

# Local Government Electoral Regulation 2023

Explanatory Notes for SL 2023 No. 57

made under the

*Local Government Electoral Act 2011*

## General Outline

### Short title

*Local Government Electoral Regulation 2023*

### Authorising law

Section 17 of the *Acts Interpretation Act 1954*

Sections 23, 32, 68, 75A, 106, 117, 118, 118AA, 118A, 118B, 120, 120A, 123A, 123S, 124, 125B, 127F, 127N, 128, 132A and 208 of the *Local Government Electoral Act 2011*.

### Policy objectives and the reasons for them

The *Local Government Electoral Regulation 2012* (LGER 2012) is due to expire on 31 August 2023 under section 54(2) of the *Statutory Instruments Act 1992*, following an exemption from expiry for a period of one year under the *Statutory Instruments Regulation 2022* on the ground it was being replaced.

The Department of State Development, Infrastructure, Local Government and Planning (the department) has undertaken a sunset review of the LGER 2012, in accordance with the *Queensland Government Guide to Better Regulation*.

The policy objectives of the *Local Government Electoral Regulation 2023* (LGER 2023) are to repeal and replace the LGER 2012, providing for the following key changes:

- fixing a different day for the 2024 local government quadrennial election to prevent it coinciding with the Easter holiday period
- supporting implementation of the new electoral expenditure caps scheme for local government elections established by the *Local Government Electoral and Other Legislation (Expenditure*

*Caps) Amendment Act 2023* (the Amendment Act), including approving an updated procedure for electronic lodgement of returns

- clarifying that electronically assisted voting (EAV) is not available to special postal voters who are detained in lawful custody
- expanding eligibility for EAV to electors who are overseas or interstate during the voting period
- approving an updated procedure for EAV in local government elections, consistent with the above
- making minor and technical changes to update section references and terminology
- applying transitional provisions.

## **Achievement of policy objectives**

The LGER 2023 commences on 28 June 2023, consistent with commencement of relevant provisions of the Amendment Act on the same date by proclamation. Section 17 of the *Acts Interpretation Act 1954*, which permits the exercise of a regulation-making power before the commencement of legislation, enables the provisions in the LGER 2023 whose heads of power are in the Amendment Act to be made prior to the commencement of the Amendment Act.

The LGER 2023 achieves the policy objectives as follows.

### *Repeal of the LGER 2012 and minor updates to requirements*

Section 28 of the LGER 2023 repeals the LGER 2012.

Repealed sections 11 to 16 of the LGER 2012 were transitional provisions which are obsolete and therefore not replaced. Similarly, section 2 of the LGER 2012, fixing the date of the 2016 local government quadrennial election, is also repealed without replacement.

Section 6 of the LGER 2023 (Prescribed information for nomination) replicates repealed section 2A of the LGER 2012 (Prescribed information for nomination) with a minor change to wording in relation to a statement that the candidate is endorsed by a political party.

Remaining repealed provisions in the LGER 2012 which are replicated in the LGER 2023 with minor changes are discussed below under the headings *Support implementation of the local government electoral expenditure caps scheme* and *EAV eligibility and procedure*.

### *Change to the date of the 2024 local government quadrennial election*

Section 23 of the *Local Government Electoral Act 2011* (LGEA) provides that a quadrennial local government election must be held on the last Saturday in March in, and every fourth year after, 2012. However, under section 23(3) a different Saturday for a quadrennial election for a particular year may be fixed by regulation.

The last Saturday in March 2024 is 30 March 2024. Easter Saturday falls on this date, which also coincides with the school holiday period. Section 3 of the LGER 2023 fixes Saturday 16 March 2024 as the new date for the 2024 local government quadrennial election, in line with the views of stakeholders (refer to Consultation below).

*Support implementation of the local government electoral expenditure caps scheme*

The Amendment Act was assented to on 2 May 2023 and, other than parts 4A and 4B, commences by proclamation. The Amendment Act amends the LGEA, the *Local Government Act 2009* and the *City of Brisbane Act 2010* to establish an electoral expenditure caps scheme for local government elections. The scheme will first apply for the 2024 local government quadrennial election.

