

8th March 2011

Local Government Legislative Reform
Department of Infrastructure and Planning
PO Box 15009
City East Qld 4002

Email: info@dip.qld.gov.au 'Attn: Local
Government Legislative Reform'

Local Government Legislative Reform

Dear Sir/Madam

RE: SUBMISSION ON REVIEW OF LOCAL GOVERNMENT STATUTES

My apologies for the lateness of this submission. I trust that it will still be considered as part of the Review process. The Environment Institute of Australia and New Zealand South East Queensland Division (EIANZ SEQ Division) thank the Queensland Government for the invitation to make a submission in relation to the Review of Local Government Statutes Discussion Paper. SEQ Division's response is in its Submission at Attachment A.

The EIANZ was formed to advance ethical and competent environmental practice, promote environmental knowledge and awareness, and facilitate interaction among environmental practitioners. Our vision is for sustainable and equitable management of the environment through excellence in environmental practice. Members of the EIANZ are fully qualified professional practitioners with experience in an environmental field of endeavour.

The EIANZ's position is that a sustainable environment is one that is environmentally, economically and socially sustainable. The EIANZ would like to see that the roles of local governments in environmental decision-making be strengthened through amending legislation, provision of training and education for local government staff and appointing additional environmental officers within local governments to assist with this important work at the local level. EIANZ believes that environmental decision-making should be open and transparent; community involvement should be at the earliest stages of environmental decision-making; and communities should be involved as fully as possible in all stages of environmental decision-making. The EIANZ SEQ Division welcomes the opportunity to provide comment.

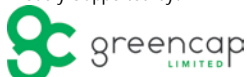
The EIANZ SEQ Division supports the Queensland Government's intention to reduce, rationalise and simplify the existing legislative burden being placed on Local Governments in Queensland and through them the various sectors of the community including developers. EIANZ would, however, be concerned if the focus of the Review was entirely on administrative process i.e. achieving increased efficiencies (cost savings) without equal consideration being given to effectiveness of the statutes in achieving the legitimate environmental, social and economic outcomes sought by the community through State and Local Governments. There may be merit in guidelines being developed to assess whether regulation is the most appropriate strategy for achieving a particular community outcome.

The EIANZ SEQ Division is of the view that significant progress could be made in meeting the aims of the Review if the State Government, rather than seek the general views of the community through the Discussion Paper, could agree on what whole of government policy outcomes it expects Local Governments to implement through Local Government statutes. If these were clearly articulated as **State interests with readily measurable policy outcomes** for addressing them then individual Local Governments would be in a better position to develop strategies (both voluntary and regulatory) with the flexibility they are seeking to address those State interests. This would inevitably reduce the overlaps and confusions on interests that exist between State and Local Governments and between individual Local Governments. It would also assist interested bodies such as EIANZ SEQ Division to provide constructive comment to the Government on the way forward.



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Do not hesitate to contact me via email david.carberry@rpsgroup.com.au or phone (4632 2511) if you would like to discuss our submission further.

Yours faithfully



David Carberry
President South East Queensland Division
Environment Institute of Australia and New Zealand



ATTACHMENT A:

SUBMISSION ON THE REVIEW OF LOCAL GOVERNMENT STATUTES FROM ENVIRONMENT INSTITUTE OF AUSTRALIA AND NEW ZEALAND SOUTH EAST QUEENSLAND DIVISION (EIANZ SEQ DIVISION)

8th March 2011

General Comments:

EIANZ SEQ Division supports the Queensland Government's reform of the state's Local Government system to achieve a stronger more efficient system that has a greater ability to deliver services and infrastructure for Queenslanders. However, it would prefer that effectiveness of the services and delivery of infrastructure in achieving desired outcomes was also specified.

EIANZ SEQ Division notes and supports the Queensland Government in seeking legislation that is:

- Transparent.
- Accountable. [EIANZ SEQ Division assumes that "accountable" means "that there will be accountabilities to the community and hence penalties for abuses or inappropriate actions of those administering the legislation and for failure to meet outcomes being sought through regulation". EIANZ SEQ Division would be concerned if "accountability" was focused on risk minimization by the Government and thus used as an excuse to generate a plethora of documentation, consuming officer time and preventing adequate resources being allocated to achieving the outcomes sought. There may be merit in Local Governments being required to cap the staff and financial resources being committed to achieving administration including accountability.]
- Has good governance.
- Efficient delivery of services. [EIANZ SEQ Division would prefer "effective and efficient delivery of services".]
- Sustainable development and management for Local Government in Queensland.

EIANZ SEQ Division confirms the observation made during the consultation phase of the development of LGA 2009, that stakeholders have issue with the large number of Queensland statutes which apply in some way to Local Government, contributing to a convoluted, highly prescriptive and complex regime. It is EIANZ SEQ Division's view that is a consequence of lack of clarity and agreement on the respective "interests" of both State and Local Governments and how interests might be reflected in the outcomes being sought and in achieving a relevant mix of regulatory and voluntary strategies to implement them.

