



# **Local Government and Other Legislation Amendment Bill 2015**

**Report No. 3, 55<sup>th</sup> Parliament  
Infrastructure, Planning and Natural  
Resources Committee  
May 2015**

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## **Infrastructure, Planning and Natural Resources Committee**

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### **Acknowledgements**

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Infrastructure, Local Government and Planning, the Department of Transport and Main Roads and the Queensland Reconstruction Authority.



## Contents

<b>Chair's foreword</b>	<b>iii</b>
<b>Abbreviations</b>	<b>iv</b>
<b>Recommendations</b>	<b>v</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Role of the committee	1
1.2 The referral	1
1.3 The committee's inquiry process	1
1.4 Policy objectives of the Bill	1
1.5 The Government's consultation on the Bill	2
1.6 Should the Bill be passed?	2
<b>2 Examination of the Bill</b>	<b>3</b>
2.1 Returning officers and conducting local government elections	3
2.2 Amendments to the <i>Heavy Vehicle National Law Act 2012</i>	7
2.3 Amendments to the <i>Queensland Reconstruction Authority Act 2011</i>	9
<b>3 Compliance with the <i>Legislative Standards Act 1992</i></b>	<b>10</b>
3.1 Fundamental legislative principles	10
3.2 Explanatory notes	11
<b>Appendices</b>	<b>12</b>
Appendix A – List of submitters	12
Appendix B – List of witnesses at the public hearings	13
Appendix C – Table	14
<b>Statement of Reservation</b>	<b>17</b>



## Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resource Committee's examination of the Local Government and Other Legislation Amendment Bill 2015.

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, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and others who informed the committee's deliberations.

I would also like to thank the departmental officials who briefed the committee, the committee's secretariat, and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



Jim Pearce MP  
**Chair**

May 2015



**Abbreviations**

CEO	Chief executive officer
COBA 1924	<i>City of Brisbane Act 1924</i>
ECQ	Electoral Commission Queensland
FLPs	fundamental legislative principles
HVNL Act	<i>Heavy Vehicle National Law Act 2012</i> HVNL Act
LGAQ	Local Government Association Queensland
LGEA	<i>Local Government Electoral Act 2011</i>
LSA	<i>Legislative Standards Act 1992</i>
QRA	Queensland Reconstruction Authority
QRA Act	<i>Queensland Reconstruction Authority Act 2011</i>
the scheme	national registration scheme for heavy vehicles
THLGC	former Transport, Housing and Local Government Committee

## Recommendations

### Recommendation 1

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The majority of the committee recommends the Local Government and Other Legislation Amendment Bill 2015 be passed.

### Recommendation 2

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The committee recommends the Bill be amended to include a provision to amend the *Local Government Electoral Act 2011* to require the Electoral Commission Queensland to consult with local governments with the objective of reducing the cost of conducting local government elections.

### Recommendation 3

7

The committee recommends the Minister consider the Local Government Association of Queensland's suggestion that the *Local Government Electoral Act 2011* be amended to return the system of voting for mayors in undivided councils to first-past-the-post.



## 1 Introduction

### 1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of government and non-government members.

The committee's areas of portfolio responsibility are:<sup>1</sup>

- Transport, Infrastructure, Local Government, Planning and Trade
- State Development, Natural Resources and Mines.

### 1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of the fundamental legislative principles to the Bill.

On 27 March 2015, the Local Government and Other Legislation Amendment Bill 2015 (the Bill) was referred to the committee for examination and report. The Legislative Assembly fixed the committee's reporting date of 22 May 2015.

### 1.3 The committee's inquiry process

On 10 April 2015, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 27 April 2015. The committee received six submissions (see Appendix A).

On 20 April 2014, the committee held a public briefing with the Department of Infrastructure, Local Government and Planning (the department). On 6 May 2015 and 20 May 2015, the committee held public hearings in Brisbane (see Appendix B).

Copies of the submissions and transcripts of the public briefing and public hearings are available from the committee's webpage.<sup>2</sup>

### 1.4 Policy objectives of the Bill

The policy objectives of the Bill are to:<sup>3</sup>

- amend the *Local Government Electoral Act 2011* (LGEA) to remove the mandate for a local government chief executive officer to be the returning officer for a local government election
- to defer commencement of Chapter 2 (Registration) of the *Heavy Vehicle National Law Act 2012* until 1 July 2018

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<sup>1</sup> Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 27 March 2015).

<sup>2</sup> See: [www.parliament.qld.gov.au/ipnrc](http://www.parliament.qld.gov.au/ipnrc). At the time of writing this report, the transcript of the public hearing held on 20 May 2015 was a proof transcript and not available on the committee's webpage.

<sup>3</sup> Explanatory notes, p 1.

