

Local Government Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 39

made under the

City of Brisbane Act 2010
Local Government Act 2009

General Outline

Short title

Local Government Legislation Amendment Regulation 2019

Authorising law

Section 47, 48, 51, 98 and 252 of the *City of Brisbane Act 2010*
Section 43, 44, 47, 96 and 270 of the *Local Government Act 2009*

Policy objectives and the reasons for them

The *Local Government Legislation Amendment Regulation 2019* (the Regulation) amends the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to amend National Competition Policy business activity thresholds and adjust the maximum interest rates payable for overdue rates and charges.

National Competition Policy Thresholds

The *City of Brisbane Act 2010* (COBA) and *Local Government Act 2009* (LGA) contain requirements to ensure Local Governments comply with the National Competition Policy (NCP) (chapter 3 part 3 division 2 COBA and chapter 3 part 2 division 2 LGA).

Section 16 of the CBR and section 19 of the LGR prescribe the expenditure thresholds that a business activity must meet to be a significant business activity. Section 29 of the CBR and section 39 of the LGR prescribe thresholds to determine 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 NCP requirements for Local Governments in the 1990s, the threshold amounts have been indexed regularly by the Consumer Price Index (CPI). The thresholds were

last increased in December 2016. The Regulation will amend the CBR and LGR to increase the threshold amounts, other than the threshold for business activities that are the provision of combined water and sewerage services, in line with CPI to apply from the 2019-2020 financial year.

Currently, section 19(2)(a) of the LGR provides for the expenditure threshold that a business activity that is the provision of combined water and sewerage services must meet to be a significant business activity. There is no threshold prescribed in the CBR for this type of business activity as Brisbane City Council does not provide combined water and sewerage services.

The expenditure threshold for combined water and sewerage services is currently \$13.96m and this threshold has been indexed regularly along with other business activity thresholds. The policy objective is to replace the expenditure threshold for combined water and sewerage services and to instead specify that a business activity that is a combined water and sewerage service is a significant business activity for a financial year if 10,000 or more premises are connected to a water service as at 30 June of the previous financial year. This threshold is more easily defined and measured and more appropriately reflects growth in the business activity.

Interest on overdue rates and charges

Section 125 of the CBR and section 133 of the LGR provide that interest payable on overdue rates or charges may be charged at a percentage of not more than 11 per cent a year, decided by the Local Government. This maximum rate of interest was originally set at this rate in 1994 and has not been reviewed or changed since then.

The policy objective is to amend the CBR and LGR to provide that, from 1 July 2019, the maximum rate of interest payable on overdue rates and charges is calculated based on the bank bill yield rate published by the Reserve Bank of Australia for the month of March in the previous financial year plus 8 per cent. This is similar to the method used to calculate interest charged on unpaid State taxes under the *Taxation Administration Act 2001*. The variable interest component ensures that the maximum rate of interest varies each year in accordance with market interest rates. The bank bill yield rate for March is used for overdue rates and charges to allow sufficient time for Local Government budget planning.

In addition, to ensure that Local Governments regularly review the interest rate payable on overdue rates and charges, the Regulation will provide that the interest rate must be decided by resolution at the Local Government's budget meeting for a financial year.

Achievement of policy objectives

National Competition Policy Thresholds

Sections 4 and 6(2) of the Regulation amend the CBR (sections 16 and 29) to increase NCP threshold amounts in line with the CPI to apply from the 2019-2020 financial year.

The new threshold amounts are:

- for a significant business activity - \$9.7m, increased from \$9.35m (CBR section 16(2))
- for a prescribed business activity - \$340,000, increased from \$328,000 (CBR section 29(1)).

Sections 5 and 6(1) of the Regulation make minor amendments to reflect current drafting practice.

Section 9 of the Regulation inserts a new section 19 of the LGR to:

- provide that, for a business activity that is the provision of combined water and sewerage services, the threshold is 10,000 or more premises being connected to a water service as at 30 June of the previous financial year
- increase the expenditure threshold for other business activities in line with CPI to \$9.7m (increased from \$9.35m).

The new section 19 of the LGR also provides that the Minister must consult with LGAQ Ltd. about a proposed amendment to a threshold mentioned in the section, as provided for currently in section 19.

Section 9 of the Regulation also inserts a new section 20 of the LGR to prescribe that a Local Government must use the information about the number of premises connected to a water service stated in the Local Government's performance report for the previous financial year when identifying significant business activities that are the provision of combined water and sewerage services for its annual report for a financial year. The performance report of a Local Government is the performance report given to the regulator by the Local Government under the *Water Supply (Safety and Reliability) Act 2008*, section 142A.

For business activities of another type, the Local Government must use the information presented to the Local Government's budget meeting for the previous financial year, as provided for currently in section 20 of the LGR.

Section 11(2) of the Regulation amends section 39 of the LGR to increase the threshold for a prescribed business activity to \$340,000 (increased from \$328,000).

Sections 10 and 11(1) of the Regulation make minor amendments to reflect current drafting practice.

These amendments will commence on 1 July 2019.

Interest on overdue rates and charges

Sections 7 and 12 of the Regulation inserts new section 125 of the CBR and new section 133 of the LGR respectively to:

- provide that the rate of interest payable is, for a day before 1 July 2019 – an annual rate, of not more than 11 per cent, decided by the Local Government; or for a day on or after 1 July 2019 – an annual rate of not more than the prescribed rate for the day, decided by the Local Government
- define the *prescribed rate* for a day as meaning the rate that is the sum of the bank bill yield rate for the day, rounded to 2 decimal places; and 8 per cent
- define the *bank bill yield rate* for a day as meaning the monthly average yield of 90-day bank accepted bills published by the RBA for the month of March immediately before the financial year in which the day occurs

- provide that a decision of the Local Government to set the rate of interest on or after 1 July 2019, must be made by resolution at the Local Government's budget meeting for the financial year.

The new sections continue to provide for the following:

- that interest is payable on overdue rates and charges from the day the rates or charges become overdue or a later day decided by the Local Government
- that interest must be calculated on daily rests and as compound interest or in another way the Local Government decides, if an equal or lower amount will be payable
- a decision of the Local Government under the sections must apply equally to all ratepayers.

These amendments will commence on notification.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the LGA and COBA.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

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

The benefits of the Regulation are to:

- increase the NCP threshold amounts, other than the threshold for business activities that are the provision of combined water and sewerage services, in line with CPI to apply from the 2019-2020 financial year
- replace the expenditure threshold for combined water and sewerage services with a more appropriate threshold based on the number of water connections provided by the service
- provide a mechanism for the maximum interest rate payable on overdue rates and charges to vary in accordance with market interest rates and for the maximum interest rate to be set in a fair and equitable manner without the need for periodic review or ongoing legislative changes.

Consistency with fundamental legislative principles

No breaches of the fundamental legislative principles have been identified.

Consultation

The Local Government Association of Queensland (LGAQ), the Local Government Managers Australia Queensland (LGMAQ) and the Local Government Finance Professionals Queensland (LGFPQ) were consulted on the proposals included in this Regulation.

The LGMAQ and the LGFPQ did not raise any concerns with the proposals. The LGAQ supports the proposed amendments.

A self-assessment by the Department of Local Government, Racing and Multicultural Affairs has determined that further regulatory impact analysis is not required as the regulatory proposals are excluded under category (c) (regulatory proposals for the internal management of the public sector or statutory authority), (g) (regulatory proposals that are of a machinery nature) or (h) (regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor) of the *Queensland Government Guide to Better Regulation*.

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