

Local Government Legislation (Implementing Stage 2 of Belcarra) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 229

made under the

City of Brisbane Act 2010

Local Government Act 2009

Local Government Electoral Act 2011

General Outline

Short title

Local Government Legislation (Implementing Stage 2 of Belcarra) Amendment Regulation 2019

Authorising law

Sections 106 and 252 of the *City of Brisbane Act 2010*

Sections 109 and 270 of the *Local Government Act 2009*

Sections 32, 106, 128 and 208 of the *Local Government Electoral Act 2011*

Policy objectives and the reasons for them

The policy objectives of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* (the Act) include amending the *City of Brisbane Act 2010* (COBA), *Local Government Act 2009* (LGA) and *Local Government Electoral Act 2011* (LGEA) to implement:

- the Government's policy in relation to a number of remaining recommendations of the Crime and Corruption Commission's report *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (the Belcarra Report), and
- other significant reforms to improve diversity, transparency, integrity and consistency in the local government system, decision-making and local government elections.

The objectives of the *Local Government Legislation (Implementing Stage 2 of Belcarra) Amendment Regulation 2019* (the Regulation) are to:

- complement these reforms by amending the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to promote transparency and accountability in relation to the budgeting and reporting of discretionary funds by local governments and the use of discretionary funds by councillors
- amend the *Local Government Electoral Regulation 2012* (LGER) to implement amendments relating to Recommendation 16 of the Belcarra Report to provide a 24-hour disclosure deadline for giving returns about gifts or loans received by candidates or groups of candidates and electoral expenditure incurred by candidates, groups of candidates, registered political parties and associated entities if the gift or loan is received or expenditure is incurred seven business days or less before the polling day
- amend the LGER to prescribe particular matters for amendments to the LGEA in the Act in relation to publication of information about nominations and returns
- amend the CBR to align Brisbane City Council (BCC) annual reporting requirements with LGR provisions as a consequence of amendments in the Act to apply the LGA councillor conduct framework to the BCC
- make other consequential amendments as necessary.

Achievement of policy objectives

Discretionary Funds

New requirements for local governments and councillors

Sections 4 and 18 of the Regulation insert new section 194(8) of the CBR and new section 202(9) of the LGR to provide that a councillor must not allocate discretionary funds from 1 January of a quadrennial election year to the conclusion of the election, other than for discretionary funds allocated for capital works for a community purpose. These amendments will commence on 18 November 2019.

Sections 7 and 20 of the Regulation replace the CBR section 194 and the LGR section 202 (as amended above) and insert new CBR sections 193A, 193B, 194 and 194A and new LGR sections 201A, 201B, 202 and 202A to prescribe requirements about how a local government may make discretionary funds available and how councillors may use the funds, to commence on 30 March 2020. The new sections provide for the following new and amended requirements about the budgeting and use of discretionary funds.

New section 193B of the CBR and new section 201B of the LGR provide that a local government may, for a financial year, budget an amount of discretionary funds for use by councillors for either or both: capital works of the council that are for a community purpose or other community purposes. However, local governments must not budget more than 0.1% of the local government's revenue from general rates from the previous financial year (the prescribed amount) as discretionary funds for allocation by councillors for community purposes, other than for capital works of the local government. The amount of discretionary funds budgeted for each councillor to allocate for a financial year must be the same for all councillors.

Within 20 business days after adopting its budget for a financial year, the local government must publish a notice (the availability notice) containing the following information: the total amount budgeted for the financial year as discretionary funds, the prescribed amount for the financial year, the total amount of discretionary funds budgeted for the financial year for

councillors to allocate for capital works of the local government that are for a community purpose and for other community purposes, the amount budgeted for each councillor for these purposes and how community organisations may apply for funds.

New section 194 of the CBR and new section 202 of the LGR provide that councillors may only allocate an amount of discretionary funds if it does not exceed the amount stated in the availability notice and may make an allocation only in the financial year for which the funds were budgeted. Also, these sections clarify that councillors must not allocate discretionary funds to assist the councillor administratively with performing the councillor's responsibilities under the COBA or LGA respectively and continue to provide that a councillor must not allocate discretionary funds from 1 January in the year a quadrennial election is to be held until the conclusion of the election.

