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Office of the President

25 July 2018

Our ref: KB-GA

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email:

Dear Committee Secretary

Draft Local Government (Dissolution of Ipswich City Council) Bill 2018

Thank you for the opportunity to provide comments on the Draft Local Government (Dissolution of Ipswich City Council) Bill 2018 (the draft bill).

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS commends the Government on allowing consultation on the draft bill prior to its introduction into Parliament. However, we hold a number of concerns about the legislation and its timing.

Key points:

QLS is concerned that:

- Clause 4 of the draft bill, which provides for dissolution of the Ipswich City Council (ICC) and ends the term of ICC councillors, circumvents the proper, established remedial processes under the *Local Government Act 2009* (LGA) and thereby abrogates the rights and liberties of individuals.
- The dissolution of ICC has the effect of breaching the principle of the presumption of innocence, by dismissing councillors who have been charged but not convicted, or who are not the subject of any charges or public allegations of wrongdoing, without even the benefit of an administrative Ministerial investigative process making adverse findings against these councillors.
- The Minister has significant powers under section 123 of the LGA which enables the Minister to dissolve the local government if the Minister reasonably believes it is in the public interest that every councillor be suspended or dismissed. If the Minister

"reasonably believes" that the public interest requires ICC be dissolved, then there is no need for this specific instance legislation. If the Minister does not have sufficient evidence to reasonably form the view that, under section 123 of the LGA, it is in the public interest to dissolve ICC, then we submit that this specific instance legislation is particularly egregious.

- The draft bill excludes judicial review and appeal under clause 6 which is contrary to fundamental legislative principles and the recommendations of the Fitzgerald Inquiry.
- The Explanatory Notes inadequately justify the significant breaches of fundamental legislative principles and procedural fairness in the draft bill.
- The draft bill specifies that no election will be held until the next quadrennial Council elections in 2020 which has the effect of denying the electorate democratically elected representatives for a significant period of time. This is also inconsistent with the approach outlined in section 123(6) of the LGA which indicates that when a council is dissolved under the LGA process, it is Parliament's intention that a fresh election be held as soon as practicable.

Clause 4: dissolution of Ipswich City Council and end of term of ICC councillors

In the limited time for review of the draft bill, QLS has considered the impacts of this clause on the rule of law and on the laws and processes that allow for the election and operation of local governments in Queensland. Whilst we consider that the Parliament is able to pass a law of this nature, given the broad power afforded to it under the Constitution[1], we hold serious concerns as to whether such a law *should* be passed.

Our primary concerns are that:

- clause 4 does not provide natural justice or a proper and fair process for dissolving a council or prematurely ending the term of an elected councillor;
- clause 4 breaches the fundamental right of certain elected councillors to be presumed innocent until this has been proved otherwise i.e. by a conviction or finding by a court or tribunal; and
- clause 4 takes particular action against elected councillors where no charges or allegations have been made about their conduct.

Proper and fair process

The LGA contains a clear process for taking steps against an elected council which affords procedural fairness and which allows for the right of review.

We refer the Committee to Division 3 of Chapter 5 of the LGA which allows the Minister to take remedial action. Specifically, sections 122 and 123 provide for the removal of a councillor and dissolution of a local government, respectively. These powers are conditional on section 120 which provides that the Minister must first give the local government or councillor written notice of the proposal to exercise the power before it is exercised[2] and importantly, the written notice must not only set out the grounds for the proposed action, but allow a reasonable time

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[1] The Parliament of Queensland is authorised to make laws for the peace, welfare and good government of Queensland (*Constitution Act 1867*, section 2).

[2] There are exceptions to this requirement however, these are either not applicable to the current matter including that giving the written notice would serve no useful purpose.

for the local government or councillor to make a submission. The Minister must then have regard to this submission.

Therefore, while sections 122 and 123 might result in the same outcome as clause 4 of the draft bill, the ways in which this outcome is achieved are vastly different. Following the LGA process would:

- first, provide notice to the affected person/council;
- secondly, enable submissions to be made on that person/council's behalf; and
- thirdly, once a decision was made, ensure that such a decision could be reviewed in the ways prescribed by the *Judicial Review Act 1991* (JRA) or potentially by way of the inherent jurisdiction of the Supreme Court.

QLS considers that the current process under the LGA affords the elected councillor or council their appropriate legal rights and ensures that any action taken is fair, reasonable and importantly, transparent.

We have not seen sufficient justification for eroding this process.

Presumption of innocence

There have been many charges and allegations made against current and former staff and councillors in the ICC. This is stated as one of the primary justifications for the draft Bill.

QLS notes that of those charged with offences, none have yet been found guilty of an offence. These individuals are entitled to the presumption of innocence and to the prosecutorial process being able to take its course. Moreover, there are current ICC councillors facing dismissal by the operation of the draft bill who have not been charged with any offence or had any allegations publicly levelled against them. This is of great concern as the operation of clause 4 means that these people will never have the opportunity to be presented with any charge or evidence or have the chance to address this.

