

FINANCE & ADMINISTRATION COMMITTEE 20 APRIL 2011	2
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LOCAL GOVERNMENT STATUTE REVIEW

L Kirchner : 1/3/87: #3097636

RECOMMENDATION:

That Council note the contents of the submission made to the Department of Local Government and Planning.

INTRODUCTION:

As part of the Local Government Legislative Reform and in response to the Queensland Regulatory Simplification Plan (2009-13) on the 17 September 2009 the Queensland Government endorsed the then Minister's proposal for a review of state legislation applying to Local Governments and to make recommendations for improvements at the end of 2011.

BACKGROUND:

The purpose of this review is reduce and rationalise the legislative burden to:

- Enable improved interpretation and understanding of the law by making Local Legislation easier to use;
- Eliminate unnecessary and excessive regulatory requirements
- Rationalise legislation governing issues where there are important inconsistencies or duplication across the statutes
- Streamline administrative processes.

The then Minister has indicated that she anticipates that the outcome of the review will mean significant savings to business, the community and government.

COMMENT:

The State Government has released a discussion document (3006950) to promote feedback and input from Councils across the state. Council officers have reviewed this at Departmental level and the attached table (3036102) contains officers feedback.

CONSIDERATIONS:

Corporate and Operational Plans:

This report has been prepared in accordance with the Corporate Plan Goal 6 – Striving for Organisational Excellence.

Statutory:

The provision of feedback will help to inform the State's decision on future legislative changes.

Policy:

Not Applicable.

Financial and Risk:

Any improvement in the legislation in the form of streamlining or removal of unnecessary bureaucratic requirements will help Council deliver more effectively and efficiently and thus reducing operational costs.

Sustainability:

In this instance it is not applicable to undertake a sustainability assessment.

CONSULTATION:

This report has been prepared based on input from all relevant Branches. Council's feedback was required by the end of March and the purpose of this report is to inform Council of this feedback.

OPTIONS:

1. That Council note and endorse officers submission.
2. That Council further refine Council's feedback in specific areas.

CONCLUSION:

This action provides input to the state from a far north Queensland perspective.

ATTACHMENTS:

Discussion questions and officers feedback (3036102).

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REVIEW OF LOCAL GOVERNMENT STATUES

QUESTION	CRC FEEDBACK.
1.1 What, if any, specific problems do you experience with legislation relating to authorised persons?	Lack of formal "Power of Entry" powers to enable officers to obtain evidence in prosecutions. Legislation pertaining to the appointment of authorised office works well, standard template should be used for all legislation. Authorised persons are inconsistent throughout the different Acts. This means that authorisation under one Act may not be compliant under another Act, particularly with the formulation of ID cards.
1.2 How could authorised persons provisions be improved to assist Local Governments, the community and business?	More consistency in "powers of entry" ie house of the day, permission required or not required. Consistency across all legislation required.
1.3 How could authorised persons provisions be standardised across statutes?	Standardisation of appointment template, same condition of entry in all statutes - Consistency across all legislation required.
1.4 What costs would be saved by these improvements?	Training requirements. Large savings in terms of efficiency and conflict resolution would be made.
2.1 What, if any, specific problems do you experience with local law making and enforcement legislation?	Model local laws will improve this situation. State legislation is a more effective tool for enforcement.
2.2 How could local laws provisions be improved to assist Local Governments, the community and business?	Standardisation of local laws ie model local laws used across the state. Local laws are often a duplication of other legislation. It would be good to see more targeted legislation and regulation to replace the local laws.
2.3 How could local laws provisions be standardised across statutes?	Use of model local laws. There should be a tightening of the scope of what can be addressed by a local law.
2.4 What costs would be saved by these improvements?	Local Government officers could use local laws in al local government areas, training costs. There would be large efficiency gains to be made by streamlining and where possible centralising local laws into state legislation.
3.1 What, if any, specific problems do you experience with compliance, regulation, planning and reporting requirements in legislation?	Amendment of new legalisation requiring local governments to enforcement new provision of the regulation without allocation of qualified officers and resources. Local Government Act 2009– Asset Management Regulations - consistent asset categorisation is not used for reporting. Compliance with state legislation is enforceable whereas local laws are not and may be impacted by local issues.