New section 194A of the CBR and new section 202A of the LGR provide that within 7 business days after making an allocation of discretionary funds, councillors must give a notice to the chief executive officer (CEO) about the allocation. A maximum penalty of 10 penalty units applies for non-compliance. The notice must state the amount and the date it was allocated, the way in which the amount was allocated, if the amount was allocated to a person or organisation, the name of the person or organisation and the purpose for which the amount was allocated including details identifying how the funds were spent, or are to be, spent. The local government will also be required to publish the notice on its website within 7 business days of the CEO receiving the notice from the councillor.

Annual Report

Sections 6 and 19 of the Regulation replace section 181 of the CBR and section 189 of the LGR to require additional information about the budgeting and use of discretionary funds to be captured in the annual report. These sections will commence on 30 March 2020.

This information includes the total amount budgeted for the financial year, the prescribed amount for the local government for the financial year, each of the total amounts budgeted for councillors to allocate for capital works of the local government that are for a community purpose and for other community purposes, and the total amount budgeted for use by each councillor for the financial year.

If a councillor allocates discretionary funds the annual report must contain the amount allocated, the date the amount was allocated, the community purpose for which the amount was allocated, if the funds were allocated to a person or organisation, the name of the person or organisation and the purpose for which the amount was allocated including identifying how the funds were, or are to be, spent.

Electoral Reforms

Electoral Funding and Financial Returns

Recommendation 16 of the Belcarra Report was that the LGEA be amended to prohibit candidates, groups of candidates, third parties, political parties and associated entities from receiving gifts or loans in respect of an election within the seven business days before polling day for that election and at any time thereafter. Any amounts received would be recoverable by the State as a debt owing to the local government.

Section 12 of the Regulation (new sections 5, 6 and 8) makes amendments to the LGER related to Recommendation 16 of the Belcarra Report to implement a 24-hour disclosure deadline for giving returns about gifts or loans received by candidates, groups of candidates or persons acting on behalf of groups during the disclosure period, if the gift or loan is received seven business days or less before the polling day. Otherwise, the disclosure deadline for the return remains as the seventh business day after the gift or loan is received.

Recommendation 2 of the Belcarra Report is that the LGEA be amended to require real-time disclosure of electoral expenditure by candidates, groups of candidates, political parties and associated entities at local government elections. To implement the Government's response to this Recommendation, the Act amends the LGEA to require the disclosure of electoral expenditure incurred by candidates, groups of candidates, registered political parties and associated entities that totals \$500 or more (new section 124 of the LGEA). New section 9 of the LGER implements a 24-hour disclosure deadline for giving these returns, if the expenditure is incurred seven business days or less before the polling day. Otherwise, the disclosure deadline for the return is the seventh business day after the expenditure is incurred.

New sections 7 and 9A of the LGER replace current sections 9 and 8 respectively to provide the disclosure deadline for giving a return about a gift received or expenditure incurred by a third party during the disclosure period, is the seventh business day after the gift is used or the expenditure is incurred. These amendments primarily update LGEA section references and terminology to reflect the amendments made to the LGEA as part of the Act.

These amendments commence on 20 January 2020.

Information about Electoral Nominations and Returns

Recommendations 3 and 4 of the Belcarra Report are that candidates, as part of their nominations, be required to provide the Electoral Commission of Queensland (ECQ) with a declaration of interests with the same financial and non-financial particulars as for a councillor register of interests and that ECQ publish the declaration as soon as practicable after the close of nominations for an election and any changes as soon as practicable after being notified, or immediately if advised within seven business days before polling day.

To implement the Government's policy on Belcarra Recommendations 3 and 4 the Act amends the LGEA to require candidates to declare additional matters on their nomination form and require the ECQ to publish a copy of the nomination on its website. Matters about a candidate's interests which must be contained in the nomination are stated in new schedule 1 of the LGEA.

Section 32 of the LGEA, as amended by the Act, provides that a returning officer must, as soon as practicable after certifying the nomination of a person for a local government election, publish the prescribed information for the nomination on the electoral commission's website and in other ways the returning officer considers appropriate. 'Prescribed information', for a nomination, is defined to mean information or a statement contained in the nomination prescribed by regulation.

