

Local Government Legislation (Integrity) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 156

made under the

City of Brisbane Act 2010
Local Government Act 2009

General Outline

Short title

Local Government Legislation (Integrity) Amendment Regulation 2020

Authorising law

Sections 169, 177X, 194C and 252 of the *City of Brisbane Act 2010*
Sections 150E, 150FA, 169, 197D and 270 of the *Local Government Act 2009*

Policy objectives and the reasons for them

On 30 June 2020, the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (the Integrity Act) received Assent. The policy objective of Chapter 5 of the Integrity Act is to continue the Government's rolling local government reform agenda guided by four key principles of integrity, transparency, diversity (reflecting electorate diversity) and consistency, as appropriate, with State and Commonwealth electoral and governance frameworks.

Chapter 5 of the Integrity Act includes amendments to the *City of Brisbane Act 2010* (COBA) and *Local Government Act 2009* (LGA) to:

- provide a new process that clarifies and further strengthens how a councillor's conflicts of interest are managed;
- establish a framework for local governments to engage councillor advisors to assist councillors in performing their responsibilities;
- require the interests of a councillor advisor and a person related to a councillor advisor to be disclosed in a register of interests;

- limit the involvement of Brisbane City Council (BCC) councillors in the appointment of BCC employees to the Chief Executive Officer (CEO) and senior staff who report to the CEO (senior executive employees).

On 24 January 2020, the Crime and Corruption Commission (CCC) tabled *Operation Yabber – An investigation into allegations relating to the Gold Coast City Council* (Yabber Report) in Parliament which made two recommendations in relation to the LGA to ensure stricter governance and accountability in local government. On 17 June 2020, the Government’s response to the Yabber Report was tabled. The Government response supported recommendation 1 and supported recommendation 2 in principle.

Recommendation 1 was to amend the LGA to ensure that mayoral directions under section 170 of the LGA cannot be used to undermine the authority of CEOs to carry out their responsibilities. The Government’s response to this recommendation was implemented in the Integrity Act. Recommendation 2 was to amend the LGA to clarify the responsibilities of mayors and councillors for the management of local government employees and councillor advisors and their adherence to codes of conduct. The Government response was that recommendation 2 can be addressed through the proposed Councillor Advisor Code of Conduct and amendments to the Code of Conduct for Councillors.

The objectives of the *Local Government Legislation (Integrity) Amendment Regulation 2020* (the Regulation) are to further continue the Government’s local government reform agenda by amending the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to:

- promote transparency, accountability and consistency in relation to the requirements for the organisation and conduct of meetings of a local government and a committee of the local government (local government meetings);
- promote transparency, accountability and consistency in relation to registers of interests;
- provide for the following matters in relation to councillor advisors:
 - prescribe which local governments may engage advisors and the maximum number of advisors that may be appointed by councillors in those local governments;
 - the criteria to which the Remuneration Commission must have regard when making a recommendation to the Minister about making a regulation relating to advisors;
 - register of interests requirements for advisors and persons related to them;
- approve a new Code of Conduct for Councillors under the LGR to implement recommendation 2 of the Government’s response to the Yabber Report and to reflect the new process in the Integrity Act for managing councillors’ conflict of interest;
- make other minor and/or consequential amendments as necessary.

Achievement of policy objectives

The Regulation commences on 12 October 2020 immediately after the commencement of section 81 of the Integrity Act to align with related reforms in the Integrity Act.

Local government meetings

The Regulation achieves the policy objective in relation to local government meetings by amending the CBR and LGR to provide for new and amended requirements for the organisation and conduct of local government meetings. Sections 7 to 19 and 47 to 61 of the Regulation

amend the CBR and the LGR respectively to improve accountability and transparency of local government meetings and to provide greater alignment between the requirements for the meetings of BCC and its committees and other local governments.

Chapter 8, part 2 of the CBR and chapter 8, part 2 of the LGR are amended to restructure and consolidate current, new and amended requirements for local government meetings under three divisions – requirements for local government meetings generally, requirements for meetings of a local government, and committees and requirements for committee meetings.

As the CBR did not previously provide requirements for BCC committees, other than the audit committee, the Regulation inserts new chapter 8, part 2, division 1 and division 3 into the CBR to provide requirements that apply to BCC committee meetings. The Regulation also applies the additional provisions for managing the health risks posed by COVID-19 in meetings to BCC committees.