QUESTION	CRC FEEDBACK.
3.2 How could these provisions be improved to assist Local Governments, the community and business?	Standard templates, review of legislation to ascertain if the legislation is achieve the intended objectives. Local Government Act 2009 – Asset Management Regulations - a standardised asset hierarchy is used for all asset reporting.
3.3 What costs would be saved by these improvements?	Reduction in officers hours in assessing compliance with legislation. Local Government Act 2009 – Asset Management Regulations - if a standardised asset hierarchy was used we could set asset registers up so that data could be extracted more efficiently.
4.1 What, if any, problems do you experience with legislation relating to procurement?	The lack of clarity in the act and regulations relating to procurement creates confusion and inconsistency in the interpretation of appropriate purchasing processes.
4.2 Consider the relationship between probity and efficiency in Local Government procurement. Could probity be achieved in other ways?	Consistency in procurement legislation will enable efficiency improvement and reduce the reliance on multiple levels of bureaucratic processes to demonstrate probity/Improved internal audits that monitor and provide process feedback/organisational discipline to procedures and policy. Cost of reviews/ruling would be minimised. This includes both financial and time savings.
4.3 What improvements could be made to procurement legislation?	Increasing procurement thresholds/Inclusion of training requirements for purchasing staff/improve clarity and consistency in the regulations in regard to procurement/rationalise the threshold for publishing details of a particular contract to tender threshold
4.4 What costs would be saved by these improvements?	Improved efficiencies/reduced costs for generation of low risk-low cost tenders/streamlined reporting functionality/improved transparency/improved probity/improved organisational reputation
5.1 In order of priority, which topics in legislation are consistent with each other?	Local Government Act 2009 – Asset Management Regulations - there are overlaps between the acts. Specifically during the development of the Landfills Asset Management Plan it was identified that DIP and DERM were requesting the same information.
5.2 What solutions will resolve the inconsistencies?	Local Government Act 2009 – Asset Management Regulations - legislation needs to be rationalised and overlaps removed. This will make the implementation of the legislative requirements much more manageable.
5.3 What cost savings would be achieved by these solutions?	Local Government Act 2009 – Asset Management Regulations - reduced repetition.

General feedback re legislation from a Planning and Environment perspective:

There is some concern about confusion and inconsistencies between various pieces of planning legislation and regulations ie. SPA, Sustainable Planning Regs, EPA, Environment Protection Regs. SPPs and Regional Plans. When definitions are used across various pieces of legislation the definition should remain the same, otherwise, different terminology should be used. Clearer connection sort between SPA & EPA ie. triggers.

General feedback re legislation from a Water and Waste perspective:

From Business Services Branch

1. Plumbing and Drainage Act and the Building Act
 - a. Discrepancies in terms of Overflow Relief Gullies. These need to be standardised or one Act should refer to the other.
 - b. Final certificates issued by private certifiers on class 1 and 10 buildings need to be the same as all other classes of buildings (not issued until the plumbing final certificate has been issued).
2. Water Supply (Safety and Reliability) Act
 - a. Water Supply (S and R) Act provides greater powers of entry rights into businesses than the Local Government Act. This represents a conflict between the two Acts. These two Acts need to be standardised or one Act should refer to the other.
 - b. Illegal Inflows to Sewer – service providers require power to issue PINs.
 - i. Trade Waste permits can be suspended to stop illegal discharge of trade waste to sewer. However, if the trade waste generator continues to discharge, Council must go through the Court system to stop the discharge. Council requires greater powers to be able to stop the illegal discharge to the service provider's infrastructure at the time it occurs (eg. By capping or disconnection).
 - ii. Similar issues occur with storm water inflows into service provider infrastructure from building sites and tenements. Giving Councils the powers to issue on the spot PINs would resolve this issue.
 - iii. Illegal dumping of prohibited substances into the service provider's infrastructure is only able to be prosecuted through the courts.
 - c. Consideration should be given to allowing service providers that ability to restrict water supply when the water bills are not paid over a period of time.
3. Local Government Act
 - a. Powers of entry to construct new infrastructure is hindered because the definition does not include new construction work.
 - b. Powers of entry in relation to water meter reading can be problematic if entry cannot be gained to the property.
 - c. Very little support given to debt recovery for Trade Waste and other sundry debts where businesses are debtors but not the property owner. Provisions for interest on debts should be included in the Act, similar to rates and water billing.

