



Submission

To

THE SENATE STANDING COMMITTEE ON FINANCE AND PUBLIC
ADMINISTRATION

Inquiry into the Commonwealth Electoral Amendment
(Democratic Plebiscites) Bill 2007

24th August 2007

Executive Summary

On the 17th April 2007, the state government, unilaterally and without warning, announced its intent to scrap local government's Size, Shape and Sustainability initiative and replace it with a state-wide program of forced council amalgamations.

For the past 19 weeks, the issue of forced council amalgamations in Queensland has featured in news headlines across all media outlets.

The reaction from the Local Government Association of Queensland (LGAQ), local government and Queensland communities has not only focused on the amalgamation reforms per se, but also on the process undertaken and the fact that the state government purposely removed the referendum provisions in the Local Government Act, thereby denying communities an opportunity to formally express their views about any proposed amalgamations.

Despite calls from the LGAQ and many communities across Queensland to conduct regional forums / briefings, the Local Government Reform Commission made a deliberate decision to stay in Brisbane and operate behind closed doors. Interested parties had only one month in which to forward suggestions to the Commission and at no time were councils or community representatives able to engage in face to face discussions or debate with the Commission or its officers.

Responding to council concerns and rising community anger about the Reform Commission's timetable and the fact that the referendum provision had been suspended in the legislation, in early July, the LGAQ advised all member councils that it was lawfully possible for councils (that wished to do so) to conduct polls under provisions contained in the Local Government Act 1993, on the amalgamation recommendations of the Local Government Reform Commission.

However, notwithstanding existing intervention powers contained within the Local Government Act 1993, in order to completely circumvent councils conducting polls on the amalgamation issue, the government hastily introduced the Local Government Reform Implementation Bill 2007 into Parliament on Tuesday 7th August. The Bill initially contained provisions to fine councillors and recover from them the cost of conducting the polls. But, by Thursday 9th August, the Bill had been amended to allow the government to dismiss councils without notice that proceeded with conducting polls on any matters relating to the local government reforms.

The LGAQ expressed serious concern about the Bill on three fronts.

First and most importantly, LGAQ believes that section 159ZY of the Local Government Reform Implementation Act is invalid on the basis that it withdraws freedom of political communication implied in the Commonwealth legislation.

Second, section 159ZY is effectively retrospective in that it prohibits the conduct of polls even where the decision to conduct the poll was taken prior to the law being enacted. This action contradicts normal legislative practice.

Third, section 164 of the legislation equates conducting a poll to a council having acted unlawfully or corruptly, which are the existing circumstances for the dismissal of councils under the Local Government Act 1993. LGAQ believes this provision to be totally unacceptable, draconian and a poor reflection on the length to which the state government has gone to prevent councils from conducting polls.

Queensland communities have taken exception to the fact that the state government has denied people an opportunity to formally express their opinion. Acknowledging that the legislation which creates the new councils is in place, many councils still wish to conduct polls on the basis that it will allow the community to collectively express its view and have that view stated on the public record.

Notwithstanding the fact that the Queensland Parliament has recently introduced legislation to repeal the offending sections of the Local Government Reform Implementation Act 2007, the LGAQ still supports the Bill allowing the Australian Electoral Commission (AEC) to undertake any plebiscite on the amalgamation of any local government body in any part of Australia.

Whilst the LGAQ did not seek the involvement of the Prime Minister in his offer to conduct the plebiscites, the move is welcomed by the Association. It provides an effective and independent alternative to the conduct of Polls under Queensland legislation in an environment of threatened state intervention and draconian penalties.

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1. The Local Government Association of Queensland

Formed in 1896, the Local Government Association of Queensland (LGAQ) is the peak body representing Queensland councils. The Association is established under the Local Government Act 1993 (Qld) and all mainstream councils and many indigenous councils are members. Membership is voluntary.

The objectives of the Association are to:

- Promote the interests, rights and entitlements of members;
- Promote the efficient performance of local government in Queensland;
- Monitor and take action in relation to any legislation affecting members;
- Advise and counsel members in matters of doubt or difficulty; and
- Undertake and promote activities endorsed at Annual Conference, which are in the interest of local government in Queensland.

An Executive consisting of a President, two Vice Presidents, a Treasurer and 14 other members administers the Association's activities. These activities focus on the key strategy areas of leadership, representation and service.

The representative and advocacy activities undertaken by the Association are guided by formal policy decisions taken by member councils at Annual or Special Conferences each year.

The following policy, developed in the mid 1980s, forms the basis of the Association's stance against forced amalgamations.

LGAQ Policy Position Opposing Forced Amalgamations

2.2.5 Boundary Change

2.2.5.1 A public inquiry should be held prior to any boundary changes unless the agreement of all local governments involved in the changes is obtained.

2.2.5.2 Where the involved local governments initiate and agree on boundary changes, these should, as a general principle, be implemented without interference by the State Government.

2.2.5.3 An amalgamation of one local government with another or major boundary change shall not take place if the majority of electors in either council is opposed to such amalgamation or major boundary change.

(Major boundary change occurs when a part of a local government area which contains at least 10% of the population of a local government or which contains at least 10% of the unimproved capital value of the local government is joined with another local government.)

2. Scope and Intent of LGAQ's Submission

LGAQ's submission to the Senate Committee inquiry will:

- Briefly outline the referendum provisions that previously existed under the Local Government Act 1993;
- Outline the history of the Size, Shape and Sustainability (SSS) project, and its requirement to conduct referendums;
- Comment on the state government's local government reform program and explain the reaction from LGAQ and councils to the reforms;
- Summarise the actions of the Queensland state government to prevent referendums from occurring;
- Provide data on community attitudes to referendums on local government amalgamation issues; and
- Comment on the Electoral Amendment (Democratic Plebiscites) Bill 2007

3. Local Government Act 1993

Prior to the Local Government Act 1993 being amended in April, section 92 provided for the "holding of referendum". In summary a referendum was to be held, if the Commission proposed to implement a matter relating to:

1. Creating a new local government area from two or more areas that are to be abolished; or
2. Abolishing one local government area and merging it with an existing local government area.

Under the Act, councils could not directly refer these matters to the Commission. Rather, councils that were interested in pursuing amalgamations and major boundary changes needed to make a considered submission to the Minister for Local Government and request that the Minister refer the matter to the Commission.

If referred, the Commission was then authorised to make such enquiries as it considered appropriate on the matter. This process involved significant opportunity for public input and comment.

After making the necessary enquiries and considering public feedback, and if the Commission considered that the matter should be implemented, the Commission was then required to conduct a referendum in the affected area(s) and advise the Minister of the result.

For the referendum to be approved, a majority of electors in the affected area must have voted “yes”, or, if the affected area was divided into voting areas, a majority of electors in each voting areas must have voted “yes”.

