

Appendix 4

Excerpts from the *Local Government Act 1993 (Qld)*

Ban on conducting polls

159ZY Polls

(1) An existing local government must not conduct a poll under chapter 6, part 2 in its area, or a part of its area, if the question the subject of the poll relates to anything that is, or is in the nature of, a reform matter, or the implementation of a reform matter.

Example

An existing local government must not conduct a poll under chapter 6, part 2 about whether its local government area should be abolished and be included in a new local government area.

(2) If, before the commencement of this section, a local government had resolved to conduct a poll the conduct of which is prohibited under subsection (1), the local government

(a) must, despite chapter 6, part 2, take all necessary action to ensure that the poll is not conducted; and

(b) must give public notice that the poll is not to proceed--

(i) by advertisement in a newspaper circulating generally in its local government area or part of its local government area; and

(ii) in any other way that is reasonably appropriate for making the information publicly known.

(3) A person who is a councillor of a local government must not take any action for the purpose of the conduct of a poll that the local government is prohibited from conducting under this section.

Maximum penalty--15 penalty units [or \$1125¹]

(4) All persons who contravene subsection (3) in relation to a particular poll, whether or not they are prosecuted under subsection (3), are jointly and severally liable for the

1 Section 5, *Penalties and Sentences Act 1992 (Qld)*

total poll amount, which may be recovered by the State, in action as for a debt for the amount, and reimbursed to the existing local government, or the successor of the existing local government, less the costs of recovering the amount.

...

During consideration of the bill, the Parliament agreed to amend s.164 of the *Local Government Act 1993 (Qld)*, so as to include a contravention of section 159ZY within the provisions which empower the Minister to dissolve the council in question. Section 164 reads:

164 Dissolution of local government

(1) The Governor in Council may, by regulation, dissolve a local government if the Minister is satisfied that the local government—

- (a) has acted unlawfully, including by contravening section 159ZY(1), or corruptly; or
- (b) has acted in a way that puts at risk its capacity to exercise properly its jurisdiction of local government; or
- (c) is incompetent or can not properly exercise its jurisdiction of local government.

(2) Subsection (1) is subject to the Constitution of Queensland 2001, chapter 7, part 2.

(3) If the Legislative Assembly ratifies the dissolution of the local government under subsection (1)—

- (a) the local government's councillors go out of office; and
- (b) the local government continues in existence as a body corporate and continues to be constituted by the local government's administrator.

Right to appeal

Section 159X of the *Local Government Act 1993 (Qld)* reads:

159X Review of particular decisions and actions

(1) A designated decision—

- (a) is final and conclusive; and
- (b) can not be challenged, appealed against, reviewed, quashed, set aside, or called into question in another way, under the Judicial Review Act 1991 or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

(2) Without limiting subsection (1), a person may not bring a proceeding for an injunction or any other order to stop or otherwise restrain the performance of a designated act, or for a declaration about the validity of a designated act.

(3) In this section—

decision includes—

- (a) conduct engaged in to make a decision; and
- (b) conduct related to making a decision; and
- (c) failure to make a decision.

designated act means—

- (a) an act of the reform commission, including the act of making a recommendation to the Minister, the performance of which is authorised, or purportedly authorised, under this part; or
- (b) an act of the Minister the performance of which is authorised, or purportedly authorised, under this part.

designated decision means a decision to perform a designated act.