Parliamentary Committees



Land and Other Legislation Amendment Bill 2016

Report No. 32, 55th Parliament
Agriculture and Environment Committee
March 2017

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Agriculture and Environment Committee:

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Acknowledgements

The committee thanks the officers from the Department of Natural Resources and Mines for their assistance during the inquiry.

Contents

Abbreviations

2014 Act	*Land and Other Legislation Amendment Act 2014*
AgForce	AgForce Queensland
DNRM	Department of Natural Resources and Mines
DOGIT	Deed of Grant in Trust
Land Act	*Land Act 1994*
Land Title Act	*Land Title Act 1994*
LGAQ	Local Government Association of Queensland
MSTD	Mandatory Standard Terms Document
NTA	*Native Title Act 1993 (Cth)*
QLS	Queensland Law Society
Registrar	Registrar of Titles
Registry	Queensland Titles Registry
Special circumstances policy	Land Holdings: Leases- Early Renewal, Rolling Term Lease Extension and Conversion (Special Circumstances) Policy (PUX/ 901/335)
Water Act	*Water Act 2000*

Chair's foreword

This report presents the findings of the Agriculture and Environment Committee's inquiry into the Land and Other Legislation Amendment Bill 2016. The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Bill amends the *Land Act 1994* and *Land Title Act 1994* to allow for the designation of watercourses or lakes as reserves, align Queensland's title registry system with that of other jurisdictions, and make minor changes to improve the operation of the Acts.

The committee found that, in almost all cases, the Bill is well drafted, and that the amendments sought are uncontroversial. This is reflected in the fact that the committee received only four stakeholder submissions. Many of the issues raised in submissions were able to be resolved during the inquiry. The committee supports the efforts of the Department of Natural Resources and Mines to work alongside stakeholder groups in order to resolve those that remain.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions, and who took the time to share their views with the committee at its public hearings. I also thank committee members, both past and present, for their work on the Bill. In particular, I extend my thanks to Mr Duncan Pegg MP, the former Chair of the committee.

I commend the report to the House.

Joe Kelly MP
Chair

Recommendations

1. Introduction

Role of the committee

The Agriculture and Environment Committee is a portfolio committee appointed by a resolution of the Legislative Assembly on 27 March 2015. The committee's primary areas of responsibility are: agriculture, fisheries, rural economic development, environment and heritage protection, national parks and the Great Barrier Reef.[1]

In relation to its areas of responsibility, the committee:

- examines Bills and subordinate legislation to consider the policy to be enacted, their lawfulness and the application of fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992*
- examines the budget estimates for departments
- assesses departments' public accounts in regard to the integrity, economy, efficiency and effectiveness of financial management, including examining government financial documents and considering the annual and other reports of the Auditor-General, and
- considers departments' public works in light of matters such as the suitability of the works for the purpose, necessity for the works, value for money of the works, revenue produced by, and recurrent costs of, the works, or estimates of revenue and costs, present and prospective public value of the works, procurement methods used for the works, and actual suitability of the works in meeting the needs in and achieving the stated purpose of the works.

Referral and committee processes

Hon Dr Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines introduced the Land and Other Legislation Bill 2016 (the Bill) into Parliament on 29 November 2016. The introduction followed simultaneous consultation by the Department of Natural Resources and Mines (DNRM) on the Bill and the Stock Route Management Bill 2016.

For its review of the Bill, the committee:

- wrote to stakeholders inviting written submissions (a list of submitters is at Appendix A)
- sought briefings from DNRM
- held public hearings on 15 February 2017, and
- sought further written advice from DNRM regarding issues raised in submissions and issues of fundamental legislative principle.

The *Land Title Act 1994* and *Land Act 1994*

The *Land Title Act 1994* (the Land Title Act) is the primary governing instrument for the registration of freehold land. Under the Torrens title system in use in Queensland since 1861, this is the basis of claims to land ownership. The core of the Torrens system is that the transference of land ownership is given effect, not when an instrument is executed by the parties, but when the instrument is registered by an office of the State.[2]

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

[2] LexisNexis, *Halsbury's Laws of Australia* (at 10 February 2017) 355 Real Property, 'Torrens System' [355-8010].

The Land Title Act gives statutory effect to the land registry (the registry), the office of the Registrar of Titles (the Registrar), and related matters in support of the administration of the registry.

The *Land Act 1994* (the Land Act) sets out a framework for the administration, allocation and management of non-freehold (i.e. not privately owned) land and Deeds of Grant in Trust (DOGITs) in Queensland. When passed, it consolidated a considerable body of existing legislation (notably the *Land Act 1962*) into a single Act, and amended other Acts (including the Land Title Act) for consistency. It also set out the following principles for the management of non-freehold, non-DOGIT land:

- sustainable resource use and development
- balancing of the different economic, environmental, cultural and social opportunities and values
- making land available for optimal development
- retention of land for community purposes where appropriate
- protection of environmental and cultural heritage
- consultation as part of the decision-making process, and
- efficient, open and accountable administration, including a market-based approach adjusted to maximise community benefit.[3]

Policy objectives of the Bill

The Bill predominantly makes minor amendments aimed at streamlining the use of the Land Act and Land Title Act. For example, provisions throughout both Acts are amended to grant executors of a will registered in another jurisdiction equal status to those of one registered in Queensland.

However, the Bill does make several significant amendments to the two Acts. These are:

- allowing the dedication of non-tidal boundary watercourses or lakes as reserves for community purposes[4]
- expanding the purposes for which a rolling term lease can be designated, and clarifying the process for extension of rolling term leases[5]
- replacing the current settlement notice provisions in the Land Title Act with a system of priority notices consistent with that adopted by other Australian jurisdictions[6]
- repealing existing Mandatory Standard Terms Documents, and providing for their replacement via regulation[7]
- dispensing with the requirement for the production of a paper certificate of title if the Registrar of Titles is satisfied that the certificate is held by a legal practitioner[8]
- amending the provisions governing the vacation of office by trustees to ensure that the State's interests are preserved,[9] and

3 Land Act 1994, s 4.

4 Land and Other Legislation Amendment Bill 2016, cls 4-6.

5 Land and Other Legislation Amendment Bill 2016, cls 9-12.

6 Clause 39.

7 Land and Other Legislation Amendment Bill 2016, cls 25-30.

8 Clause 38.

9 Clause 34.

- removing the requirement for Ministerial approval under the Land Act for subdivision of indigenous land held under a DOGIT, allowing the subdivision to occur purely under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*.[10]

Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. The committee recommends the Land and Other Legislation Amendment Bill 2016 be passed.