The referendum would not be approved if a majority of electors in the affected area voted “no”, or, if the affected area was divided into voting areas, a majority of electors in any of the voting areas would have to vote “no”.

If the referendum was approved it was required to be implemented as soon as practicable.

However, if the referendum was not approved, the Minister was able to refer the matter to State Parliament for approval to implement the matter.

4. Size, Shape and Sustainability Program

From March 2006 to mid April 2007, Queensland councils were given an opportunity to work in partnership with other councils in a region to identify and review issues impacting on their long term sustainability. This process was known as Size, Shape and Sustainability (SSS). In essence, SSS was a process of voluntary reform which encouraged councils to review their size and geographic dimensions; their management, organisation and operational arrangements; their financial and accountability practices; and their service delivery mechanisms.

Overseeing this process were Independent Review Facilitators charged with the responsibility of recommending the necessary reforms. These would have included, amalgamations, major boundary changes, resource sharing arrangements such as multi purpose joint local governments, strategic alliances, shared service centres or a combination of each.

In addition, the Queensland Treasury Corporation (QTC) volunteered to assist councils with their reviews by examining each council's financial position. This was done through their Financial Sustainability Review process.

The state government was a formal partner to the SSS initiative and provided funding (\$25 million over five years) to all councils who participated in SSS reviews through the Regional Collaboration and Capacity Building Program.

The SSS framework comprised three different phases, each requiring research and analysis and an overall evaluation of the strengths and weakness of alternative models of change. Each phase of SSS also involved extensive community engagement.

The referendum provisions contained in the Local Government Act as outlined in section three of this submission applied to the SSS process. That is, if SSS recommended an amalgamation or major boundary change, then a referendum in the affected area or voting areas was required to be held.

At the end of March 2007, 27 Review Groups consisting of 117 councils were fully engaged in the SSS process. Fifteen of these groups had developed their terms of reference setting out the scenarios for investigation during the comprehensive review phase of the process. In many cases, councils were prepared to delay local government elections until October 2008 in order for reviews to be completed and unhindered by electioneering.

Two of these Review Groups had reached the final investigation phase of SSS, with the Independent Review Facilitator recommending an amalgamation of the councils involved.

5. State Government Local Government Reform Agenda

The announcement by the state government on 17th April of this year to scrap SSS and replace it with a process of forced amalgamations and a Local Government Reform Commission model came without warning, negotiation or any consultation with LGAQ, or councils.

Concerns with State Government Actions

The response from LGAQ, local government and Queensland communities has, in the main, generated strong criticism of the government's actions in relation to the reform agenda. For the past 19 weeks, the issue of forced council amalgamations has featured in news headlines across all media outlets.

The reaction from LGAQ, local government and Queensland communities has not only focused on the reforms per se, but also on the process undertaken and the fact that the state government purposely removed the referendum provisions in the Local Government Act, thereby denying communities an opportunity to formally express their views about any proposed amalgamations.

It is now known that the decision to abandon SSS was taken in January 2007, possibly sooner, but for the next three months the government continued to encourage councils to participate in SSS, approved funding applications for aspects of the review only days before the announcement and continued to host meetings of the state-wide advisory group overseeing the program.

Also during this period and indeed earlier, the Association's President Cr Paul Bell AM sought clarification from the Minister for Local Government, the Hon Andrew Fraser as to his expectations, particularly about the timetable for the SSS program. Despite several undertakings to respond none was forthcoming until the announcement on 17th April.

In fact, in an article in the February / March 2007 edition of the Council Leader (a LGAQ publication which is sent to every councillor in Queensland), the Minister stated that *“Importantly there is no set agenda to force neighbouring councils into amalgamation or boundary changes..... If that becomes a clear option a public referendum must be held”*.

With the announcement of its reform agenda, the state government released a document – “Local government reform, a new chapter for local government in Queensland”. Regrettably, the publication demonstrated an inadequate understanding of the complexity of local government. It included factual and comparative errors; misused statistics from the Australian Local Government’s Association’s PricewaterhouseCooper’s Report into the financial sustainability of local government and, most significantly, failed to demonstrate the impending financial collapse of the system of local government used as the state’s primary justification for its precipitous intervention into the reform process. Nor did the document demonstrate local government’s claimed lack of performance in meeting community expectations. Indeed, the opposite is the case.

The release of this document and the actions of the state government have been viewed by LGAQ and many councils as a breach of trust and a repudiation of the state’s protocol with local government and its often espoused commitment to engagement, collaboration and partnership.

The LGAQ also believes the actions of the state government are contradictory to the spirit and intent of section 77 of the Constitution of Queensland, which states that:

(2) The member of the Legislative Assembly who proposes to introduce the Bill in 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.

On a matter of such fundamental importance, the LGAQ questions why the Minister for Local Government did not consider it practicable to consult with the LGAQ on the state government’s intended reforms.

Commentary by Professor Brian Dollery and Dr Mark McGovern on the local government reform approach adopted by the state government is provided in Appendix One and Appendix Two.

Concerns with process of Local Government Reform Commission

Further concerns from the LGAQ, local government and Queensland communities relating to the reform process focus on the timetable and terms of reference of the Local Government Reform Commission.

Despite calls from the LGAQ and many communities across Queensland to conduct regional forums / briefings, the Reform Commission made a deliberate decision to stay in Brisbane and operate behind closed doors. Interested parties had only one month in which to forward suggestions to the Commission and at no time were councils or community representatives able to engage in face to face discussions or debate with the Commission or its officers.

The terms of reference for the Commission were considered especially narrow giving preference for “whole of area” amalgamations and a focus on financial sustainability over other community development objectives. This has been of particular concern for many councils and communities across the state and is justified by research commissioned in June by the Department of Local Government, Planning, Sport and Recreation entitled “outcomes of major local government structural change”. This research concludes that *“there is little evidence (mainly due to lack of data capture) about the gains to be made out of amalgamations and that factors such as efficiency, scale, cost reduction and elimination of duplication are often over-emphasised and not properly balanced with factors such as the attachment people have to place and community and their concept of local democracy and representation”*.

Furthermore, the Local Government and Other Legislation Amendment Act 2007 – the legislation which provides for the reforms and created the Commission, specifically denies any challenge, appeal, review or questioning of decisions made by the Commission or the government in relation to any aspect of the reform process.

The explanatory notes to the legislation acknowledge this as a departure from the government’s own fundamental legislative principles. The relevant excerpt of the Act is attached in Appendix Three. On issues of such vital importance to the future of councils and their communities, this is a significant denial of natural justice and democratic principles.

In summary, the Reform Commission was given three months to undertake a state-wide review of external boundaries and electoral arrangements for all 156 councils in Queensland (only Brisbane City Council was excluded). There were no hearings or meetings in places where changes might occur, and interested parties had only one month in which to make suggestions. The Commission received 47,267 suggestions and after a further two months handed down its report on 27th July, three days earlier than required under its legislation.