Requirements for local government meetings generally

Sections 8 and 47 of the Regulation insert chapter 8, part 2, division 1 into the CBR and chapter 8, part 2, division 1A into the LGR to provide requirements for local government meetings, other than an audit committee.

Public notice of meetings

New section 254B of the LGR retain the requirement for a local government to publish on its website a notice of when ordinary meetings of the local government and standing committees are to be held each year. New section 242B of the CBR will also apply this requirement to its standing committees. However, the current requirement to publish the notice in a newspaper circulating generally in the local government's area will be replaced with a requirement for the local government to publish the notice in other ways it considers appropriate. A local government must also notify any changes to the days and times mentioned in the notice, as soon as practicable, rather than immediately after the changes.

Notice of meetings and agendas for councillors and committee members

New section 242C of the CBR and new section 254C of the LGR expand the current requirement for a local government to give a notice to each councillor of each meeting or adjourned meeting of a local government to also apply to committee meetings. The new sections also provide a new requirement for the notice of a meeting to include the agenda for the meeting.

Currently, section 246 of the CBR and section 258 of the LGR provide that the notice must be given at least 2 days, or 4 days for an indigenous regional council, before the day of the meeting, unless it is impracticable. However, under the new sections a notice must still be given if it is impracticable to give it before the time specified.

Publication of agendas and related reports

Currently section 247(5) and (6) of the CBR and section 277(5) and (6) of the LGR require that a list of items to be discussed at a meeting of the local government be available for inspection at the same time the agenda for the meeting is made available to councillors, and that the local

government may publish this list, along with any details or documents relating to the list, on the local government's website.

New section 242D of the CBR and new section 254D of the LGR specify that, for all local government meetings other than a meeting of the BCC Establishment and Coordination Committee (ECC):

- the agenda for the meeting must be available for inspection by the public at a local government's public office and website (publicly available) by 5pm on the next business day after the notice of the meeting is given to councillors or committee members;
- a report or other document relating to an item on the agenda made available to councillors or committee members for the purpose of the meeting (related report) must be made publicly available along with the agenda;
- a related report made available to councillors or committee members after the notice of the meeting is given and before the meeting is held, must be made publicly available as soon as practicable after it is made available to the councillors or committee members.

However, a local government is not required to make information confidential to the local government in a related report publicly available.

Procedure at meetings

Sections 81 and 104 of the Integrity Act will replace chapter 6, part 2, division 5A of the COBA and chapter 6, part 2, chapter 5B of the LGA to provide a new process for managing councillors' conflicts of interests. The new process prohibits councillors with a prescribed conflict of interest or a declarable conflict of interest in a matter from participating in a decision about the matter. However, councillors who do not have a prescribed or declarable conflict of interest in the matter may decide to allow a councillor with a declarable conflict of interest to participate in the decision (sections 177H and 177P of the COBA and sections 150EK and 150EQ of the LGA).

New section 242E of the CBR and new section 254E of the LGR provide that a councillor's entitlement to vote on questions to be decided at a meeting is subject to chapter 6, part 2, division 5A of the COBA and chapter 6, part 2, chapter 5B of the LGA. The new sections omit from the procedures of a meeting that voting must be open, as it is considered unnecessary to specify this requirement as voting is open to all councillors or members of a committee.

To align the procedure for meetings of the BCC and its committees with the LGR, section 242E of the CBR also provides that a councillor or committee member is taken to vote in the negative if they were present at a meeting and failed to vote, despite being entitled to vote.

Minutes of meetings

New section 242F of the CBR and new section 254F of the LGR provide a new requirement that the minutes for local government meetings must include each relevant report, other than to the extent it contains information that is confidential to the local government or was made publicly available under the requirements for the agenda for the meeting under new sections 242D of the CBR and 254D of the LGR. A relevant report is any report or other document that is directly relevant to a matter considered or voted on at the meeting or presented at the meeting for the consideration or information of the local government or committee.

A time requirement is also specified to provide that a copy of the unconfirmed minutes of each local government meeting must be made publicly available by 5pm on the tenth day after the meeting is held, unless the minutes are sooner confirmed (rather than simply within 10 days). When the minutes have been confirmed, they must be made available for purchase at the local government's public office (as currently required) but also made publicly available (that is, available for inspection at the local government's public office and on its website), as soon as practicable after the meeting at which the minutes are confirmed.

