

Local Government Legislation (Councillor Code of Conduct) Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Stirling Hinchliffe, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs provide this human rights certificate with respect to the *Local Government Legislation (Councillor Code of Conduct) Amendment Regulation 2020* made under the *City of Brisbane Act 2010* (COBA) and the *Local Government Act 2009* (LGA).

In my opinion, the *Local Government Legislation (Councillor Code of Conduct) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined below.

Overview of the Subordinate Legislation

In January 2017, an independent Councillor Complaints Review Panel published the report '*Councillor Complaints Review: A fair effective and efficient framework*' (Councillor Complaints Report) to provide for a more streamlined system for making, investigating and determining complaints about Councillor conduct in Queensland.¹ In particular, recommendation 5.1 of the Councillor Complaints Report stated that 'there should be a uniform mandatory Code of Conduct for Local Government Councillors in Queensland and a model code of meeting procedure'.

The Government implemented its response to the Councillor Complaints Report in the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* and the *Local Government Legislation (Councillor Complaints and Other Matters) Amendment Regulation 2018*. The framework implemented through these amendments applied to all Local Governments except BCC.

In 2018, the Department of Local Government, Racing and Multicultural Affairs undertook a review to determine whether the new Councillor complaints framework under the LGA should be wholly applied to the Brisbane City Council (BCC) to provide a single and independent Councillor complaints framework across all 77 Local Governments.

On 30 March 2020, certain provisions of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* (the Belcarra Stage 2 Act) commenced to amend the COBA and the LGA to apply the Councillor complaints framework under the LGA to Councillors of BCC.

¹ *Councillor Complaints Review: A fair effective and efficient framework* (the Councillor Complaints Report).

A copy of the report is available at:

<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1073.pdf>

A copy of the Government's response is available at:

<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1074.pdf>

To ensure the Councillor complaints framework is fully operational for BCC, amendments to the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR), to commence on notification of the Regulation, are required.

Approval of Code of Conduct for Councillors

Under the LGA Councillor complaints framework, section 150D of the LGA provided that the Minister must make a Code of Conduct that sets out standards of behaviour for Councillors in performing their functions as Councillors under the LGA. Section 150E of the LGA provides that the Code of Conduct does not take effect until approved by a regulation. Contravention of a behavioural standard may amount to unsuitable meeting conduct, inappropriate conduct or misconduct under the LGA Councillor complaints framework.

On 30 August 2018, the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs (the Minister) made the '*Code of Conduct for Councillors in Queensland*' which applied in relation to the performance of functions of Councillors under the LGA. The Code of Conduct was approved by section 239A of the LGR.

The Belcarra Stage 2 Act amended section 150D of the LGA to require the Minister to make a Code of Conduct for Councillors in performing their functions under the COBA and the LGA.

In accordance with amended section 150D of the LGA, the Minister made a new Code of Conduct on 7 April 2020 to apply to all Councillors in Queensland. Section 5 of the proposed Regulation amends section 239A of the LGR to approve the new Code of Conduct, in accordance with section 150E of the LGA.

The new Code of Conduct will set out standards of behaviour for Councillors to:

- carry out responsibilities conscientiously and in the best interests of the Council and the community
- treat people in a reasonable, just, respectful and non-discriminatory way
- ensure their conduct does not reflect adversely on the reputation of the Council.

The standards of behaviour in the Code of Conduct are consistent with the Local Government principles in section 4 of the LGA and section 4 of the COBA:

- transparent and effective processes, and decision-making in the public interest
- sustainable development and management of assets and infrastructure, and delivery of effective services
- democratic representation, social inclusion and meaningful community engagement
- good governance of, and by, Local Government
- ethical and legal behaviour of Councillors and Local Government employees

Declaration of office to include additional statement for BCC Councillors

Section 169 of the COBA provides that a Councillor must not act in office until the Councillor makes a declaration of office and that the declaration of office is prescribed under a regulation. The declaration of office is prescribed in section 241 of the CBR.

As part of the implementation of the LGA Councillor complaints framework, the declaration of office prescribed by regulation under section 169 of the LGA was amended to include a statement that a Councillor will abide by the Code of Conduct.

To align with the declaration of office under the LGR, section 3 of the proposed Regulation amends section 241 of the CBR so that Councillors must declare, before acting in office, that they will faithfully and impartially fulfil their duties as a Councillor in accordance with Local Government principles under the COBA and the Code of Conduct, to the best of their judgment and ability.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The regulation engages the following human rights protected by the HR Act:

- Freedom of expression (section 21 of the HR Act)
- Right to take part in public life (section 23 of the HR Act)

Freedom of expression (section 21 of the HR Act)

The right to freedom of expression protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication). The forms of protected expression are broad, and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

Right to take part in public life (section 23 of the HR Act)

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The United Nations Human Rights Committee considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The amendments may limit the rights to freedom of expression and to take part in public life.

