

Local Government Legislation Amendment Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 140

made under the

City of Brisbane Act 2010
Local Government Act 2009

General Outline

Short title

Local Government Legislation Amendment Regulation (No. 1) 2015

Authorising law

Section 252 of the *City of Brisbane Act 2010* and section 270 of the *Local Government Act 2009*.

Policy objectives and the reasons for them

The objectives of the regulation are to:

- (1) remove the redundant appropriation provision from the *Local Government Regulation 2012* (LGR); and
- (2) require local governments to keep written records of alleged and proven losses arising from fraud, to keep written records of material losses, and to report material loss as a result of fraud.

Removal of redundant appropriation provision

Section 65 of the LGR defines the Kuranda rail line as the railway between Cairns and Kuranda. Section 66 of the LGR imposes a tourist infrastructure levy on each Kuranda rail operator until 31 December 2020, at the rate of \$1 for each passenger journey to or from Kuranda on the Kuranda rail line. The LGR section 67 requires each Kuranda rail operator to pay the amount of the imposed levy to the State within three weeks after the end of each quarter. Section 69 of the LGR provides that the amounts received by the State for payment of the tourist infrastructure levy must be paid to the relevant local government.

However, because the State is authorised under the general Appropriation Acts to pay the relevant council the amounts received for payment of the tourist infrastructure levy, the LGR section 69 is redundant.

The Kuranda Infrastructure Agreement 2010-2020 between the State and the relevant council outlines how the funds are to be used by the council, including providing and maintaining amenities that will enhance visitors' experience, enjoyment and environmental understanding of the Kuranda area, whilst supporting the well-being of the local Kuranda community. The Agreement also includes details about the State's obligations with respect to the payment of monies to the council.

Local governments to record and report the loss of local government assets (including money)

The new requirements implement recommendation 1 of the Queensland Audit Office (QAO) report *Fraud Management in Local Government – Report 19: 2014-15* (the QAO Audit Report) which was tabled in Parliament on 2 June 2015. A copy of the audit report can be accessed via the Queensland Parliament's website at www.parliament.qld.gov.au by clicking on (1) 'Work of the Assembly' (2) 'Tabled Papers' and (3) 'Online Tabled Papers'.

The QAO Audit Report found that the value of alleged and confirmed fraud instances over the five year survey period (July 2009 to June 2014) to be 324 cases at a value of \$8.6M with 18 of the 194 confirmed cases greater than \$10,000. The QAO Audit Report provides that the most common types of fraud committed against councils are misappropriation of council assets, including theft, and corruption by employees who use their position's authority or their access to information for personal benefit.

Further findings of the QAO Audit Report include:

- the local government sector experiences a significant level of fraudulent and corrupt activity, but under Queensland's current fraud reporting framework, it is difficult to accurately quantify the extent of the problem;
- local government record keeping and reporting to external agencies on fraud matters is inadequate and incomplete;
- all councils (except Brisbane City Council (BCC)) are required to report missing property to the Auditor-General under the LGR, however, there is no requirement for councils (including BCC) to report fraud under the LGR or the *City of Brisbane Regulation 2012* (CBR). This has contributed to the situation where almost half of councils do not maintain systems to record fraud;
- local governments did not report confirmed fraudulent activity worth \$0.8M and alleged fraudulent activity worth \$6.3M to the Auditor-General over a five year period.

Recommendation 1 of the QAO Audit Report is:

'The Department of Infrastructure, Local Government and Planning pursue amendment of the *Local Government Regulation 2012* and the *City of Brisbane Regulation 2012* to require:

- loss as a result of fraud to be a reportable loss to the Auditor-General and to the Minister responsible for local government
- councils to keep written records of alleged and proven losses arising from fraud.'