The new sections also clarify that a councillor or committee member present at a local government meeting may vote to confirm the minutes of the previous meeting even if the councillor or committee member was not present at that meeting or if the councillor had a prescribed conflict of interest or declarable conflict of interest for a matter that was considered, discussed or voted on at that meeting. The confirmed minutes also no longer have to be signed by the person presiding over the meeting at which the minutes are being confirmed.

New section 242H of the CBR and new section 254H of the LGR makes a drafting amendment in relation to the requirement for minutes of a Local Government meeting to include a statement of reasons for not adopting the recommendation or advice of an advisor if the decision is inconsistent with a policy of the Local Government or the approach ordinarily followed by the Local Government for the type of decision.

Advisory committees

New section 242G of the CBR provides new requirements for advisory committees that align with the LGR, which will allow BCC to exempt an advisory committee from taking minutes, by resolution, and to instead require the advisory committee to give BCC a written report of its deliberations and advice or recommendations.

Sections 81 and 104 of the Integrity Act will insert new sections 170X into the COBA and 150FA into the LGA to provide that information about a councillor's prescribed conflict of interest or declarable conflict of interest must be recorded in the minutes for a local government meeting, or if minutes are not required for the meeting, in another way prescribed by regulation.

New section 242G of the CBR and new section 254G of the LGR will provide that, for advisory committees that are exempt from taking minutes, the required information about conflicts of interest must be recorded in a written statement given to the local government.

Requirements for holding meetings in public or closing meetings

New section 242I of the CBR provides that the requirement for meetings to be open to the public applies to BCC committees to align with the requirements for other local government committees. However, this does not apply to meetings of the ECC.

New section 242J of the CBR and new section 254J of the LGR clarify that a local government or committee may resolve that either part or all of a meeting be closed to the public.

These new sections amend the prescribed list of matters that a local government or committee may close a meeting to discuss. As currently, a meeting may be closed to discuss:

- industrial matters affecting employees;
- the local government's budget;

- rating concessions.

The remaining matters which were prescribed in section 255 of the CBR and section 275 of the LGR are omitted and replaced by the following:

- the appointment, dismissal or discipline of a CEO or a BCC senior executive employee;
- legal advice obtained by the local government or legal proceedings involving the local government including for example, legal proceedings that may be taken by or against the local government;
- matters that may directly affect the health and safety of an individual or group of persons;
- negotiations relating to a commercial matter involving the local government for which a public discussion would be likely to prejudice the interests the local government;
- negotiations relating to the taking of land by the local government under the *Acquisition of Land Act 1967*;
- a matter which the local government is required to keep confidential under a law of, or a formal arrangement with, the Commonwealth or a State.

However, a resolution cannot be made to close the part of the meeting at which one of the following decisions is to be considered, discussed, voted on or made:

- whether a councillor has a declarable conflict of interest (sections 177O(2) of the COBA and 150ER(2) of the LGA);
- whether a councillor with a declarable conflict of interest may participate in the decision of a matter (sections 177P(3) of the COBA and 150ES(3) of the LGA);
- which action a local government will take in relation to a matter where there is no quorum because of prescribed conflicts of interest or declarable conflicts of interest (sections 177R(2) of the COBA and 150EU(2) of the LGA).

A resolution to close a meeting must state the matter from the prescribed list that is to be discussed and include an overview of what is to be discussed (rather than the current requirement to state the nature of the matter to be discussed).

Participating in meetings by audio link or audio visual link

New section 254K of the LGR provides that a committee of a local government, as well as the local government itself, may allow a person to take part in a meeting by audio link or audio visual link.

New section 242K of the CBR provides for participation in a meeting of a council or a committee of the council by electronic means to align with the LGR. A councillor or committee member is taken to be present at the meeting if they were simultaneously in audio contact with each other person at the meeting.

Committees and requirements for committee meetings

Section 13 of the Regulation inserts new CBR chapter 8, part 2, division 3 to provide requirements for BCC committee meetings, other than audit committee meetings (new section 253(2) of the CBR). These requirements provide greater alignment with the regulation of committees under the LGR.

Consistent with the LGR, the CBR provides that:

- an advisory committee must not be appointed as a standing committee and may include members who are not councillors and that all members of an advisory committee may vote on business before the committee (new section 254 of the CBR);
- BCC may appoint one person as the alternate member of a committee. The alternate member attends a meeting of the committee and acts as a member of the committee whenever another member of the committee is absent (new section 254A(1) and (2) of the CBR);
- provides that the time and place of meetings of a committee are decided by the committee (new section 254B of the CBR);
- that a quorum of a committee is a majority of its members unless there is an even number of members in which case one-half of the number of members is a quorum (new section 255(1) and (2) of the CBR).