The Amendment Act aligns where appropriate with the electoral expenditure caps scheme for state elections under the *Electoral Act 1992* (EA), to provide uniformity and certainty to candidates, registered political parties and third parties who may participate in both local and state government election campaigns, and provide clarity for enforcement of both schemes by the Electoral Commission of Queensland (ECQ). Similarly, relevant provisions in the LGER 2023 align as appropriate with corresponding provisions in the *Electoral Regulation 2013* (ER).

The LGER 2023's key provisions supporting the new expenditure caps scheme provide for the following:

- a new start date for the capped expenditure period of 14 August 2023 (section 4)
- the 'relevant day' for the ECQ to decide the number of enrolled electors to remain as 1 July 2023 (section 5)
- qualifications for auditors (section 9), aligning with section 6 of the ER
- details to be included in a third party's application to become a registered third party (section 10), aligning with section 11A of the ER
- information to be included in records (sections 11 to 17), generally aligning with part 5AA of the ER
- the disclosure deadline for new returns for gifts or loans received by associated entities of candidates or groups of candidates (section 20), in alignment both with section 10A of the ER and with the disclosure deadlines for returns for gifts or loans received by candidates and groups (sections 18, 19 and 23)
- the disclosure deadline for returns for electoral expenditure incurred by 'relevant third parties' (section 25), in general alignment with the requirements for third parties under the LGER 2012
- approval of the ECQ's procedure for electronic lodgement of returns (section 27)
- minor changes to requirements which are being carried over from the LGER 2012, to align with terminology and section references in the Amendment Act. These relate to:
  - disclosure deadlines (sections 18, 19, 21, 22, 23, 24 of the LGER 2023)
  - prescribed information for publishing copies of returns and documents (section 26 of the LGER 2023).

These provisions are outlined in further detail below.

#### New start date for the capped expenditure period for 2024 quadrennial election

Section 123A(1)(a) of the LGEA provides for when a capped expenditure period starts for a quadrennial election. Under this section, the start date for the capped expenditure period for the 2024 quadrennial election would be 28 August 2023, in the event the election was to be held on 30 March 2024.

However, section 123A(2) of the LGEA provides that where a regulation fixes a day for a quadrennial election under section 23(3) of the LGEA, the capped expenditure period for the quadrennial election starts on a day prescribed by regulation. As the LGER 2023 prescribes the new election date as 16 March 2024 (two weeks earlier), it also prescribes a new start date for the capped expenditure period as 14 August 2023 (two weeks earlier).

#### 'Relevant day' for deciding the number of enrolled electors for the 2024 quadrennial election

Section 123S of the LGEA provides that the number of enrolled electors for an election is the number of persons decided by the ECQ under the section. The ECQ must decide the number as at the 'relevant day' for an election.

Section 123S(3)(a) of the LGEA defines the 'relevant day' for quadrennial elections to be 1 July in the year immediately before the quadrennial election. However, section 123S(4) provides that if the capped expenditure period for a quadrennial election is a day prescribed by a regulation under new section 123A(2) of the LGEA, the relevant day for the quadrennial election is a day prescribed by regulation. While it is not proposed that the relevant day changes from what is provided for in the LGEA, for clarity and in line with section 123S(4), the LGER 2023 nonetheless confirms 1 July 2023 as the relevant day.

#### Qualifications or experience for auditors

Section 106 of the LGEA defines 'auditor' as 'an individual who (a) has the qualifications or experience prescribed by regulation for this definition; and (b) is not, and has never been, a member of a political party.' This definition aligns with the definition of 'auditor' in section 197 of the EA. Section 6 of the ER prescribes the qualifications for an auditor for section 197 of the EA. Section 9 of the LGER 2023 prescribes the qualifications for an auditor for section 106 of the LGEA, in general alignment with section 6 of the ER.

#### Application for third party registration

The LGEA provides for a new system of third-party registration modelled on part 11 division 12 of the EA. Section 127F of the LGEA aligns with section 299 of the EA, providing that where a third party intends to incur electoral expenditure for an election, the third party may apply to the ECQ for registration for the election. The application must be in the approved form and include the details prescribed by regulation for the application.

Section 11A of the ER prescribes the details for section 299 of the EA for an application for registration of a third party for an election. Section 10 of the LGER 2023 prescribes the details for an application for registration of a third party for new section 127F of the LGEA, aligning with section 11A of the ER.