- extend the operation of the Queensland Reconstruction Authority (QRA) after 30 June 2015 to ensure communities affected by the recent cyclone Marcia receive assistance in rebuilding and recovery.

### 1.5 The Government's consultation on the Bill

The explanatory notes advise that in March 2015, the Local Government Association of Queensland (LGAQ) and Electoral Commission Queensland (ECQ) were provided with an exposure draft of the Bill relating to the proposed amendments to the LGEA and *Queensland Reconstruction Authority Act 2011*. Both the LGAQ and ECQ supported the amendments.<sup>4</sup>

The explanatory notes do not outline the consultation in relation to the proposed amendments to the *Heavy Vehicle National Law Act 2012*. However, the committee notes that the Transport and Infrastructure Council voted to support the delay of the commencement of the registration scheme.<sup>5</sup>

### 1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. The committee unanimously supports the proposed amendments to the *Heavy Vehicle National Law Act 2012* and the *Queensland Reconstruction Authority Act 2011*. The majority of the committee support the proposed amendments to the *Local Government Electoral Act 2011*. Overall, the majority of the committee recommends the Bill be passed.

#### **Recommendation 1**

The majority of the committee recommends the Local Government and Other Legislation Amendment Bill 2015 be passed.

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<sup>4</sup> Explanatory notes, p 4.

<sup>5</sup> Explanatory notes, p 2.

## 2 Examination of the Bill

### 2.1 Returning officers and conducting local government elections

#### 2.1.1 Local government elections from 1939 to 2004

Prior to the 2008 election, local government elections were generally conducted by the relevant local government. The two local government Acts that predate the current *Local Government Act 2009* – the *Local Government Act 1993* and the *Local Government Act 1936* – provided that the local government’s chief executive officer (the clerk in the 1936 Act) was the returning officer for local government elections, except in certain circumstances.<sup>6</sup>

The *City of Brisbane Act 1924* (COBA 1924) similarly provided that the town clerk of Brisbane City Council was the chief returning officer for the council’s local government elections. However, in 1999, the *Local Government and Other Legislation Amendment Act 1999* amended COBA 1924 to enable Brisbane City Council to enter into an agreement with the ECQ to conduct elections.<sup>7</sup> In instances in which the Council entered into such an agreement, the town clerk was not the chief returning officer for the election.<sup>8</sup>

#### 2.1.2 2008 local government election

The 2008 quadrennial local government election was the first time in Queensland that no council conducted its own election.<sup>9</sup>

The *Local Government Reform Implementation Act 2007* inserted provisions into the *Local Government Act 1993* for the conduct of the 2008 quadrennial elections. The provisions required the 2008 local government election to be conducted by the ECQ. Under the amendments, the commissioner was the chief returning officer and had overall responsibility for the proper conduct of the 2008 quadrennial election.<sup>10</sup>

The COBA 1924 was also amended by the *Local Government Reform Implementation Act 2007* to require that the 2008 quadrennial election be conducted by the ECQ.<sup>11</sup>

The Local Government Association of Queensland (LGAQ) expressed its view of the changes as follows:

Whilst this action was aimed at clearly demonstrating electoral probity and confidence to the community, over a century of tradition and satisfactory service by local Returning Officers has come to an end.<sup>12</sup>

<sup>6</sup> *Local Government Act 1936*, Schedule 3, r 2; *Local Government Act 1993*, ss 220, 221 (from 1 July 1998, ss 272, 273).

<sup>7</sup> [Local Government and Other Legislation Amendment Act 1999](#), ss 5, 6, 8. See also [City of Brisbane Act 1924](#), Reprint 4E, s 17A.

<sup>8</sup> *City of Brisbane Act 1924*, s 16A(2).

<sup>9</sup> LGAQ, ‘[Local Government Elections](#)’, accessed 27 April 2015.

<sup>10</sup> *Local Government Act 1993*, s 159ZL.

<sup>11</sup> *Local Government Reform Implementation Act 2007*, s 22 which inserted new ss 17B-17D into the *City of Brisbane Act 1924*. The provisions expired on 31 December 2008.

<sup>12</sup> Local Government Association of Queensland, ‘[Queensland communities decide 2008: some facts, figures and insights of the local government election held on Saturday 15 March 2008](#)’, accessed 11 May 2015. See also, Local Government Reform Implementation Bill 2007, Explanatory notes, pp 21-22.

### **2.1.3 2012 local government election**

The 2012 local government election was conducted under the *Local Government Electoral Act 2011* (LGEA).<sup>13</sup> Under the LGEA, the ECQ is responsible for conducting local government elections.<sup>14</sup>

At the time of the 2012 election, the ECQ was empowered to appoint a person as the returning officer for an election unless the person was:<sup>15</sup>

- a minor
- a member of a political party, or
- the chief executive officer of the local government for which the election is to be held.