In addition to implementing recommendation 1 of the QAO Audit Report, the regulation aims to provide consistency with the State's reporting requirements under the *Financial and Performance Management Standard 2009* (FPMS). While not a recommendation of the QAO Audit Report, the regulation also requires local governments to keep written records of material losses (other than a loss from an offence or corrupt conduct) to further align the CBR/LGR with the FPMS section 22.

Achievement of policy objectives

Removal of redundant appropriation provision

The regulation achieves the policy objective by omitting redundant section 69 from the LGR.

Local governments to record and report the loss of local government assets (including money)

As a result of the finding of the QAO Audit Report that many local governments have poor record keeping and were not aware of allegations of fraud in their councils, the QAO Audit Report recommendation 1 requires councils to keep written records of both alleged and proven losses arising from fraud. As the majority of local government frauds will involve amounts less than \$5000 the threshold for material losses for assets, other than money, is to be established at \$1000 under the LGR. Given the size of BCC the threshold for material losses for assets, other than money, is to be \$5000 under the CBR, the same as in the FPMS.

The regulation differs from the FPMS in two ways: local governments will be required to keep written records of both alleged and proven losses, not just proven losses; and the threshold triggered by the term 'material loss' for a local government asset (that is not money) is set at a loss of more than \$1000 for local governments (except BCC), compared to \$5000 at the State level.

The regulation achieves the policy objectives by inserting new provisions in the CBR (section 279A) and the LGR (section 307A) to provide:

- councils must keep written records of both alleged and proven losses arising from fraud (including money) (consistent with the QAO's recommendation, however, at the State level only proven losses are required to be recorded under the FPMS)
- councils must keep written records of material losses (other than those arising from an offence or corrupt conduct) (consistent with the FPMS but not a recommendation of the QAO Audit Report)
- councils must report, within six months, a material loss as a result of fraud to the Minister and the Auditor-General and in certain circumstances, to the police or the Crime and Corruption Commission (consistent with the QAO's recommendation and the FPMS)
- material loss for BCC, under the CBR means:
 - for money - a loss of more than \$500 (consistent with the FPMS)
 - for any other asset – a loss valued at more than \$5000 (consistent with the FPMS)
- material loss for all other local governments (excluding BCC), under the LGR means:

- for money - a loss of more than \$500 (consistent with the FPMS)
- for any other asset – a loss valued at more than \$1000 (not consistent with the FPMS but appropriate as the majority of local government frauds will involve amounts less than \$5000).

The regulation omits current section 307A of the LGR (Reporting missing local government property) as its contents are captured by new chapter 9 part 6 (section 307A).

Consistency with policy objectives of authorising law

The regulation is consistent with the main objectives of the *City of Brisbane Act 2010* and the *Local Government Act 2009* to provide for the nature and extent of local government responsibilities and powers, and to provide a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The costs to Government as a result of the proposed amendments are negligible.

Consistency with fundamental legislative principles

The regulation has been drafted with regard to the fundamental legislative principles as defined in the *Legislative Standards Act 1992* and is consistent with these principles.

Consultation

Removal of redundant appropriation provision

The Local Government Association of Queensland (LGAQ) and the relevant councils were consulted during the development of the proposal. The proposed amendment is supported.

The Office of Best Practice Regulation was consulted in relation to the proposed amendment and advised no further assessment under the Regulatory Impact Statement Guidelines is required.

Local governments to record and report the loss of local government assets (including money)

The QAO, LGAQ, Local Government Managers Australia (Queensland) and BCC were consulted and support the proposed amendments.

The Office of Best Practice Regulation was consulted in relation to the proposed amendments and advised no further assessment under the Regulatory Impact Statement Guidelines is required.

With respect to the performance audit itself, the QAO surveyed each of the 77 local governments in relation to alleged and confirmed fraud instances over a five year period between July 2009 and June 2014 and their internal fraud management systems. Sixty-six local governments responded to the survey. In addition, further intelligence was gathered from other agencies, including the Department of Infrastructure, Local Government and Planning and the Crime and Corruption Commission, to help inform the audit.

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