

# Local Government (Gold Coast City Council—Suspension of Councillor) Amendment Regulation 2023

Explanatory notes for SL 2023 No. 134

made under the

*Local Government Act 2009*

## General Outline

### Short title

*Local Government (Gold Coast City Council—Suspension of Councillor) Amendment Regulation 2023*

### Authorising law

Sections 122 and 270 of the *Local Government Act 2009* (LGA)

### Policy objectives and the reasons for them

Councillor Ryan Bayldon-Lumsden of the Gold Coast City Council (GCCC) was charged by police late on 23 August 2023 after a 58-year-old man was found dead at his family home at Arundel that afternoon. The councillor was charged with the murder of his mother's partner.

The councillor appeared in the Southport Magistrates Court on 24 August 2023, pleading not guilty.

On 31 August 2023, Councillor Bayldon-Lumsden was released on bail after a hearing in the Queensland Supreme Court.

Chapter 5 part 1 of the LGA provides for remedial action by the chief executive or by the Minister. Remedial action is defined to include action that is in the public interest, taken under division 2A (by the chief executive) or 3 (by the Minister) of chapter 5 part 1. This includes suspension or dismissal of a councillor by the Minister under section 122 of the LGA.

Section 120 of the LGA provides for preconditions the Minister must meet if the Minister proposes to exercise a power under division 3 of chapter 5 part 1 (i.e., to take remedial action).

In a circumstance where the proposed exercise of power is to make a recommendation to suspend or dismiss a councillor under section 122 of the LGA, the Minister is required to give the councillor

a notice of the proposal to make a recommendation to suspend or dismiss the councillor unless certain conditions are met, such as the Minister considering that giving notice is likely to defeat the purpose of the exercise of the power.

The notice must state a reasonable time within which the councillor may make submissions to the Minister about the proposal to exercise the power.

The Minister must have regard to all submissions that are made by the councillor within the time specified in the notice. If the Minister receives no submissions from the councillor within the time specified in the notice, or the submissions from the councillor do not contain reasonable grounds to persuade the Minister not to exercise the power, the Minister may exercise the power without further notice to the councillor.

Section 122 of the LGA provides for situations in which the Minister may recommend a councillor be suspended or dismissed, including if the Minister reasonably believes it is ‘otherwise in the public interest’ (section 122(1)(d) of the LGA).

Section 122(2)(b) provides that the Minister may recommend the councillor be suspended or dismissed for a period that is no longer than the period stated in the notice provided to the councillor under section 120 of the LGA.

On 4 September 2023, under section 120 of the LGA, the Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure provided to Councillor Bayldon-Lumsden written notice of the Deputy Premier’s proposal to recommend to the Governor in Council that the councillor be suspended from office until 30 April 2024, or the conclusion of the 2024 quadrennial election, whichever is earlier.

The notice stated that any submission Councillor Bayldon-Lumsden wished to make in relation to the proposed action should be made by close of business on 8 September 2023.

The Deputy Premier considered it in the public interest to suspend Councillor Bayldon-Lumsden, and accordingly, under section 122(2) of the LGA, the Deputy Premier recommended that the Governor in Council suspend Councillor Bayldon-Lumsden as councillor of the GCCC, with full pay, until 30 April 2024, or the conclusion of the GCCC’s 2024 quadrennial election, whichever is earlier.

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

Section 7 of the *Local Government Electoral Act 2011* (LGEA) provides that if a councillor is elected at an election of all councillors of the local government (e.g., in this case, a quadrennial election for GCCC), the conclusion of the election of a councillor is the day on which the last declaration of a poll conducted in the election is published on the electoral commission’s website under section 100(2) of the LGEA.

Section 100 of the LGEA provides that as soon as practicable after the result of a poll for an election is known, the electoral commission must declare the result of the poll, including on the electoral commission’s website.

## **Achievement of policy objectives**

The policy objective of the *Local Government (Gold Coast City Council—Suspension of Councillor) Amendment Regulation 2023* Amendment Regulation) is to give effect to the Deputy Premier’s recommendation that Councillor Bayldon-Lumsden be suspended with full pay until 30 April 2024, or the conclusion of the GCCC’s 2024 quadrennial election, whichever is earlier.

The Amendment Regulation inserts new section 253A under chapter 8, part 1, division 3 of the *Local Government Regulation 2012* to provide that the nominated councillor is suspended from office as a councillor of the GCCC, with pay, for the period starting on 15 September 2023 and ending on the earlier of the conclusion of the quadrennial election for the GCCC to be held in 2024, or 30 April 2024.

The section expires on 1 May 2024 and defines ‘nominated councillor’ to mean Ryan Bayldon-Lumsden.

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

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

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

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The benefits of the Amendment Regulation are to give effect to the Deputy Premier’s recommendation that Councillor Bayldon-Lumsden be suspended, based on his reasonable belief that it is in the public interest that the councillor be suspended.

There are no anticipated costs of implementation.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is generally consistent with the fundamental legislative principles (FLPs). Issues in relation to the FLPs 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 *Legislative Standards Act 1992* (LSA)).

#### *Human rights*

The amendments limit the following human rights: taking part in public life (section 23 of the *Human Rights Act 2019* (HR Act)) and privacy and reputation (section 25 of the HR Act). 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 because Councillor Bayldon-Lumsden was given notice of the proposal to exercise the power to recommend the councillor be suspended and an opportunity to provide submissions to the Deputy Premier in response, in accordance with section 120 of the LGA.

*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.

Taking remedial action in the form of a suspension from office is in the public interest and is in accordance with the purpose of the LGA and the local government principles.

Section 3 of the LGA provides that the purpose of the LGA includes to provide for a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Section 4 of the LGA provides that the local government principles include transparent and effective processes and decision-making in the public interest and democratic representation, social inclusion and meaningful community engagement and good governance of, and by, local government.

Finally, noting section 122(1)(d) of the LGA provides either for the suspension or dismissal of councillors if the Minister reasonably believes it is in the public interest, suspending Councillor Bayldon-Lumsden, with pay, is a less restrictive way to take remedial action under the section.

*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 and reputation (section 25 of the HR Act) 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**

The GCCC was consulted. Councillor Bayldon-Lumsden was provided with a notice under section 120 of the LGA.

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