However, if the chief executive officer (CEO) was the only person with experience conducting elections who was reasonably available to be appointed as the returning officer, the chief executive officer could be appointed as the returning officer if the officer was not a member of a political party.<sup>16</sup>

At the 2012 election, 12 of the 73 returning officers were local government CEOs.<sup>17</sup>

### **2.1.4 2014 amendments to the Local Government Electoral Act 2011**

The *Local Government Legislation Amendment Act 2014* amended the returning officer provisions in the *Local Government Electoral Act 2011* to provide that the CEO is the returning officer for an election unless:

- the CEO is a member of a political party
- the CEO gives ECQ a withdrawal notice, or
- the electoral commission gives the CEO a removal notice.

If the CEO is not the returning officer, the ECQ must appoint another person as the returning officer for the election.<sup>18</sup>

The amendments were made with the aim of empowering local governments to make decisions that benefit their local communities.<sup>19</sup>

An election has not been held since the commencement of the amending Act on 1 January 2015.<sup>20</sup>

### **2.1.5 Amendments to the Local Government Electoral Act 2011 proposed by the Bill**

The provisions of the Bill relating to returning officers are almost identical to those in the *Local Government Electoral Act 2011* at the time it was made.

The Bill proposes to remove the default position of the CEO of a local government being the returning officer and instead enable the ECQ to appoint returning officers.<sup>21</sup>

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<sup>13</sup> The *Local Government Electoral Act 2011* applies to all Queensland local governments including Brisbane City Council: Explanatory notes, p 1.

<sup>14</sup> *Local Government Electoral Act 2011*, s 8.

<sup>15</sup> *Local Government Electoral Act 2011*, s 9(2).

<sup>16</sup> *Local Government Electoral Act 2011*, s 9(3).

<sup>17</sup> Public briefing transcript, 20 April 2015, p 9.

<sup>18</sup> *Local Government Electoral Act 2011*, s 9.

<sup>19</sup> Local Government Electoral Bill 2011, Explanatory notes, p 1.

<sup>20</sup> [Proclamation made under the Local Government Legislation Amendment Act 2014](#), notified 5 December 2014. The next election is due to be held in 2016.

Under proposed new section 9, the ECQ may appoint a person as the returning officer for an election unless the person is:

- a minor
- a member of a political party, or
- the chief executive officer of the local government for which the election is to be held.

Despite these restrictions, the ECQ may appoint the CEO of the local government as the returning officer if:

- the CEO is not a member of a political party
- the ECQ considers the CEO is the only person with experience in conducting elections who is reasonably available to be appointed as the returning officer.

The amendments were introduced to remove the potential for a conflict of interest for CEOs, especially when incumbent mayors and councillors recontest an election, and to bring local government elections in line with state and federal elections by having them conducted by an independent body.<sup>22</sup>

The table at Appendix C summarises the changes to the returning officer and conduct of elections provisions in local government legislation over recent decades and identifies the quadrennial/triennial elections that have taken place under each regime.

### **2.1.6 Stakeholder views**

The preferred position of the Local Government Association of Queensland (LGAQ), the peak local government body in Queensland, is that local governments should have the choice of who conducts their elections. The LGAQ was willing to accept the proposed changes on the basis that the Government consults with them about how the costs of conducting local government elections can be reduced.<sup>23</sup>

Logan City Council also held the view that councils should be given the choice as to who runs their elections. It submitted that it has the 'skills, knowledge and expertise to run a local government election'<sup>24</sup> and could save over \$400,000 if it ran its own election with the CEO as returning officer and support from other council staff.<sup>25</sup> The Council also pointed out that council officers, such as the CEO, have to be able to act independently and with integrity in their day-to-day roles, even if

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<sup>21</sup> Clause 3. The other amendments proposed to be made to the *Local Government Electoral Act 2011* are consequential to the clause 3 amendment: Public briefing transcript, 20 April 2015, p 2. Clause 20 provides transitional provisions for elections in which there is a CEO returning officer before the commencement of the proposed provisions.

<sup>22</sup> Explanatory notes, p 1; Public briefing transcript, 20 April 2015, p 7. See also, Transport, Housing and Local Government Committee, *Report No. 50: Local Government Legislation Amendment Bill 2014*, p 5; Public briefing transcript, 6 May 2015, p 12.

<sup>23</sup> Local Government Association of Queensland (LGAQ), '[Who we are](#)', accessed 12 May 2015; LGAQ, Submission 1; Explanatory Notes, p 4; Public hearing transcript, 6 May 2015, pp 1, 5. The LGAQ holds the view that local governments should have the choice to conduct elections themselves, contract with the ECQ or contract with some other qualified provider: Public hearing transcript, 6 May 2015, p 1. See also, LGAQ, correspondence dated 11 May 2015; LGAQ, [Submission 2 to Transport, Housing and Local Government Committee, Local Government Legislation Amendment Bill 2014 inquiry](#), 24 June 2014.

