

Local Government (Fraser Coast Regional Council—Suspension of Councillor) Amendment Regulation 2023

Explanatory notes for SL 2023 No. 132

made under the

Local Government Act 2009

General Outline

Short title

Local Government (Fraser Coast Regional Council—Suspension of Councillor) Amendment Regulation 2023

Authorising law

Sections 122 and 270 of the *Local Government Act 2009*.

Policy objectives and the reasons for them

On 28 July 2023, the Councillor Conduct Tribunal (CCT) handed down a decision about three allegations of misconduct against Councillor James Victor Hansen of the Fraser Coast Regional Council (FCRC).

The CCT found Councillor Hansen had engaged in misconduct in relation to the three allegations. The CCT ordered pursuant to section 150AR(1)(b)(ii) of the *Local Government Act 2009* (LGA) that Councillor Hansen is reprimanded and recommended pursuant to section 150AR(1)(b)(xi) of the LGA that ‘the Minister suspend the Councillor from office for not less than one (1) calendar month’.¹

Section 122 of the LGA provides that if the CCT recommends under section 150AR of the LGA that a councillor be suspended or dismissed, the Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister assisting the Premier on Olympic and Paralympic Games Infrastructure as Minister for Local Government may recommend that the Governor in Council suspend or dismiss the councillor.

¹ Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website, https://www.statedevelopment.qld.gov.au/__data/assets/pdf_file/0028/83278/councillor-james-hansen-frase-coast-regional-council.pdf

Under section 122(2)(a) of the LGA, the Minister recommended that the Governor in Council suspend Councillor Hansen as councillor of the FCRC for a period of one month, with pay, taking effect on 8 September 2023.

Section 122(3) of the LGA provides that the Governor in Council may give effect to the Minister’s recommendation under a regulation.

Achievement of policy objectives

The policy objective of *Local Government (Fraser Coast Regional Council—Suspension of Councillor) Amendment Regulation 2023* (the Regulation) is to give effect to the Minister’s recommendation that Councillor Hansen be suspended with pay for one month from 8 September 2023.

The Regulation inserts new section 253 under chapter 8, part 1, division 3 of the *Local Government Regulation 2012* to provide that from 8 September 2023, the nominated councillor is suspended from office as a councillor of the FCRC for one month with pay. The section expires on the day after the suspension period ends and defines ‘nominated councillor’ to mean James Victor Hansen.

Consistency with policy objectives of authorising laws

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

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 the Regulation are to enforce compliance with the local government principles and the appropriate standards for the behaviour of councillors as provided for in the LGA and the Councillor Code of Conduct and to provide for increased public confidence in a system of local government in Queensland that is accountable, effective, efficient and sustainable.

There are no anticipated costs of implementation.

Consistency with fundamental legislative principles

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

Sufficient regard to the rights and liberties of individuals

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

Human rights

The amendments limit the following human rights: freedom of thought, conscience, religion and belief, freedom of expression, taking part in public life and privacy and reputation. These limitations are addressed in the Human Rights Certificate which concludes the rights are limited only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Natural justice

Whether legislation has sufficient regard to rights and liberties of individuals also depends on whether the legislation is consistent with principles of natural justice (LSA section 4(3)(b)).

The principles of natural justice are principles developed by the common law. The first principle requires that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person's case to the decision-maker. The second principle is that the decision-maker must be unbiased. Third, the principles require procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.

Any potential breach of the FLPs is considered justified as Councillor Hansen was given natural justice through both the investigation process undertaken by the Office of the Independent Assessor and the hearing before the CCT.

Proportion and relevance and reasonableness and fairness in the treatment of individuals

Legislation should be reasonable and fair in its treatment of individuals and should not be discriminatory. Any consequences imposed by legislation should be reasonably proportionate and relevant to the actions to which the consequences apply.

The appropriate standards for the behaviour of councillors as provided for in the LGA and the Code of Conduct Councillor apply to all councillors, are easily accessible to councillors and are formulated in a way that enables councillors to regulate their conduct by the standards. Therefore, Councillor Hansen had the ability to regulate his conduct in accordance with the LGA and the Code of Conduct for Councillors and avoid the consequences for his misconduct.

Taking disciplinary action in the form of a suspension from office is in accordance with the purpose of the LGA, the local government principles, and the procedure for dealing with misconduct under the LGA. Noting the CCT's decision relates to three allegations of misconduct and that Councillor Hansen has also been found to have engaged in two other instances of misconduct, disciplinary action in the form of a suspension is also reasonable and proportionate.

In addition, noting the CCT's recommendation was to suspend Councillor Hansen from office for not less than one calendar month, any potential breach of the FLPs is considered justified as suspending Councillor Hansen for a period of one month, with pay, is the least restrictive way to implement the CCT's recommendation.

Privacy and confidentiality rights

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have generally been identified as relevant to consideration of whether legislation has sufficient regard to individual's rights and liberties.

The right to privacy is addressed in the Human Rights Certificate which concludes the right is limited only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Consultation

No consultation was undertaken, noting the Office of the Independent Assessor undertook an investigation process under the LGA and the CCT conducted a hearing before deciding Councillor Hansen engaged in misconduct and deciding the action to take under section 150AR of the LGA to discipline the councillor.

©The State of Queensland 2023