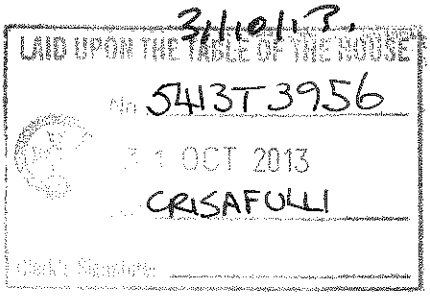
Local Government and Other Legislation Amendment Bill 2013



Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable David Crisafulli MP

Title of the Bill

Local Government and Other Legislation Amendment Bill 2013

Objectives of the Amendments

The objectives of the amendments to the Bill are to:

- reduce red tape and simplify the process for the preliminary assessment of councillor conduct complaints;
- provide an equitable role in the decision making process for development applications over land which straddles both the continuing and new local government areas;
- correct a minor typographical error in the *Local Government Act 2009*;
- fix an incorrect section reference in schedule 1 of the Bill.

Achievement of the Objectives

Reduce red tape and simplify the process for the preliminary assessment of councillor conduct complaints

The amendments achieve the objectives by removing the requirement for a written notice to be given to the person required to conduct the preliminary assessment of a councillor conduct complaint. The amendments also clarify through simplified provisions the person responsible for conducting the preliminary assessment of a councillor conduct complaint based on who makes the complaint, and the person responsible for referring the complaint.

Improve equity for continuing and new local governments resulting from de-amalgamation

The *Local Government and Other Legislation Amendment Bill 2013* amends the *Sustainable Planning Act 2009* (SPA) to, amongst other things, provide for appeals for decisions made on development applications prior to the changeover day for de-amalgamating local governments over land which straddles both the continuing and new local government areas.

The proposed amendment to the Bill improves decision making equity and procedural efficiency where a development application is for land which straddles both the continuing and new local government areas.

The Transport, Housing and Local Government Committee (the Committee) received five submissions that relate to the provisions which deal with a development application over land that straddles both the continuing and new local government areas.

These submissions identified a potential inequity in the ability for either local government to have a legal role in future proceedings, regardless of which is the ultimate decision maker.

The amending provisions ensure the continuing local government still decides if it will remain the assessment manager. However, regardless of which local government is the assessment manager for the development application, the other local government will be the concurrence agency for the part of the development within its local government boundary and have some input into the decision making. Consequently, both local governments will have some role in decision making, as well as a legal role and the ability to be party to an appeal about the development application.

Correct a minor typographical error and incorrect section reference

The amendments achieve the objectives by:

- amending section 90A(1)(b) of the *Local Government Act 2009* to correct a minor typographical error;
- amending schedule 1 of the Bill to replace an incorrect reference to 'section 270' with the correct reference which is 'section 292' in amendment number 4 for the *Local Government Regulation 2012*.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no anticipated costs for government.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles. The amendment to SPA is intended to improve equity for continuing and new local governments resulting from the

de-amalgamation where the land is partly within a continuing local government area and partly within a new local government area.

Consultation

The amendments principally stem from the recommendations of the Committee on the Bill as a result of the Committee's consultation with stakeholders.

The Sunshine Coast Regional Council was consulted regarding the SPA amendment, as it is the only local government which has received a development application where the land straddles both the continuing and new local government areas.

NOTES ON PROVISIONS

Amendment 1 amends clause 7 (Amendment of s 179 (Preliminary assessments of complaints)) to reduce red tape for council. The Bill amends section 179 of the *City of Brisbane Act 2010* to make specific reference to the chief executive officer receiving a complaint about the conduct or performance of a councillor and clarifies the process for the preliminary assessment of a complaint if the complaint is made or received by the council, the department's chief executive or the chief executive officer.

Amendment 1 gives effect to recommendation 5 of the Committee. Recommendation 5 is in direct relation to the corresponding provision of the *Local Government Act 2009* and reads-

"The Committee recommends that the Minister for Local Government, Community Recovery and Resilience considers amending Clause 15 of the Bill to reflect the suggested change by the Local Government Association of Queensland to clarify the process for the preliminary assessment of a complaint about the conduct or performance of a councillor so that the Council Chief Executive Officer can respond to a complaint immediately, prior to Council providing written notice of the complaint to the Chief Executive Officer."

In view of the Committee's comments and the representations made to the Committee by the Local Government Association of Queensland, the government has decided to completely remove the legislative requirement for a written notice to be given to the person required to conduct the preliminary assessment of a councillor conduct complaint. Amendment 1 also clarifies through simplified provisions the person responsible for conducting the preliminary assessment of the complaint based on who makes the complaint. In summary, councillor conduct complaints must be referred to the chief executive officer of council to conduct a preliminary assessment unless it is the chief executive officer of council who makes the complaint, in which case it must be referred to the department's chief executive for preliminary assessment. The amendment also makes it clear that the person who receives the complaint is responsible for referring the complaint to the person required to undertake the preliminary assessment, however the referral is no longer required to be made by written notice.

Amendment 1 is consistent with government policy to remove unnecessary prescription and to empower local governments. Allowing council to rely on its own internal processes and policies supports operational convenience and allows the assessment of complaints to occur in a timely manner.