Notwithstanding the Commission’s statements that one size does not fit all, the Commission’s report only recommended amalgamations and some boundary changes for councils across Queensland. Despite the increasing volume of national and international research which suggests that amalgamations of councils as a singular policy instrument is now considered flawed public policy, the Commission’s report failed to recommend the implementation of any other reform models such as multi purpose joint

local governments, strategic alliances and shared service arrangements. In fact, these models were dismissed outright by the Commission.

Unfortunately, the Commission's report lacks any quantifiable data to support its recommendations and all of its documentation has been submitted to State Cabinet preventing its access under freedom of information mechanisms.

An evaluation by Professor Brian Dollery and Dr Scott Prasser on the Local Government Reform Commission's Report is provided in Appendix Four and Appendix Five.

Prevention of Referendums

Acknowledging the concerns outlined above with respect to the reform process, it is the absence of the opportunity for a referendum on any amalgamation proposal which has been at the heart of council and community dissatisfaction with the government's approach.

The state government's actions to deny communities the opportunity to participate in referendums commenced with the assent of the Local Government and Other Legislation Amendment Act 2007 on 26th April. This Act suspends the referendum provisions contained previously in the Local Government Act as outlined in section three of this submission.

Responding to our members concerns and rising community anger about the referendum provision being suspended, in early July, the LGAQ advised all member councils that it was lawfully possible for councils (who wished to do so) to conduct polls under provisions contained in the Local Government Act 1993, on the amalgamation recommendations of the Local Government Reform Commission. In doing so, the LGAQ emphasised to councils that the outcomes of these polls would not be determinative or impact on the recommendations of the Reform Commission.

On the basis that the legislation creating the new council arrangements would be introduced into Parliament in late August and after careful consideration of the anticipated legislative timelines, the LGAQ advised members to conduct polls on Saturday 18th August. Appendix Six contains a copy of LGAQ issued advice to councils about this matter.

Some 40 councils expressed an interest to conduct polls on this date.

The LGAQ also wrote to all State Members of Parliament asking whether or not they would support the outcomes of these polls.

In response, the state government wrote to the Association and all councils stating that the LGAQ had confused the matter of conducting polls on local government boundaries with the process undertaken by independent boundary commissions when drawing state and federal electoral boundaries. Refer to Appendix Seven for a copy of this correspondence.

The LGAQ refuted these statements and explained that the external boundaries of a “level” of government, whether federal, state or local serve a different purpose to the electoral boundaries within a level of government. The LGAQ also requested that the state government give due consideration to the views of the community when considering the recommendations from the Local Government Reform Commission. Refer to Appendix Eight for a copy of this correspondence.

Notwithstanding this request, the Minister for Local Government, the Hon Andrew Fraser wrote to all councils stating “..... *I have initiated steps using my reserve powers in the Local Government Act 1993, to prevent the holding of polls...*”. Refer to Appendix Nine for a copy of this correspondence and Appendix Ten for State Government reserve powers over council decisions.

In order to completely circumvent councils conducting polls on the amalgamation issue, the government hastily introduced the Local Government Reform Implementation Bill 2007 into Parliament on Tuesday 7th August and deemed it urgent, enabling its passage to be rushed through Parliament.

The Bill initially contained provisions to fine councillors (\$1125) and recover from them the cost of conducting polls. However, by Thursday 9th August, the Bill had been amended to allow the government to dismiss councils without notice that proceeded with conducting polls on any matters relating to the local government reforms. The Bill was passed and assented to on Friday 10th August. The relevant excerpt of the Local Government and Other Legislation Amendment Act 2007 is attached in Appendix Ten.

The LGAQ expressed serious concern with the Bill on three fronts.

First and most importantly, LGAQ believes that section 159ZY of the Local Government Reform Implementation Act is invalid on the basis that it withdraws freedom of political communication implied in the Commonwealth legislation – refer to Appendix Eleven for copy of correspondence to Minister Fraser on this matter.

Second, section 159ZY is effectively retrospective in that it prohibits the conduct of polls even where the decision to conduct the poll was taken prior to the law being enacted. This action contradicts normal legislative practice.

Third, section 164 of the legislation equates conducting a poll to a council having acted unlawfully or corruptly, which are the existing circumstances for the dismissal of councils under the Local Government Act 1993. LGAQ believes this provision to be totally unacceptable, draconian and a poor reflection on the length to which the state government has gone to prevent councils from conducting polls.

6. Community Attitudes to Referendums on Council Amalgamations

LGAQ has undertaken three sample surveys since June 2007 regarding attitudes to council amalgamations. Two of these surveys were held prior to the announcement of proposed boundary changes, while the third was conducted in the week following the announcement of the proposed new boundaries. The surveys were conducted by Market Facts (Qld), an independent market research company.

In late June 2007, a state-wide sample survey of 600 respondents was asked a number of questions in relation to the Local Government Reform Process. One of the questions was *“If Council boundary changes or amalgamations are to occur in your area do you think the local community should have the opportunity for a referendum on the proposal so that their view is known before a decision is taken?”*

Overall 75.5% saw a need for a referendum. This was highest in SEQ and lowest in Provincial areas.

	Total	SEQ	Provincial	Rural
Sample	600	200	200	200
Yes %	75.5	86.5	63.5	76.5
No %	18.2	7.5	32	15
don't know %	6.3	6	4.5	8.5

In July 2007, as part of the LGAQ’s biennial community satisfaction tracking study, a question was also included on the need for referendums. The question asked was *“If your Council were to be amalgamated with one or more Councils in this region, would you prefer that this was based on the result of a local referendum or should this be decided solely by the State Government?”* The results in July 2007 were very similar to those in June with almost 78% overall seeing a need for a local referendum.

	Total	Metropolitan	Provincial	Rural
Sample	700	300	250	150
local referendum %	77.7	72.3	77.2	89.3
State Government decision %	16.9	21.7	17.2	6.7
don't know %	5.4	6.0	5.6	4.0

Both of these surveys were undertaken prior to the announcement of the proposed amalgamations. In late July/early August, in the week following the announcement, a survey of 1100 people in regions affected by the proposals was undertaken. The question asked was *“Do you think that, before a final*

decision is taken by the State Government, a local referendum on the proposed council boundary changes in your area is necessary regardless of cost, or would it be a waste of money?"

In this survey of those directly affected 59% saw a referendum as necessary regardless of cost while only 35% saw it as a waste of money. However, there was a variation across the affected communities. Of the 27 announced new council areas surveyed, less than 50% felt a referendum was necessary in eight of the new council areas. More than 70% felt a referendum was necessary in seven of the new council areas.

Sample	1101
Necessary %	58.9
waste of money %	35.4
don't know %	5.7

Overall, these LGAQ surveys point to a relatively strong community desire to express their views on amalgamation by way of a local referendum.