<sup>24</sup> Public hearing transcript, 6 May 2015, p 7.

<sup>25</sup> Logan City Council, Submission 2.



pressure is exerted on them from councillors or the mayor, and that this would be no different if appointed as returning officer.<sup>26</sup>

Sunshine Coast City Council, on the other hand, supported the proposed amendments, stating they would remove the potential for a conflict of interest and bring the standards of local government elections in line with state and federal elections.<sup>27</sup>

The committee was advised that the Electoral Commissioner favours the appointment of returning officers by the ECQ rather than CEOs being the returning officer by default.<sup>28</sup>

Whilst the ECQ did not comment on the merits of the policy position, the ECQ stated:

... we are confident that if the bill remains as it is we could make it work.

The interplay between section 8 of the Local Government Electoral Act, which places responsibility for the conduct of the quadrennial elections on the Electoral Commission, and section 9(1), which states that the CEO of a local government is to be the returning officer, raises some complex managerial and administrative challenges, though. The Electoral Commissioner is responsible under the act for the conduct of local government elections but is reliant on a person outside of his or her direct employment to actually run the operation on the ground. We are confident at ECQ that we can make this work and, indeed, there may well be no-one better placed to run the election in certain circumstances, particularly in small rural councils where the numbers of electors are sometimes quite small.<sup>29</sup>

#### Committee comment

The committee supports the amendments and the intention of increasing transparency and integrity of local government elections. The committee notes however, no overwhelming evidence was provided to the committee to demonstrate issues associated with a CEO being the returning officer for an election.<sup>30</sup>

The committee is considerate of the extra costs that may be faced by some councils. Unfortunately, figures were not available which would have illustrated the comparative cost of CEO and ECQ running elections.<sup>31</sup> The LGAQ indicated that some councils may be able to conduct their elections at a lower cost than the ECQ but others may not be able to.<sup>32</sup> As mentioned above, Logan City Council considered that it could save over \$400,000 if it ran its election.

In relation to costs, the ECQ stated:

We are cognisant of the cost burden for councils so we have written to all CEOs and are in the process of contacting them directly to stipulate their requirements for election. We are looking to utilise, wherever possible, council real estate for returning officers' office space, prepoll and polling booths. We are also working with council on the number of and ideal

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<sup>26</sup> Public hearing transcript, 6 May 2015, p 7. See also, Public hearing transcript, 6 May 2015, p 5.

<sup>27</sup> Sunshine Coast Council, Submission 5.

<sup>28</sup> Public briefing transcript, 20 April 2015, p 8.

<sup>29</sup> Public hearing transcript, 20 May 2015, p 1.

<sup>30</sup> Public briefing transcript, 20 April 2015, p 7; Public hearing transcript, 6 May 2015, p 12.

<sup>31</sup> Public briefing transcript, 20 April 2015, p 6; Public hearing transcript, 6 May 2015, p 11. The department provided the 2012 quadrennial local government election direct and indirect costs for each council: see Department of Infrastructure, Local Government and Planning, correspondence dated 24 April 2015. Logan City Council also wrote to the ECQ seeking a breakdown of the cost of conducting the Council's 2012 election: see correspondence dated 11 May 2015. The 2004 election was the most recent election conducted by local governments.

<sup>32</sup> Public hearing transcript, 6 May 2015, pp 2-4.

location of polling booths. These measures will save significant amounts of time and planning and, ... significant sums of money during the period leading up to and during the running of the event.<sup>33</sup>

The committee is pleased to note that the department, ECQ and the LGAQ are working together to determine how election costs can be reduced for local governments. The committee recommends the Bill be amended to require the ECQ to consult with local governments with the objective of reducing the cost of conducting local government elections.

#### **Recommendation 2**

The committee recommends the Bill be amended to include a provision to amend the *Local Government Electoral Act 2011* to require the Electoral Commission Queensland to consult with local governments with the objective of reducing the cost of conducting local government elections.

The LGAQ requested the committee consider recommending that the Bill be amended to return the system of voting for mayors in undivided councils to first-past-the-post. This proposal was not within the scope of the Bill. Accordingly, the committee has not addressed this matter and refers it to the Minister for consideration.

#### **Recommendation 3**

The committee recommends the Minister consider the Local Government Association of Queensland's suggestion that the *Local Government Electoral Act 2011* be amended to return the system of voting for mayors in undivided councils to first-past-the-post.