The *City of Brisbane Act 2010* is purposely silent in relation to complaints made or received by the Lord Mayor. Council will continue to rely on current internal practices in this regard. For all other local governments, the *Local Government Act 2009* deals with complaints made or received by the mayor of a local government.

Amendment 2 amends clause 7 (Amendment of s 179 (Preliminary assessments of complaints)) to update a renumbering provision for section 179 of the *City of Brisbane Act 2010* as a consequence of the amendments proposed under amendment number 1 above.

Amendment 3 inserts new clause 7A (Amendment of s 183A (Records about complaints)) to amend section 183A of the *City of Brisbane Act 2010*. Currently, section 183A requires the chief executive officer of council to keep a record of all written complaints received by the chief executive officer and the outcome of each written complaint. The public can inspect the part of the record that relates to outcomes of written complaints.

Amendment 3 amends section 183A to replace all references to 'written complaint/s' with 'complaint/s'. The amendments ensure that all complaints received by the chief executive officer are captured and recorded regardless of whether they were referred via a written notice. The amendments are as a consequence of the amendments proposed under amendment number 1 above.

Amendment 4 amends clause 8 (Amendment of schedule (Dictionary)) to update the cross reference to section 179(6) in the definition *preliminary assessment* under the *City of Brisbane Act 2010*. The amendment is as a consequence of the amendments proposed under amendment number 1 above.

Amendment 5 inserts new clause 11A (Amendment of s 90A (Caretaker period)) to amend section 90A of the *Local Government Act 2009* to correct a minor typographical error. Section 90A defines *caretaker period* for a local government and is missing the word 'of' in subsection (1)(b).

Amendment 6 amends clause 15 (Amendment of s 176B (Preliminary assessments of complaints)) to reduce red tape for local governments. The Bill amends section 176B of the *Local Government Act 2009* to make specific reference to the chief executive officer and mayor receiving a complaint about the conduct or performance of a councillor and clarifies the process for the preliminary assessment of a complaint if the complaint is made or received by the local government, the department's chief executive, the chief executive officer or the mayor.

Amendment 6 gives effect to recommendation 5 of the Committee. Recommendation 5 reads-

"The Committee recommends that the Minister for Local Government, Community Recovery and Resilience considers amending Clause 15 of the Bill to reflect the suggested change by the Local Government Association of Queensland to clarify the process for the preliminary assessment of a complaint about the conduct or performance of a councillor so that the Council Chief Executive Officer can respond to a complaint immediately, prior to Council providing written notice of the complaint to the Chief Executive Officer."

In view of the Committee's comments and the representations made to the Committee by the Local Government Association of Queensland, the government has decided to completely remove the legislative requirement for a written notice to be given to the person required to conduct the preliminary assessment of a councillor conduct complaint. Amendment 6 also clarifies through simplified provisions the person responsible for conducting the preliminary assessment of the complaint based on who makes the complaint. In summary, councillor conduct complaints must be referred to the chief executive officer of the local government to conduct a preliminary assessment unless it is the mayor or chief executive officer of the local government who makes the complaint, in which case it must be referred to the department's chief executive for preliminary assessment. The amendment also makes it clear that the person who receives the complaint is responsible for referring the complaint to the person required to undertake the preliminary assessment, however the referral is no longer required to be made by written notice.

Amendment 6 is consistent with government policy to remove unnecessary prescription and to empower local governments. Allowing local governments to rely on their own internal processes and policies supports operational convenience and allows the assessment of complaints to occur in a timely manner.

***Amendment** 7* amends clause 15 (Amendment of s 176B (Preliminary assessments of complaints)) to insert a re-numbering provision as a consequence of amendment number 6 above.

Amendment 8 inserts new clause 15A (Amendment of s 181A (Records about complaints)) to amend section 181A of the *Local Government Act 2009*. Currently, section 181A requires the chief executive officer of a local government to keep a record of all written complaints received by the chief executive officer and the outcome of each written complaint. The public can inspect the part of the record that relates to outcomes of written complaints.

Amendment 8 amends section 181A to replace all references to 'written complaint/s' with 'complaint/s'. The amendments ensure that all complaints received by the chief executive officer are captured and recorded regardless of whether they were referred via a written notice. The amendments are as a consequence of the amendments proposed under amendment number 6 above.

Amendment 9 amends clause 20 (Amendment of sch 4 (Dictionary)) to include an amendment to the definition *preliminary assessment* under the *Local Government Act 2009* to update the cross reference to section 176B(6). The amendment is as a consequence of the amendments proposed under amendment number 6 above.

Amendment 10 inserts new subsections in section 952 (Application or request relating to land within continuing and new local government area) in clause 31. The new subsections will improve decision-making equity where a development application is for land which straddles both the new and continuing local government areas. The continuing local government still chooses whether it is to continue to be the decision maker for these development applications. The new subsections have the effect that, regardless of who is the decision maker for the development application, the other local government will be the concurrence agency, but only to the extent the development application is about land within that local government's area.

The concurrence agency must give its response about the development application within 30 business days after the notification day. The decision maker cannot make a decision about the application until the earlier of either receipt of the concurrence agency's response, or the expiration of 30 business days after the notification day.

Amendment 11 amends schedule 1 (Minor and consequential amendments) to fix an incorrect section reference in the amendments for the *Local Government Regulation 2012*. The incorrect reference to 'section 270' will be replaced with 'section 292'.

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