7. Electoral Amendment (Democratic Plebiscites) Bill 2007

The LGAQ acknowledges that the Electoral Amendment (Democratic Plebiscites) Bill does not override the Local Government Reform Implementation Act 2007 which creates the new councils.

As outlined in this submission, LGAQ, councils and Queensland communities, have taken exception to the fact that the state government has denied people an opportunity to formally express their opinion. LGAQ's research (as outlined in section six above), demonstrates that this is a major cause of concern for many people across the state. Acknowledging that the legislation which creates the new councils is in place, many councils still wish to conduct polls on the basis that it will allow the community to collectively express its view and have that view stated on the public record.

Notwithstanding the fact that the Queensland Parliament has recently introduced legislation to repeal the offending sections of the Local Government Reform Implementation Act 2007, the LGAQ still supports the Bill allowing the Australian Electoral Commission (AEC) to undertake any plebiscite on the amalgamation of any local government body in any part of Australia. The LGAQ also supports the Bill overriding State or Territory law which prohibits, penalises or discriminates against a person or a body who has entered, or proposes to enter into an arrangement with the AEC, or who take part in or assists with (or proposes to take part in or assist with) an arrangement with the AEC.

8. Conclusion

Whilst the Association did not seek the involvement of the Prime Minister in his offer to conduct plebiscites on the amalgamation issue in Queensland, the move is welcomed by the Association as providing an opportunity the state has denied councils and communities who wanted this right to express their opinions on the proposed changes.

In addition, the proposed legislation will ensure that moves by any state government in the future to force the amalgamation of councils, may be the subject of plebiscites in affected areas.

Appendix One: Article by Professor Brian Dollery

IS COUNCIL AMALGAMATION RATIONAL POLICY?

The shock decision by the Queensland state government to ditch the ongoing *Size, Shape and Sustainability* (SSS) local government reform process and instead embark on a drastic program of forced local council amalgamations took many observers by surprise.

Not only does this provoke concern about public funds already invested in the SSS program, but it also raises serious questions about amalgamation as a means of increasing the efficiency of local councils.

Council amalgamation has a long and undistinguished history in Australian local government. In the recent past, Victoria, South Australia, Tasmania and New South Wales have all used council amalgamation in order to secure cost savings and increase the financial viability of councils.

The Queensland government is thus not alone in its belief that 'bigger is better' in local government. However, the main problem with this logic is that amalgamation programs conducted in other states have failed to improve financial sustainability. Indeed, the financial position of many local authorities, both big and small, has continued to deteriorate in these states.

The recent national report by PriceWaterhouseCoopers, as well as numerous state-based inquiries, all established that many Australian local councils are in a parlous financial state. This includes both jurisdictions that have used amalgamation and local government systems, like Queensland and Western Australia, which have not merged councils.

It is thus immediately obvious that amalgamation has not been the 'silver bullet' that cured the financial ills of amalgamated councils. On the contrary, Queensland and Western Australian local councils are not in worse shape than their amalgamated counterparts in other states. Indeed, the PriceWaterhouseCoopers report found that Queensland local councils have fared better on average than those in other states.

We must thus question the proposition that 'bigger is always better' in local government since it cannot account for observed trends in local government finances. Put differently, why has amalgamation failed to improve financial sustainability where it has been tried?

An important foundation for the view that bigger is better rests on the belief that economies of scale exist in local government service provision. It is argued that bigger councils can thus provide services at lower costs than their smaller counterparts.

But modern local councils provide a large number of different services. Some of these services do exhibit significant scale economies, most notably domestic water provision, IT services and regional economic development activities. However, many other services, especially human services, do not have economies of scale. In fact, there is evidence that most local services show diseconomies of scale at relatively low levels.

The Queensland case is further complicated by the vast distances between many local councils in non-metropolitan areas. This 'tyranny of distance' often means it is simply physically impossible to provide service from a single centre to a huge hinterland of country towns.

This points to the central irony of the Queensland state government decision to scrap the SSS program. The whole thrust of the SSS process was to identify local services that could be provided on a regional basis and create shared service agreements between neighbouring councils for the joint provision of these services.

The SSS program thus correctly recognized that scale economies could only arise in certain types of service provision. It sought to harness these economies and at the same time avoid diseconomies of scale inevitable in other types of service. It also recognized that the sheer size of Queensland often



precluded any resource sharing arrangements due to the costs involved in running services over hundreds of kilometers.

Even where substantial scale economies prevail, it still does not follow that amalgamation is the best way to reap these economies. Hard won experience in other states has demonstrated that amalgamation is not only expensive to implement, but that it also typically robs small communities of effective representation. This means that small communities often suffer in terms of service provision relative to their bigger cousins with larger populations.

A much better alternative is to select local services that can be provided more cheaply through shared service arrangements, outsourcing, state-wide networks, and the like. This avoids the costs diseconomies of scale in other service areas and preserves vital political representation for people living in smaller communities.

The Queensland state government should thus abandon its ideology that 'bigger is always better' and learn from the bitter experience of other Australian states.

*Professor Brian Dollery
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Appendix Two: Article by Dr Mark McGovern

Spurious claims bedevil Queensland local government discussions

Sweeping claims that structural reform to Queensland local governments is essential are unfounded. Reports by Queensland Treasury Corporation, the Auditor General and McGrathNicol all confirm that while there are issues there is no real case for the changes apparently envisaged by new minister Fraser.

Review of the various documents shows no basis in economics or finance for the local government “reform process” currently underway in Queensland. Sadly, much commentary reveals poor understanding of economics and finance compounded by a failure to appreciate the details of analysis.

Much has been made of the interim “weak” rating of some councils. Such councils do have “an acceptable ability to meet short and medium term financial commitments” the QTC notes. They are currently reasonably positioned.

The rating indicates a potential for difficulty managing problems three or so years out, or if unexpected events occurred. A weak council *“is unlikely to be able to manage unforeseen financial shocks and any adverse changes in its business and in general economic conditions without the need for significant revenue or expense adjustments. It may experience difficulty in managing core business risks.”*

Such things are merely possibilities, things that may or may not need to be considered, and probably not for three years or more (if at all). Note also, and most importantly in the current debates, that there is no mention of any need for structural adjustments for “weak” councils.

“Very weak” councils may need to consider *“some structural reform and major revenue and expense adjustments”*. Final numbers in each category are yet to be determined.

The commentary for a “distressed” council is: *“To be able to manage unforeseen financial shocks and any adverse changes in its business and in general economic conditions, major revenue and expense adjustments and structural reform will be required to meet its medium- and long-term obligations.”*

For some unknown reason the remedy for “the distressed” is now to be applied to all councils. This is, at best, an amazing failure of logic. It is the sort of mistake sometimes seen in the works of a thoroughly confused undergraduate. Fortunately such major flaws in analysis are easily picked up and remedied through effective education. They are also easily picked up and remedied through proper policy development processes.