Prescribed information to be included in particular records to be kept

The Amendment Act amends the record keeping requirements in the LGEA, generally aligning with part 11, division 12A of the EA. Section 127N of the LGEA generally aligns with section 305AB of the EA by providing that a ‘relevant entity’ for an election must ensure a record about each ‘prescribed matter’ is made that includes the information required by regulation.

Part 5AA of the ER prescribes for section 305AB(1)(b) of the EA information to be included in records required to be kept about particular prescribed matters under section 305AB of the EA. Division 2 of the LGER 2023 generally aligns with part 5AA of the ER, prescribing for section 127N(1)(b) of the LGEA information that is required to be included in a record for a prescribed matter under section 127N of the LGEA. There are some minor differences between the LGER 2023 and the ER, for example, the ER reflects requirements in the EA under the donation caps scheme applying only to State elections.

Section 11 of the LGER 2023 provides for the purpose of the Division, in alignment with section 12A of the ER.

Section 12 of the LGER 2023 provides for records about gifts or loans made to or for the benefit of relevant entities and aligns generally with section 12C of the ER (Other gifts or loans made to or for the benefit of particular election participants).

Section 13 of the LGER 2023 provides for records about gifts or loans made by particular relevant entities to other relevant entities and aligns generally with section 12D of the ER (Political donations or other gifts or loans made by particular election participants to other election participants).

Section 14 of the LGER 2023 provides for records about gifts to third parties to enable political expenditure and aligns generally with section 12E of the ER (Gifts made to or for the benefit of a third party).

Section 15 of the LGER 2023 provides for records about electoral expenditure incurred and aligns generally with section 12F of the ER (Electoral expenditure incurred).

Section 16 of the LGER 2023 provides for records about amounts paid into the dedicated account of a candidate or group of candidates and aligns generally with section 12G of the ER (Amounts paid into State campaign account) in relation to candidates.

Section 17 of the LGER 2023 provides for records about amounts paid from the dedicated account of a candidate, group of candidates, registered political party that endorses a candidate in an

election, and a relevant third party and aligns generally with section 12H of the ER (Amounts paid from State campaign account) in relation to candidates and registered political parties.

#### Disclosure deadline for gift and loan returns by associated entities of candidates and groups

Section 106 of the LGEA defines ‘disclosure deadline’ for a return as the day or time prescribed by regulation for the giving of the return. Repealed sections 5 to 9A of the LGER 2012 prescribed the disclosure deadline for various return requirements under the LGEA. Where these sections are replicated with only minor amendments, the replicated sections are discussed under the heading ‘Minor and technical amendments’, below.

Sections 118AA and 120A of the LGEA provide for new requirements for gift and loan returns by associated entities of candidates or groups of candidates, aligning with section 294(1), (2) and (3) of the EA. Returns must be provided on or before the disclosure deadline.

Section 20 of the LGER 2023 prescribes the disclosure deadline for returns by associated entities of candidates and groups for gifts and loans received. The disclosure deadline is consistent with section 10A of the ER for returns under section 294 of the EA and with the disclosure deadline for returns by candidates or groups of candidates for gifts or loans received (sections 18, 19 and 23 of the LGER 2023), as follows:

- if the gift or loan is received 7 business days or less before the polling day for the election—24 hours after the gift/loan is received; or
- otherwise—the seventh business day after the gift or loan is received.

#### Disclosure deadline for returns by relevant third parties for electoral expenditure incurred

Section 25 of the LGER 2023 prescribes the disclosure deadline for returns for electoral expenditure incurred by relevant third parties for section 125B(3)(b) of the LGEA.

Former section 125A of the LGEA (omitted by the Amendment Act) provided for political expenditure returns by third parties. New section 125B of the LGEA provides for electoral expenditure returns by relevant third parties (registered third parties and third parties required to be registered, refer to section 106 of the LGEA) to be provided on or before the disclosure deadline for the return.

Under section 106A of the LGEA, the disclosure period for relevant third parties for section 125B starts on the day the capped expenditure period for the election starts and ends 30 days after the polling day for the election.

Under new section 127D of the LGEA, a third party may become a relevant third party after the capped expenditure period has begun (and therefore after the disclosure period has begun), and after the third party has already incurred expenditure required to be disclosed under new section 125B. Therefore, the disclosure deadline must take into account the fact that a third party may have incurred expenditure more than seven business days before the third party becomes a relevant third party and is consequently required to disclose the expenditure.