Further, the CBR provides the following additional requirements in relation to BCC committees to manage the discretion the Mayor has in attending, participating in or voting at any meeting of a standing committee under section 26 of the COBA:

- an alternate member may attend and act as a member of a standing committee for the Mayor only if the Mayor is the chairperson of the committee (new section 254A(3));
- when determining a quorum for a standing committee, the Mayor is not counted as a member of the committee if the Mayor is absent from the meeting, unless the Mayor is a chairperson of the committee (new section 255(3) and (4)).

Sections 14 to 19 of the Regulation amend sections 255A to 255F of the CBR to apply the additional provisions for meetings of BCC to minimise the health risks associated with COVID-19 to BCC committee meetings. However, these provisions do not apply to the audit committee or the ECC.

Section 53 of the Regulation amends section 263 of the LGR to provide that committee meeting requirements under chapter 8, part 2, division 2 of the LGR do not apply to an audit committee.

Sections 56 to 61 of the Regulation amend chapter 8, part 2A of the LGR to make consequential amendments to reflect the new term ‘local government meeting’ to be inserted by the Integrity Act and to reflect current drafting practice in relation to meetings held by audio line or audio visual link.

Register of Interests

The Regulation achieves the policy objective in relation to register of interests by amending the CBR and LGR to provide for new and amended requirements for the management of register of interests and the particulars to be included in registers of interest.

Sections 21 to 30 and 63 to 72 of the Regulation amend chapter 8, part 5 of the CBR and chapter 8, part 5 of the LGR respectively, to improve accountability and transparency in a local government’s obligations to keep and make available registers of interests and to make amendments in relation to registers of interest for BCC senior executive employees (SEEs).

Sections 32 to 41 and 75 to 84 of the Regulation amend schedule 3 of the CBR and schedule 5 of the LGR to provide greater alignment between the particulars to be disclosed in local government registers of interests and statements of interests for State Members of Parliament,

to provide consistency with requirements for conflicts of interests and electoral funding disclosure obligations, and to simplify and remove duplication in the disclosure of interests.

Keeping registers of interests

The Regulation amends sections 269 of the CBR and 291 of the LGR to clarify that a register of interest consists of the forms or other documents used to inform the person required to maintain the register about an interest that must be recorded in the register.

New section 274A of the CBR and new section 296A of the LGR provide new requirements about the period that local governments must keep registers of interests of a councillor, the CEO, a councillor advisor, a SEE and a person related to them (relevant person). The register must be kept for a period of 10 years starting on either the last day a councillor holds office (for a councillor or person related to the councillor) or the last day a CEO, councillor advisor or SEE holds that appointment (for a CEO, advisor or SEE or a person related to them).

New sections 274A of the CBR and 296A LGR also provide a new requirement for local governments to ensure a register of interests of a former councillor is available to be viewed by the public at a local government's public office for the period that the register of interest is required to be kept.

Senior executive employees

Section 192 of the COBA currently provides that BCC appoints employees who are employed on a contractual basis and classified by the council as 'senior executive service' (senior contract employees). To provide for better alignment with the LGA, the Integrity Act amends the COBA to provide that BCC will be responsible only for appointing senior staff who report directly to the CEO (senior executive employees) and that the CEO of BCC will be responsible for appointing all other employees.

The CBR currently requires that the CEO maintain a register of interests for senior contract employees and persons relating to them. The Regulation amends sections 267 to 272 and 275 to the CBR to require register of interests to be maintained for 'senior executive employees' rather than 'senior contract employees'.

Particulars for registers of interests

Schedule 3 of the CBR and schedule 5 of the LGR prescribe the financial and non-financial particulars required to be contained in the register of interests of a relevant person. A number of amendments are made to the particulars as follows.

Section 1 of schedule 3 of the CBR and schedule 5 of the LGR are amended to insert the following definitions for:

- conflicts of interest, in relation to a councillor, to mean a prescribed conflict of interest or a declarable conflict of interest to align with the new process for managing councillors' conflicts of interest;
- reporting term, for a relevant person, to mean the period of the current term or contract of employment and the period of the term or contract of employment ending immediately before the current term or contract of employment started.

The definition of relevant person is also amended to include a councillor advisor, a BCC senior executive employee and a person related to them.

