

# **Local Government (Moreton Bay City Council) and Other Legislation Amendment Regulation 2023**

Explanatory Notes for SL 2023 No. 91

made under the

*Hospital and Health Boards Act 2011*

*Industrial Relations Act 2016*

*Local Government Act 2009*

*Nature Conservation Act 1992*

*Planning Act 2016*

*Statutory Bodies Financial Arrangements Act 1982*

*Transport Infrastructure Act 1994*

*Waste Reduction and Recycling Act 2011*

## **General Outline**

### **Short title**

*Local Government (Moreton Bay City Council) and Other Legislation Amendment Regulation 2023*

### **Authorising law**

Section 282(1) of the *Hospital and Health Boards Act 2011*

Section 990(1) of the *Industrial Relations Act 2016*

Sections 8(4)(e), 20 and 270 of the *Local Government Act 2009*

Section 175(1) of the *Nature Conservation Act 1992*

Section 284(1) of the *Planning Act 2016*

Section 78 of the *Statutory Bodies Financial Arrangements Act 1982*

Section 490(1) and (3) of the *Transport Infrastructure Act 1994*

Section 271(2)(b)(i) of the *Waste Reduction and Recycling Act 2011*

## Policy objectives and the reasons for them

The policy objectives of the *Local Government (Moreton Bay City Council) and Other Legislation Amendment Regulation 2023* (the Regulation) are to:

- amend the *Local Government Regulation 2012* (LGR) to implement the recommendation of the Local Government Change Commission (the Commission) that there be a change to the classification of the Moreton Bay Regional Council (MBRC) to the Moreton Bay City Council
- make a range of consequential amendments to the LGR and other regulations across the statute book
- make transitional provision for references to MBRC in an Act or document.

### *Implement the Commission's recommendation*

Under the *Local Government Act 2009* (LGA), the Commission has jurisdiction to assess and make recommendations in relation to applications for local government changes. Local government changes are changes to a local government's boundaries, divisions (other than the City of Brisbane), number of councillors, name or classification (refer section 17 of the LGA).

Section 18 of the LGA provides that only the Minister for Local Government may propose a local government change to the Commission.

Section 19(1) of the LGA provides that the Commission is responsible for assessing whether a local government change is in the public interest. Section 19(3) provides that the Commission may conduct its assessment in any way that it considers appropriate, including, for example, by asking for submissions from any local government that would be affected by the proposed local government change or holding a public hearing to ask the public for its views about the proposed local government change.

Under section 19(2) the Commission must also consider:

- (a) whether the proposed local government change is consistent with a 'Local Government Act' (as defined in schedule 4 Dictionary)
- (b) the views of the Minister about the proposed local government change
- (c) any other matters prescribed under a regulation.

Section 13 of the LGR prescribes for section 19(2)(c) of the LGA the other matters to be considered if a proposed local government change relates to a change of the classification of a local government area.

Section 13(2) of the LGR lists the criteria for a local government area to be declared a city. The criteria are that:

- (a) the area is the centre of a region providing commercial, industrial, health and public sector services for the region; and
- (b) the area has, for the 3 years immediately before the declaration, had:
  - (i) a population of at least 25,000; and
  - (ii) a population of at least 15,000 in its urban centre; and

(iii) a population density of at least 150 people for each square kilometre of its urban centre.

On 16 September 2022, the Deputy Premier and then Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure (the Deputy Premier) referred a local government change application received from MBRC to the Commission for assessment.

MBRC's submission sought to have its local government area reclassified as a 'city' on the basis that the application met the criteria specified in section 13(2) of the LGR. MBRC argued reclassification would better reflect its characteristics as Australia's third largest local government area and such recognition would unlock various economic and social benefits.

On 27 April 2023, the Commission wrote to the Deputy Premier enclosing its report '*Electoral Arrangements Review - April 2023 - Moreton Bay Regional Council*' (the Commission report).<sup>1</sup> The Commission concluded that a change from 'region' to 'city' was in the public interest.

The Commission report noted that, in reaching its recommendation, it gave consideration to all views and materials presented to it, including the 'legislative requirements for classification as a city, community views on the proposed change and the local government principles of the *Local Government Act 2009*'. As the Deputy Premier did not provide any views on the proposed change in the review referral, this did not need to form part of the assessment.

#### *Consequential amendments and transitional provision*

MBRC is referred to in a number of Acts and regulations across the statute book. In addition to the LGR, the subordinate legislation listed below under 'Achievement of policy objectives' requires consequential amendments.