Recommendation 1

The committee recommends the Land and Other Legislation Amendment Bill 2016 be passed.

[10] Clause 23.

2. Issues considered by the committee

Local government concerns

The Local Government Association of Queensland (LGAQ) has stated in its submission that it believes that several of the proposed amendments will weaken the relationships between the State and local governments.

1. Resignation of trustees

Since the commencement of the Land Act, Chapter 3, Part 1 has provided for some packages of land to be exempt from sale or disposal.

> *The public interest reasons, or community purposes, for which such land should be able to be reserved are numerous and varied (for example the local community need for a recreation area, or watering places for travelling stock). Such land is designated as a "reserve".*
>
> *…*
>
> *A greater security of title may be provided in certain circumstances for such land by issuing a deed of grant in trust, for a specific community purpose. This is freehold land, but it is held in trust, rather than owned by the trustees and is subject to the [Land Act] for actions relating to the management and disposal of the land.*[11]

Clause 24 amends s 50 of the Land Act to state that a resignation of a trustee takes effect at the point at which the Minister accepts it, and sets out criteria for Ministerial acceptance of a resignation. DNRM has noted that resignations currently take effect at the time of their receipt by the Minister, and states:

> *This can give rise to a situation where there is a significant period of time between the resignation taking effect and when the trustee is replaced.*[12]

The LGAQ cites this Clause as a particular cause for concern, as it may tie local government trustees to their functions for the State, potentially against their will. This will make local governments more prone to objecting to designation of land within their areas of responsibility as reserves, and refusing appointments as trustees. Consequentially, the ability of local and State governments to work together to ensure appropriate management of reserve land will be reduced.[13] In hearings, the LGAQ stated:

> *… these amendments did come out of left field and we have not seen any systemic issue to justify a seemingly heavy-handed regulatory response.*[14]

The LGAQ has suggested that the current text of Clause 24 be replaced by a provision inserting a requirement for a compulsory notice period prior to a resignation taking effect:

> *I do acknowledge that [DNRM] has recently had discussions with the LGAQ regarding the matters outlined in the LGAQ's submission… Based on these discussions, I do understand the intention of the amendments was to create a suitable transitional provision for resignations to occur. However, if this is the case I believe a sledgehammer has been used to crack a nut and*

[11] Land Bill 1994, Explanatory Notes, p 7.

[12] Explanatory Notes, p 14.

[13] LGAQ, 2017, *Submission 01*, p 3.

[14] Mr Luke Hannan, Manager, Planning, Development and Environment, Local Government Association of Queensland, *Public hearing transcript – 15 February 2017*, p 6.

> *I would encourage further options to be explored such as using provisions to provide for a notice of surrender period.*[15]

In its advice to the committee, DNRM has noted the LGAQ's comments and recommendations on Clause 24, and has given an undertaking to discuss the matters further with the LGAQ.[16] It advises that it is currently 'considering Clause 24(3) in consultation with [the] LGAQ specifically to facilitate a smooth transition from one trustee to another in the event of a trustee vacating office by resignation.'[17]

2. Provision of notices to local governments

The LGAQ also recommends minor amendments to Clause 27, so that the proposed ss 321E, 321G, 321H and 321J require the provision of notice to local government trustees when:

- a Notice to Remedy or Notice to Cancel Interest is issued
- a decision is made regarding the registration of a document, or
- the owner of improvements on a lot applies to the Minister to remove the improvements.[18]

The LGAQ states:

> *It is noted [that] the Minister, not the local government trustee, gives the notice to remedy and the notice of cancellation. To support transparency and accountability, the LGAQ recommends the notice provisions be expanded to ensure a copy of the notice to remedy and the notice of intent to cancel is given to the local government trustee, not just to the lessee/permittee.*[19]

DNRM has noted the LGAQ's comments and recommendations on Clause 27, and has undertaken to discuss the matters further with the LGAQ.[20]

3. Payment of compensation

The proposed s 321K (also in Clause 27) requires that compensation be paid for improvements that become property of the State upon the cancellation by the Minister of a document creating an interest in land.[21] The LGAQ argues that the proposed section is unclearly drafted, and could be interpreted as meaning that a trustee is obliged to pay compensation for the cancellation of a document, rather than the State.[22]

DNRM has stated that the compensation payable under the proposed s 321K is implicitly the responsibility of the State, but has likewise undertaken to discuss the matter further.[23]

4. Definition of 'trustee'

The LGAQ states that there is a lack of clarity surrounding the use of the term 'trustee' in the proposed s 373A(2) (which requires the consent of the trustee in order to make trust land the subject of a covenant).[24] It argues that s 30 of the Land Act 'distinguishes reserves from land granted in trust, yet

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15 Mr Luke Hannan, Manager, Planning, Development and Environment, Local Government Association of Queensland, *Public hearing transcript – 15 February 2017*, p 6.

