

Local Government and Other Legislation Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Local Government and Other Legislation Amendment Bill 2015.

Policy objectives and the reasons for them

Local Government Electoral Act 2011

The *Local Government Electoral Act 2011* (LGEA) section 9 provides the chief executive officer (CEO) of the local government for which an election is to be held is the returning officer (RO) for the election. A local government CEO may withdraw from being the RO by giving the Electoral Commissioner of Queensland a withdrawal notice before the prescribed notification day.

As local government CEOs work closely with elected mayors and councillors in carrying out their duties, CEOs performing the role of RO for a local government election present the potential for a conflict of interest, especially where incumbents recontest an election.

For that reason, the Bill ensures local government elections are run to the same high standards of independence and efficiency as state and federal elections by removing the mandate for a local government CEO to be the RO for a local government election.

An exception allows for the Electoral Commission of Queensland (ECQ) to appoint a local government CEO as the RO if the CEO is the only person reasonably available in a community to perform the role with the necessary experience in conducting local government elections, provided the CEO is not a member of a political party. This approach ensures every community, including smaller communities, have a RO with the necessary capabilities to perform the role.

Heavy Vehicle National Law Act 2012

Chapter 2 (Registration) of the *Heavy Vehicle National Law Act 2012* (HVNL Act) establishes the legislative requirements for a national registration scheme that will capture all heavy vehicles over 4.5 tonne Gross Vehicle Mass garaged in each of the participating jurisdictions. Chapter 2 broadly covers issues such as registration eligibility criteria, how vehicles may be registered, conditions of registration, fees and charges payable for the registration of heavy vehicles, and the issue and display of registration plates and labels.

In May 2013 the Transport and Infrastructure Council agreed, in principle, to commence the national registration provisions of the HVNL Act from 1 July 2015.

There is 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.

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.

On 20 March 2015, the Transport and Infrastructure Council voted to defer the commencement of Chapter 2 (Registration) until 1 July 2018.

Queensland Reconstruction Authority Act 2011

The *Queensland Reconstruction Authority Act 2011* (the QRA Act) establishes the Queensland Reconstruction Authority (QRA) and provides for other measures to assist with the rebuilding and recovery of Queensland communities affected by disaster events. The QRA was established in January 2011 to manage and coordinate the recovery effort for the disaster events of the summer of 2010-11. The Act as passed included a sunset clause to wrap up the QRA after two years, recognising that the focus of the QRA was to fast-track rebuilding efforts and get Queensland back on to a business-as-usual footing as quickly as possible.

The QRA Act was extended in 2012 and again in 2013 until 30 June 2015 to ensure the QRA could continue the critical work of helping communities effectively and efficiently recover from the impacts of natural disasters that continued to devastate Queensland.

The QRA also administers the rebuilding program for Natural Disaster Relief and Recovery Arrangements (NDRRA) activated disaster events and works closely with local governments to ensure the effective recovery of Queensland communities. The work of the Authority is integral as Queensland deals with natural disasters and moves from response to recovery.

In February 2015, severe tropical cyclone Marcia passed over parts of Queensland bringing very heavy rainfall, destructive winds and abnormally high tides to many communities in its path. The scale and scope of damage resulting from severe tropical cyclone Marcia saw the activation of the NDRRA in 14 local government areas; not only Rockhampton, Livingstone, North Burnett and Banana, but also north to Mackay and south to the Sunshine Coast.

Accordingly, one of the objectives of the Bill is to continue the QRA after 30 June 2015 to ensure those communities recently affected by several tropical cyclone Marcia receive the necessary assistance in rebuilding and recovery.

Achievement of policy objectives

To achieve the policy objectives, the Bill amends the:

- LGEA to ensure a local government CEO cannot be the RO for a local government election unless the ECQ appoints the CEO as the RO. The ECQ may appoint the local government CEO as the RO if the CEO is the only person reasonably available to be appointed as the RO and the CEO is not a member of a political party;
- HVNL Act to extend the automatic commencement of any unproclaimed provisions of the HVNL Act to 1 July 2018; and
- QRA Act to extend the expiry of the QRA Act past 30 June 2015, with no end date to be specified.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by legislative amendment.