Section 11 of the Regulation inserts new section 2A into the LGER to prescribe the information or statements that must be published by a returning officer about the nomination of a person for a local government election. The prescribed information includes a candidate's name, address and occupation and the information or statement required to be contained the nomination under schedule 1 of the LGEA other than the address of a close associate of the

candidate. For a candidate nominated by the registered officer of a registered political party under section 27(1)(a) of the LGEA, the name of the registered officer, the political party and the fact that the candidate is endorsed by the party is also prescribed. For a candidate nominated by electors under section 27(1)(b) of the LGEA, the name of each elector is prescribed.

This section commences on 18 November 2019.

Recommendation 19 of the Belcarra Report is that the LGEA be amended to require additional details to be stated in a third party's return about expenditure.

To implement the Government's policy on Recommendation 19, new section 125A of the LGEA provides that a third party return about electoral expenditure includes additional details, including the name and business address of the person who supplied the goods or service to which the expenditure relates. New section 124 of the LGEA requires these details to also be provided in an expenditure return given by candidates, groups of candidates or registered political parties.

Section 128 of the LGEA, as amended by the Act, provides that the ECQ must publish particular returns and documents on its website. However, particular information must not be published, including the address of a silent elector, a bank statement accompanying a return and information prescribed under a regulation.

New section 9B of the LGER prescribes the name and business address of the person who supplied the goods or service to which the expenditure relates for section 128. This information is withheld so that these businesses are not publicly taken to be promoting a particular candidate, group of candidates, party or issue in the election merely by the provision of goods and services.

This section commences on 20 January 2020.

Annual reporting – councillor conduct

As a consequence of the Act applying the LGA councillor conduct framework to the BCC, section 5 of the Regulation amends section 178 of the CBR to update the particulars required to be included in BCC's annual report in relation to councillor conduct. These particulars are consistent with the particulars required under the LGR in relation to councillor conduct for other local governments.

A transitional provision (section 8 of the Regulation) provides that BCC's 2019-20 annual report must comply with the requirements of existing section 178 before the commencement and the requirements of amended section 178 from the commencement.

Also, as a consequence of the Act amending the LGA councillor conduct framework, section 16 of the Regulation amends section 186 of the LGR to make a number of minor consequential amendments to the annual reporting requirements of other local governments in relation to councillor conduct.

Consistency with policy objectives of authorising law

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

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 benefits of implementation of the Regulation are to improve accountability and transparency in relation to:

- the budgeting, use and reporting of councillor discretionary funds
- electoral funding and financial disclosure, including by providing for 24-hour disclosure of gifts and loans received and electoral expenditure incurred by particular persons in the seven business days before polling day
- disclosure of interests and affiliations of candidates for local government elections.

The Regulation will also ensure consistency between the CBR and the LGR in relation to annual reporting requirements for councillor conduct.

Any costs to Government of implementing the Regulation will be met through normal budgetary processes.

Consistency with fundamental legislative principles

The fundamental legislative principles as set out in the *Legislative Standards Act 1992* require legislation to have sufficient regard to rights and liberties of individuals and the institution of Parliament.

Rights and Liberties of Individuals: Proportionality of Penalties

The Regulation inserts a new offence (maximum penalty of 10 penalty units) in the CBR and LGR for a councillor who does not notify the CEO within the prescribed time about the allocation of discretionary funds. Whether the Regulation has sufficient regard to the rights and liberties of individuals requires consideration of whether the penalties are proportionate to the offence.

The imposition of the notification requirements and associated penalty aligns with the objective of the Act to increase integrity and transparency in local governments. The notification requirements ensure that information about expenditure of discretionary funds is available to the local government for inclusion in the local government's annual report. The penalty is considered proportionate and appropriate to deter non-compliance.

Consultation

The Local Government Association of Queensland, the Local Government Managers Australia Queensland, the Office of the Independent Assessor, the ECQ and the BCC have been consulted on the proposed Regulation. There are no objections to the Regulation being made.

Consultation was not undertaken with the Office of Best Practice Regulation as the Department determined that the proposed Regulation was excluded from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation* exclusion categories (a) and

(c) – ‘regulatory proposals that make consequential amendments’ and ‘regulatory proposals for the internal management of the public sector or statutory authority’.

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