

Local Government Legislation (Councillor Conduct) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 14

made under the

City of Brisbane Act 2010
Local Government Act 2009

General Outline

Short title

Local Government Legislation (Councillor Conduct) Amendment Regulation 2024

Authorising law

Sections 169A, 177C(1)(d) and 252 of the *City of Brisbane Act 2010*
Sections 150E(1), 150EF(1)(d), 169A and 270 of the *Local Government Act 2009*

Policy objectives and the reasons for them

The policy objectives of the *Local Government Legislation (Councillor Conduct) Amendment Regulation 2024* (the Amendment Regulation) are to amend the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to:

- approve a new ‘Code of Conduct for Councillors in Queensland’
- prescribe the statutory documents relevant to a new conflict of interest exemption
- prescribe the required information for approved councillor training
- provide for an updated Financial Management (Sustainability) Guideline
- make minor technical corrections.

Code of conduct

Section 150D of the *Local Government Act 2009* (LGA) requires the Minister for Local Government to make a code of conduct that sets out the standards of behaviour for councillors in performing their functions as councillors under the LGA or the *City of Brisbane Act 2010* (COBA). Under section 150E(1) of the LGA, the code of conduct does not take effect until it is approved by a regulation.

A new code of conduct was made by the Minister for Housing, Local Government and Planning and Minister for Public Works on 22 February 2024 to support reforms in the *Local Government (Councillor Conduct) and Other Legislation Amendment Act 2023* (the Amendment Act), including clarifying that the standards of behaviour apply only to a councillor's conduct whilst acting in their official capacity, not to a councillor's personal conduct. Other changes include updating the term 'inappropriate conduct' as well as several definitions.

In accordance with section 150E(1) of the LGA, amendments are proposed to the LGR to approve the new code of conduct.

Statutory documents for conflict of interest exemption

The Amendment Act amended the COBA section 177C and the LGA section 150EF to include additional 'ordinary business matters', enabling councillors to participate in more ordinary business matters of their local governments without giving rise to a conflict of interest.

In particular, the COBA section 177C(1)(d) and the LGA section 150EF(1)(d) provide that the councillor conflict of interest provisions do not apply in relation to a conflict of interest in a matter if the matter is solely, or relates solely to, preparing, adopting or amending a document prescribed by regulation that the local government is required to prepare or adopt under a 'local government related law' as defined under the COBA or a 'Local Government Act' as defined under the LGA.

Amendments are proposed to the CBR and the LGR to prescribe, for section 177C(1)(d) of the COBA and section 150EF(1)(d) of the LGA, a local government's investigation policy and annual operational plan.

Approved councillor training

The Amendment Act introduced compulsory training requirements for councillors.

Section 169A(1) of the COBA and section 169A(1) of the LGA require councillors to complete 'approved councillor training' about the responsibilities of councillors under section 14 of the COBA or section 12 of the LGA.

In addition, section 169A provides for a regulation to prescribe the following information for approved councillor training:

- period within which councillors must complete the training
- period within which the department's chief executive must publish a notice about the training on the department's website
- period within which the department's chief executive must give a written notice about the training to each local government and councillor
- requirements for the training, including the format of the training and how the training may be successfully completed.

Amendments are proposed to the CBR and the LGR to prescribe the required information for approved councillor training.

Financial Management (Sustainability) Guideline

A new ‘Sustainability Framework for Queensland Local Governments’ commenced on 1 July 2023, supported by nine new measures of financial sustainability and an updated Financial Management (Sustainability) Guideline to describe the new measures and the extent to which they apply to a local government’s financial planning and accountability documents.

Section 160(6) of the CBR and section 169(6) of the LGR prescribe the ‘measures of financial sustainability’ and schedule 4 of the CBR and schedule 8 of the LGR define the ‘financial management (sustainability) guideline’ to mean the document called ‘Financial Management (Sustainability) Guideline 2023’, version 1, made by the chief executive and published on the department’s website.

As a result of further stakeholder feedback, a new ‘Financial Management (Sustainability) Guideline 2024’, version 1 has been made to improve its usability for local governments, the Queensland Audit Office (QAO) and other stakeholders, including by simplifying and refining definitions to ensure clarity and alignment with QAO requirements.

