

## Economics and Governance Committee

### Report No. 32, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 1 May 2019 and 2 May 2019

#### 1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 1 May 2019 and 2 May 2019. It reports on any issues identified by the committee relating to the policy to be given effect by the subordinate legislation, its consistency with fundamental legislative principles (FLPs) and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).

#### 2 Subordinate legislation examined

No.	Subordinate legislation (SL)	Date tabled	Disallowance date
63 of 2019	Local Government (Dissolution of Logan City Council) Amendment Regulation 2019	2 May 2019	17 September 2019

#### 3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the consistency with FLPs or the lawfulness of the subordinate legislation. While a potential FLP concern was acknowledged, the committee was satisfied that the relevant provisions are appropriate and do not impose on individual rights and liberties.

The explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA.

##### 3.1 SL No. 63 of 2019 – Local Government (Dissolution of Logan City Council) Amendment Regulation 2019

###### *Objective of the subordinate legislation*

The objective of SL No. 63 is to give effect to the recommendation of the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs (the Minister) to dissolve the Logan City Council (LCC) and appoint an interim administrator to act in place of the councillors.<sup>1</sup>

###### *Reasons for the subordinate legislation’s introduction*

The subordinate legislation was introduced because, of the 12 councillors and one mayor that serve the LCC, only four serving councillors remain. This removes the LCC’s ability to have a quorum at meetings, conduct business and pass resolutions.<sup>2</sup>

The LCC has four serving councillors because in:

- May 2018, the Mayor and one councillor were automatically suspended from office, and

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

<sup>2</sup> Explanatory notes, p 1.

- April 2019, seven councillors were automatically suspended from office after the Crime and Corruption Commission charged those councillors with criminal offences.<sup>3</sup>

Following the events noted above, the Minister considered that the LCC was incapable of performing its responsibilities.<sup>4</sup> On 2 May 2019, the Minister dissolved the LCC and appointed Tamara O'Shea as the interim administrator to act in the councillors' place.<sup>5</sup> The interim administrator will be in place until the conclusion of a fresh election of councillors for the LCC in March 2020 or 30 June 2020,<sup>6</sup> whichever is earlier. The interim administrator has all of the responsibilities and powers of the local government and mayor.<sup>7</sup>

#### *Benefits and costs of implementation*

The explanatory notes advise that the benefits of the Regulation are that the LCC's responsibilities under the *Local Government Act 2009* (Local Government Act) can continue to be exercised and the Logan community is given some certainty.<sup>8</sup>

The explanatory notes also advise that the government will fund the interim administrator's costs and expenses, with the LCC paying these costs and expenses to the Minister on a monthly basis.<sup>9</sup>

#### *Minister's power to dissolve a local government*

The Minister is required<sup>10</sup> to give the local government in question a written notice of the proposal to exercise the power to recommend that the Governor in Council dissolve the local government and appoint an interim administrator, unless a prescribed exception applies. No written notice was provided, because the exception that doing so would serve no useful purpose was considered to apply.<sup>11</sup>

#### Committee comment

Section 4(2)(a) of the LSA states that FLPs include a requirement that legislation has sufficient regard to the rights and liberties of individuals, while section 4(3)(b) is concerned that legislation is consistent with the principles of natural justice.

When dissolving the LCC, its remaining four councillors were removed from office without the opportunity to respond to their removal. This process could be considered to have not complied with the principles of natural justice.

However, as highlighted by the explanatory notes, LCC does not have a functioning council, meaning:

*Any potential breach of the FLPs is considered justified because in the absence of a quorum the Logan City Council cannot hold council meetings or pass resolutions and consequently is incapable of discharging its responsibilities.*<sup>12</sup>

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<sup>3</sup> Explanatory notes, p 2.

<sup>4</sup> Explanatory notes, p 2.

<sup>5</sup> Logan City Council, *Office of the Interim Administrator*, 2 May 2019, <https://www.logan.qld.gov.au/about-council/office-of-the-interim-administrator-and-divisions/interim-administrator>.

<sup>6</sup> Explanatory notes, p 2.

<sup>7</sup> Explanatory notes, p 2.

<sup>8</sup> Explanatory notes, p 3.

<sup>9</sup> *Local Government Act 2009* (Local Government Act), s 124; explanatory notes, p 3.

<sup>10</sup> Local Government Act, s 120.

<sup>11</sup> Explanatory notes, p 2.

<sup>12</sup> Explanatory notes, p 3.

When considering whether this potential FLP breach is justified, the committee considers the circumstances in which the former Mayor and councillors were removed from the LCC and the Parliament's ratification of the dissolution brought about by the regulation are relevant.<sup>13</sup>

In the circumstances, the committee considers that sufficient regard has been had to the principles of natural justice and the rights and liberties of individuals.

#### *Other issues*

The committee identified no other issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness.

## **4 Recommendation**

The committee recommends that the House notes this report.



Linus Power MP

**Chair**

**August 2019**

### **Economics and Governance Committee**

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<sup>13</sup> Logan City Council, *Office of the Interim Administrator*, 2 May 2019, <https://www.logan.qld.gov.au/about-council/office-of-the-interim-administrator-and-divisions/interim-administrator>.