local laws cannot be made - none as yet.	Yes, the Act states a council may make by-laws in respect of any act, matter or thing for which a council has a function or power.	Yes, the Act enables local govts to make by-laws for or in relation to the performance of a function vested in it. Parliamentary Counsel is required to certify a council can make a new by-law.

Appendix A - LOCAL LAW MAKING IN AUSTRALIA (as at March 1998) (continued)

How state interests are incorporated						
There is legislative requirements for the Minister to be satisfied that State interests are dealt with prior to Minister's approval to make local law.	The NSW <i>Local Government Act</i> specifies in section 124 the matters which a local government may order a person to do or to refrain from doing. This section also specifies the circumstances and persons applicable in serving orders.	There are no legislative requirements, but there are informal processes by which local govts consult with affected stakeholders (not just other State departments).	All by-laws are referred to Legislative Review Committee of Parliament for compliance check.	Local govts are required to send proposed laws to Minister for local govt & other relevant Ministers; must also prepare an Explanatory Memorandum for Joint Standing Committee on Delegated Legislation.	There are no legislative requirements, but local govts undertake regulatory impact statements (primarily to satisfy NCP provisions). The Department may identify matters and refer them to other Departments for comment.	There are no legislative requirements, but the Department consults other Departments in processing by-laws.
Public consultations						
Consultation is required for making local laws and local law policies; notification is required for model local laws, local laws, local law policies and interim local laws.	Local govts can adopt local policies for giving approvals or orders. Notification that a policy is going to be made and consultation on the draft policy are required when making local policies.	Notification that a local law is going to be made and consultation on the draft law are required for when making local laws. There is no legislative requirement for consultation in making policies but it is generally undertaken by local govts.	Notification that a by-law is going to be made and consultation on the draft by-law are required when making by-laws.	Notification that a local law is going to be made and consultation on the draft local law are required when making local laws. There is also legislative provision requiring local govts to take reasonable steps to inform inhabitants of its district.	Notification that a by-law is going to be made and consultation on the draft by-law are required when making by-laws. Adoption of model by-laws only requires notification of adoption (no consultation or notification of proposal to adopt).	Local govts are required to consult with the community when the final draft is available.
Interim laws						
There is provision for interim laws for period of 6 months. Extensions require further Ministerial approval. Public consultation is not required.	N/A	There are no legislative provisions.	There are no legislative provisions.	There are no legislative provisions.	There are no legislative provisions.	There are no legislative provisions.