16 DNRM, *Correspondence 13 February 2017*, pp 3-4.

17 DNRM, *Correspondence 24 February 2017*, p 1.

18 LGAQ, 2017, *Submission 01*, p 4.

19 As above.

20 DNRM, *Correspondence 13 February 2017*, pp 3-4.

21 Clause 27.

22 LGAQ, 2017, *Submission 01*, p 3.

23 DNRM, *Correspondence 13 February 2017*, p 4.

24 To clarify, this proposed section originally appears as s 373A(1A) in cl 17.

the manager of a reserve is called a trustee.' The LGAQ proposes that the proposed subsection be amended to clearly state whether the provisions apply to reserves, or only to trust land.[25]

Section 30 of the Land Act reads:

> *The object of this part is to—*
>
> *…*
>
> *(b) ensure that reserves and land granted in trust are properly and effectively managed—*
>
> *(i) by persons (the **trustees**) who have some particular association or expertise with the reserve or land and its purpose or with the local community…*[26]

The Land Act also contains the following definitions:

> ***reserve** includes land dedicated as a reserve under this Act … as shown by the current particulars in the appropriate register.*
>
> *…*
>
> ***trust land** means the land comprising a reserve or deed of grant in trust.*[27]

DNRM does not accept that the proposed s 373A(2) is unclearly drafted, arguing that the provision clearly applies to reserve land as intended:

> *[The] proposed 373A(2) refers to non-freehold land the subject of a trust and 373A(2)(a) specifies that for trust land the consent of the trustee is required in relation to making that land the subject of a covenant.*
>
> *The dictionary in Schedule 6 defines 'trust land' to mean the land comprising a reserve or deed in grant of trust. A trust is created with the appointment of a trustee over a reserve and as such 373A(2) is sufficiently clear in applying to reserve land.*[28]

5. Other recommendations

Finally, the LGAQ has recommended amendment of the Bill to include:

- greater flexibility for leaseholders of State land to authorise use of the land by third parties
- greater autonomy for local governments to manage the use of community purpose reserves
- removal of 'onerous and constraining' trustee land management plan requirements
- greater authority for local governments to authorise the use of roads under their control
- removal of provisions for mandatory terms documents, and
- a broad-scale review of Aboriginal and Torres Strait Islander land tenure, including the impact of reforms of Native Title provisions.[29]

DNRM notes the LGAQ's opposition to mandatory standard terms documents.[30] These will be replaced by freely available regulation. This issue is discussed further in the Fundamental Legislative Principles section, below.

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25 LGAQ, 2017, *Submission 01*, p 4.

26 Land Act, s 30.

27 Land Act, sch 6.

28 DNRM, *Correspondence 13 February 2017*, p 4.

29 As above, pp 3-4.

30 As above.

DNRM also notes that the LGAQ's other recommendations above are beyond the scope of the current Bill.[31]

Committee comment

The committee notes both the undertaking of DNRM to discuss the wording of Clauses 24 and 27 further with the LGAQ, and the willingness of the LGAQ to work alongside DNRM to ensure the Clauses are appropriately drafted.

Recommendation 2

That Clause 24 of the Bill be amended, in accordance with the recommendations of the Local Government Association of Queensland, to remove the proposed amendments and instead require a notice period between the receipt of a resignation by the Minister and the resignation taking effect.

Recommendation 3

That Clause 27 be amended to provide for the provision of notices to local government trustees under the proposed sections 321E, 321G, 321H and 321J, and to alter the wording of the proposed section 321K to make it clear that compensation is payable by the State, and not local government.

Priority notices

The current system of settlement notices has been in place since it was inserted into the Land Title Act in 1994.[32] It was instituted to 'provide statutory protection for purchasers and financiers under a contract of sale, between the time of settlement and the time of the lodgement of documents with the Registrar of Titles.'[33] Approximately 70,000 settlement notices are lodged with the Registry each year.[34] However, the system appears to operate smoothly, having never arisen as an issue in multiple rounds of amendment of the Land Title Act.[35]

Clause 39 of the Bill replaces the current system of settlement notices set out in Part 7A of the Land Title Act with a system of priority notices. These have substantially the same function – 'preventing the registration of an instrument affecting [a] lot or an interest in the lot until the notice lapses, or is withdrawn, removed or cancelled'.[36] The priority notice system is consistent with the national system agreed to by the Australian Registrars' National Electronic Conveyancing Council. Victoria, New South Wales, Western Australia and Tasmania already use the priority notice system, and other Australian jurisdictions have stated their intention to adopt it.[37]

Notably, the replacement of the settlement notice system with the priority notice system set out in the Bill involves the repeal of s 146 of the Land Title Act, which prevents the lodgement of repeated settlement notices covering a single transaction. The Bill also amends the requirements for depositing a priority notice such that the depositor need not be (or act for) a purchaser or person with an interest in a lot. Instead, a person who will be party to an instrument will be eligible.

31 As above.

32 Land Title Act, endnotes.

33 Hon G. N. Smith, Minister for Lands, *Parliamentary debates transcript – 16 November 1994*, p 10408.

34 Ms Liz Dann, Executive Director – Titles Registry, Department of Natural Resources and Mines, *Public briefing transcript – 15 February 2017*, p 3.

35 Based on a search of Hansard, including committee submissions and hearings, 23 February 2017.

36 Explanatory Notes, p 23

37 As above, p 7.

Within Clause 39, s 144 provides processes for affected, interested parties to apply to the Supreme Court to order the removal of priority notices, and s 146 provides that the Court may order the payment of compensation to interested parties for resultant loss or damages.

The Queensland Law Society (QLS) has urged caution with regard to the priority notice system, arguing that:

> *… it is more than a change of name. You are affecting the landholder's rights and you are broadening the rights of others to impact on a landholder, and that can have quite significant consequences.*[38]

The QLS has raised the possibility of mischievous use of priority notices to frustrate the rights of other parties, for example:

> *… by a prospective buyer during negotiations to gain a tactical advantage over the owner and other prospective buyers, or by an owner attempting to frustrate the exercise of a power of sale by a mortgagee.*[39]

It has suggested an alternative wording of the proposed s 139:

> *'A person who has an entitlement to a legal or equitable estate or interest in a lot and who intends to lodge an instrument to give effect to that interest may lodge a priority notice with respect to the proposed instrument…'*[40]

In response, DNRM advised the committee that the proposed amendments are intended to expand the eligibility to lodge a notice by including additional types of instruments to which a priority notice may apply, rather than the persons for whom a notice is deposited.

