

Chapter 2

Background¹

2.1 In his second reading speech, the Special Minister of State, the Hon. Gary Nairn MP, stated that the imperative for the introduction of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 (the bill) was the 'law passed by the Queensland parliament on 10 August 2007 that, unless overridden by this Commonwealth law, would prevent councillors in that state having any involvement with these plebiscites.'² Therefore, to properly understand the provisions of the bill, it is first necessary to consider the two Queensland local government reform processes that have occurred recently, as well as the related Queensland legislation.

Size Shape and Sustainability process

2.2 In late 2004, the Local Government Association of Queensland (LGAQ) Executive resolved to actively promote discussion amongst its members on the need to consider reform options to ensure the long term sustainability of Queensland local government.

2.3 This position was adopted on the basis that local government itself should be capable of initiating reform rather than have reform imposed upon it by other levels of government.

2.4 The Size, Shape and Sustainability (SSS) initiative was an opportunity for Queensland local government to voluntarily self-determine what structural reform options best provide for its long term sustainability. The SSS process had bi-partisan support in the Queensland parliament and The Local Government and other Legislation Amendment Bill 2006 was introduced to implement the legislative requirements of the SSS process.

2.5 The LGAQ described the SSS initiative in the following terms:

In essence, SSS was a process of voluntary reform which encouraged councils to review their size and geographic dimensions; their management, organisation and operational arrangements; their financial and accountability practices; and their service delivery mechanisms.

Overseeing this process were Independent Review Facilitators charged with the responsibility of recommending the necessary reforms. These would have included, amalgamations, major boundary changes, resource sharing

1 Much of the content of this chapter was drawn from *Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007*, Bills Digest, Department of Parliamentary Services, August 2007.

2 The Hon. Gary Nairn MP, Special Minister of State, *House of Representatives Hansard*, 16 August 2007, p. 28.

arrangements such as multi purpose joint local governments, strategic alliances, shared service centres or a combination of each.

In addition, the Queensland Treasury Corporation (QTC) volunteered to assist councils with their reviews by examining each council's financial position. This was done through their Financial Sustainability Review process.

The state government was a formal partner to the SSS initiative and provided funding (\$25 million over five years) to all councils who participated in SSS reviews through the Regional Collaboration and Capacity Building Program.

The SSS framework comprised three different phases, each requiring research and analysis and an overall evaluation of the strengths and weakness of alternative models of change. Each phase of SSS also involved extensive community engagement...

At the end of March 2007 [just prior to the abandonment of the SSS process], 27 Review Groups consisting of 117 councils were fully engaged in the SSS process. Fifteen of these groups had developed their terms of reference setting out the scenarios for investigation during the comprehensive review phase of the process...³

Local Government Reform Commission process

2.6 Despite the progress made under the SSS process, after only '18 months into a 5 year program' the Queensland State Government decided to scrap the SSS process and implement its own reform agenda.

2.7 Following the Queensland government's decision to abandon the SSS process, on 17 April 2007 the Premier of Queensland, the Honourable Peter Beattie, and the Queensland Minister for Local Government, the Honourable Andrew Fraser, announced the establishment of a seven-member Queensland Local Government Reform Commission (Reform Commission). The brief of the Reform Commission was to consider new boundaries for the long-term sustainability of local government across the state.

2.8 The Queensland Government cited as its rationale for the changes that 40 per cent of Queensland councils were struggling financially and that, as Australia's fastest growing state, Queensland's system of local government was outdated and needed 'to be modernised to reflect the way Queenslanders live, work and interact in today's Queensland.'⁴

2.9 Submissions were invited from stakeholders with a closing date of 24 May 2007. A total of 47 267 suggestions were received including:

3 Local Government Association of Queensland, *Submission 67*, p. 7.

4 www.strongercouncils.qld.gov.au/Whyreform.aspx (accessed 6 September 2007).

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- 3976 suggestions;
 - 36 570 form letters, proformas, surveys and postcards;
 - 3624 petition signatures; and
 - 3277 referrals from external sources.

2.10 The Reform Commission handed down its report on 27 July 2007. It included 25 recommendations, 22 of which were adopted by the State Government. In particular, the Reform Commission recommended reducing the number of councils from 156 to 72. This recommendation was accepted in its entirety by the Beattie government.

2.11 Many concerns were raised regarding the way in which the Reform Commission process was conducted, the basis for its amalgamation recommendations and the impact of those recommendations. These issues are discussed in chapter 3.

2.12 Subsection 92(1) of the *Local Government Act 1993 (Qld)* requires a referendum to be held when the Local Government Electoral and Boundaries Review Commission makes certain proposed determinations regarding ‘reviewable local government matters’, which includes the creation of a new local government area from two or more existing areas.⁵ Where the reviewable matter is in relation to changing the external boundaries of an area, subsection 92(2) empowers the Commission to instead hold a non-compulsory (or non-binding) referendum, or a plebiscite. The reforms put in place by the Queensland government expressly remove any right to appeal any decisions by the government or the Commission in relation to a reform matter.