## **2.2 Amendments to the *Heavy Vehicle National Law Act 2012***

The *Heavy Vehicle National Law Act 2012* (HVNL Act) regulates the use of heavy vehicles to improve safety and create regulatory efficiencies for industry.<sup>34</sup> The HVNL Act covers all heavy vehicles over 4.5 tonnes and is administered by the National Heavy Vehicle Regulator. The Act commenced in Queensland, New South Wales, Victoria, Tasmania, South Australia and the Australian Capital Territory on 10 February 2014. The Northern Territory and Western Australia have not commenced the HVNL Act at this time.<sup>35</sup>

Part 3, clause 23, of the Bill proposes to amend section 2(2) of the HVNL Act to extend the automatic commencement of any unproclaimed provisions of the Act, including the commencement of Chapter 2 (Registration), to 1 July 2018, or a date prior to that by proclamation. Clause 23 of the Bill also exempts the HVNL Act from the requirements of section 15DA of the *Acts Interpretation Act 1954* – the automatic commencement of postponed law.<sup>36</sup>

<sup>33</sup> Public hearing transcript, 20 May 2015, p 2.

<sup>34</sup> Heavy Vehicle National Law Bill 2012, Explanatory notes, pp 4-6.

<sup>35</sup> The National Heavy Regulator, [National Heavy Vehicle Regulator](#), accessed on 22 April 2015.

<sup>36</sup> Section 15DA, *Acts Interpretation Act 1954* provides: (2) If a postponed law has not commenced within 1 year of the assent day, it automatically commences on the next day. (3) However, within 1 year of the assent day, a regulation may extend the period before commencement under subsection (2) to not more than 2 years of the assent day.

Chapter 2 (Registration) establishes the legislative requirements for the national registration scheme for heavy vehicles (the scheme) over 4.5 tonne Gross Vehicle Mass garaged in each of the participating jurisdictions.<sup>37</sup> The scheme is currently due to commence on 1 July 2015. However:

There is [sic] significant policy and system development issues to be resolved before a national heavy vehicle registration scheme can be delivered. Based on assessments undertaken to date, this is expected to take several years.<sup>38</sup>

Based on their assessment of outstanding issues, the National Transport Commission proposed a revised implementation date for a national registration scheme and commencement of Chapter 2 (Registration) of 1 July 2018.<sup>39</sup>

The department asserted that the proposed amendment to extend the commencement date was necessary to avoid the difficulties industry and state and territory governments would encounter if the scheme commenced on 1 July 2015.<sup>40</sup> The Australian Trucking Association, the trucking industry's peak body, supported the proposed amendment as 'more work is needed on the planned national registration scheme before it is implemented'.<sup>41</sup> The Queensland Trucking Association Ltd also supported the proposed amendment.<sup>42</sup> Both Associations stated that, while they support the proposed amendment, they would like the scheme implemented as a priority.<sup>43</sup>

The department advised:

... the industry would prefer that there was a scheme ready to go and to move to at this point, but they understand some of the policy complexities that are being worked through. Their preference, if it is not ready to go, is that there be a specific date aimed for, which is effectively what we are looking to put through with this amendment. So as I mentioned, their preference, first of all, is to have something. They understand the need for a delay at this point. Their second preference is that we have a specific target date to hit, which is where the July 2018 is looking to take us. That is based on the work done by states, territories and the National Transport Commission along with the regulator themselves.<sup>44</sup>

#### Committee comment

The committee considers that the proposed amendment to Chapter 2 (Registration) of the *Heavy Vehicle National Law Act 2012* is necessary, as the national registration scheme for heavy vehicles will not be ready to commence in participating jurisdictions by 1 July 2015.

The committee notes the National Transport Commission's assessment of outstanding matters relating to the development of the scheme and that these matters may take several years to be resolved.

The committee supports the proposed amendment to extend the commencement date of unproclaimed provisions of the HVNL to a day to be fixed by proclamation or by 1 July 2018. This will allow for all outstanding matters relating to the development of the scheme to be addressed prior to implementation.

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<sup>37</sup> Explanatory notes, p 1.

<sup>38</sup> Explanatory notes, p 2.

<sup>39</sup> Explanatory notes, p 2.

<sup>40</sup> Public briefing transcript, 20 April 2015, p 2.

<sup>41</sup> Australian Trucking Association, Submission 3.

<sup>42</sup> Queensland Trucking Association Ltd, Submission 4.

<sup>43</sup> Australian Trucking Association, Submission 3; Queensland Trucking Association Ltd, Submission 4.

<sup>44</sup> Public briefing transcript, 20 April 2015, p 3.

### 2.3 Amendments to the *Queensland Reconstruction Authority Act 2011*

The Queensland Reconstruction Authority (QRA) is a statutory authority established by the *Queensland Reconstruction Act 2011* (QRA Act). The QRA was established in response to the disaster events that occurred between November 2010 and April 2011.