Section 2 of schedule 3 of the CBR and section 2 of schedule 5 of the LGR are amended to align the particulars to be disclosed in relation to shareholdings and controlling interests in proprietary companies and other corporations with the requirements for statement of interests for State MPs and to provide for consistent disclosure requirements for all relevant persons.

Section 3 of schedule 3 of the CBR and section 3 of schedule 5 of the LGR are amended to refer to the defined term 'executive officer' which will be inserted by the Integrity Act, for the requirement to disclose particulars in relation to a relevant person's role as an executive officer of a corporation.

Section 4 of schedule 3 of the CBR and section 4 of schedule 5 of the LGR are amended to relocate the definition of 'nominee corporation' which is currently in section 1 of these schedules and to clarify that 'marketable securities' has the meaning given in the *Corporations Act 2001* (Cwlth).

Section 5 of schedule 3 of the CBR and section 5 of schedule 5 of the LGR are amended to extend the requirement for councillors' registers of interests to contain particulars about self-managed superannuation funds to all relevant persons, rather than only for councillors and persons related to councillors.

Section 7 of schedule 3 of the CBR and section 10 of schedule 5 of the LGR are amended to align the particulars required for interests in a partnership and joint venture with those required in a statement of interests for State MPs by requiring disclosure of the investments or other interests in property, of which the relevant person is aware, held by the partnership or joint venture.

Section 10 of schedule 3 of the CBR and section 10 of schedule 5 of the LGR are amended to relocate the definition of 'debenture' which is currently in section 1 of these schedules

Section 12 of schedule 3 of the CBR and section 12 of schedule 5 of the LGR are amended to apply to each gift or a number of gifts received by a relevant person during a reporting term that total \$500 or more. The threshold of \$500 or more aligns with a gift which may give rise to a declarable conflict of interest under section 177L of the COBA and section 150EO of the LGA to be inserted by the Integrity Act.

The sections do not apply to a gift:

- that is required to be the subject of a return under the *Local Government Electoral Act 2011*;
- received by a relevant person in an official capacity that is subsequently given to the local government by the relevant person;
- of hospitality, or attendance at a sporting or cultural event, if a councillor, the CEO, a councillor advisor, a SEE or the spouse of one of these persons received the hospitality or attended the event in an official capacity;
- given to a relevant person by the person's spouse, family member or friend, if the person is satisfied the gift could not give rise to a conflict of interest in relation to the person's duties under the COBA or LGA.

Sections 31 and 73 of the Regulation inserts new section 297 of the CBR and new section 357 of the LGR that apply if a relevant person's reporting term includes a period that occurred partly before the commencement. A reference to a gift given to a relevant person during the person's reporting term includes a reference to a gift given to the person before commencement during the reporting term.

New section 13 of schedule 3 of the CBR and section 13 of schedule 5 of the LGR replace 'sponsored hospitality benefits' with 'sponsored travel and accommodation benefits' to align with the new defined term for benefits which may give rise to a conflict of interest under amendments in the Integrity Act. For the purpose of a register of interests, sponsored travel or accommodation benefits also includes travel or accommodation undertaken or used by a relevant person, other than employment-related or upgraded travel or accommodation, if the relevant person's spouse, family member or friend contributes to the cost of the travel or accommodation financially or non-financially and the contribution could give rise a conflict of interest in relation to the relevant person's duties under the COBA or LGA.

New section 14 of schedule 3 of the CBR and section 14 of schedule 5 of the LGR no longer requires particulars of a relevant person's membership of a political body or association to align the requirements for State MP statements of interests.

New section 14A of schedule 3 of the CBR and new section 14A of schedule 5 of the LGR require the name for each organisation to be provided, other than a corporation mentioned in section 3 or a political party or trade or professional organisation mentioned in section 14 of which a relevant person is an executive officer. This aligns with requirements for statement of interests for State Members of Parliament.

New section 14B of schedule 3 of the CBR and new section 14B of schedule 5 of the LGR provide a new requirement for register of interests to contain particulars about donations made by a relevant person to align with the requirements for statement of interests for State members of Parliament. The new particular required is the name of the person or organisation to whom the relevant person gives a donation.

However, the new requirement differs to those of the State as it only applies to a donation or donations made by the relevant person that total \$500 or more during a reporting term. Also, the requirements do not apply if a relevant person makes a donation to a spouse, family member or friend and the relevant person is satisfied that the donation could not give rise to a conflict of interest in relation to the relevant person's duties under the COBA or LGA.