The right to freedom of expression is limited to the extent that when the Code of Conduct takes effect it will reduce a Councillor's ability to express their opinion without interference, for example, the Code of Conduct requires Councillors to avoid making unnecessary or irrelevant comments or accusations about Councillors or Council employees in order to undermine them or their position.

The right to take part in public is limited by the Code of Conduct as it sets out standards of behaviour that restrict how a Councillor may behave when in office, for example, the Code of Conduct requires Councillors to ensure that their behaviour or capacity to perform their

responsibilities as a Councillor is not impaired by the use of substances that may put them or others at risk while performing their duties.

The right to take part in public life is also limited by the modification to the declaration of office for BCC Councillors as they cannot act in office until the prescribed declaration is made.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations is to promote integrity in Local Governments, including BCC, by providing for standards of behaviour for all Councillors to increase public confidence in Local Government and its decision-making and to help Councillors understand how the Local Government principles and values are to be put into practice while performing their official duties. The limitation also promotes the public's right to take part in public life by encouraging meaningful representation by their elected Local Government representatives.

Approval of the Code of Conduct will apply the same standards of behaviour to all Councillors in Queensland and inform Councillors of the behaviours expected by the community from their elected representatives, including that Councillors will represent the best interests of the Council and the community. The amendment to modify the declaration of office for BCC Councillors ensures they make the same declaration as other Councillors and are aware that they are required to fulfil their duties of the office in accordance with the Code of Conduct as well as the Local Government principles.

This purpose is consistent with a free and democratic society as it promotes public confidence in the system of Local Government as Councillors are elected representatives and are expected to model behaviour consistent with the values of the community.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitations imposed on Councillors' rights to freedom of expression and right to take part in public life by approving the Code of Conduct and modifying BCC Councillor's declaration of office achieve the purpose.

As the previous Code of Conduct did not apply to BCC Councillors, approval of the new Code of Conduct will ensure that the same standards of behaviour apply to all Councillors in Queensland. This promotes integrity in Local Governments by providing consistent standards of behaviour for all Councillors. The limitations on Councillors' freedom of speech are appropriate as they are intended to ensure that Councillors behave in a way that is in the best interests of the Local Government and the community, that Councillors treat people respectfully and ensure their conduct does not reflect adversely on the reputation of the Local Government.

Modifying the declaration of office for BCC Councillors to include a statement about Councillors fulfilling their duties of the office in accordance with the Code of Conduct will ensure consistency between all Local Governments and that Councillors are aware of their duties to comply with the Code of Conduct and their responsibilities to the Local Government and community.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive means reasonably available to achieve the purpose of promoting integrity in Local Governments, including BCC, and promoting the public's right to take part in public life by encouraging meaningful representation by their elected Local Government representatives.

The Councillor Complaints Report noted that providing a uniform Code of Conduct would be beneficial as it 'will make Councillors more aware of their obligations', especially where there had been a high turnover of Councillors at previous elections.² The Councillor Complaints Report also acknowledges that codes of conduct are increasingly being used to set standards of ethical behaviour for public and governmental organisations and has been adopted in Queensland by the Parliament, the cabinet and the public service.³

The amendments to approve the Code of Conduct and modify the declaration of office for BCC Councillors provides limitations on Councillors through a mechanism that reflects common practice in promoting integrity in public office in Queensland. There is no less restrictive means to ensure consistency of standards applying to all Councillors in Queensland and promoting integrity in Local Governments and the public's right to take part in public life.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on the right to freedom of expression and the right to take part in public life, and having regard to the information and analysis detailed above. I consider that the purpose of promoting integrity in Local Governments throughout Queensland and ensuring the public's interests are meaningfully represented by Councillors outweighs the negative impact of the approval of the Code of Conduct and modification of BCC Councillors declaration of office have on the right to freedom of expression and the right to take part in public life.

Conclusion

I consider that the *Local Government Legislation (Councillor Code of Conduct) Amendment Regulation 2020* is compatible with the HR Act because although it limits, restricts or interferes with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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Minister for Local Government,
Minister for Racing and
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² *Councillor Complaints Review: A fair effective and efficient framework* (the Councillor Complaints Report), pages 12 and 13.

³ *Councillor Complaints Review: A fair effective and efficient framework* (the Councillor Complaints Report), page 42.