Estimated cost for government implementation

Funding to extend the QRA was approved for 2015-16 as part of the 2014-15 Mid Year Fiscal and Economic Review.

Consistency with fundamental legislative principles

Heavy Vehicle National Law Act 2012

The proposed amendment to section 2 of the HVNL Act provides for provisions of the HVNL Act to commence on a day to be fixed by proclamation or by 1 July 2018.

In considering the Heavy Vehicle National Law Bill 2012, the Transport, Housing and Local Government Committee made the following assessment of section 2 (et al) in its contemplation of potential breaches of fundamental legislative principles (FLPs):

The commencement clause (clause 2) is an example of a Henry VIII clause; it provides for the heavy vehicle national law to be commenced by a date fixed by the Queensland Governor by proclamation. That aspect of the clause is not controversial and accords with accepted Queensland practice. However proposed clause 2(2)(a) is out of the ordinary to the extent that it modifies the operation of section 15DA of the Acts Interpretation Act 1952. Proposed clause 2(2)(a) alters from the date of assent deferral of the otherwise automatic commencement of the heavy vehicle national law from 1 to 2 years, and proposed clause 2(2)(b) enables a regulation to be made to extend before the automatic commencement date the commencement of the heavy vehicle national law from 2 to 3 years from date of assent.

In its final submission on the Heavy Vehicle National Law Bill 2012, the Committee made the following assessment of this potential FLP breach:

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.

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.

Queensland Reconstruction Authority Act 2011

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 allow Ministerial declarations of critical infrastructure projects which are excluded from review under the *Judicial Review Act 1991*.

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.

Consultation

In March 2015, a draft exposure Bill incorporating the proposed amendments to the LGEA and the QRA Act was released for targeted consultation with the Local Government Association of Queensland (LGAQ) and the ECQ. The LGAQ and the ECQ support the Bill.

The LGAQ support of the proposed LGEA amendments to ensure a local government CEO cannot be the RO for a local government election is given on the understanding that the government will consult with the LGAQ about steps to reduce the costs of conducting local government elections.

Consistency with legislation of other jurisdictions

The Bill, as it relates to the amendment of the LGEA and the QRA Act, is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

The HVNL Act is national scheme legislation, hosted by Queensland, and adopted by other participating jurisdictions as applied legislation. The proposed amendment of the HVNL Act will ensure that the provisions of the HVNL Act relating to heavy vehicle registration do not commence in Queensland ahead of other participating jurisdictions and the establishment of a national registration system.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that when enacted, the Bill may be cited as the *Local Government and Other Legislation Amendment Act 2015*.

Part 2 Amendment of Local Government Electoral Act 2011

Clause 2 Act amended

Clause 2 provides that part 2 amends the *Local Government Electoral Act 2011*.

Clause 3 Replacement of s 9 (Returning officer)

Clause 3 replaces section 9 to ensure that a local government chief executive officer (CEO) cannot be the returning officer (RO) for a local government election. The Electoral Commission of Queensland (ECQ) may appoint a person as the RO for an election.

The ECQ may appoint the CEO as RO if the ECQ considers the CEO is the only person with experience in conducting elections who is reasonably available to be appointed as the RO and the CEO is not a member of a political party. Under subsection (5), the RO must comply with a direction given by the ECQ, for the proper conduct of the election.

Clause 4 Omission of s 9A (Responsibility of returning officers)

Clause 4 omits section 9A as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer (RO). Under new section 9(5) the RO must comply with a direction given by the Electoral Commission of Queensland, for the proper conduct of the election.

Clause 5 Amendment of s 10 (Assistant returning officers)

Clause 5 replaces section 10(2) and amends subsection (4) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer. The Electoral Commission of Queensland may appoint a person as an assistant returning officer for an election.

Clause 6 Amendment of s 12 (Issuing officers)

Clause 6 replaces section 12(2) to (4) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer. A member of the staff of the Electoral Commission of Queensland is an issuing officer.