It is extremely concerning that a council and councillors who were democratically elected are now being arbitrarily removed before the current LGA investigation is completed (for those not charged with any offence) and before any court has determined the charges brought against certain councillors.

The draft bill is also concerning because it overrides a recently introduced investigative process. The legislation governing local governments was recently amended earlier this year when the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 was passed to implement the Government's response to the "Operation Belcarra - A blueprint for integrity and addressing corruption risk in local government" report. The amendment introduced to section 123 of the LGA gave the Minister the power to dissolve the local government if the Minister reasonably believes it is in the public interest that every councillor be suspended or dismissed. This is already a significant power. If the Minister "reasonably believes" that the public interest requires the ICC be dissolved, then it is unclear why the Minister is not relying on this pre-existing power without the need for specific instance legislation.

If the Minister does not have sufficient evidence to reasonably form the view that, for the purposes of section 123 of the LGA, it is in the public interest to dissolve ICC, then we submit that this specific instance legislation is particularly egregious.

Excluding the right to review a decision made under clause 5

Clause 5 of the draft bill requires the Governor in Council to appoint an interim administrator once the ICC councillors have been removed. The Minister may also appoint someone in certain circumstances under this clause.

Clause 6 of the draft bill removes the right of a person affected by a decision of the Governor in Council or the Minister under clause 5 to challenge, appeal or seek a review of the decision.

QLS strongly objects to the abrogation of these rights and to the exclusion of these long-established processes under the JRA and pursuant to the inherent jurisdiction of the Supreme Court. We note that the JRA was introduced following the Fitzgerald Inquiry to ensure that appropriate and proper administrative processes were followed by Government and that there were sufficient checks and balances in place.

As recently noted by the Australian Law Reform Commission:

> "*Access to the courts to challenge administrative action is an important common law right. Judicial review of administrative action is about setting the boundaries of government power. It is about ensuring government officials obey the law and act within their prescribed powers.*" (footnotes omitted)[3]

We also consider that clause 6 is broader than provisions in other acts which have sought to limit review under the JRA. Clause 6 excludes any form of recourse or accountability for these decisions. We do not consider this is warranted, especially as such decisions will be made at a time when the integrity of democratic processes are being questioned.

Explanatory Notes

The Explanatory Notes (the notes) that accompany the draft bill require significant amendment in order to provide adequate explanation and justification for this legislation.

When stating whether the draft bill is consistent with fundamental legislative principles, the notes concede that operative clauses will not afford councillors natural justice, however, the notes do not contain any justification for denying this right. Further, while some justification is provided for the abrogation of the right of review or appeal under clause 6, QLS considers this is not sufficiently detailed.

When considering the rights and liberties of individuals, the notes signal a possible infringement as the draft bill does not contemplate any compensation for former councillors once the legislation commences. However, as stated above, other substantive rights and liberties, such as the presumption of innocence, are to be withdrawn by this legislation and these are not explained or justified in the notes. That section of the notes provides that "a comprehensive solution" is needed "in response to serious governance, ethical and cultural concerns." We again make the point that this legislation is premature, at best, as the full legal and investigative process about these "serious governance, ethical and cultural concerns" has not yet been finalised.

Clause 7 of the draft bill indicates that an election will not be held until 2020. However, section 123(6) of the LGA provides that when a local government is dissolved under the LGA remedial process, it is Parliament's intention that a fresh election of the councillors of the local

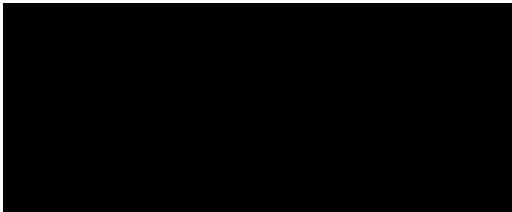
[3] Australian Law Reform Commission (ALRC Report 129), 2 March 2016, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws*, Chapter 15, paragraph 15.1 available at https://www.alrc.gov.au/sites/default/files/pdfs/publications/fr_129ch_15._judicial_review.pdf

government should be held as soon as practicable after the Legislative Assembly ratifies the dissolution of the local government. The LGA approach of requiring a fresh election as soon as practicable seems much more consistent with the expectations of an electorate who are entitled to be represented by democratically elected representatives, rather than an interim administrator.

Finally, the notes state that the Local Government Association of Queensland will be consulted on the draft bill before the proposed introduction of this legislation into parliament. We consider that other stakeholders, including QLS, should also be given this opportunity.

If you have any queries regarding the contents of this letter, please do not hesitate to contact Matt Dunn, General Manager, Policy, Public Affairs and Governance by phone on ██████ or via email to ██████ or Kate Brodnik, Senior Policy Solicitor by phone on ██████ or by email to ██████

Yours faithfully



Ken Taylor
President