The QRA manages and coordinates the Government's program of infrastructure reconstruction within disaster-affected communities.<sup>45</sup> It was initially established for a period of two years. The QRA has been extended three times and is due to expire by 30 June 2015.<sup>46</sup>

Clause 25 of the Bill removes Part 11 of the QRA Act (the expiration clause) to provide open-ended continuation. The Deputy Premier stated:

Many Queenslanders are going through traumatic times as a result of natural disasters. The extension of the Queensland Reconstruction Authority is recognition of the fact that, unfortunately, natural disasters are a fact of life in Queensland and we need to be constantly ready to prepare, respond and recover.<sup>47</sup>

The LGAQ stated it 'welcomes the fact that the QRA will be maintained as a central whole of government contact for councils affected by natural disasters'.<sup>48</sup>

#### Committee comment

The QRA undertakes vital rebuilding functions for those communities affected by natural disasters and the committee supports its continuation.

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<sup>45</sup> Queensland Reconstruction Authority, 'About the Queensland Reconstruction Authority', <http://qldreconstruction.org.au/about> accessed 11 May 2015. See also section 10 of the *Queensland Reconstruction Authority Act 2011*.

<sup>46</sup> Public briefing transcript, pp 2-3.

<sup>47</sup> Queensland Parliament, Record of Proceedings, 27 March 2015, p 233.

<sup>48</sup> Local Government Association Queensland, Submission 1.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) 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.

The committee has examined the application of FLPs to the Bill and considers Clauses 23 and 25 raise potential concerns.

##### 3.1.1 *Rights and liberties of individuals*

Section 4(2)(a) of the LSA provides the principles of FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals. Sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice, or provides for the compulsory acquisition of property only with fair compensation.<sup>49</sup>

Clause 25 repeals part 11 of the QRA Act to provide for the QRA’s continuation. The QRA Act contains provisions which may adversely affect the rights and liberties of individuals or breach principles of natural justice, such as the ability to compulsorily acquire land, and to allow ministerial declarations of critical infrastructure projects which are excluded from review under the *Judicial Review Act 1991*.

The explanatory notes state:

The potential breach of FLPs is considered justified in the context of the broader public interest of the QRA being able to effectively undertake its rebuilding functions for the benefit of those communities affected by historical and continuing disaster events in Queensland.<sup>50</sup>

##### Committee comment

The committee considers the potential breaches are justified in the context of the QRA’s work.

##### 3.1.2 *Institution of Parliament*

Section 4(2)(b) of the LSA provides the principles of FLPs include requiring that legislation has sufficient regard to the institution of Parliament. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill authorises the amendment of an Act only by another Act.<sup>51</sup>

If a provision of a Bill enables primary legislation to be amended or repealed by subordinate legislation, with or without further parliamentary scrutiny, it is known as a ‘Henry VIII’ clause. Henry VIII clauses are generally discouraged as they tend to limit a parliament’s effective control over the legislation it enacts. It is recognised in some circumstances that these types of clauses should only be enacted in appropriate cases and when they are well defined.

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<sup>49</sup> *Legislative Standards Act 1992*, ss 4(3)(b) & 4(3)(i).

<sup>50</sup> Explanatory notes, p 4.

<sup>51</sup> *Legislative Standards Act 1992*, s 4(4)(c).

Clause 23 is an example of a Henry VIII clause as it provides for a date fixed by the Queensland Governor by proclamation. That aspect of the clause, though, is not controversial and accords with accepted Queensland practice, particularly relating to national or uniform scheme legislation.

The clause is out of the ordinary to the extent that it modifies the operation of section 15DA of the *Acts Interpretation Act 1952*. It does this by:

- altering the date of assent, deferral of the otherwise automatic commencement of the HVNL from 1 to 2 years
- enabling a regulation to be made to extend before the automatic commencement date the commencement of the HVNL from 2 to 3 years from the date of assent.

The former Transport, Housing and Local Government Committee (THLGC) considered a similar FLP issue during its examination of the Heavy Vehicle National Law Bill 2012. THLGC stated:

The committee considered the objective of the bill, Explanatory Notes and TMR's response in considering the significance of the delegation of power and the use of Henry VIII clauses. The committee considers that any potential FLP issues are justified on the basis that the bill is implementing a national scheme. The committee considers the bill will provide substantial benefits to the nation and economy which has been enacted in the interests of cooperative federalism in order to more effectively address national concerns and priorities.<sup>52</sup>

The explanatory notes state:

The extension of the automatic commencement is considered necessary to provide for resolution of issues surrounding the development of a national heavy vehicle registration scheme. The potential breach of clause 2 has been made less objectionable by limiting the delayed commencement to 1 July 2018.<sup>53</sup>

#### Committee comment

The committee considered the former THLGC's views in relation to the potential breach. The committee agrees with the former THLGC that the potential breach is justified on the basis that the Act implements national scheme legislation.