> *For a settlement notice, it is not required that the person has an existing interest in land, but only that the settlement notice records sufficient information about an instrument proposed to be lodged in the future to which the relevant person is a party. Priority notices will operate in the same way. The expansion of eligibility will allow a priority notice to be deposited in relation to a greater range of transactions, including for example leases, whereas currently a settlement notice can only be deposited in relation to a transfer or mortgage.*[41]

Further, the Registrar gave evidence to the committee that, based on her experience, the likelihood of misuse is low:

> *I suggest that the potential for mischievous or vexatious use is unlikely to increase… [I]f someone is going to use something mischievously they can use the words as they stand now for a settlement notice. Even though we have had settlement notices for the last 20 years, I am not aware of any instances where we have been told that they have been misused mischievously or vexatiously.*[42]

DNRM also advised the committee that the proposed s 145 provides for intervention by the Registrar:

> *There is [a] power for the Registrar of Titles to cancel a priority notice if the Registrar is satisfied that it is unlikely the related instruments for the notice will be lodged before the notice lapses. This power … would be exercised sparingly and on evidence which is sufficient to satisfy the Registrar.*[43]

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38 Ms Christine Smyth, President, Queensland Law Society, *Public hearing transcript – 15 February 2017*, p 4.

39 QLS, 2017, *Submission 04*, p 2.

40 As above.

41 DNRM, *Correspondence 10 February 2017*, p 1.

42 Ms Liz Dann, Executive Director – Titles Registry, Department of Natural Resources and Mines, *Public briefing transcript – 15 February 2017*, p 3.

43 DNRM, *Correspondence 10 February 2017*, p 2.

Committee Comment

The committee notes that the use of settlement notices to frustrate a mortgagee's power of sale is currently prohibited by s 141(2)(c) of the Land title Act, and that this prohibition will be continued by the proposed s 140(2)(b).

The committee also notes the advice of DNRM regarding the policy intent of the proposed Part 7A, the experience of the current settlement notice scheme and the potential for the Registrar to cancel a priority notice in exceptional circumstances. On this basis, the committee considers the proposed Part 7A to be appropriate.

Rolling term leases

Rolling term leases have been a periodic feature of Australian real estate law since the 1840s. Their most recent incarnation in Queensland was introduced via the *Land and Other Legislation Amendment Act 2014* (the 2014 Act).[44] The 2014 Act was intended to '[provide] greater security of tenure and certainty for … leasehold landholders', and to 'deliver significant red-tape reductions thanks to a quicker, more simplified lease renewal process.'[45]

The amended Land Act now provides for rolling term leases for agriculture, grazing and pastoral purposes and for all term leases issued for tourism purposes located on declared offshore islands.[46] A rolling term lease may be extended by approval of the Minister. A leaseholder may apply for extension of a rolling term lease at any time in the last 20 years of the term of the lease, or at an earlier time approved by the Minister, if the Minister is satisfied special circumstances exist.[47] Ministerial approval **must** be granted (if submitted in the approved form) unless the leaseholder has previously entered into an agreement to surrender the lease to the State.[48]

1. Limited extensions

The rolling term lease provisions in Chapter 4, Division 2, Subdivision 3 of the Land Act are further amended by Clauses 9-12 of the Bill. In particular, Clause 11 amends s 164C(5), which governs applications for extension. The relevant subsection currently reads:

> *(5) An extension application may be made –*
>
> *(a) at any time in the last 20 years of the term of the lease; or*
>
> *(b) at an earlier time approved by the Minister if the Minister is satisfied special circumstances exist.*[49]

Clause 11 will, if adopted, amend this subsection to provide that only one application for extension may be made during each term of the lease, including terms granted by extension of the original lease. That is, one application may be made during the original term, one during the term of an extension, one in a subsequent extension and so forth.

Clause 12 amends s 164E(2)(a) of the Land Act to provide that an extension may not be granted for a period longer than the original duration of the lease.

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44 Land Act, endnotes.

45 Hon AP Cripps MP, Minister for Natural Resources and Mines, *Parliamentary debates transcript – 19 March 2014*, pp 708-709.

46 Land Act, s 164.

47 As above, s 164C(5).

48 As above, ss 164C(1), 164D.

49 As above, s 164C(5).

AgForce has informed the committee that consultation on these Clauses of the Bill was less informative of its effect and intended purpose than it might have desired.[50] This breakdown in consultation may have caused a misconception that the proposed amendments to Clauses 11 and 12 will limit the number of times a lease may be extended. In its submission, AgForce states that it: 'opposes the passage of Clause 12 in the Bill, which seeks to limit the number of times a rolling term lease can be extended to only one.'[51]

This does not reflect the nature of the proposed amendments. The number of extensions under a rolling term lease has never been restricted by the Land Act. Nor does the Bill impose new restrictions. DNRM advised the committee that:

> *The proposed amendments will have no impact on the number of times a rolling term lease may be extended, or 'rolled over'.*
>
> *Instead, what the proposed amendments do is limit the number of times a lessee may apply for an extension during each term of a lease, to only once. This means that a lease may still be continually extended, but that only one application for extension can be made during each term.*[52]

Clauses 11 and 12 simply clarify the original intention of the rolling term lease framework. That is, that:

> *… a rolling term lease can only be extended once within the current term of a lease. Essentially, most leases are about 30 years in length. A lessee can apply within the last 20 years of that term. If you have a lease coming into its 11th year, the lessee can apply to the department to roll over that lease. The rolling or extending does not actually start from that point. … The rollover actually occurs after the original length of that term. Ostensibly [the leaseholder] should have tenure security for the next 50 years.*[53]

The Land Act states:

> *(2) The length of the extension granted must be –*
>
> *(a) for lease to which section 164C(3) applies – the term advised by a person whose agreement is required for the extension; or*
>
> *(b) otherwise – the original term of the lease.*[54]
>
> *…*
>
> *(1) If a rolling term lease is extended under this subdivision –*
>
> *(a) the lease continues in force for the term of the extension; and*
>
> *(b) the term of the extension commences immediately after the lease would otherwise have expired.*[55]

Together, these sections provide for extensions of rolling term leases that:

- do not affect the initial term of the lease
- take effect immediately upon the completion of the initial term, and

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50 AgForce Queensland, 2017, *Submission 03*, p 1.