Clause 7 Omission of s 12A (CEO returning officer may appoint persons to carry out relevant duties) and s 12B (Appointments made by CEO returning officer)

Clause 7 omits sections 12A and 12B as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 8 Amendment of s 17 (Electoral commission or returning officer must compile voters roll)

Clause 8 amends section 17 heading and section 17 as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 9 Omission of s 24A (Plan for election)

Clause 9 omits section 24A as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 10 Amendment of s 56 (Ballot papers for separate polls)

Clause 10 replaces section 56(2) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer (RO). The RO may decide to use separate ballot papers or combined ballot papers for a poll where the election of mayor of a local government is to be conducted when a poll for election of another councillor of the local government is conducted.

Clause 11 Amendment of s 79 (Applications to cast postal votes in local government elections that are not postal ballot elections)

Clause 11 replaces section 79(5) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 12 Amendment of s 80 (Distribution of ballot papers to electors for postal ballot elections)

Clause 12 replaces section 80(2)(a) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 13 Amendment of s 81 (Applications to cast postal votes in postal ballot elections)

Clause 13 replaces section 81(6) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 14 Amendment of s 82 (Distribution of ballot papers to particular electors whose address has been omitted from electoral roll and to special postal voters)

Clause 14 amends section 82 to omit the term 'relevant entity' and replaces section 82(1)(d) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 15 Amendment of s 96A (Re-counting of votes)

Clause 15 updates the cross reference in section 96A(4) to section 9A(2) with the reference to section 9(5) as a consequence of the repeal of section 9A.

Clause 16 Amendment of s 145 (Restrictions on particular orders)

Clause 16 replaces section 145(2)(a) as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 17 Amendment of s 163 (Evidentiary provisions)

Clause 17 omits from section 163 the words ‘or a CEO returning officer’ as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer.

Clause 18 Amendment of s 179 (Giving of how-to-vote cards to electoral commission)

Clause 18 replaces the words ‘local government’s’ in section 179(6)(b) with ‘electoral commission’s’ as a consequence of new section 9 prohibiting a local government chief executive officer from being the returning officer (RO). The RO must ensure an accepted how-to-vote card is available on the Electoral Commission of Queensland’s website.

Clause 19 Insertion of new pt 11, div 1, hdg

Clause 19 inserts division 1 heading (Transitional provision inserted under Sustainable Planning and Other Legislation Amendment Act 2012) to part 11 as a consequence of new part 11 division 2 which provides the transitional provision for the *Local Government and Other Legislation Amendment Act 2015*.

Clause 20 Insertion of new pt 11, div 2

Clause 20 inserts new division 2 heading (Transitional provision for Local Government and Other Legislation Amendment Act 2015) and new section 211 (By-elections and fresh elections) to part 11 to transition the necessary provisions of the *Local Government Electoral Act 2011* as in force before amendment by the *Local Government and Other Legislation Amendment Act 2015*.

The transitional provisions apply if, before the commencement of the repeal of the chief executive officer (CEO) returning officer provisions, a local government CEO is the **CEO returning officer** for a by-election or fresh election.

Clause 21 Amendment of schedule (Dictionary)

Clause 21(1) omits from the dictionary the defined term *CEO returning officer* as a consequence of new section 9 prohibiting a local government chief executive officer (CEO) from being the returning officer (RO) unless the Electoral Commission of Queensland (ECQ) appoints the CEO as the RO under new section 9.

Clause 21(2) amends the defined term *electoral officer* as a consequence of the repeal of section 12A and new section 9 prohibiting a local government CEO from being the RO unless the ECQ appoints the CEO as the RO under new section 9.

Part 3 Amendment of Heavy Vehicle National Law Act 2012

Clause 22 Act amended

Clause 22 provides that part 3 amends the *Heavy Vehicle National Law Act 2012*.

Clause 23 Amendment of s 2 (Commencement)

Clause 23 amends section 2 to exempt the *Heavy Vehicle National Law Act 2012* from the requirements of section 15DA of the *Acts Interpretation Act 1954* and instead provides that the Act commences on a day to be fixed by proclamation and that any uncommenced provisions will automatically commence on 1 July 2018.

Part 4 Amendment of Queensland Reconstruction Authority Act 2011

Clause 24 Act amended

Clause 24 provides that part 4 amends the *Queensland Reconstruction Authority Act 2011*.

Clause 25 Omission of pt 11 (Expiry of Act)

Clause 25 repeals part 11 to extend the *Queensland Reconstruction Authority Act 2011* past 30 June 2015.