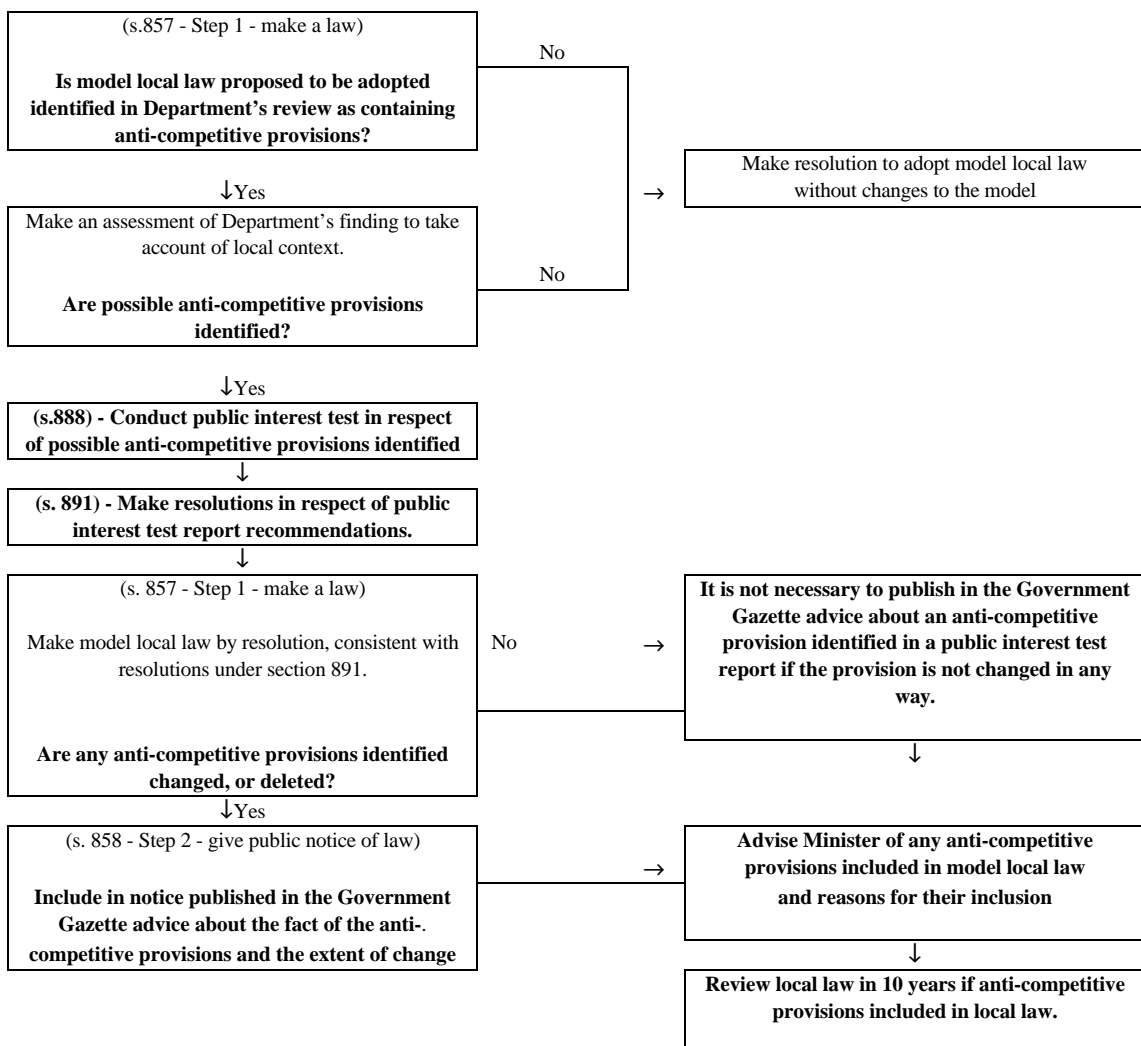
Appendix A - LOCAL LAW MAKING IN AUSTRALIA (as at March 1998) (continued)

Review and/or redundancy provisions						
There is no general requirement for automatic review/ revocation of local laws. There is a requirement for reviewing local laws every ten years for anti-competitive provisions. Local govts must also review all pre-existing local laws (those laws made subject to legislation prior to the current <i>Local Government Act</i>) by 30/6/99; all local laws were reviewed by 31/12/97 for anti-competitive provisions.	Local policies are automatically revoked at the expiration of 12 months after the declaration of the poll for a general election, held every 4 years.	Local laws are automatically revoked on 10 th anniversary.	By-laws generally expire in the January after 7 th anniversary.	Local govts are required to review all local laws to determine whether they will be amended for repealed within 8 years. The review process requires public notification and consultation.	All laws (whether later amended or not) expire after 8 years.	It is suggested laws be reviewed within 10 years.
Local law policies						
Yes they are defined as a statutory instrument and the legislation requires public consultation.	Yes local govts able to make local policies to support administration of approvals and orders.	Yes, They are not a statutory instrument but rather administrative rules to assist with implementation of laws. They are often made in consultation with community.	Local govts may have policies but there are no legislative requirements for making them.	Yes. They are not a legislative instrument, more administrative rules to assist with consistent implementation.	Local govts may have policies but there are no legislative requirements for making them.	Local govts may have policies but there are no legislative requirements for making them.
How changes are made						
Local laws are repealed and amended by local law. Model local laws are amended by a new model local law. They are repealed by a notice in the Gazette.	Changes to local policies by local policy. Revocation can be done at any time.	Local laws are repealed and amended by local law.	By-laws are repealed and amended by by-law.	The Governor and local govts may make local laws to amend or repeal local laws.	By-laws are repealed and amended by by-law. Model by-laws can be repealed by resolution and gazettal.	By-laws are repealed by resolution and gazettal; they are amended by by-law.