The committee is satisfied that the proposed amendment to modify the operation of section 15DA of the *Acts Interpretation Act 1952* is justified to allow time to address outstanding matters in the development of the scheme prior to commencement, and that the inclusion of a specific commencement date provides some certainty for industry.

### **3.2 Explanatory notes**

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee considers it would have been helpful if the explanatory notes identified the specific clauses being discussed when identifying FLPs.

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<sup>52</sup> Transport, Housing and Local Government Committee, *Report No. 4: Heavy Vehicle National Law Bill 2012*, p 35.

<sup>53</sup> Explanatory notes, p 4.

## Appendices

### Appendix A – List of submitters

<b>Sub #</b>	<b>Name</b>
1	Local Government Association of Queensland
2	Logan City Council
3	Australian Trucking Association
4	Queensland Trucking Association Ltd
5	Sunshine Coast Council
6	Banana Shire

**Appendix B – List of witnesses at the public hearings**

<b>Witnesses – Public Hearing held Wednesday 6 May 2015</b>	
1	Mr Joshua O’Keefe, Team Leader, Intergovernmental Relations, Local Government Association of Queensland
2	Mr Simon Benham, Governance Manager, Logan City Council
3	Mr John Oberhardt, Chief Executive Officer, Logan City Council
4	Mrs Brownyn Blagoev, Director, Policy, Legal and Corporate Support, Department of Infrastructure, Local Government and Planning
5	Mrs Josie Hawthorne, Manager, Legislation, Policy, Legal and Corporate Support, Department of Infrastructure, Local Government and Planning
<b>Witnesses – Public Hearing held Wednesday 20 May 2015</b>	
1	Mr Dermot Tiernan, Assistant Electoral Commissioner, Electoral Commission Queensland
2	Mr Peter McGraw, Assistant Director Elections, Operations and Planning, Electoral Commission Queensland



## Appendix C – Table

## Queensland local governments (not including Brisbane City Council)

Legislation	Relevant provisions	CEO <u>is</u> the returning officer except in certain circumstances	CEO <u>is not</u> the returning officer except in certain circumstances	Quadrennial/triennial local government elections held during the term of the provisions and who was responsible for conducting it
Local Government and Other Legislation Amendment Bill 2015 (proposing to amend the <i>Local Government Electoral Act 2011</i> )	Proposed new s 9 and proposed omission of s 9A		✓	n/a
<i>Local Government Legislation Amendment Act 2014</i> (amended the <i>Local Government Electoral Act 2011</i> )	Replaced s 9 and inserted new s 9A	✓		The next election is due to be held in 2016. The Electoral Commission of Queensland will conduct the election.
<i>Local Government Electoral Act 2011</i>	Section 9		✓	Quadrennial elections on last Saturday in March or another date fixed by regulation, commencing in 2012 and held every fourth year after 2012 (s 23) Includes 2012 election. The 2012 election was conducted by the Electoral Commission of Queensland. <sup>54</sup>
<i>Local Government Act 2009</i>	Schedule 2: ss 272, 273	✓		Quadrennial elections, commencing in 2012 and held every fourth year after 2012 (Schedule 4)
<i>Local Government Act 1993</i>	Sections 220, 221 From 1 July 1998: sections 272, 273	✓		Triennial elections on last Saturday in March or a date fixed by regulation, commencing 26 March 1994 (ss 214, 216-218). Quadrennial elections commenced in 2000. <sup>55</sup> Includes 1994, 1997, 2000, 2004

<sup>54</sup> *Local Government Electoral Act 2011*, s 8. The *Local Government Electoral Act 2011* shifted responsibility for the conduct and administration of local government elections from the local governments to the ECQ: Local Government Electoral Bill 2011, Explanatory notes, p 3. See also, LGAQ, '[Local Government Elections](#)', accessed 27 April 2015.

<sup>55</sup> *Local Government and Other Legislation Amendment (No. 2) Act 1999*, ss 5 and 6 which replaced ss 266 and 269 of the *Local Government Act 1993*; s 19 which replaced s 16 of the *City of Brisbane Act 1924*.

Legislation	Relevant provisions	CEO <u>is</u> the returning officer except in certain circumstances	CEO <u>is not</u> the returning officer except in certain circumstances	Quadrennial/triennial local government elections held during the term of the provisions and who was responsible for conducting it
				and 2008 elections.  The 2008 election was the first local government election in which no council conducted its own election. <sup>56</sup>  Up to 2004, only Brisbane City Council elections had been conducted by ECQ. <sup>57</sup>
<i>Local Government Act 1936</i>	Schedule 3, r 2	✓		Triennial elections, commencing in 1939 (s 7(8)).