Accordingly, section 25 of the LGER 2023 prescribes for section 125B(3)(b) the disclosure deadline for electoral expenditure returns for relevant third parties as follows:

- if the amount is incurred before the day the third party is registered for the election, or is required to be registered for the election under section 127D of the LGEA, seven business days after the third party registers or is required to be registered, but not less than 24 hours before polling day;
- otherwise, the seventh business day after the amount is incurred.

#### Procedure for electronic lodgement of returns

Section 132A of the LGEA provides that the ECQ may make procedures about how a return under part 6 may be lodged electronically.

The procedures do not take effect until approved by a regulation; must be tabled in the Legislative Assembly with the regulation approving the procedures; and must be published on the ECQ's website.

Repealed section 10 of the LGER 2012 approved a procedure which has now been superseded. Section 27 of the LGER 2023 approves the 'Procedure for electronic lodgement of returns', version 3.0, made by the ECQ on 22 May 2023. The updated procedure reflects changes introduced by the Amendment Act.

#### Minor and technical amendments

Section 26 of the LGER 2023 (Prescribed information for publishing copy of return or document) replicates repealed section 9B of the LGER 2012, with minor consequential changes to section references, arising from the Amendment Act.

Sections 18, 19, 21, 22, 23 and 24 of the LGER 2023 replicate requirements in repealed sections 5 to 9A of the LGER 2012 with the following minor changes to reflect the Amendment Act and to clarify wording:

- section 18 prescribes for sections 117 and 120 of the LGEA the disclosure deadline for returns for gifts and loans received by candidates. The section heading to repealed section 5 of the LGER 2012 is changed to reflect amendments to section 117 and 120 in the Amendment Act, arising from the introduction of agents for candidates
- section 19 prescribes for section 118 of the LGEA the disclosure deadline for gifts received by groups of candidates. The section heading to repealed section 6 of the LGER 2012 is changed to clarify that the gift referred to is received by the group
- section 21 prescribes for section 118A of the LGEA the disclosure deadline for gifts received by third parties to enable political expenditure. The section heading to repealed section 7 of the LGER 2012 is changed to reflect amendments in the Amendment Act introducing agents for third parties, as the agent may be submitting the return.

- section 22 prescribes for section 118B of the LGEA the disclosure deadline for gifts made by third parties. Repealed section 9A of the LGER 2012 prescribed the disclosure deadline for returns for political expenditure by third parties under former section 125A of the LGEA. Former section 125A applied to both electoral expenditure incurred by and gifts made by third parties. The Amendment Act relocates the requirements in relation to gifts made by third parties to section 118B of the LGEA. The heading to and section references in section 22 of the LGER 2023 reflect this.
- section 23 prescribes for section 120 of the LGEA the disclosure deadline for returns for loans received by groups of candidates. The section heading to repealed section 8 of the LGER 2012 is changed to clarify that the loans referred to are received by groups of candidates.
- section 24 of the LGER 2023 prescribes for section 124 of the LGEA the disclosure deadline for electoral expenditure incurred by particular election participants. Minor changes are made to the section heading to repealed section 9 of the LGER 2012 for clarity. It should be noted that former section 124 of the LGEA applied to associated entities of political parties. Because the Amendment Act expanded the expenditure return requirements by including associated entities of candidate and groups in section 124, section 24 of the LGER 2023 has the effect of prescribing the same disclosure deadline for these new expenditure return requirements for associated entities of candidates and groups.

### *EAV eligibility and procedure*

#### EAV eligibility

Section 67 of the LGEA provides for ways in which votes can be cast, including EAV. Section 68 of the LGEA provides for who may cast votes in particular ways, including electors who may cast an electronically assisted vote. Section 68(5B) provides that if a procedure about how an elector may cast an electronically assisted vote has been made under section 75A of the LGEA, an elector may cast an electronically assisted vote (refer below under EAV procedure).

Repealed section 3 of the LGER 2012 prescribed ‘special postal voters’ and ‘distance voters’ for the purposes of section 68(5B) of the LGEA.