Fascinating questions arise. Clearly there has been a major failure of policy development, one worthy of independent external review. This failure is compounded in the confused terms of reference given to the Review Commission and the frighteningly poor understanding of industrial economics in departmental documents.

Searching and relevant expert review is needed. Current nonsenses, if left unchecked, could eventually undermine the financial and economic position of the State itself, including all its local governments. Manifest inability to effect or use analysis is a serious problem in any organisation.

It is important to note that the three reports noted above do appear to be generally competent and professionally written. Indeed there are useful materials which would be beneficial when used in a consultative and educative way. It is their improper use and misrepresentation that is the problem.

Consider the case of “weak” Millmerran (with an expected neutral outlook) with a net 2005-06 surplus of \$300 000 (after depreciation of \$2.5m) on revenue of \$8.2m and assets of \$57.3m. QTC notes operating deficits totalling \$7.9m over six years with no historical borrowing and no debt forecast. Depreciation of assets is relatively fast and a consultant is being employed to review assets and depreciation expenses with the cumulative operating result expected to improve, perhaps even to surplus?

“The impact of depreciation is a major issue which the local government industry needs to resolve” writes the QTC. A good Commerce graduate, such as the Minister, would immediately appreciate the significance of depreciation on bottom lines be it for a shire such as Millmerran or for the Queensland local government sector with over \$55 billion in assets under management and annual revenues of around \$6 billion. Was the Minister properly briefed? Did he make suitable enquiry?

The Auditor General simply noted, without alarm, a reported operating deficit of \$290m across 68 councils for 2005-06, a problem “not unique to Queensland”. “Unexpected” federal funding declines more than account for such a shortfall.

Queensland council restructuring is both premature and misconstrued. Review commissioners have inadequate information on which to base prudent decisions, except perhaps in some special cases. It is not just their third term of reference (improved financial sustainability) that is too important to be addressed with interim estimates, patchy information, hearsay, political dreaming or assumption.

Impatience and inexperience amongst other things have put the State government in a very weak and fundamentally flawed policy position. Prompt rectification is needed.

If rectification is not initiated by the Minister, Queenslanders and their local governments must hope these comments of Hugh Lunn are accurate. *“I know Peter Beattie and he is a good man who, if he is proven wrong, is always willing to change his mind. So I hope Peter personally takes charge of this and looks at the implications for the little people in the little towns in the state’s smallest and poorest shires.”* And, I would add, the implications for all shires, including the biggest, of proceeding with such terribly flawed policy.

*Dr Mark McGovern
Senior Lecturer
School of Economics and Finance
QUT*

Appendix Three: Local Government and Other Legislation Amendment Bill 2007

‘Division 4 Miscellaneous

‘159X Review of particular decisions and actions

- ‘(1) A designated decision—
- (a) is final and conclusive; and
 - (b) can not be challenged, appealed against, reviewed, quashed, set aside, or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
 - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- ‘(2) Without limiting subsection (1), a person may not bring a proceeding for an injunction or any other order to stop or otherwise restrain the performance of a designated act, or for a declaration about the validity of a designated act.
- ‘(3) In this section—
- decision* includes—
- (a) conduct engaged in to make a decision; and
 - (b) conduct related to making a decision; and
 - (c) failure to make a decision.
- designated act* means—
- (a) an act of the reform commission, including the act of making a recommendation to the Minister, the performance of which is authorised, or purportedly authorised, under this part; or
 - (b) an act of the Minister the performance of which is authorised, or purportedly authorised, under this part.
- designated decision* means a decision to perform a designated act.

Appendix Four: Article by Professor Dollery

Evidence-Free Policymaking in Local Government

On Friday 27 July the Queensland Local Government Reform Commission released its report on structural reform of local councils. The Reform Commission recommended a radical plan that would result in the most drastic forced amalgamation of local councils in Queensland history.

If the recommendations are implemented by the Queensland government, it would see the number of local councils compulsorily reduced from 157 to just 73 organizations. When it is noted that no changes at all are proposed to 37 councils, then the extreme nature of the Reform Commission is placed in even greater relief.

Given the drastic nature of the Reform Commission's recommendations, the handing down its report heralds a new phase in the struggle for local democracy in Queensland. Whether the Queensland government actually implements all or some of the amalgamation proposals will depend in large measure on the intensity of popular feeling against forced amalgamation.

The distressing nature of the wholesale program of compulsory mergers is underlined when we consider that the Reform Commission arrived at its conclusions just two months after submissions closed on 25 May 2007. In other words, we are expected to believe that in a mere two months the Commission was able to consider tens of thousands of pages of submissions, carefully weigh the evidence and then deliver sound policy advice.

Given the time available to the Commission and the volume of material to be considered, superhuman effort would have been required to produce sensible policy to advance the interests of Queensland local government. It is thus hardly surprising that the final report is seriously deficient in several respects.

For example, rational evaluation of economic and social policy requires a careful assessment of the costs and benefits of alternative courses of action. The Queensland public will thus be dismayed to learn that the Reform Commission made no attempt at all to determine the costs attached to amalgamation and the implantation of structural reform. This is all the more distressing when it is well-known both in Australia and abroad that forced amalgamation always imposes substantial costs even in the process of amalgamating several councils into a larger organization.

The Commission itself recognises that 'there are costs inherent in amalgamations'. But in the very next breath, the Commission admits that 'it has not attempted to quantify these costs in respect of the recommendations it makes' (Chapter 3, p.38).

The only factual 'evidence' on the costs of forced amalgamation considered by the Commission derived from a few amalgamations in Queensland in the 1990s as well as the submissions of four councils under the now defunct *Size, Shape and Sustainability* process abandoned by the Queensland government. No account at all is taken of experience in Victoria, South Australia and New South Wales, all of which have undergone amalgamation. Nor is any of the extensive evidence from Canada, the 2007 Lyons Report into British local government, and the substantial American literature even mentioned.

To add insult to injury, by rhetorical slay of hand the Commission then goes on to assert that any costs that do eventuate will depend on the councils themselves rather than forced amalgamation. This is despite the fact that many affected councils have already warned the Commission in their submissions that implementation costs will be prohibitive.

The Commission simply contends that 'in the end, the costs incurred by, and the benefits which accrue to amalgamated councils will largely be dependent upon decisions the new local governments make during the implementation phase' (p.39). In other words, the victims of state government compulsion will be to blame for the costs of state government policy.

Evidence-free policy making of this kind is alarming. Queensland government politicians should ask themselves a simple question before embarking on a potentially destructive forced amalgamation



program. Why do financial problems persist in other Australian states that have already compulsorily amalgamated local councils if amalgamation is indeed a silver bullet for all the ills of local government?