Sections 31 and 73 of the Regulation inserts new section 297 of the CBR and new section 357 of the LGR that apply if a relevant person's reporting term includes a period that occurred partly before the commencement. A reference to a donation totalling \$500 or more made during a relevant person's reporting term, does not include a reference to a donation made before the commencement.

Section 16 of schedule 3 of the CBR and section 16 of schedule 5 of the LGR are amended to align the monetary threshold for disclosure of sources of income, other than those already addressed in the schedules, with the threshold for gifts and donations, that is \$500 or more.

Section 17 of schedule 3 of the CBR and section 17 of schedule 5 of the LGR are amended to make minor drafting amendments.

Councillor advisors

Sections 85 and 115 of the Integrity Act insert new chapter 6, part 4, division 2A into the COBA and new chapter 6, part 5, division 2A into the LGA, respectively, to provide a regulatory framework for the appointment of councillor advisors. The Regulation achieves the policy objective in relation to councillor advisors by amending the CBR and LGR to prescribe matters in relation to the new framework.

Appointment of councillor advisors

New section 197A(1) of the LGA provides that a local government prescribed by regulation under section 197D(1)(a) of the LGA may, by resolution, allow a councillor to appoint one or more councillor advisors. New section 197A(1A) of the LGA provides that the resolution must state the number of advisors that the councillor may appoint up to the maximum prescribed under section 197D(1)(b) of the LGA.

Sections 194A(1) and 194A(2)(b) of the COBA provide that a BCC councillor may appoint one or more councillor advisors, however, the councillor must not appoint more than the number of councillor advisors prescribed under section 194C(1)(a).

To ensure the framework for appointing councillor advisors is operational for local governments on commencement of the Integrity Act amendments, the Regulation will prescribe the local governments under the LGA that may engage in councillor advisors and the maximum number of councillor advisors each local government (including BCC) may appoint.

Section 20 of the Regulation inserts new section 255H into the CBR to prescribe that, for BCC:

- the Mayor may appoint 10 councillor advisors;
- the leader of the opposition may appoint 4 councillor advisors;
- the chairperson of the council, unless the chairperson is the leader of the opposition, may appoint 2 councillor advisors;
- a chairperson of a standing committee, unless the chairperson is the mayor, leader of the opposition or chairperson of the council, may appoint 2 councillor advisors;
- another councillor may appoint 1 councillor advisor.

Sections 62 and 74 of the Regulation insert new section 277G and schedule 4A into the LGR to prescribe the following local governments that may engage councillor advisors and the maximum number of advisors that councillors may appoint:

Prescribed local governments	Number of councillor advisors
Bundaberg Regional Council	Mayor – 1 Another councillor – 0
Cairns Regional Council	Mayor – 2 Another councillor – 0
Fraser Coast Regional Council	Mayor – 1 Another councillor – 0
Gladstone Regional Council	Mayor – 1 Another councillor – 0
Gold Coast City Council	Mayor – 4

	Another councillor – 1
Ipswich City Council	Mayor – 3 Another councillor – 0
Logan City Council	Mayor – 3 Another councillor – 1
Mackay Regional Council	Mayor – 2 Another councillor – 0
Moreton Bay Regional Council	Mayor – 3 Another councillor – 1
Redland City Council	Mayor – 2 Another councillor – 0
Rockhampton Regional Council	Mayor – 1 Another councillor – 0
Sunshine Coast Regional Council	Mayor – 3 Another councillor – 1
Toowoomba Regional Council	Mayor – 2 Another councillor – 0
Townsville City Council	Mayor – 3 Another councillor – 0

Remuneration Commission and councillor advisors

New section 197D(2) and (3) of the LGA will provide that before the Minister recommends the making of a regulation to the Governor in Council about the prescription of local governments that may engage in councillor advisors and maximum number of advisors that may be appointed by each Councillor, the Minister must ask the Local Government Remuneration Commission (Remuneration Commission) for its recommendation.

New section 194C(2) and (3) of the COBA provides that before the Minister recommends the making of a regulation to the Governor in Council about the maximum number of advisors that may be appointed by each Councillor, the Minister must ask the Remuneration Commission for its recommendation.

New section 194C(3) of the COBA and section 197D(3) of the LGA provide that the Minister must have regard to the recommendation from the Remuneration Commission before recommending to the Governor in Council to make the regulation. However, this process does not apply to the regulation first made after the commencement (sections 297 of the COBA and 335 of the LGA).