From Operations Branch

General

1. Collate the Acts and Regulations to one Larger document so you don't have to look up different Acts i.e. Combine Water Fluoridation Act & Regulation with The Water Act they are already large so a little bigger won't matter that much but at least their in one document. Same with Food, Local Government and OH&S
2. WHS Act
 - a. The WHS Act, Reg's and various Codes of Practice are geared towards ensuring a person is free from Injury or Illness whilst at their respective workplaces. If an Authorised Officer follows set down procedures etc their Health & Safety risk's should be minimal although not sure on review timeframes for their individual procedures.
 - b. The legislation allows an employer to manage their own individual safety system using various components of the reg's etc for guidance and compliance. An Intergrated management system would lead to a more cost effective overall system as everyone would be using the same audit methodology to continually improve the system whether it be Health & Safety or Procurement or any other relevant legislation that may apply to the organisation.
 - c. The only other issue would be proper resourcing to enable better management of any applicable legislation

From Waste and Environment Branch

General

Some of the acts and regulation do not go into the content of the licences as we have experienced a lot of inconsistency within licence i.e. with percentile definitions, site based management plan content - which is then not consistent with the online guidelines or point source database definitions. In the Dam Safety Conditions they have three different dates for some of the conditions i.e. one date that the review should be done by, one date when you must notify the regulator that the review has been done, then one date to have the report to them. (Why not just have one date and simplify)

The following comments are provided:

1. **Water Supply (Safety & Reliability) Act - s120 Reviewing customer service standard** (2) *If, because of the review, the service provider changes the standard, the service provider must give the regulator, and each customer of the service provider who does not have a service contract, a copy of the changed standard.* It can be a new brochure every year to every customer if the review identifies a change. Suggestion has been to make reference on water notice to a change and stating the location where people can view the changes i.e. customer service centres, libraries, website etc.

2. Licence requirements
 - a. A number of licences i.e. Water Licences (under the act), Environmental Licences (under the act), Strategic Asset Management Plan - require annual reports. In most cases we are already providing data through monthly reports, quarterly reports, incident reports, the points source database or state-wide water information management system and in most cases these systems are already interpreting the data - a duplication to report the information again annually.
3. Commonwealth Water Act
 - a. BoM is now requesting extensive amounts of data - this needs to be taken into account as potentially this could be a duplication of information if already providing to the state i.e providing extraction data as part of Water Act licences and Resource Operation Plans

Environment Protection (Water) Policy 2009

Requirements for Total Water Cycle Management Plans are very onerous. Also, in terms of those aspects of the Water Cycle Management Plan that relate to a Water Service Provider (Trade Waste, sewage treatment), there is significant duplication of reporting requirements with other legislation such as the Water Supply (Safety and Reliability) Act 2008.

4. Environment Protection Act 1994 and regulations – significant inconsistencies in licences for individual facilities introduces an unnecessary environmental risk – there should be more regular review and updating of licences to reflect continuous improvement in regulation.
5. Fisheries Act 1994 – requirements for notification and signage when doing minor drainage works that may require removal of regrowth marine vegetation is onerous.
6. Fisheries Act 1994 – New requirements for creek crossings are overly prescriptive and likely to lead to unnecessary increased costs for no significant environmental benefit.
7. Nature Conservation Act 1992 – Requirements for permits to remove individual trees of 'species of least concern' is almost unworkable – a permit should not be required to remove individual trees of least concern species, instead the regulations could stipulate conditions in which these types of trees should be managed, such as the use of the Australian Standard for tree pruning etc.
8. Nature Conservation Act 1992 – annual fee for s35 agreement should be able to be substituted for conservation work to the equivalent value (this work could be additional to that required for the management of an infrastructure footprint).