It is suggested that the interests of Local Governments might be described along similar lines to the following:

To protect the local interests of the community (including as an owner or delegated manager of public assets); to ensure provision of State and regional infrastructure; to ensure their actions are consistent with the relevant policies and initiatives of the Commonwealth and State governments (including the recognition and where appropriate the removal of barriers to the appropriate use and management of relevant public and private assets); to ensure that government funded services and initiatives related to the use and management of relevant public and private assets are effective and efficient (i.e. activities are accountable); and to collaborate with others to achieve those interests.

While the Discussion Paper purports to identify issues raised by professional and business associations and Local Governments the paper would be strengthened if the desired outcomes sought were articulated and that these could be commented upon in terms of the adequacies of existing practice.

EIANZ SEQ Division notes that the main issues identified in the Discussion Paper are:

1. The large number of statutes under which Local Governments have obligations.
2. Duplicated, redundant and irrelevant regulations.
3. Inconsistencies across similar regulatory areas across statutes—for example, powers of entry.
4. The need for consolidation of powers, accountabilities and responsibilities.
5. The regulatory burden and costs of administration and compliance.
6. Rationalisation of the legislation applying to Local Governments.
7. National and state regulatory reform.

EIANZ SEQ Division is disappointed that these issues are not supported by evidence (including an appropriate analysis by the State Government) and such evidence appears to rely entirely on submissions by others. For example, it is unfortunate the focus of Issue 3 relates to a general “power” rather than the relevance of the power in achieving a specific outcome.

EIANZ SEQ Division is of the view that Local Governments are being given legislative requirements by the State Government that appear to be:

- Poorly defined in terms of outcomes sought and scope.
- Lack an appreciation of the feasibility and cost of delivering that requirement. To address this issue there may be merit in members of the State Government that draft legislation to be seconded to Local Governments to assist Local Governments in its implementation. However, to achieve this, because of the numbers of Local Governments involved a body, coordinating mechanisms such as the Council of Mayors in SEQ may need to be involved rather than dealing with individual Local Governments.
- Not subject to any cost-benefit analysis.
- Outside the resources and expertise of Local Governments to undertake.
- Encouraging Local Governments, because of their lack of capacity to employ regulatory strategies when non-regulatory means might be more appropriate in those cases where there is less urgency in achieving outcomes sought.

Regulatory and voluntary strategies:

While strategies involving voluntary adoption, such as through education and incentives, are likely to take greater time to take effect than regulatory measures, these measures are likely to be most effective where those involved see the need for such actions and the actions are perceived as:

- Being at least cost neutral.
- Being easily monitored.
- Requiring less time or skills to implement.
- Being simple to implement.
- Being readily built into existing practices; and
- Being consistent with the landowners long terms intentions.

While measures involving regulation are likely to take less time to take effect than voluntary measures, these measures are likely to be most effective where those involved see the need for the measures and the measures are perceived as:

- Being at least cost neutral - incentives may be needed to achieve this.
- Being easily monitored and thus detection of non-compliance is high.

- Being costly (in terms of reputation and finances) if they do not comply.
- Being consistently applied.
- Likely to achieve the outcomes being sought.
- Being simple to implement.
- Being readily built into existing practices; and
- Being consistent with the landowners long terms intentions.

There may be merit in guidelines being developed to assess whether a regulatory approach is the most appropriate strategy for achieving a community outcome.

Terms of Reference:

The Terms of reference would be enhanced if it the Review also included an examination of “The obligations of the State Government to Local Governments”.

It is noted that similar reviews are also being undertaken in Western Australia and Victoria. It is not clear how the results of the respective reviews of Queensland, Western Australia and Victoria are to be integrated to contribute to the proposed national regulatory system.

Simplifying Legislation:

EIANZ SEQ Division is of the view that the existing legislative regime is unnecessarily complex and thus too difficult to understand and too difficult to use - particularly for those not involved in the legislative regime on a regular basis.

It is EIANZ SEQ Division's view that simplified legislation should:

- Be specific and focused; and
- have regulations that:
 - have a clear and single purpose;
 - have all of its elements closely related and fixed on the key purpose;
 - have a high level of cohesion;
 - clearly indicate who is responsible for their administration; and
 - do not rely on recourse to poorly defined contexts, references and other regulations.

If a more flexible regulatory system is being sought which can be updated easily, then the regulations should not be tightly coupled together so as to create complex dependencies. When changing, updating or eliminating any regulation, it should not be necessary to change all other regulations.

Specific Issues Identified in Discussion Paper:

1. Authorised persons:

EIANZ SEQ Division holds the view that the most appropriately qualified person be authorised. Authorised persons should also be certified through a scheme such as EIANZs Certified Environmental Practitioner program.

Response to Specific Questions:

1.1 What, if any, specific problems do you experience with legislation relating to authorised persons?

[EIANZ SEQ Division does not have a comment on this matter.]