### Brisbane City Council

Legislation	Relevant provisions	CEO/town clerk <u>is</u> the returning officer except in certain circumstances	CEO <u>is not</u> the returning officer except in certain circumstances	Quadrennial/triennial local government elections held during the term of the provisions and who was responsible for conducting it
Local Government and Other Legislation Amendment Bill 2015 (proposing to amend the <i>Local Government Electoral Act 2011</i> )	Proposed new s 9 and proposed omission of s 9A		✓	n/a
<i>Local Government Legislation Amendment Act 2014</i> (amended the <i>Local Government Electoral Act 2011</i> )	Replaced s 9 and inserted new s 9A	✓		The next election is due to be held in 2016.  The Electoral Commission of Queensland will conduct the election.

<sup>56</sup> LGAQ, '[Local Government Elections](#)', accessed 27 April 2015; [Local Government Act 1993](#), s 159ZL which was inserted by the [Local Government Reform Implementation Act 2007](#), s 5.

<sup>57</sup> LGAQ, '[Local Government Elections](#)', accessed 27 April 2015.

Legislation	Relevant provisions	CEO/town clerk <u>is</u> the returning officer except in certain circumstances	CEO <u>is not</u> the returning officer except in certain circumstances	Quadrennial/triennial local government elections held during the term of the provisions and who was responsible for conducting it
<i>Local Government Electoral Act 2011</i>	Section 9		✓	Quadrennial elections on last Saturday in March or another date fixed by regulation, commencing in 2012 and held every fourth year after 2012 (s 23)  Includes 2012 election.  The 2012 election was conducted by the Electoral Commission of Queensland. <sup>58</sup>
<i>City of Brisbane Act 2010</i> <sup>59</sup>		✓ Not if ECQ conducted the election.		
<i>City of Brisbane Act 1924</i>	Sections 16(2), <sup>60</sup> 16A(2) <sup>61</sup>	✓ Not if ECQ conducted the election.		Triennial elections commencing 1937. <sup>62</sup>  Quadrennial elections from 2000. <sup>63</sup>  From 2000, Brisbane City Council had power to enter into an agreement with the Electoral Commission Queensland (ECQ) to conduct Brisbane City Council elections. <sup>64</sup>

<sup>58</sup> The *Local Government Electoral Act 2011* shifted responsibility for the conduct and administration of local government elections from the local governments to the ECQ: *Local Government Electoral Bill 2011*, Explanatory notes, p 3. See *Local Government Electoral Act 2011*, s 8. See also, LGAQ, '[Local Government Elections](#)', accessed 27 April 2015.

<sup>59</sup> The *City of Brisbane Act 2010* continued to apply the election provisions of the repealed *City of Brisbane Act 1924* to quadrennial elections for the council as if a reference in the provisions to the town clerk were a reference to the chief executive officer and with other necessary changes: *City of Brisbane Act 2010*, s 263.

<sup>60</sup> *City of Brisbane Acts 1924 to 1960*.

<sup>61</sup> [City of Brisbane Act 1924](#), Reprint 4E.

<sup>62</sup> The first election was held in 1925. The returning officer was appointed by the Governor in Council: *City of Brisbane Act 1924 to 1960*, s 15. Elections were also held in at least 1931 and 1934: *City of Brisbane Act 1924 to 1960*, s 20.

<sup>63</sup> [City of Brisbane Act 1924](#), Reprint 4E, s 16

<sup>64</sup> [Local Government and Other Legislation Amendment Act 1999](#), ss 5, 6, 8. See also [City of Brisbane Act 1924](#), Reprint 4E, s 17A.

## Statement of Reservation



20 May 2015

Mr Jim Pearce  
Chairperson  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George St  
Brisbane 4000

Dear Mr Pearce

**Re:- Local Government and Other Legislation Amendment Bill 2015**

We wish to notify the committee of our reservations about aspects of Report No.3 of the Infrastructure, Planning and Natural Resources Committee.

Part of the Bill seeks to amend the *Local Government Electoral Act 2011* to reverse the present position of Chief Executive Officers of Local Government being, by default, appointed Returning Officers at Local Government elections.

The Explanatory Notes for the Bill suggest the reason for the change was a perceived conflict of interest in having a Local Government CEO as an RO during an election. We note however, that during the committee's Department briefings and public hearings, no evidence was offered to justify this statement, although all stakeholders presenting to the committee were questioned on this aspect of the Bill.

Further reservations with regard to changes to the *Local Government Electoral Act 2011* will be outlined during debate on the Bill.

Amendments to the *Heavy Vehicle National Law Act 2012* and the *Queensland Reconstruction Authority Act 2011* are supported.

Yours sincerely



Michael Hart  
Member for Burleigh



Lachlan Millar  
Member for Gregory



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