

Local Government reform update - the *Local Government Amendment Bill 2013* and the Government's updated plan for boundary changes

Local Government Update

The *Local Government Amendment Bill 2013* (“*the Bill*”) was introduced into the Legislative Assembly on 30 October 2013.

Minister for Local Government, Tony Simpson, described the Bill as “*an important step in a historic reform of the local government sector*”.

Then, on 12 November 2013, the Minister released an updated plan of the Government's proposed local government boundaries and lodged proposals reflecting those boundaries for consideration by the Local Government Advisory Board (“*LGAB*”).

When the Government released its blueprint for reform in July 2013, we commented that the “music had started” and that it was time to “choose your dance partners” for the reform process. At the risk of taking that analogy too far, does the Bill mean that the band has fundamentally changed, or has the line-up and playlist simply been refreshed? Is the ballroom going to turn into a rave party, or a line-dance?

A snapshot of the Bill

Requirement “to have regard to” Government policy

Clause 4 of the Bill amends section 2.46 of the *Local Government Act 1995* (“*the Act*”) which provides that the Minister may advise the Local Government Advisory Board (“*LGAB*”) about “*any general or specific policy of the Government relating to local governments*”. Under the proposed section 2.46(2), the LGAB is required in carrying out its functions under Schedule 2.1 of the Act, to “*have regard*” to any such policy, but the LGAB “*does not have to act in accordance with that policy*”.

A corresponding amendment has been included for clause 5 of Schedule 2.1 of

Who does this affect?

- Local Governments

Article Highlights

- Uncertainty regarding the scope of several key provisions of proposed amendments to Schedule 2.1 of the Local Government Act is potentially a cause for concern.
- Local Government Advisory Board retains its independent role, but the expansion of membership, together with other changes, allows for greater influence by the Government.
- Some significant changes have been made to the Government's original blueprint for metropolitan local government reform.

the Act, providing that section 2.46(2) applies in relation to the carrying out of an inquiry by the LGAB into a boundary proposal.

The scope of the requirement to “have regard to” something has been considered by the Courts on a number of occasions.

In the context of the Minister’s updated boundary reform proposals, the effect of this is that the LGAB may accord the same weight to these boundary proposals as it would to other applicable matters such as community of interests, physical and topographic features and economic factors. However, the LGAB is not bound to make a recommendation in accordance with or in a manner consistent with the Minister’s preferred boundaries.

Dealing with multiple boundary proposals

Not surprisingly, given the short timeframe available to complete the inquiry process, clauses 11 and 12 of the Bill contain amendments to enable the LGAB to deal with multiple boundary proposals, as follows:

- clause 11 amends clause 3 of Schedule 2.1 to allow the LGAB to defer a formal inquiry into a boundary proposal if the LGAB “*considers that the deferral is necessary or desirable to enable the Board to conduct one formal inquiry in accordance with the clause 4A into that proposal and any other proposal that has already been made to the Board or that the Board knows or reasonably anticipates will be made to the Board*”;
- clause 12 inserts a new clause 4A into Schedule 2.1, providing that the LGAB “*may decide to conduct one formal inquiry into 2 or more proposals if the Board considers that the proposals are related, and in that case this Act applies as if the proposals were one proposal*”.

While these amendments are sensible in the circumstances, there is no guidance as to what is meant by “*related*” in the new clause 4A, and the fact that multiple proposals will be considered “*as if the proposals were one proposal*” has the potential to lead to interesting outcomes in light of other amendments set out in the Bill.

Dispensing with Submissions

Currently, clause 4(2)(c) of Schedule 2.1 requires that where the LGAB holds a formal inquiry into a boundary proposal, it is required to give a notice to various bodies, which is to advise, amongst other things “*that submissions may be made to the Board not later than 6 weeks after the date the notice is first given about ... the proposal ... or ... the scope of the inquiry*”.

Clause 14 of the Bill proposes to add a new clause 5A to Schedule 2.1 of the Act. It is relevant to note that:

- although the Explanatory Memorandum relating to clause 14 of the Bill and the new clause 5A states that “*Where the clause applies to a proposal,*

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it provides the Board with the flexibility to alter the submission period regarding that proposal” (our emphasis), the wording of clause 5A(2) is significantly different;

- the new clause 5A(2)(a) simply provides that clause 4(2)(c) of Schedule 1 does not apply to the current proposals for reform in the metropolitan area;
- the new clause 5A(2)(c) provides that the LGAB “*is not required to call for submissions about ... the proposal .. or the scope or, as the case requires, the revised scope of the formal inquiry into the proposal*”. (our emphasis);

In addition, clause 6(2) of Schedule 2.1 currently provides that the LGAB is “*not to recommend to the Minister the making of an order that is significantly different from the proposal into which it formally inquired unless the Board has...*” given notice to various bodies, afforded an adequate opportunity for submissions and considered any submissions that are made.

Clause 16 of the Bill proposes to add a new clause 6(3) providing that the LGAB is not required to comply with clause 6(2) above in the case of metropolitan proposals if “*the Board decides that, in the circumstances of the particular case, compliance with the procedures in that subclause would serve no useful purpose*” (our emphasis).

While it may be inconceivable in practice, nevertheless the combined effect of the new clauses 5A and 6(3) is that the LGAB could decide not to call for submissions during an inquiry process, and could make a recommendation to the Minister that is significantly different from the proposal the subject of the of the inquiry, without giving notice to the affected local governments and without calling for or considering any further submissions.

Expansion of the LGAB

Clause 18 of the Bill amends clause 2 of Schedule 2.5 to expand the membership of the LGAB from 5 members to 7. The 2 additional members are to be nominated by the Minister “*to represent the interests of the community*” (our emphasis). The Bill does not specify any minimum prerequisites or qualifications of persons appointed to represent “*the interests of the community*”.

Consequential amendments are made to Schedule 2.5 to increase the quorum of the LGAB and any committees appointed by the LGAB from 3 to 4 and to allow the appointment of deputies for each community member. Any committees appointed by the LGAB must also include the two new community members.

Relevantly, the amendments mean that an absolute majority and a quorum of the LGAB can be achieved from the Minister’s direct appointees alone (given that two other members of the LGAB - the Chair and an officer of the Department of Local Government and Communities) are also appointed by the Minister.



Polling provisions left untouched

The Bill does not propose any amendments to the polling provisions of clauses 8 and 9 of Schedule 2.1, or any amendment to the restriction on the Minister's power to act contrary to the outcome of a poll under clause 10(2), despite various announcements on these matters by the Government. The Second Reading Speech suggests no explanation for this, other than recognition of the likely opposition that any such amendment would have generated.

The updated plans for metropolitan local government reform

There has already been much comment in the media and elsewhere on the updated plans released by the Minister on 12 November 2013.

The most significant changes from the original blueprint released in July are in the south-western metropolitan area, primarily affecting the City of Fremantle, City of Melville, City of Cockburn and City of Kwinana. The changes appear to have been welcomed to varying degrees by all but the City of Cockburn.

Where to from here?

The Minister has indicated that he expects the LGAB to start its formal inquiries in December 2013 and report back to him with its recommendations by mid-2014, and the LGAB has said that it is working towards this timeframe.

The band has been given a combination of new members, new instruments and an expanded playlist. It remains to be seen how all this will affect the dance which is now about to get underway, but several of the provisions of the Bill certainly give cause for concern in this regard. For further advice on the particular implications of these provisions, or any other aspect of the reform process under the Act, please contact:

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