*Professor Brian Dollery
Director, Centre for Local Government
University of New England.*

Appendix Five: Article by Dr Scott Prasser

Going, Going Gone – The End of Local Government in Queensland

The Queensland Government has just decided to abolish half of the state's local councils by March next year. Reactions to the decision are split and many of the affected communities and councils are vowing to fight 'to the death'. Scott Prasser weighs up the various motives behind the move.

In April, Premier Beattie announced the biggest shake-up in Queensland's history of the state's 157 local governments. A review team with representatives from state government, local government and even former Labor, Liberal and National Party ministers, was established to report by August on local government amalgamation.

The Beattie Government's actions have puzzled many commentators by its suddenness and motives.

After all, since elected in 1998, the Beattie Government has eschewed any confrontation with local government. Beattie has sought to avoid any repetition of the Goss Labor Government's post Fitzgerald reforms of local government that led to local government amalgamations and considerable community resistance. Labor strategists saw it as another contributing factor to the Goss Government's fall from grace in 1996. Consequently, successive Beattie local government ministers have stated there would be no local amalgamations unless invited and there was community support.

Also, despite large majorities since the 2000 election the Beattie Government has avoided major reforms of anything unless driven by a crisis. Witness the energy crisis, infrastructure crisis, health crisis and water crisis and subsequent urgent government actions.

Last, local government is not only well organised, but it is where large numbers of the powerful Australian Workers Union (AWU) are based. No Queensland government, even Coalition ones, have ever taken on the AWU. So why would a Labor government take on such an important faction of its own party, or is amalgamation just a play out of faction wars?

Furthermore, the announcement of the review has been a surprise to almost all concerned. It certainly was not part of the government's 2006 election mandate. Moreover, for the last twelve months the government has invested considerable resources (\$25m had been put aside) for its size, shape and sustainability review process whereby local government was supported to conduct self-assessment of amalgamation. Neither the Local Government Association of Queensland (LGAQ), despite its strong links to the government nor Labor dominated councils, were aware of the plan.

Ostensibly, the government's reasons for amalgamation are all based on rational argumentation. Foremost of these is (of course) the economic rationale that 43 per cent of local governments are not financially viable and that amalgamation will lead to efficiencies. There is also the suggestion that with Queensland's growing population, present boundaries that have hardly changed for decades are now redundant. Queensland, it appears, needs new governance arrangements.

All of these reasons are open to critical analysis.

The financial viability issue has been strongly countered by the LGAQ and contrary evidence produced.

The efficiency argument has long been contested elsewhere where amalgamation has occurred. Few long-term efficiency gains have ever been proved to result from amalgamations. Ensuing rate cuts have usually been the result of government subsidies to induce support, not efficiencies resulting from economies of scale. Also, with the Beattie government promising there will be no sackings of staff how will the efficiencies be achieved?

Also, the government is being mischievous in portraying in its taxpayer-funded advertisements promoting amalgamation that local government boundaries have hardly changed since the turn of the century. This is incorrect. Why, there have been many adjustments to local government boundaries over the years, including some major ones. In 1925 the greater Brisbane City Council was created and involved extensive boundary changes. Coalition governments during the 1970s created new local governments based around Aboriginal communities. And of course, as noted, the Goss Government made major boundary changes affecting key coastal and rural local governments a decade ago.

So what's it all about?

One view is that by amalgamating local governments in western Queensland the National Party base will be undermined. However, in the light of Kevin Rudd's concerns about possible federal impacts it is doubtful if there will be much action out west. After all, with so few people in many of these shires, potential efficiency gains are limited. There may be a few changes, but overall we should expect minimalist reform.

Another view is that, given the ascendancy of Anna Bligh from the left faction as the possible next premier, then all this is about getting the AWU faction. Wind up some key local governments and the AWU loses members and hence power in the party.

Certainly, AWU interests are involved, but more about protecting them from the dreaded possibility of some local governments moving to AWAs; hence, all of the guarantees about jobs, and union representation on the transition committees.

There is also the suggestion that the government wants to deal with less local authorities in managing issues like water. It is about increasing power in the hands of a government that has strong centralising tendencies in its policy execution and public administration.

Some government backbenchers have also resented the way local government representatives have upstaged them and have been able to produce small, but politically significant funds for local events and causes. Certainly, under Labor local government ministers like the late Tom Burns and Terry Mackenroth, local government has enjoyed considerable autonomy. In an increasingly centrally structured government like Beattie's, this model no longer sits comfortably with current practices.

Another suggestion is that shaking up local government so suddenly and bypassing the LGAQ in some of the processes is payback for the way the LGAQ successfully opposed the government's ambulance levy on rates a few years ago.

At the end of the day there is still considerable internal Labor Party manoeuvring and factional adjustments to be made on this issue. Nevertheless, having gone this far, the Beattie Government has got to deliver changes of some substance. Thus, there will be amalgamation of most of the so-called 'donut' councils down the east coast. In southeast Queensland 18 councils will be reduced to less than half that number. Considerable angst will be devoted as to whether Noosa will be part of new greater Sunshine Coast Council. Western local governments will breathe a sigh of relief that they have been left largely untouched, leaving the Beattie Government to come out smelling roses. Certainly, all this shows that local government is not only the child of the states, but will never be allowed to grow up.

*Dr Scott Prasser
Senior Lecturer, Management
University of Sunshine Coast*

Appendix Six: LGAQ Initial Advice to Councils re Conduct of Polls

**ATTENTION CHIEF EXECUTIVE
OFFICER / COMMUNITY CLERK**

For Information

Circular #: **2007-213**

CIRCULAR

LOCAL GOVERNMENT
ASSOCIATION
OF QUEENSLAND INC.



LGAQ Proposes a Poll of Voters on 18 August

At Midday today the LGAQ President proposed the conduct of council polls on 18 August in councils affected by proposed amalgamations in accordance with provisions of the Local Government Act 1993.

Based on legal advice obtained by King and Co, the LGAQ is recommending the conduct of a poll in all council areas affected by recommendations of the Local Government Reform Commission. We want to stress that the conduct of such polls is lawful but not legally binding on the state government.

The reasons for recommending this course of action is set out in the President's press release.

Mr Tim Fynes-Clinton, Managing Partner of King and Co (phone 3236 1199) and Mr Mark Leyland, Finance and Governance Advisor, LGAQ (phone 3000 2201) are the principal contacts for Councils seeking legal and administrative advice regarding the conduct of a poll.

Finally and most importantly the LGAQ recognises and respects the right and independence of any member councils not to conduct a poll on a proposed amalgamation of their area.