The Remuneration Commission is established under section 176 of the LGA. The Integrity Act will amend the functions of the Remuneration Commission under section 177 of the LGA to include considering and making recommendations to the Minister about particular matters relating to councillor advisors.

Section 62 of the Regulation inserts new section 277H into the LGR to provide the following matters the Remuneration Commission must have regard to if the Minister asks the Remuneration Commission for its recommendation:

- the size, and geographical and environmental terrain, of the local government area;

- the population of local government area, including the area's demographics, the spread of population serviced by the local government and the extent of the services the local government provides;
- the remuneration category to which the local government belongs; and
- the financial position of the local government to have councillor advisors.

The Remuneration Commission may also have regard to other matters it considers relevant to the effectiveness, efficiency and sustainability of the local government.

Councillor advisors' registers of interests

Sections 89 and 119 of the Integrity Act will insert new chapter 6, part 4A into the COBA and chapter 6, part 5A into the LGA, respectively, which create particular obligations for a councillor advisor to disclose interests which are required, under a regulation, to be recorded in a register interests for themselves or a person who is related to them.

Sections 21 to 26 and 28 to 30 of the Regulation amend chapter 8, part 5 of the CBR and sections 63 to 68 and sections 70 to 72 amend chapter 8, part 5 of the LGR to apply the following requirements for register of interests for councillor advisors and a person related to an advisor:

- the CEO must maintain the register of interests;
- the register of interests must contain the particulars required in schedule 3 of the CBR and schedule 5 of the LGR;
- the register of interests of a person related to an advisor need not contain interests that are held jointly or in common with the advisors and are included in the advisor's register;
- the register of interests is only open to inspection by a councillor, the CEO or another person permitted by law to have access to information in the register. A maximum penalty of 85 penalty units will apply if a person knowingly discloses information obtained from a register to another person;
- a person seeking access to a register of interests must apply in writing to the CEO and the CEO must take specified actions to record the access and inform the person to whom the register relates;
- if a person informs the CEO of a reasonable suspicion that the register of interests does not contain particulars that should be in the register then the CEO must inform the advisor. The advisor must then either amend the register or confirm that it is accurate.

Consequential amendment

Section 6 of the Regulation amends section 242 of the CBR which provides for administrative and support services for councillors. The consequential amendment clarifies that this section does not relate to the engagement of councillor advisors to assist councillors in performing their functions.

Code of Conduct for Councillors

Approval of the new code of conduct for councillors

Recommendation 2 of the Yabber Report recommended that the LGA be amended to set out clear protocols for transparent communication between councillor advisors and local government employees, clarify the management of disciplinary matters for councillor advisors

and make clear that mayors and councillors are responsible for the actions of the advisors and must take all reasonable steps to ensure their advisors act in accordance with the guidelines and code of conduct.

The Government response supported the recommendation in principle and considered that the intent of the recommendation could be addressed through a new Code of Conduct for Councillor Advisors and by amendments to the existing Code of Conduct for Councillors.

Sections 150D and 150E of the LGA, respectively, provide that the Minister must make a code of 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 44 of the Regulation amends section 239A of the 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 4 August 2020, in accordance with section 150E of the LGA. The new Code of Conduct for Councillors implements the Government's response to recommendation 2 of the Yabber Report and also includes amendments to reflect changes in the Integrity Act about conflicts of interests.

Declaration of office

Section 169 of the COBA and section 169 of the LGA provide that a councillor must not act in office until the councillor makes the declaration of office. The declarations of office are prescribed under section 241 of the LGR and section 254 of the LGR.

Sections 5 and 46 of the Regulation amend the prescribed declarations of office to clarify that the declarations refer to the Code of Conduct for Councillors and not the Councillor Advisor Code of Conduct.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the COBA and LGA. The purpose of the LGA includes providing for a system of local government that is accountable, effective, efficient and sustainable (refer section 3(b)). The purpose of the COBA includes providing for a system of local government in Brisbane that is accountable, effective, efficient and sustainable (refer section 3(b)).

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 implementing the Regulation include:

- promoting accountability and transparency in relation to local government meetings and registers of interests;

- providing greater alignment between the CBR and LGR in relation to requirements for local government meetings and between local government register of interests requirements and State Parliament statements of interest;
- prescribing matters about the appointment of councillor advisors to ensure the regulatory frameworks are operational on commencement of the reforms in the Integrity Act;
- approving a new Code of Conduct for Councillors to implement the Government's response to recommendation 2 of the Yabber Report which aims to ensure stricter governance and accountability in local government.