The policy objective also includes providing for transitional arrangements for references to MBRC or the 'Council of the Region of Moreton Bay' in an Act or a document.

## **Achievement of policy objectives**

Section 8(4)(e) of the LGA provides that a regulation may classify a local government area as a city, town, shire or region. Section 20 of the LGA provides that the Governor in Council may implement the Commission's recommendation under a regulation and that the regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change. Section 270(1) of the LGA provides that the Governor in Council may make regulations under the LGA.

The Regulation commences on notification and achieves the policy objectives as follows.

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<sup>1</sup> The Commission report is available at [www.ecq.qld.gov.au](http://www.ecq.qld.gov.au)

### *Implementation of Commission's recommendation*

Section 5(1) of the LGR states the classification of each local government area is mentioned in schedule 1, column 2. Section 6(1) of the LGR states the boundaries of each local government area, and any divisions of the area, are shown on its area map mentioned in schedule 1, column 3.

Schedule 1 of the LGR lists 'Prescribed information about local governments' as follows:

- column 2 prescribes the 'class' for each local government area
- column 3 prescribes the area map for each local government area.

For the purposes of section 5 of the LGR, section 5(1) of the Regulation amends schedule 1, column 2 of the LGR to update the 'class' for Moreton Bay local government area from 'region' to 'city'. For the purposes of section 6 of the LGR, section 5(2) of the Regulation amends schedule 1, column 3 of the LGR to update the local government area map title for Moreton Bay local government area from LGB 50 edition 5 to LGB 50 edition 6.

### *Consequential amendments*

#### LGR

Sections 3 and 6 of the Regulation amend the following provisions of the LGR, as a consequence of the change in classification:

- section 38 (Building certifying activity – Act, s 47) at the 13th dot point by replacing 'Regional' with 'City'
- schedule 4A (Matters relating to councillor advisors), entry for Moreton Bay Regional Council, in column 1, by replacing 'Regional' with 'City'.

#### Other subordinate legislation

The Regulation amends the following subordinate legislation to reflect the change of classification.

##### *Hospital and Health Boards Regulation 2012*

- schedule 1, entry for Metro North, column 2

##### *Industrial Relations Regulation 2018*

- schedule 5, part 2, item 46

##### *Nature Conservation (Protected Areas Management) Regulation 2017*

- schedule 1, entry for Beachmere Conservation Park, Buckleys Hole Conservation Park, Byron Creek Conservation Park, Neurum Creek Conservation Park, Sheep Station Creek Conservation Park and Wararba Creek Conservation Park, column 2

##### *Planning Regulation 2017*

- schedule 10, part 2A, division 1, section 3A(2)(b)
- schedule 10, part 2A, division 3, table 2, item 1, column 2

- schedule 24, definition *approved neighbourhood development plan*
- schedule 24, definition *local government area 1*, paragraph (h)
- schedule 24, definition *prescribed local government area*, paragraph (g)

*Statutory Bodies Financial Arrangements Regulation 2019*

- schedule 3, 2nd entry for *Local Government Act 2009*, column 2, 6th dot point
- schedule 4, 5th entry for *Local Government Act 2009*, column 2

*Transport Infrastructure (Public Marine Facilities) Regulation 2011*

- schedule 1, entry for Moreton Bay Regional Council, column 1
- schedule 1A, entry for Moreton Bay Regional Council, column 1

*Waste Reduction and Recycling Regulation 2011*

- schedule 2, part 1, item 6
- schedule 4A, column 1, entry for Moreton Bay Regional Council.

*Transitional provision*

Section 4 of the Regulation inserts new Chapter 22 ‘Transitional provision for Local Government (Moreton Bay City Council) and Other Legislation Amendment Regulation 2023’. New section 366 of the LGR provides that a reference in an Act or document to Moreton Bay Regional Council or the Council of the Region of Moreton Bay may, if the context permits, be taken to be a reference to Moreton Bay City Council or the Council of the City of Moreton Bay.

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

The Regulation is consistent with the purpose of the LGA which includes under section 3(a) providing for ‘the way in which a local government is constituted’.

The Regulation is consistent with the authorising law for the other regulations referred to above, as the consequential amendments to these regulations are minor technical amendments to update references.

## **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 Commission considered MBRC’s submission for change, and in particular the stated benefits to the community and the region as a whole, including:

- increased regional investment
- enhancement of planned economic initiatives
- fairer social outcomes for residents.