51 As above.

52 DNRM, *Correspondence 13 February 2017*, p 2.

53 Ms Helen Spencer, Director, Land Policy, Department of Natural Resources and Mines, *Public briefing transcript – 15 February 2017*, p 3.

54 Land Act, s 164E.

55 As above, s 164F.

- add a subsequent term of identical duration to the initial term.

The diagram overleaf illustrates the process for a hypothetical 30-year lease.

DNRM has advised that the restriction on the number of extension applications to one per lease term imposed by Clause 11 is necessary to prevent 'banking' of extensions. That is, to prevent additional lease extensions beyond a single additional term being added to the lease. It argues that allowing this would constitute a significant change from the approved policy to be implemented by the Bill:

> *The Bill seeks to implement the rolling term lease policy as was originally intended—that is, that the rolling term lease is simply an extension of the term of an existing lease* ***where the rights and interests of the extended lease are no greater than they previously were*** *(and the use of the lease land is for the same purpose)* [emphasis in original]*. Currently, the extension of the rolling term lease can validly proceed under section 24IC of the Native Title Act 1993 (Cth) (the NTA), subject to meeting the relevant requirements of that section.*
>
> *To allow multiple applications in the current term would change the nature of the lease, with broader implications for leasing arrangements and lessees' rights and interests under the Land Act; as well as native title rights and interests (and compensation issues) under the NTA.*[56]

To date, there has been no test case to establish whether banking extension terms offends the NTA.

Committee comment

The committee notes the advice of DNRM regarding the operation of lease extensions, the fact that the proposed amendment gives effect to the original intent of the 2014 amendments, and the fact that restriction of the number of times a lease may be extended is not contemplated by the Bill.

The committee notes that the hypothetical ability of leaseholders to bank extensions may be incompatible with the terms of the NTA.

Without an ability to bank future extensions, the committee does not see any benefit to leaseholders in permitting further extension applications, as no additional term beyond the first extension could be granted. This is especially the case as applications must be approved by the Minister (as stated above).

Given these points, the committee considers the proposed amendments to be appropriate.

2. Early extensions

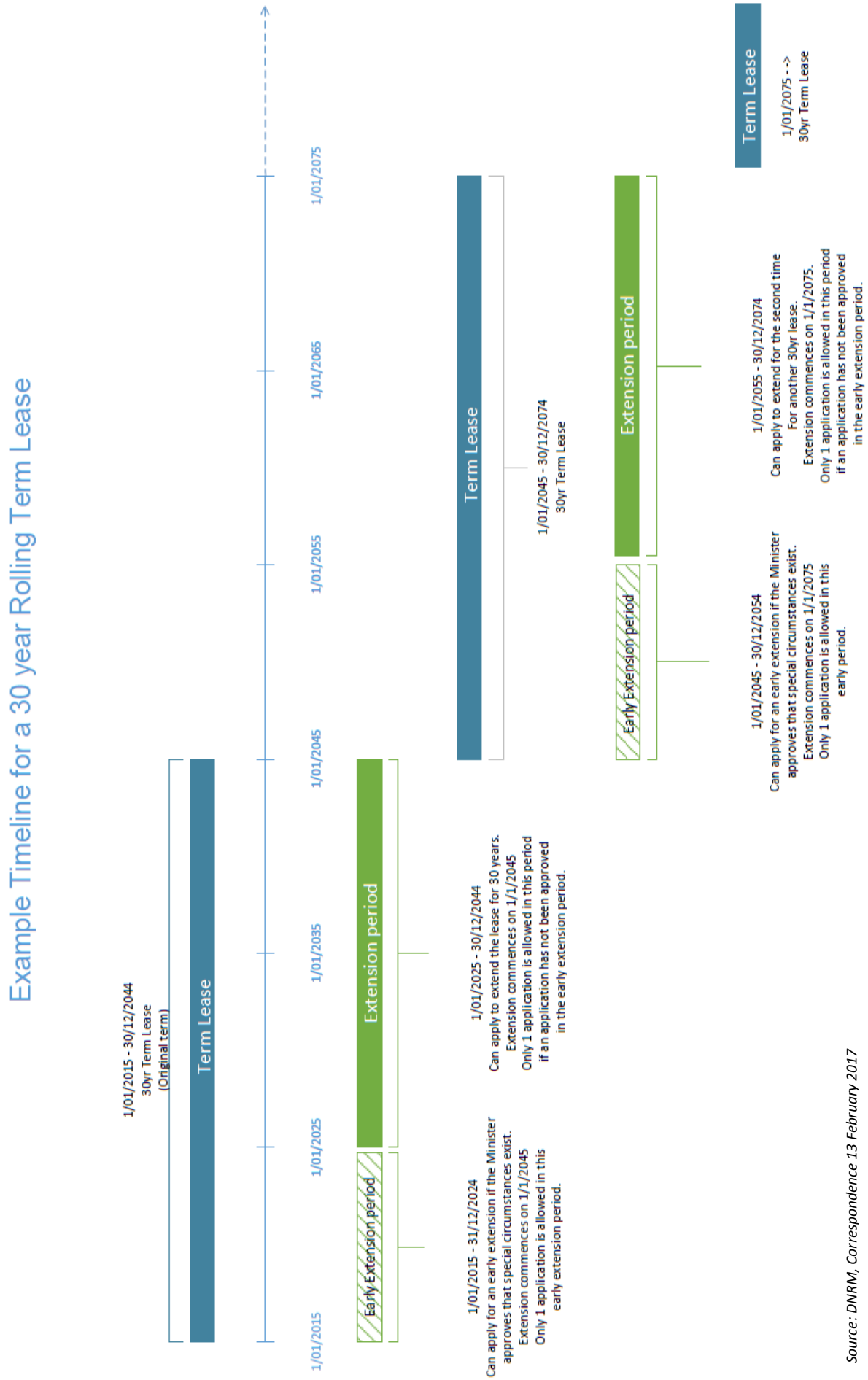
Since the introduction of the Bill that became the 2014 Act, AgForce has argued that the requirement to apply for extension of a lease only in the last 20 years of its duration unduly restricts the ability of leaseholders to apply for extensions at a time suitable to them. At the time, AgForce proposed that all lessees should be able to make an application for a rolling term lease extension at any time within the term of their lease in order to 'seek … additional security going forward.'[57] It has restated that position during the current inquiry:

> *What people generally would try to do is build into their leases the maximum number of years ahead of them. They might seek to renew early. Often we would urge them to seek to renew early, even before the last … 20 years of their lease, to try to build up, particularly in the instance of a sale, the number of years ahead of them. We think that is a perfectly valid thing for people to do.* [58]

[56] DNRM, *Correspondence 24 February 2017*, p 2.