The LGER 2023 retains these classes of electors (with minor, technical amendments), while making two changes to eligibility for EAV. First, it clarifies that EAV is not available to special postal voters who are detained in lawful custody. The *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* amended section 69 of the LGEA to expand the categories of persons who must complete a declaration envelope for an election to include electors who are serving a sentence of imprisonment or are otherwise detained on polling day. The EA includes a similar provision (section 115(f)). This is reflected in the ER (section 4AA(1)(a)) which prescribes ‘special postal voters who are not detained in lawful custody’ as a class of electors who may make an electronically assisted vote. To ensure consistency with the LGEA and the ER, section 7(1)(a) of the LGER 2023 prescribes special postal voters who are not detained in lawful custody as a class of electors who may make an electronically assisted vote.

Second, section 7 (1)(c) of the LGER 2023 prescribes ‘out-of-State voters’ as an additional class of elector who may use EAV. The definition of ‘out-of-State voter’, for an election, is provided in



section 7(2) as ‘an elector who is not in Queensland at any time during the voting period’. This amendment enables electors who are enrolled in an electoral district in Queensland, but who are overseas or interstate at any time during the voting period for a quadrennial election or a by-election, to use EAV. The voting period is defined as the period starting on the first day that a pre-poll vote may be made for an election and ending on the close of the poll for the election.

### EAV procedure

Under section 75A of the LGEA, the ECQ may make procedures about how an elector may cast an electronically assisted vote. The procedures do not take effect until approved by a regulation, must be tabled in the Legislative Assembly with the regulation approving the procedures; and must be published on the ECQ’s website.

Repealed section 4 of the LGER 2012 approved a procedure which has now been superseded. Section 8 of the LGER 2023 approves the ‘Procedure for electronically assisted voting for local government elections’, version 3.0, made by the ECQ on 22 May 2023.

### *Transitional provisions*

Sections 29 and 30 of the LGER 2023 are transitional provisions addressing:

- references to the repealed LGER 2012
- information required to be included in a record, where the event that is the subject of the information occurred before the commencement.

## **Consistency with policy objectives of authorising laws**

The LGER 2023 is consistent with the policy objectives of the LGEA.

## **Inconsistency with policy objectives of other legislation**

The LGER 2023 is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

Benefits of implementation include the following:

- the date change for the 2024 local government quadrennial election means that the right to take part in public life will be promoted and the operational impacts of holding the election during the Easter holiday period will be addressed
- the local government electoral expenditure caps scheme will be fully operational, establishing a level playing field for election participants and delivering the policy objectives outlined in the explanatory notes to the Amendment Act
- an additional cohort of electors will be able to exercise their right to vote by accessing EAV and a revised EAV procedure document will be available

- requirements in the repealed LGER 2012 which remain necessary are replicated with minor changes
- unnecessary provisions are repealed and not replaced.

In relation to costs of the electoral expenditure caps scheme, the explanatory notes accompanying the Amendment Act noted that the State Government would incur additional costs in the implementation of the measures in the Amendment Act and that funding would be considered through standard budgetary processes. Funding was subsequently approved and costs will be managed within existing budget allocations.

In relation to EAV, a significant cost increase is not anticipated. Any cost increase would be managed within existing budget allocations.

Any other costs associated with the LGER 2023 will be met through standard budgetary processes.

## **Consistency with fundamental legislative principles**

The LGER 2023 is generally consistent with the 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 (section 4(2)(a) of the LSA). The amendments impact the following human rights: freedom of expression, freedom of association, taking part in public life and privacy and reputation. These impacts are addressed in the Human Rights Certificate.

## **Consultation**

On 21 April 2023, the Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure issued a statement advising that, on the advice of the ECQ, Cabinet had approved bringing forward the date of the 2024 local government election.

The ECQ, Local Government Association of Queensland and Local Government Managers Australia (Queensland) were consulted on the amendments in the LGER 2023 and raised no issues.

The department provided a sunset review of the LGER 2012 to the Office of Best Practice Regulation (OBPR) for assessment, in line with the *Queensland Government Guide to Better Regulation*. OBPR advised the requirements for a sunset review had been met and the proposal to remake the LGER 2012 with amendments had undergone sufficient regulatory impact analysis. OBPR advised no further regulatory impact analysis was required under the *Queensland Government Guide to Better Regulation*.