

Local Government Legislation (Councillor Complaints and Other Matters) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 201

made under the

Local Government Act 2009

General Outline

Short title

Local Government Legislation (Councillor Complaints and Other Matters) Amendment Regulation 2018

Authorising law

Sections 150E, 150BA and 270 of the *Local Government Act 2009*.

Policy objectives and the reasons for them

The *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* (Councillor Complaints Act) primarily amends the *Local Government Act 2009* (LGA) to implement the Government's response to the Independent Councillor Complaints Review Panel's Report '*Councillor Complaints Review: A fair, effective and efficient framework*' to deliver a simpler, more streamlined and transparent system for making, investigating and dealing with Councillor complaints and conduct in Queensland.

The new Councillor complaints system will come into operation on 3 December 2018 when the remaining provisions of the Councillor Complaints Act and the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* will commence by Proclamation.

Amendments to the *Local Government Regulation 2012* (LGR) are required to ensure the new Councillor complaints system is fully operational on its commencement and to ensure consistency between the LGR and the LGA.

The objectives of the Regulation are to:

- approve the *‘Code of Conduct for Councillors in Queensland’*
- modify the declaration of office to require Councillors to declare that they will fulfil their duties in accordance with the code of conduct
- prescribe other persons who may be appointed as investigators by the Independent Assessor
- ensure Local Government annual reporting requirements align with the new processes and LGA provisions about Councillor complaints and conduct
- make minor consequential amendments as necessary.

Achievement of policy objectives

The Regulation commences on 3 December 2018 and achieves the policy objectives as follows.

Approval of code of conduct for Councillors

Sections 150D and 150E of the *Local Government Act 2009* (LGA) respectively provide that the Minister must make a code of conduct that sets out the standards of behaviour for Councillors in performing their functions as Councillors under the LGA and that the code of conduct does not take effect until approved by a regulation.

Section 7 of the Regulation inserts new section 239A into the *Local Government Regulation 2012* (LGR) to approve the *‘Code of Conduct for Councillors in Queensland’* made by the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs on 30 August 2018, in accordance with section 150E of the LGA.

Declaration of office to include additional statement

Section 169 of the LGA provides that a Councillor must not act in office until the Councillor makes the declaration of office. The declaration of office is prescribed under section 254 of the LGR.

Recommendation 5.3 of the Independent Councillor Complaints Review Panel’s Report *‘Councillor Complaints Review: A fair, effective and efficient framework’* proposed amending the declaration of office to include a statement that the Councillor will abide by the code of conduct. The Government supported in principle this recommendation to prescribe by legislation a code of conduct for Councillors and to require Councillors to make a declaration that they will abide by the code of conduct.

Section 15 of the Regulation amends the prescribed declaration of office in section 254 of the LGR so that Councillors must declare, before acting in office, that they will faithfully and impartially fulfil their duties as a Councillor in accordance with the code of conduct and the local government principles, to the best of their judgment and ability.

Other persons who may be appointed as investigators

Section 150BA of the LGA provides that the Independent Assessor may, by instrument in writing, appoint a staff member of the Office of the Independent Assessor, a public service employee or another person prescribed by regulation as an investigator if satisfied the person is appropriately qualified. An investigator’s functions are prescribed under section 150AY of

the LGA and include investigating the conduct of Councillors as directed by the Independent Assessor and investigating potential offences against the conduct provisions.

Section 7 of the Regulation inserts new section 239B into the LGR to prescribe other persons who may be appointed as investigators by the Independent Assessor for section 150BA(1)(c) of the LGA, i.e. a person, or an individual employed or engaged by the person, who contracts with the Independent Assessor to provide services to conduct investigations. The appointment of contracted investigators by the Independent Assessor will be on an ‘as needs’ basis.

New annual reporting requirements

Section 186 of the LGR prescribes particulars relating to Councillors that must be contained in a Local Government’s annual report for a financial year, including details relating to Councillor complaints.

On the commencement of the new Councillor complaints system, the current provisions of the LGA dealing with complaints about the conduct and performance of Councillors (chapter 6, part 2, division 6) will be omitted and new provisions inserted to deal with Councillor complaints and conduct (new chapter 5A).

Section 6 of the Regulation updates the particulars required to be included in a Local Government’s annual report under section 186 of the LGR in relation to Councillor complaints to reflect the new processes and provisions relating to Councillor complaints and conduct in new chapter 5A of the LGA.

This amendment includes the removal of reporting requirements which will become obsolete under the new Councillor complaints system and the addition of new reporting requirements, such as, the number of orders made in relation to inappropriate conduct under new section 150AH(1) of the LGA; the number of decisions made by the Independent Assessor under new section 150W(a) of the LGA to dismiss a complaint; the number of decisions made by the Independent Assessor under new section 150W(b) of the LGA to refer suspected inappropriate conduct to the Local Government; and the number of occasions the Local Government asked another entity to investigate, for the Local Government, the suspected inappropriate conduct of a Councillor.

Also, the Regulation amends section 186 of the LGR to require Local Governments to include in their annual reports details of orders made for unsuitable meeting conduct under new section 150I(2) of the LGA, in the same way particulars of orders and recommendations made in relation to misconduct and orders made in relation to inappropriate conduct are included now and as part of the new reporting requirements.

This amendment is necessary because of the introduction of ‘unsuitable meeting conduct’ under new section 150H of the LGA. The conduct of a Councillor is unsuitable meeting conduct if the conduct happens during a Local Government meeting and contravenes a behavioural standard (a standard of behaviour for Councillors set out in the code of conduct). Unsuitable meeting conduct can be dealt with immediately by the Chairperson of a Local Government meeting or Local Government committee meeting in accordance with new section 150I of the LGA.

Section 21 of the Regulation inserts new section 352 into the LGR to confirm a continuing requirement for Local Governments to include particulars of any complaints dealt with under the current LGA provisions in their annual reports for the 2017-2018 and 2018-2019 financial years. The requirement will only apply to a Local Government's 2017-2018 annual report if the Local Government has not adopted its annual report for that financial year before the commencement of the new Councillor complaints system, proposed for 3 December 2018.

The current annual reporting of Councillor remuneration, expenses incurred by Councillors, facilities provided to Councillors and Councillor meeting attendance is retained under the new reporting requirements.

Minor consequential amendments

The remaining sections of the Regulation update references and amend/omit definitions in the LGR to ensure consistency with the LGA on the commencement of the new Councillor complaints system.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the *Local Government Act 2009*.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Regulation will ensure the new Councillor complaints system is fully operational on its commencement and ensure consistency between the *Local Government Regulation 2012* and the *Local Government Act 2009*.

Any costs to Government or other stakeholders as a result of the amendments will be negligible.

Consistency with fundamental legislative principles

The Regulation is consistent with the fundamental legislative principles.

Consultation

The Local Government Association of Queensland was consulted on the Regulation and has no objections to the proposed amendments.

A self-assessment by the Department of Local Government, Racing and Multicultural Affairs has determined that a Regulatory Impact Statement is not required as the regulatory proposals are excluded under either category (a) or (g) of the *Queensland Government Guide to Better Regulation* – regulatory proposals that make consequential amendments and regulatory proposals that are of a machinery nature.