[57] Ms Lauren Hewitt, General Manager, Policy, AgForce Queensland, *Public hearing transcript, 10 April 2014*, p 20.

[58] Ms Lauren Hewitt, General Manager, Policy, AgForce Queensland, *Public hearing transcript – 15 February 2017*, p 8.



Source: DNRM, Correspondence 13 February 2017

AgForce argued that the hypothetical nature of any lease extension (prior to approval) affects the ability of leaseholders to refinance when needed:

> *It is purely for bank and valuation purposes to have the maximum number of years in front of you at any one time. … [I]n the past 10 years we have had three amendments or three different types of systems in place. We do not know what is going to happen in the future and we need the best deal that we can take at the moment.*
>
> *…*
>
> *The one thing [leaseholders] have in front of them is this term, so they know at any one day they might have a lease until 2030 or 2050… We just want to make sure that they can apply early, If needs be. … We merely see this as limiting the ability for them to do that.*[59]

In response, DNRM noted that s 164C(5)(b) already enables the Minister to approve an application submitted outside the 20 year application period if special circumstances exist. Its response clarified:

> *The Bill does not restrict or specify what those circumstances may be. We have considered that that would include the common reasons that people want to have a longer term and that would be refinancing or sale of the property.*[60]

In its report on the Bill that became the 2014 Act, the State Development, Infrastructure and Industry Committee commented:

> *Based on the department's response, the committee is satisfied the Bill enables the Minister to extend a rolling term lease prior to the final 20 years of a lease under special circumstances, which may include the need to secure a longer term lease in the event of refinancing or sale of the property. The committee notes the suggestion from AgForce but does not see a need for further amendment.*[61]

However, current DNRM operational policy may not reflect the understanding reached at the time of the 2014 Act. DNRM's Land Holdings: Leases- Early Renewal, Rolling Term Lease Extension and Conversion (Special Circumstances) Policy (PUX/ 901/335) (the special circumstances policy) reads, in part:

> *Special circumstances for early renewal may include:*
>
> *…*
>
> *Major Investment*
>
> *Where there is a proposed major investment*
>
> - *consistent with the purpose of the lease benefiting both the public and lessee's interest. (Note: a lease may only be renewed or converted for the same purpose of the lease expiring or being converted); and*
> - *where the balance of the term of the lease*
>   - *is significantly less than the term that would generally be considered for a lease where a lessee proposes a similar level of investment; and*

[59] Ms Lauren Hewitt, General Manager, Policy, AgForce Queensland, *Public hearing transcript – 15 February 2017*, p 9.

[60] Mr Peter Burton, Director, Land and Asset Policy, Department of Natural Resources and Mines, *Public hearing transcript, 10 April 2014*, p 29.

[61] State Development, Infrastructure and Industry Committee, 2014, *Report No. 39 - Land and Other Legislation Amendment Bill 2014*, p 6.

- *is not adequate to enable finance to be secured e.g. by way of a registered mortgage (if finance is required to be raised); and /or*
- *is not sufficient to enable a suitable return to the lessee on the level of investment.*[62]

Refinancing a lease (for example, when transferring to a new leaseholder or switching lenders) would likely constitute a major investment under the policy, but this may not be well understood in the community. In response to the committee's inquiry, DNRM has noted that the 'major investments' section of the special circumstances policy applies primarily to non-rural commercial leases, and has stated that it will review the document in light of the issues raised in the inquiry.[63]

The committee has researched the origin of the requirement to renew a rolling term lease only in the final 20 years, but has found no rationale for its existence. The Explanatory notes for the Bill that became the 2014 Act are silent on the issue[64] and DNRM officers questioned by the State Development, Infrastructure and Industry Committee in 2014 did not elaborate on their reasoning.[65] In meetings between DNRM and committee Members, DNRM officers were unable to suggest any negative consequence that might follow from allowing extension applications at any point during a lease. They suggested that the 20 year time frame for the application period had been chosen arbitrarily.[66]

Committee comment

The committee has considered AgForce's position and the advice of DNRM. It notes and welcomes the undertaking of DNRM to review the special circumstances policy.

However, the committee also notes the advice of DNRM that the requirement to apply for renewal only in the final 20 years of a lease was not implemented in order to remedy any administrative issue or potential mischief otherwise made possible by the 2014 Act. In the absence of any compelling reason for this requirement, the committee considers that the interests of leaseholders could readily be served by removing it from the Land Act.

Recommendation 4

That section 164C(5) of the *Land Act 1994* be amended to permit holders of rolling term leases to make one application for extension at any point during the term of the lease.

[62] DNRM, 2013, *Land Holdings: Leases- Early Renewal, Rolling Term Lease Extension and Conversion (Special Circumstances) Policy (PUX/ 901/335)*, pp 2-3.

[63] DNRM, *Correspondence 24 February 2017*, p 2.

[64] Land and Other Legislation Amendment Bill 2014, Explanatory Notes, p 20.

[65] Mr Peter Burton, Director, Land and Asset Policy, Department of Natural Resources and Mines, *Public hearing transcript, 10 April 2014*, p 29.

[66] Agriculture and Environment Committee Meeting 85, minutes, p 2.

3. Fundamental Legislative Principles and Explanatory Notes

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

Rights and Liberties of Individuals

1. Designation of watercourse or lake land as reserves

Clause 6 inserts a new section 13AC into the Land Act, allowing for the dedication of non-tidal watercourse land or non-tidal lake land as a reserve.