**Circular Authorised by:
Greg Hallam PSM
Executive Director**

Date: 02 Jul 2007

Appendix Seven: Correspondence from Minister Fraser re Referendums



Hon Andrew Fraser MP
Member for Mount Coot-tha



Queensland
Government

Minister for Local Government, Planning
and Sport

13 JUL 2007

Cr Paul Bell AM
President
Local Government Association of Queensland
PO Box 2230
FORTITUDE VALLEY BC QLD 4006

Dear Cr Bell

I refer to your letter of 3 July 2007 to all State Members of Parliament.

You may regard this reply as being on behalf of all 59 members of the Beattie Government, whose support for sensible and timely reform of local government boundaries remains resolute.

As the Premier has already clearly articulated, and as I have confirmed publicly on numerous occasions, it is the view of the government that the conduct of indeterminate polls would represent an exercise in futility at the expense of ratepayers.

While your organisation continues to point to the notion of a referendum as being part of the constitutional fabric for boundary determination, the truth is:

- An independent boundaries commission draws the boundaries at a state and federal level;
- No referendum is held of voters in determining state and federal boundaries;
- The referendum provision inserted into the Local Government Act on the 16th of December 1996 has never been determinative, with the National/Liberal Party Government of the day inserting into the Act a power for the Minister of the day to overturn a referendum;
- A key tenet of a mature liberal democracy is that boundaries are determined by an independent commission not through the stewardship of the elected representatives that are to contest those boundaries.

You would be aware that an independent commission has recently been constituted to review state boundaries to apply to the next state election due in 2009. There will be no vote of the public, nor will I - or any other Member of the Queensland Parliament - have a role to play as an elected representative in determining those boundaries. I will as a member of the public have a right to make a submission. You will recall that such a right was provided to each and every Queenslanders during the local government reform process. Some 38 000 individuals availed themselves of this opportunity, despite the disingenuous activities of the LGAQ at that time.

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As the LGAQ has acknowledged, any proposed poll would not be determinative, nor binding. In truth, the futility of the exercise is revealed by the contemplation publicly of the LGAQ of the possibility of two local government areas returning different results to such a poll.

I have every confidence that the independent Local Government Reform Commission will provide a framework for local government that acknowledges that the Queensland of 2007 is very different to the Queensland of 1907.

I have today provided a copy of this correspondence to each local government across Queensland for their information.

Yours sincerely



ANDREW FRASER

Appendix Eight: Correspondence from Cr Bell re Referendums

LOCAL GOVERNMENT
ASSOCIATION
OF QUEENSLAND INC.
ABN 11 010 883 293

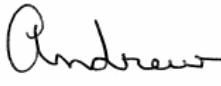


Local Government House
25 Evelyn Street Newstead Qld 4006
PO Box 2230 Fortitude Valley BC Qld 4006
Phone (07) 3000 2222 Fax (07) 3252 4473
www.lgaq.asn.au

20 July 2007

Honourable Andrew Fraser MP
Minister for Local Government Planning and Sport
PO Box 15031
CITY EAST QLD 4002



Dear Minister 

I refer to your letter of 13 July 2007. There are two issues I wish to clarify for you.

The Association's position in opposing forced amalgamations has not just been determined in response to your government's reform program. The Association's policy opposing forced amalgamations and calling for a referendum when amalgamation and major boundary change is proposed was adopted at the Association's Annual Conference in 1985. As the government's reform program does not provide this opportunity as a result of your suspension of the legislation providing for a referendum, we have advised councils of the Poll provisions.

The polls provide an opportunity for the community to express their opinion on the proposed changes and I would ask that you have regard to the community's wishes in making your decision on the Local Government Reform Commission's recommendations. Given the long term implications of the changes being considered it is only fair and just that the communities have a say, a position which is supported by an overwhelming majority of Queenslanders.

In your letter you refer to an independent commission being constituted to review state boundaries for the next state election due in 2009. You have on previous occasions drawn the comparison between the review of electoral boundaries at federal, state and local government levels with this review of the external boundaries of councils. I reject this comparison as being neither valid nor relevant.

A more accurate comparison would be changing the boundaries of the State of Queensland with New South Wales, South Australia or the Northern Territory. Any such change would no doubt involve a referendum of the people affected. Any change in a council's external boundaries should be dealt with in the same way.

The external boundaries of a level of government, whether federal, state or local serve a very different purpose to the electoral boundaries within a level of government. External boundaries relate to identity, sense of place and community, effective representation and the efficient planning for and provision of services and facilities.

Electoral boundaries are intended to provide equitable representation for residents and electors within the area of a level of government and are primarily drawn on the principle of one vote one value and legislated tolerance levels.

After the external boundaries are determined through a process providing for the fullest expression of public opinion, the electoral or internal boundaries are then rightfully determined by an independent commission applying the legislative provisions of one vote one value within appropriate tolerance levels.

In fact, the creation of the Commonwealth of Australia in 1901 occurred at the end of an extensive referendum process of electors across the nation. Subsequently and up to the present time electoral divisions within the Commonwealth have been reviewed and determined by an independent commission.

I would also point out that normally when electoral boundaries are being reviewed there are legal avenues open to challenge the processes and outcomes. Whilst this will apply to the upcoming review of State electorates the Local Government reform process announced on 17 April 2007 removed any such rights in relation to any aspect of the current review process either external boundaries or internal electoral boundaries.

Local Government in Queensland is not opposed to reform. My concern and that of the overwhelmingly majority of people within Local Government and Queenslanders as a whole is about the process adopted by the Government. By contemporary standards they have not been effectively engaged and denied reasonable and appropriate democratic rights of expression on an issue of fundamental importance to their future.

In your consideration of the Commission's recommendations I once again ask that you have regard to public opinion expressed through the polls where conducted and listen closely to the community's response in other areas.

Yours sincerely

Cr Paul Bell AM
PRESIDENT



Appendix Nine: Correspondence from Minister to Councils re Conduct of Polls

31-07-07:11:08 :Office Dept Local Gov Plan & S :61 7 3247 3679 # 1 / 1



Hon Andrew Fraser MP
Member for Mt Coot-tha

MC07.5680

31 July 2007

Cr Bob Oakes
Mayor
Nebo Shire Council
PO Box 21
NEBO QLD 4742

Fax no: (07) 4950 5245



**Queensland
Government**

Minister for Local Government,
Planning and Sport

SHIRE COUNCIL
Received ✓
31 JUL 2007

Doc #
Action

FYI *CEO, Mayor - copies given*

Dear Cr Oakes

As you are aware the Queensland Government has accepted the external boundaries proposed in the Report of the Local Government Reform Commission without exception.

I wish to confirm my previous advice to local governments intending to hold a poll on local government reform. To this end, I have initiated steps using my reserve powers in the Local Government Act 1993, to prevent the holding of polls which are a costly action that will have no bearing on the sensible and timely reform of our local government system, as envisaged by the Report of the Commission. I will write again to impacted councils in due course.

I encourage councils to reconsider their decisions to conduct polls and thereby save their communities the cost of conducting a non-determinative poll. Your early advice on reconsideration of this matter would be appreciated.