Reasons for opposition from the community to the change included concerns about the possible costs of implementation.

The Commission report noted that the ‘Commission was mindful that the cost of implementation was a legitimate public interest consideration’. It further noted that the MBRC submission advised that costs associated with the change of its corporate identity had not yet been estimated or quoted and that it had an existing operational budget of \$400,000 per annum for maintenance and replacement of signage, which could be used to cover any costs necessitated by a change to classification. MBRC also advised that it did not expect the costs to be immediate or significant.

The Commission report further noted MBRC’s statement that if a reclassification were recommended, it would request the works for replacement of brand, logo, signage and other materials to be scoped. However, it intended to continue to apply the policy position since amalgamation in 2008 (between the Pine Rivers Shire, Caboolture Shire and the City of Redcliffe) that signage would only be replaced as necessary.

In its Conclusions, the Commission report noted that MBRC had not explicitly outlined the actual costs of full implementation of the proposed change. However, it also noted that MBRC’s submission outlined a proposed policy of phased implementation from within existing allocations, including a commitment to ensuring the costs of implementing the proposed change were managed appropriately. Accordingly, this consideration was not of sufficient weight to balance the decision against the public interest.

The Commission considered the social and economic benefits MBRC had outlined for the region and the community, together with the fact that the proposed change was consistent with legislative provisions, meant that on balance the proposal to change the council’s status to ‘city’ was in the public interest.

## **Consistency with fundamental legislative principles**

The Regulation is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

## **Consultation**

The Commission report outlines MBRC’s community engagement process, conducted between February and May 2022. This included focus groups, the *Your Say Moreton Bay* survey, one-on-one in-depth ‘immersion sessions’ and community and business leader polls. The Commission report notes the key finding from the consultation process was that the proposed reclassification was not an overwhelmingly important issue for members of the community. However, participants who supported the change identified that the potential for more funding and investment in the region had strong appeal. Some respondents expressed concerns about the impact on rates and the possible cost of reclassification. MBRC reported that 55 per cent of survey participants supported or were neutral to the classification change and 45 per cent were opposed.

To assist and inform its assessment, the Commission also conducted consultation with the public, as allowed by section 19(3) of the LGA. Written submissions from the community were requested from 14 to 28 November 2022. MBRC's submission was published prior to the commencement of the public consultation. Submissions could be made by any person, by post, email or online form. This allowed any interested party, including residents and stakeholders, to provide their views for the Commission's consideration.

The Commission received 103 written submissions during the two-week submission period for the assessment. The majority of submissions (83) did not support a change to the classification, while 17 submissions supported a change, and three submissions did not express a definitive position. All submissions were published on the Electoral Commission of Queensland (ECQ) website following the conclusion of the consultation period.

The opposing submissions focussed on disagreement with MBRC's 'polycentric hubs' proposal, the different geographical characteristics of the region, the perceived lack of community consultation, and concerns about costs and potential rate increases.

The Commission noted that very few submissions were received in comparison to the population of the region and that it was difficult to generalise these responses as reflecting the views of most ratepayers.

The Commission report noted that, based on the submissions the Commission received, there were concerns within the community that the proposed change would lead to a changed strategic focus of the council and that the large rural areas and smaller townships within the Moreton Bay region would be adversely impacted in resourcing and funding decisions and representation of the views of those communities. The submissions in favour of the proposal were predominantly from the local business community who supported MBRC's view that a change of classification to a city would increase recognition and provide economic benefits. These views, expressed by MBRC and submissions in favour of the proposed change, argued that it would provide an opportunity to better promote the local government area.

The Commission noted that the system of local government in Queensland requires that councils be elected and make decisions in the best interests of their broader community in accordance with the local government principles under section 4 of the LGA. Notwithstanding the opposing feedback received, the Commission concluded that it had assessed various considerations associated with the electoral arrangements for MBRC and that the proposal to change its status to 'city' was in the public interest. In line with section 19(6) of the LGA, the Commission published its report on the ECQ's website on 28 April 2023 and notice of its final determination in the Queensland Government Gazette on 5 May 2023.

Consultation was not undertaken with the Office of Best Practice Regulation as the Department of State Development, Infrastructure, Local Government and Planning determined that the proposed Regulation was excluded from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation* exclusion category (g) – 'regulatory proposals that are of a machinery nature'.