APPENDIX B - CURRENT PROCEDURES UNDER THE LOCAL GOVERNMENT ACT 1993 (QLD)

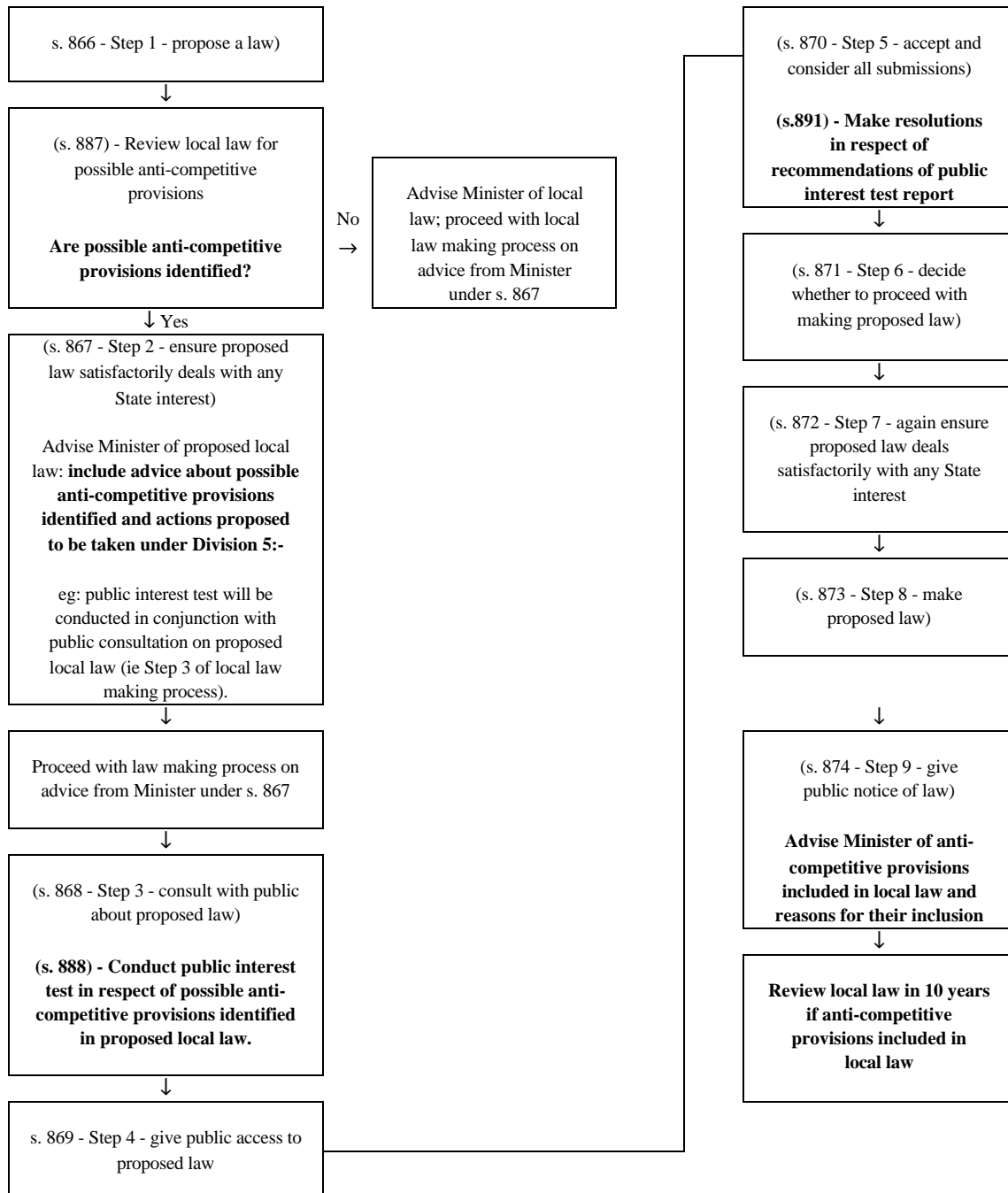
MODEL LOCAL LAWS

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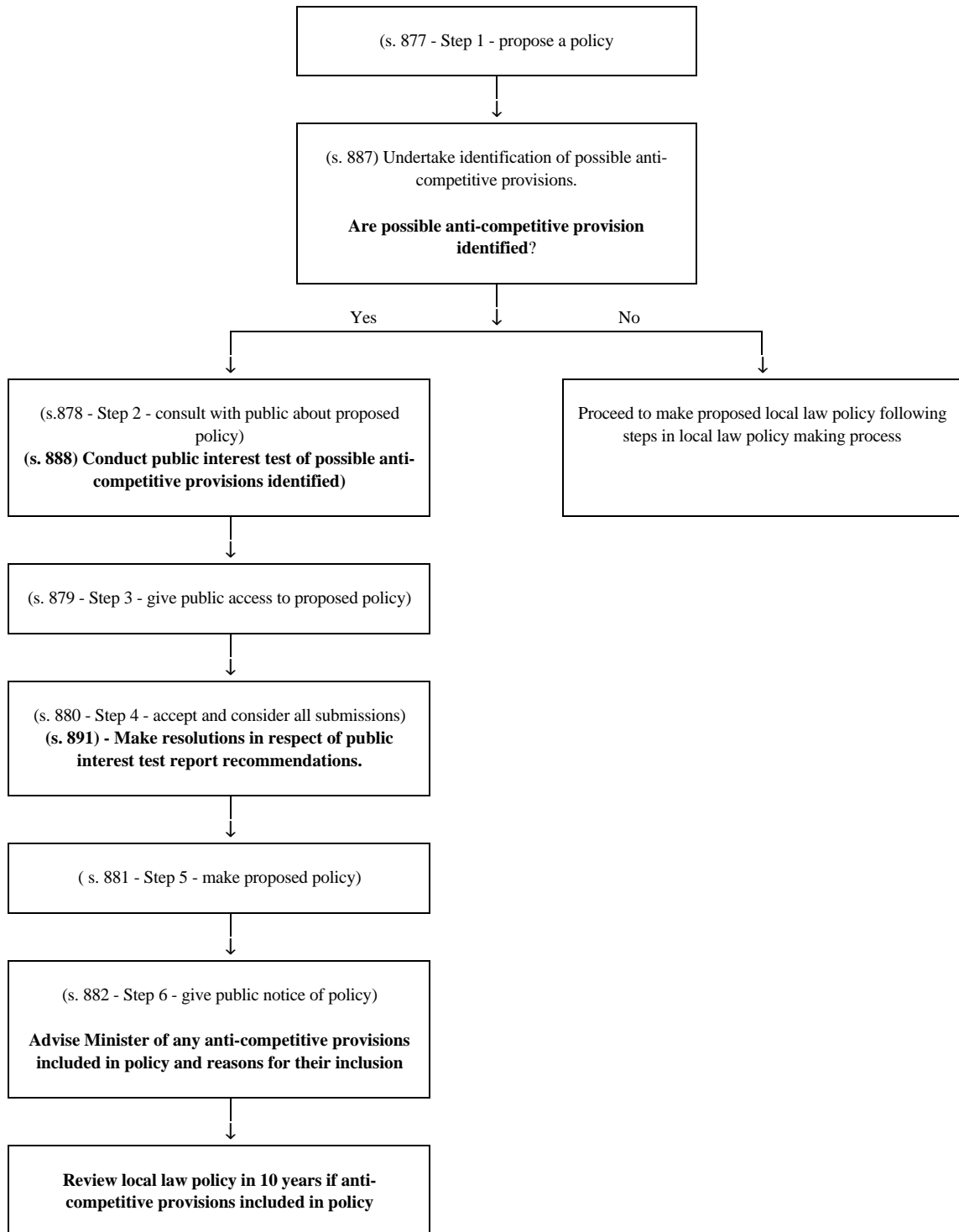
OTHER LOCAL LAWS

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LOCAL LAW POLICIES

Source: Queensland. Department of Local Government, Planning, Regional and Rural Communities, *Law Making - an evaluation - Discussion Paper*, March 1998.



INTERIM LOCAL LAWS

Source: Queensland. Department of Local Government, Planning, Regional and Rural Communities, *Law Making - an evaluation - Discussion Paper*, March 1998.