As you know no referendums are conducted on the boundaries for State or Federal elections. That same principle is being applied to local governments.

Should your office require any further information in relation to this matter, please contact Mr Michael Dart, Senior Policy Adviser, of my office on telephone number (07) 3227 8820.

Yours sincerely

ANDREW FRASER

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Website www.qld.gov.au

Appendix Ten: Local Government Reform Implementation Act 2007 & Local Government Act 1993

'Division 11 Miscellaneous

'159ZY Polls

- '(1) An existing local government must not conduct a poll in its area, or a part of its area, if the question the subject of the poll relates to anything that is, or is in the nature of, a reform matter, or the implementation of a reform matter.

Example—

An existing local government must not conduct a poll under chapter 6, part 2 about whether its local government area should be abolished and be included in a new local government area.

- '(2) If, before the commencement of this section, a local government had resolved to conduct a poll the conduct of which is prohibited under subsection (1), the local government—
- (a) must take all necessary action to ensure that the poll is not conducted; and
 - (b) must give public notice that the poll is not to proceed—
 - (i) by advertisement in a newspaper circulating generally in its local government area or part of its local government area; and
 - (ii) in any other way that is reasonably appropriate for making the information publicly known.
- '(2A) If the poll mentioned in subsection (2) is to be conducted under chapter 6, part 2, the subsection applies despite that part.
- '(3) A person who is a councillor of a local government must not take any action for the purpose of the conduct of a poll that the local government is prohibited from conducting under this section.

Maximum penalty—15 penalty units.

‘(4) All persons who contravene subsection (3) in relation to a particular poll, whether or not they are prosecuted under subsection (3), are jointly and severally liable for the total poll amount, which may be recovered by the State, in action as for a debt for the amount, and reimbursed to the existing local government, or the successor of the existing local government, less the costs of recovering the amount.

‘(5) In this section—

conduct a poll, means—

- (a) conduct a poll under chapter 6, part 2; or
- (b) take any action to request, arrange, assist, facilitate or cause a poll to be conducted by the Australian Electoral Commission or any other entity.

Example of action to arrange a poll to be conducted—

advertise that the poll is to be conducted

poll, other than for a poll conducted under chapter 6, part 2, includes referendum and plebiscite, and any process similar to a poll, referendum or plebiscite.

successor, of an existing local government, means a local government that, under a reform implementation regulation, is the successor of the existing local government.

total poll amount means the amount reasonably decided by the Minister as being the total amount of the expenses incurred by the local government in the conduct of the poll after the commencement of this section.

Part 2 Intervention by the State

Division 1 Powers of intervention

160 Procedures before exercise of certain powers

- (1) Before the Governor in Council or Minister exercises a power under this division in relation to a local government, the Minister must give written notice of the proposed exercise of the power to the local government.
- (2) However, notice need not be given if—
 - (a) the power is proposed to be exercised at the local government's request; or
 - (aa) the power is proposed to be exercised because of a contravention of section 159ZY(1); or
 - (b) in the Minister's opinion, giving notice—
 - (i) is likely to defeat the purpose of the proposed exercise of the power; or
 - (ii) would serve no useful purpose.
- (3) The notice must state—
 - (a) the reasons for the proposed exercise of power; and
 - (b) a time within which the local government may make submissions to the Minister about the proposed exercise of power.
- (4) Reasons stated in the notice are the only reasons that can be relied on in support of the exercise of the power.
- (5) The Minister must have regard to all submissions made by the local government within the specified time.
- (6) If—
 - (a) the proposed exercise of power is to proceed despite submissions of the local government; or
 - (b) no submissions of the local government are received by the Minister within the specified time;

the power may be exercised without further notice to the local government.

164 Dissolution of local government

- (1) The Governor in Council may, by regulation, dissolve a local government if the Minister is satisfied that the local government—
 - (a) has acted unlawfully, including by contravening section 159ZY(1), or corruptly; or
 - (b) has acted in a way that puts at risk its capacity to exercise properly its jurisdiction of local government; or
 - (c) is incompetent or can not properly exercise its jurisdiction of local government.
- (2) Subsection (1) is subject to the *Constitution of Queensland 2001*, chapter 7, part 2.⁴²
- (3) If the Legislative Assembly ratifies the dissolution of the local government under subsection (1)—
 - (a) the local government's councillors go out of office; and
 - (b) the local government continues in existence as a body corporate and continues to be constituted by the local government's administrator.

Appendix Eleven: LGAQ Letter to Minister Fraser re Section 159ZY



OUR REF: TFC:AA16976

YOUR REF:

DATE: 17 August 2007

The Honourable Andrew Fraser MP
Minister for Local Government, Planning & Sport
41 George Street
BRISBANE QLD 4000

Level 6, Quay Central
95 North Quay, Brisbane.

G.P.O. Box 758, Brisbane, Q. 4001

Telephone: (07) 3236 1199
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www.kingandcompany.com.au

CONSTITUTIONAL INVALIDITY OF SECTION 159ZY OF THE LOCAL GOVERNMENT ACT 1993

We write on behalf of the Local Government Association of Queensland (LGAQ).

Introduction – Role of LGAQ

As you are aware, LGAQ is comprised of all local governments in Queensland. Further, its objects include monitoring and protecting the interests of its members.

LGAQ's concern

LGAQ has received advice from Queens Counsel that section 159ZY of the *Local Government Act* is invalid on the basis that it withdraws freedom of political communication implied in the Commonwealth Constitution.

Based on that advice, LGAQ is concerned that you may take action, pursuant to section 164 of the *Local Government Act*, to make a regulation dissolving one or more of the Councils presently acting in contravention of section 159ZY. As intimated, it is LGAQ's position that you have no legal basis to take such action. Whilst LGAQ does not condone Councils acting in contravention of section 159ZY, it nevertheless has a legitimate concern to see the rights of its members are not unlawfully withdrawn.

The LGAQ's request

We are instructed to request your undertaking that you will take no action (and will discontinue any action you may have commenced) pursuant to section 164 of the *Local Government Act* in relation to any local government that you consider may be acting in contravention of section 159ZY until such time as the validity of section 159ZY has been finally and conclusively determined by the Court. In this regard, LGAQ will institute the necessary proceedings to have the validity of section 159ZY determined in the Supreme Court of Queensland, by not later than 4.00pm on Friday, 24 August 2007.

Concluding comments

If you are unwilling to provide the undertaking by close of business today, LGAQ will be left with no alternative but to seek immediate injunctive relief to ensure no local government is unlawfully dissolved in the immediate future.

Tim Fynes-Clinton of our office can be contacted to discuss any aspect of the matter at any time (telephone 3236 1199 or 0419 683 852, or by email: tfc@kingandcompany.com.au).

Yours faithfully
KING & COMPANY