Clauses 4 and 5 make consequential amendments to sections 13A and 13AA of the Land Act. Notably, s 13A(6) is amended to provide that, if an area adjacent to a watercourse or lake is part of a reserve or the subject of a lease:

(a) subsection (4)(a) and (b) applies only to the extent [that] exercising the right does not interfere with:

(i) a trustee of the reserve performing the trustee's functions and fulfilling their duty of care for the land; or

(ii) the lessee's rights and interests under the lease; and

(b) subsection (4)(c) does not allow the owner to bring an action against:

(i) a trustee of the reserve, a person acting for a trustee, or a person with a registered interest in the reserve land; or

(ii) the lessee, a person acting for the lessee, or a person with a registered interest in the lease.[67]

The ability of the State to enter into a leasing arrangement in relation to non-tidal watercourse land or non-tidal lake land for infrastructure purposes may impinge on the rights and liberties of owners of an adjacent property, potentially breaching section 4(2)(a) of the *Legislative Standards Act 1992*.

The explanatory notes acknowledge the issue and provide the following justification for the amendments of ss 13A – 13AA:

> *Under section 13A(1) of the Land Act, the beds and banks of a non-tidal boundary watercourse or lake are the property of the State. The owners of land adjoining a non-tidal boundary watercourse or lake have certain 'riparian rights' under section 13A(4) of the Land Act.*
>
> *…*
>
> *However, the riparian rights provided by section 13A are restricted when the adjacent area is being used by a person authorised under the Water Act.*
>
> *Under the proposed amendment, exercise of the riparian rights provided by section 13A(4) will also be restricted with regards to a reserve over a non-tidal boundary watercourse or lake.*
>
> *In recognition of the possible impact on an adjoining owner's riparian rights, the dedication of a reserve over [a] non-tidal boundary watercourse or lake cannot occur without the consent of*

[67] Clause 4.

the adjoining owner. If the reserve covers more than the area adjacent to the owner's land, the reservation cannot occur without the consent of the adjoining owner on both sides of the non-tidal boundary watercourse or lake.[68]

DNRM's comments refer to Clause 6, which inserts the proposed s 13AC into the Land Act. The proposed section provides that:

(1) Non-tidal watercourse land or non-tidal lake land may be dedicated as a reserve only if –

(a) each person who is an adjacent owner for the land consents to the dedication; and

(b) the chief executive (water) consents to the dedication; and

(c) each condition of the consent of the chief executive (water) imposed under subsection (3)-

(i) has been satisfied; or

(ii) is imposed as a condition of the appointment of a trustee of the reserve.

…

(2) In deciding whether to consent to the dedication, the chief executive (water) must consider whether, and to what extent, the dedication will interfere with –

…

(b) a right of the State or a person to take or use water under the [Water Act].

(3) The consent of the chief executive (water) may be given on conditions.[69]

Committee comment

The Committee notes the safeguard provided by new section 13AC(1) whereby the consent of any adjacent owners, plus the chief executive administering the Water Act, is required before non-tidal watercourse land or non-tidal lake land may be dedicated as a reserve. Prior to granting permission, the chief executive must consider the extent to which the dedication will affect the rights of a person to take or use water under the Water Act.

Given the safeguard provided, the Committee considers the new sections to have sufficient regard to fundamental legislative principles.

2. Prescribed terms

Clause 27 inserts a new Division into Chapter 6, Part 3 of the Land Act. The new Division includes sections 321A and 321B. Section 321A provides for the creation of prescribed terms in registered documents via a regulation.

The new section 321B (Effect of prescribed terms) states that these terms automatically become a term of all registered documents, and are binding on:

(i) each person who holds an interest in land created by the document's registration and any successor in title of the person; and

(ii) each person who is otherwise a party to the transaction to which the document relates.[70]

Subsection (2) of section 321B states that, where a term of a document is inconsistent with a prescribed term, the prescribed term prevails to the extent of any inconsistency.

[68] Explanatory Notes, p 6.

[69] Clause 6.

[70] Clause 27.

By setting out certain provisions that must be incorporated into all registered documents, the proposed sections curtail the freedom of individuals to enter into contracts and other arrangements on terms agreed by them. This is a foundation principle of much of the common law.

The explanatory notes state that the application of prescribed terms 'will ensure that the document includes terms considered necessary for the tenure or dealing … and essential to protect the States [sic] interest in the land.' The explanatory notes give the example of a term requiring a sublessee to hold appropriate insurance.

DNRM has stated that the prescribed terms to be included in regulations will be based on current mandatory standard terms documents (MSTDs) and that there is 'no intention to impose new obligations on interest holders.'[71] The terms currently included in MSTDs include:

> *… those dealing with public liability insurance and indemnity; use and development of land; duty of care; holding over, possession or occupation of the land upon the interest ending; and power of attorney arrangements.*[72]

DRNM states that the carrying over of these terms 'will not prevent the parties to an interest from entering into contracts and other commercial arrangements on terms agreed by them.'[73]

DNRM also notes that the removal of the existing sections 318A and 320A and the insertion of the new Division will move the mandatory terms from MSTDs into a regulation. This will have the effect of making the mandatory terms more generally available, as it will remove the need to apply to the registry for a copy of the MSTD.[74]

Committee comment

The committee notes that the designated officer for a document may only include an amended term in a document (or remove a repealed term from a document) with the consent of all persons bound by the prescribed term.

The committee notes the advice of DNRM that no mandatory terms are contemplated beyond those currently applied through MSTDs.

The committee also notes that similar provisions for the making of mandatory terms exist elsewhere in Queensland legislation (e.g. the *Manufactured Homes (Residential Parks) Act 2003*), and in Commonwealth legislation (e.g. the *Fair Work Act 2009* and *Corporations Act 2001*). However, these typically operate to protect the rights of natural persons against commercial operations that may be presumed to be better informed and have greater financial resources. Despite this, there is no reason in principle why the State may not impose mandatory provisions in order to protect its own interests, as these tend to coincide with the interests of the public.

