

Local Government Legislation (Significant Business Activity Thresholds and Another Matter) Amendment Regulation 2016

Explanatory notes for SL 2016 No. 217

made under the

City of Brisbane Act 2010
Local Government Act 2009

General Outline

Short title

Local Government Legislation (Significant Business Activity Thresholds and Another Matter) Amendment Regulation 2016

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. amend the *City of Brisbane Regulation 2012* and the *Local Government Regulation 2012* (LGR) to increase National Competition Policy business activity thresholds by the consumer price index from the 2017-2018 financial year; and
2. amend the LGR to extend the timeframe for a local government to adopt a lesser amount of remuneration payable to its councillors.

Achievement of policy objectives

Increase business activity thresholds by the consumer price index

The City of Brisbane Act 2010 and the *Local Government Act 2009* (LGA) and associated regulations contain particular requirements to ensure local governments comply with the National Competition Policy (NCP). The *City of Brisbane Regulation 2012* (CBR) section 16 and the *Local Government Regulation 2012* (LGR) section 19 prescribe thresholds used to determine if a business activity of a local government is a

significant business activity. The CBR section 29 and the LGR section 39 prescribe thresholds for determining if a business activity of a local government is a prescribed business activity, for the purpose of applying the NCP code of competitive conduct.

Since the introduction of the NCP requirements for local governments in the 1990s, the original threshold amounts have been indexed annually by one of the consumer price index (CPI). The thresholds were last increased in December 2015.

The regulation part 2 sections 3 and 4 amend the CBR (sections 16 and 29) and part 3 sections 6 and 7 of the regulation amend the LGR (sections 19 and 39) to increase threshold amounts in line with the CPI to apply to local governments from the 2017-2018 financial year.

The new thresholds (rounded) are: CBR section 16(2) - \$9.35m (increased from \$9.2m), section 29(1) - \$328,000 (increased from \$325,000); LGR section 19(2)(a) - \$13.96m (increased from \$13.75m), section 19(2)(b) - \$9.35m (increased from \$9.2m), section 39(1) - \$328,000 (increased from \$325,000).

Timeframe to adopt a lesser amount of councillor remuneration

The Local Government Remuneration and Discipline Tribunal (the Tribunal) is established under section 183 of the LGA and is responsible for deciding the maximum amount of remuneration that is payable to councillors in each local government category.

The LGR section 244 provides the Tribunal must decide the maximum amount of remuneration payable to councillors before 1 December each year, payable from 1 July the following year. The determined remuneration then forms part of a remuneration schedule prepared and gazetted by the Tribunal, which continues in effect until a new remuneration schedule applies (LGR section 246).

Under section 247 a local government must pay the maximum amount of remuneration under the remuneration schedule unless it decides, by resolution, that the maximum amount is not payable. Section 247(6) provides the resolution must be made within 90 days of the remuneration schedule being published in the gazette. Where a local government decides the maximum amount of remuneration is not payable to its councillors it must decide, by resolution, the amount of remuneration that is payable. The remuneration must not be more than the maximum amount of councillor remuneration payable under the remuneration schedule.

The regulation part 3 section 8 amends section 247 of the LGR to:

- remove the requirement for local governments to decide within 90 days of the Tribunal's annual decision being gazetted, that the maximum amount of remuneration is not payable; and
- instead require a local government to decide under one resolution, before 1 July (for remuneration payable from 1 July of that year), that the maximum amount of remuneration is not payable to its councillors; and the amount of councillor remuneration that is payable.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the authorising laws.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

A local government will have more scope to review any decision it might make, or which an outgoing local government might have made, about councillor remuneration levels.

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

The Local Government Association of Queensland and Brisbane City Council were consulted and have no objections to the regulation.

In May 2016, the Local Government Remuneration and Discipline Tribunal (the Tribunal) recommended removing the 90-day time limit on local governments being able to resolve to reduce remuneration levels for councillors, noting the timeframe was too restrictive with no scope for a local government to review any decision it might make, or which an outgoing local government might have made, about councillor remuneration levels.