Accordingly, amendments are proposed to the CBR and the LGR to reference the new Financial Management (Sustainability) Guideline.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives by:

- amending section 239A of the LGR to approve the code of conduct set out in the document called ‘Code of Conduct for Councillors in Queensland’ made by the Minister on 22 February 2024;
- inserting new section 242AB into the CBR to prescribe, for the purposes of section 177C(1)(d) of the COBA, the investigation policy adopted by Brisbane City Council under the LGA section 150AE as well as its annual operational plan adopted under the CBR section 166;
- inserting new section 254AB into the LGR to prescribe, for the purposes of section 150EF(1)(d) of the LGA, a local government’s investigation policy adopted under the LGA section 150AE and a local government’s annual operational plan adopted under the LGR section 174;
- inserting new section 242AA into the CBR and new section 254AA into the LGR to prescribe, for the purposes of section 169A of the COBA and section 169A of the LGA respectively, the following information:
 - approved councillor training relates to the code of conduct, registers of interests and dealing with conflicts of interest;
 - approved councillor training must be completed by a councillor elected at a local government election within the period ending 6 months after the conclusion of the local government election;
 - the department’s chief executive must publish a notice about approved councillor training on the department’s website: for the first training approved by the department’s chief executive – within 5 business days after the commencement of the Amendment Regulation; or otherwise – within 20 business days after the training is approved by the department’s chief executive;

- the department's chief executive must give a written notice about approved councillor training to each local government and councillor within the period ending 20 business days after the conclusion of each local government election (other than a by-election); and
- approved councillor training is provided through an electronic system that identifies each councillor who starts the training and records when the councillor completes the training; and
- amending the definition 'financial management (sustainability) guideline' in schedule 4 of the CBR and schedule 8 of the LGR to mean the document called 'Financial Management (Sustainability) Guideline 2024', version 1, made by the chief executive and published on the department's website.

The Amendment Regulation also makes minor amendments to:

- replace the word 'operation' with 'operational' in the CBR section 166 and the LGR section 174;
- insert a definition of 'conclusion', of a local government election, in the CBR schedule 4 and the LGR schedule 8; and
- replace the reference to '*Local Government Electoral Act 2011*' in the LGR schedule 5, section 12 with the defined term in the LGA, i.e. Local Government Electoral Act.

Consistency with policy objectives of authorising laws

The Amendment Regulation is consistent with the purposes of the COBA and the LGA which include providing for the nature and extent of a local government's responsibilities and powers and a system of local government that is accountable, effective, efficient and sustainable (section 3).

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 amendments will ensure the reforms implemented by the Amendment Act are fully operational before the new local government term commences in March 2024 and the Financial Management (Sustainability) Guideline 2024, version 1, is in place prior to the annual statutory financial reporting process for the 2023-2024 financial year.

Any costs to Government of implementing these amendments will be met through standard budgetary processes.

Consistency with fundamental legislative principles

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

The institution of Parliament

The fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament (LSA section 4(2)(b)). Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons; and if authorised by an Act (LSA section 4(5)(e)).

Sub-delegation of power – Code of conduct

The code of conduct is incorporated into legislation by reference as a document made by the Minister for Local Government.

The code sets out the principles and standards of behaviour expected of councillors when carrying out their roles as elected representatives for their communities and this detailed information is considered more appropriate to include in a code rather than legislation.

The code does not take effect until it is approved by regulation. The approved code of conduct must then be tabled in the Legislative Assembly with the regulation approving the code and must be published on the department's website. These safeguards ensure that this sub-delegation of legislative power is subject to the scrutiny of the Legislative Assembly.

Further, the date of the making of the code of conduct by the Minister for Local Government is referenced in the LGR as well as on the code itself.

Sub-delegation of power – Financial Management (Sustainability) Guideline

The Financial Management (Sustainability) Guideline is incorporated into legislation by reference as a document made by the chief executive of the department and published on the department's website.

It is a comprehensive document that is used by local governments in the calculation of measures of financial sustainability and would be unnecessarily complex to include in legislation.

The sub-delegation of legislative power is mitigated by the inclusion of a version number and year on the guideline and in the definition 'financial management (sustainability) guideline' in the CBR and the LGR, meaning that the updated guideline and any future changes made to the guideline require regulation amendments which are subject to the scrutiny of the Legislative Assembly.

Consultation

Comprehensive consultation was undertaken with stakeholders in 2022 and 2023 on the reforms contained in the Amendment Act, including with the Local Government Association of Queensland (LGAQ), Local Government Managers Australia (Queensland), the Crime and Corruption Commission and the Queensland Law Society. There was general support for the reforms.

In relation to the Amendment Regulation, consultation was undertaken with the LGAQ who are supportive of the regulation amendments needed to support the implementation of the Amendment Act.

The changes to the Financial Management (Sustainability) Guideline were made in consultation with QAO and Queensland Treasury Corporation.