On this basis, the committee does not consider that Clause 27 offends fundamental legislative principles.

[71] DNRM, *Correspondence 10 February 2017*, p 3.

[72] As above, p 2.

[73] As above, p 3.

[74] As above, pp 2-3.

Appendix A: List of submitters

Sub No.	Submitter
1	Local Government Association of Queensland
2	Property Council of Australia
3	AgForce Queensland Industrial Union of Employers
4	Queensland Law Society

Appendix B: Witnesses at public briefing

12 December 2016 - Department of Natural Resources and Mines
• Ms Liz Dann, Executive Director Titles Registry • Ms Helen Spencer, Director Land Policy • Ms Marie Vidas, Manager, Titles Practices and Standards • Ms Mirranie Barker, Manager Land Policy

15 February 2017 - Department of Natural Resources and Mines
• Ms Liz Dann, Executive Director Titles Registry • Ms Helen Spencer, Director Land Policy • Ms Marie Vidas, Manager, Titles Practices and Standards • Ms Mirranie Barker, Manager Land Policy • Mr Lyall Hinrichsen, Executive Director, Land and Mines Policy • Mr Brad Warneke, Director, Titles Operations

Appendix C: Witnesses at public hearing

15 February 2017
Queensland Law Society • Ms Christine Smyth – President • Mr Matthew Raven – Chair, Property and Development Law Committee
Local Government Association of Queensland • Mr Luke Hannan – Manager, Planning, Development & Environment
AgForce Queensland • Ms Lauren Hewitt, General Manager, Policy

Pat WEIR MP
Member for Condamine

6 March 2017

Opposition Members' Statement of Reservations

Report No. 32: Land and Other Legislation Amendment Bill 2016

Opposition Members wish to record our concerns about the very poor consultation by the Government in relation on the Land and Other Legislation Amendment Bill 2016.

Had the department's consultation for this Bill been conducted properly, the problems the committee identified with the Bill, and flagged for amendments in this report, could have been resolved before the Bill was even introduced by the Minister. Instead, the committee had to seek extra briefings from the department after eleventh-hour meetings between departmental officers and stakeholders to work out amendments to fix the Bill's significant shortcomings.

Agforce, the peak body representing the State's agricultural interests noted in their submission that they only became aware of the Bill through the committee's alert once the Bill have been introduced and referred for consideration. It beggars belief that department's would not think it necessary to consult with peak industry bodies like Agforce.

Having heard about the Bill from the committee, Agforce subsequently made contact with the Department of Natural Resources and Mines to seek information about the justification for the Bill and, in particular, Clause 12 which related to Rolling Term Leases. Rolling term leases are vitally important to the State's pastoralists, and any changes affecting extensions and eligibility can have implications for their operations and viability. As Agforce explained in their submission, they weren't consulted on the Bill, and then found a dearth of information in the Explanatory Notes:

> *While the Department was able to explain how the mechanics of Clause 12 would function, there was no explanation provided as to the need for this change.*[1]

And:

> *There has been no justification provided for the change and as a significant stakeholder, AgForce were never approached to discuss issues associated with s 164C of the Act (which Clause 12 of the Bill seeks to amend).*[2]

And:

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1 AgForce Queensland, 2017, *Submission 03*, p 1.

2 AgForce Queensland, 2017, *Submission 03*, p 2.

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The explanatory notes have provided absolutely no detail about why the change is there. When I approached the department back in December when the Bill came forward, I could not get any further explanation about the reason for the Clause"[3]

At the committee's public hearings, Agforce explained this further:

Back ... when the Bill was first put forward, I approached the department, just to see if there was any logic and to ask why. They did get back to me with an explanation of how it would operate. I am aware of the mechanics of how it will operate; I just do not understand the reason. Is there some frivolous or serial litigant or pest who is going for renewals or something? There might very well be a valid reason, but not in the explanatory notes and not that I have received in a response to date.[4]

In answer to a question from the Member for Gregory, Agforce further explained:

***Mr MILLAR**: Lauren, I want to go back to your concerns about Clause 11. When you approached the department, did they come back with anything? Did they come back with an explanation of any kind? You said they did not give you a satisfactory one, but did they come back with an explanation?*

***Ms Hewitt**: Yes, they certainly did. They came back with an explanation about how the mechanics of it would work in a number of ways. It was a little further explanation on how the mechanics of it would operate, but to me what was missing in there was a rationale about why the change was required.*

***Mr MILLAR**: When you asked them to explain the rationale, what was their response?*

***Ms Hewitt**: Nothing that gave me any satisfaction to know that that was a valid change in the framework.*[5]

Similarly, the Local Government Association of Queensland raised concerns in their evidence about the lack of notice and explanation as to the justification for, or background to, the provisions in the Bill affecting their members. This is very concerning given the importance of maintaining strong and open relationships between the State Government and our local governments:

No rationale or systemic issue is identified warranting the removal of local governments' resignation entitlement.[6]

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3 Ms Lauren Hewitt, General Manager, Policy, AgForce Queensland, *Public hearing transcript – 15 February 2017*, p 8.

4 Ms Lauren Hewitt, General Manager, Policy, AgForce Queensland, *Public hearing transcript – 15 February 2017*, p 9.

5 Ms Lauren Hewitt, General Manager, Policy, AgForce Queensland, *Public hearing transcript – 15 February 2017*, p 9.

6 Local Government Association of Queensland, 2017, *Submission 1*, p 3.

As per the LGAQ's submission, these amendments did come out of left field and we have not seen any systemic issue to justify a seemingly heavy-handed regulatory response.[7]

While this Palaszczuk government likes to tout itself as an open, accountable, transparent and consultative government this is yet another example of their actions not matching their rhetoric.

Pat Weir MP, Member for Condamine Deputy Chair	Lachlan Millar MP, Member for Gregory

[7] Mr Luke Hannan, Manager, Planning, Development and Environment, Local Government Association of Queensland, *Public hearing transcript – 15 February 2017*, p 6.