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

Consistency with fundamental legislative principles

The Regulation is generally consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992* (LSA). Potential breaches of the fundamental legislative principles are addressed below.

Rights and liberties of individuals

The fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals (LSA section 4(2)(a)).

Proportionality of penalties

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

Currently, section 275(2) of the CBR and section 297(2) of the LGR prohibit a person from knowingly disclosing information obtained from a register of interests of a CEO, SEE or a person related to them, to a person other than a councillor, the CEO, or another person permitted by law to have access to information in the register. The offence carries a maximum penalty of 85 penalty units.

The Regulation applies the same restrictions on who may inspect a register of interest for a CEO, SEE and a person related to them to a register for a councillor advisor and a person related to the advisor. The offences under section 275(2) of the CBR and 297(2) of the LGR is also amended to cover the disclosure of information from a register of an advisor or a person related to the advisor.

The offence restricts the disclosure of personal information of local government employees and persons related to them. This information should be reserved for internal use of a local government in managing conflicts of interests risks or as otherwise permitted by law. As a councillor advisor is also employed by a local government and is not an elected public official like a councillor, it is appropriate that their personal information, along with the personal information of a person related to them, should be similarly restricted and equivalent penalties should apply for knowingly disclosing the information.

Retrospectivity

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, it adversely affects rights and liberties, or imposes obligations, retrospectively (LSA section 4(3)(g)).

Amended section 12 of schedule 3 of the CBR and section 12 of schedule 5 of the LGR require gifts totalling \$500 or more that are given to a relevant person during the person's reporting term to be disclosed in the person's register of interests. New sections 297 of the CBR and 357 of the LGR provide transitional provisions about gifts and donations if a relevant person's reporting term includes a period that occurred partly before the commencement.

The transitional provisions provide a gift made during a relevant person's reporting term will include a gift made before the commencement during the reporting term. This will require those gifts totalling \$500 or more to be disclosed on or after commencement.

Although gifts given to a relevant person prior to commencement are required to be disclosed, the obligation to disclose those gifts arises on commencement. In this way, the Regulation does not impose obligations that impact on the rights and liberties, retrospectively.

Also, currently the particulars to be contained in a register of interest apply to each gift, or all gifts, totalling more than \$500 in amount or value given to a relevant person by another person. The particulars to be included are the name of the donor and a description of the gift. These particulars are not amended by the Regulation. Therefore, a relevant person whose reporting term commenced before commencement has a current obligation to record gifts, including a number of smaller gifts, if they total more than \$500.

Consultation

In April 2019, the Department of Local Government, Racing and Multicultural Affairs (the Department) distributed an information paper outlining certain proposed legislative amendments contained in the Regulation.

The Local Government Association of Queensland (LGAQ) and the Local Government Managers Australia (LGMA) have been consulted on the proposed Regulation. A series of consultation workshops have also been conducted with a CEO Network group. The LGAQ and LGMA generally support the Regulation.

Brisbane City Council and Local Governments prescribed for appointing Councillor advisors have been consulted on those provisions and generally support them. However, the Gold Coast City Council (GCCC) does not support the prescription of limits on the number of councillor advisors who may be appointed or the matters to which the Remuneration Commission must have regard in relation to Councillor advisors.

The GCCC also does not support amendments relating to publishing related reports with the agenda for a meeting, not making decisions about conflicts of interest in a closed meeting or the inclusion of donations in the register of interests. In relation to publishing related reports with the agenda for a meeting, it is considered that this promotes greater transparency so members of the public have a greater understanding of the nature of matters to be discussed.

Members of the CEO Network raised concerns regarding the requirement to include related reports in meeting minutes given minutes must currently be signed in hard copy. The Regulation removes the requirement for meeting minutes to be signed in hard copy. In response to concerns raised by the CEO Network members, the requirement to include related reports in agenda and minutes has been tightly drafted so that it only captures those reports actively considered by councillors (and not every document potentially discussed in any detail, some of which may not be relevant to the agenda item).

Consultation with stakeholders did reveal some concerns that limiting the instances when a local government may close a meeting may drive these conversations to forums external to council meetings. This is acknowledged, however on balance it is considered that tightening the instances where a meeting can be closed to the public promote greater transparency. Members of the CEO Network raised a number of minor drafting matters which were considered during drafting.

A self-assessment by 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) 'regulatory proposals that make consequential amendments' and (c) 'regulatory proposals for the internal management of the public sector or statutory authority'.