1.2 How could authorised persons provisions be improved to assist Local Governments, the community and business?

[EIANZ SEQ Division believes that the most appropriately qualified person (in terms of knowledge and skills), be authorised and that authorised persons should also be certified through a scheme such as EIANZs Certified Environmental Practitioner program.]

1.3 How could authorised persons provisions be standardised across statutes?

[EIANZ SEQ Division believes that is a task for the parliamentary draftsman, however industry certifications such as the EIANZs Certified Environmental Practitioner program may be used to standardise across statutes.]

1.4 What costs would be saved by these improvements?

[EIANZ SEQ Division does not have a comment on this matter.]

2. Local Laws:

Response to Specific Questions:

2.1 What, if any, specific problems do you experience with local law making and enforcement legislation?

[EIANZ SEQ Division perceives a lack of consistency in law making and in the development of instruments such as codes possibly due to a lack of appropriate staff resources within Local Governments and due to a lack of evaluation of the effectiveness of the laws. It is one area where consultation on the consequences of implementation of laws before adoption by Local Governments may be beneficial. Further the recognition of relevant standards of others is likely to be beneficial, possibly with the policy assistance of the State Government.]

2.2 How could local laws provisions be improved to assist Local Governments, the community and business?

[EIANZ SEQ Division perceives that local laws are more directed at ease of enforcement and achieving compliance than on outcomes. Again this is one area where consultation on the consequences of implementation of laws before adoption by Local Governments may be beneficial. Further the recognition of relevant standards is likely to be beneficial, possibly with the policy assistance of the State Government. There is a need for greater consistency in the intent of local laws (and subordinate local laws) where variations in policy intent are not justified. This particularly applies to cross-Local Government boundaries such as for animal management.

2.3 How could local laws provisions be standardised across statutes?

[EIANZ SEQ Division believes that model local laws are an appropriate mechanism, provided they are developed in concert with Local Government such as through the involvement of cross-Local Government entities such as the Council of Mayors in SEQ. An inventory of local laws and their policy analysis appears warranted.]

2.4 What costs would be saved by these improvements?

[EIANZ SEQ Division does not have a comment on this matter.]

3. Compliance, regulation, plans and reports:

Response to Specific Questions:

3.1 What, if any, specific problems do you experience with compliance, regulation, planning and reporting requirements in legislation?

[EIANZ SEQ Division is of the view that resourcing needs to be linked to compliance and triggers for compliance less reliant on community complaints. Greater opportunity for informed community input into planning appears warranted; EIANZ SEQ Division is prepared to assist in this regard. Reporting should be more focused on evaluation of outcomes than on risk aversion.]

3.2 How could these provisions be improved to assist Local Governments, the community and business?

[EIANZ SEQ Division is of the view that:

- Greater feed-back is warranted when community comments are provided on plans and reports;
- A mechanism should be established to evaluate the effectiveness and efficiencies of regulations; and
- When regulations are to be established that the policy basis, outcomes sought in terms of State interests, and decision rules that might apply be defined.]

3.3 What costs would be saved by these improvements?

[EIANZ SEQ Division does not have a comment on this matter.]

4. Procurement:

Response to Specific Questions:

4.1 What, if any, problems do you experience with legislation relating to procurement?

[EIANZ SEQ Division does not have a comment on this matter.]

4.2 Consider the relationship between probity and efficiency in Local Government procurement.

[EIANZ SEQ Division does not have a comment on this matter.]

4.3 What improvements could be made to procurement legislation?

[EIANZ SEQ Division does not have a comment on this matter.]

4.4 What costs would be saved by these improvements?

[EIANZ SEQ Division does not have a comment on this matter.]

5. Other Issues that might lead to greater consistency and cost savings:

Specific Questions:

5.1 In order of priority, which topics in legislation are inconsistent with each other?

[EIANZ SEQ Division does not have a comment on this matter.]

5.2 What solutions will resolve the inconsistencies?

[The State Government needs to:

- Resource Local Governments for regulations that have been delegated to Local Government, especially where these lead to consequent reduced costs to the State Government.
- Consider covering all costs relating to administration of delegated regulations and not only the costs of services borne by Local Governments.
- Ensure that there is a clear link between the costs of services provided and the fees imposed.
- Comply with Local Government regulations. The State Government needs to recognise and comply with regulations required by it from Local Governments just as much as Local Governments should comply with State Government requirements. This is essential to achieve predictable, integrated outcomes.
- Review its policies on "injurious affection" and "betterment".

Local Governments need to:

- Ensure that regulations are being administered by adequately trained staff and not rigidly enforced irrespective of whether they are to achieve the outcomes sought or not.
- Be bound by their own regulations.
- Ensure that mechanisms that are implemented achieve real value outcomes for the environment (social, environmental and economic).

EIANZ SEQ Division is available to work with State and Local Governments following the analysis that it believes the State government should undertake in 5.1 to resolve the inconsistencies once there is a clearer statement on "State and Local Interests".]

5.3 What cost savings would be achieved by these solutions?

[EIANZ SEQ Division does not have a comment on this matter.]