2.13 In going ahead with its reforms, the Beattie Government decided not to allow a referendum or plebiscite on the amalgamation issue, and made amendments to this effect via the Local Government and Other Legislation Amendment Bill 2007.

2.14 The Australian Government subsequently expressed concern at allegations of a lack of consultation and the possibility that the amalgamations were taking place against the will of constituents. The Prime Minister has explained that this led him to offer funding to allow the Australian Electoral Commission (AEC) to undertake any plebiscite on the amalgamation of any local government body in any part of Australia⁶, and observed that:

I think it is a total travesty of democracy to not only refuse to consult people about what you are going to do that is going to affect them[, but] having refused to consult them, threaten to punish them if they dare to express their opinion in a vote...⁷

5 *Local Government Act 1993 (Qld)*, s. 64.

6 Reflected in new subsections 7A(1C) to (1G) of the current bill.

7 The Hon. John Howard, MP, Prime Minister, Joint Press Conference with the Treasurer, the Hon Peter Costello, MP, Parliament House, Canberra, 8 August 2007.

2.15 On 10 August 2007, the Beattie Government passed an act implementing the amalgamations, adding a provision prohibiting an existing local government from conducting a poll on the amalgamations. The section provided that:

An existing local government must not conduct a poll in its area, or a part of its area, if the question the subject of the poll relates to is anything that is, or is in the nature of, a reform matter, or the implementation of a reform matter.⁸

2.16 An example is then given in the legislation which makes clear that the prohibition would relate to a poll about local government area abolition. The Act provides for a maximum penalty of 15 penalty units, plus the cost of holding the poll, to be paid by the councillors in the event a contravention occurs. The Act also amends the *Local Government Act 1993 (Qld)* to provide for the dissolution of the relevant council in the event it undertakes any action for the purpose of holding a poll.⁹

2.17 On 16 August 2007, the Australian Government announced amendments to electoral laws to override the Queensland government's attempt to block local councils from holding referendums on mergers.¹⁰ This led to the current bill containing a provision to the effect that any law prohibiting the holding of a plebiscite would be invalid.¹¹

2.18 The Queensland Government has since introduced amendments to repeal the provision banning the holding of plebiscites.

The objectives of the bill

2.19 As the Minister made clear in his second reading speech, this bill is not designed to provide an avenue for citizen-initiated referenda, but rather focuses on preserving the right of local people to participate and be consulted on issues facing their communities.¹²

2.20 To the same end, the Prime Minister stated that:

It should be remembered that the Government is not expressing a view as to whether or not an individual merger should occur. Rather, the Commonwealth believes that people should have the right to express a view on the actions of a government without threat of penalty.

8 *Local Government Reform Implementation Act 2007 (Qld)*, s. 159ZY.

9 *Local Government Act 1993 (Qld)*, para. 164(1)(a).

10 'Howard to override Beattie on merger votes', *ABC News*, 16 August 2007.

11 New subsection 7A(1E).

12 The Hon. Gary Nairn, MP, *House of Representatives Hansard*, 16 August 2007, p. 28.

However, if there is a strong expression of opinion in local government areas that choose to go ahead with the ballots, the Queensland Government may be forced to reconsider those amalgamations.¹³

Provisions of the bill

2.21 Although the bill was prompted by the recent concerns surround the forced amalgamations of Queensland councils, the scope of the bill is not limited to the enabling plebiscites on council amalgamations. Other topics that may be the subject of a plebiscite are discussed further in chapter 3.

2.22 While the Electoral Act already provides for the AEC to make arrangements for the supply of goods or services to any person or body, new subsections 7A(1C) and (1D) authorise the use by the AEC of any information it holds, including information contained in an electoral roll, for the purpose of conducting an activity, such as a plebiscite. These provisions also authorise any disclosure by the AEC of information for the purpose of conducting an activity, such as a plebiscite, and clarify that this particular use and disclosure does not contravene any provision of the Electoral Act.

2.23 New subsection 7A(1E) negatives a State or Territory law which attempts to prohibit a person or body (in this case, a local council) from entering into arrangements for the provision of goods or services from the AEC (in this case, a plebiscite).

2.24 New subsection 7A(1F) reinforces new subsection 7A(1E) by rendering such State or Territory laws inoperative to the extent of any inconsistency with Articles 19 and 25(a) of the International Covenant on Civil and Political Rights, should new subsection 7A(1E) exceed the Commonwealth's legislative powers. Article 19 provides that people should have the right to hold opinions without interference and the right to freedom of expression. Paragraph (a) of Article 25 provides that every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.

13 The Hon. John Howard, MP, *Queensland local government amalgamations*, media release, 19 August 2007.

