

Local Government Legislation (Integrity) 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* (HR Act), I, the Honourable Stirling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs make this human rights certificate with respect to the *Local Government Legislation (Integrity) Amendment Regulation 2020* (the Regulation) made under the *City of Brisbane Act 2010* (COBA) and *Local Government Act 2009* (LGA).

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 30 June 2020, the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (the Integrity Act) received Assent. The policy objective of Chapter 5 of the Integrity Act is to continue the Government's rolling Local Government reform agenda guided by four key principles of integrity, transparency, diversity (reflecting electorate diversity) and consistency, as appropriate, with State and Commonwealth electoral and governance frameworks.

Chapter 5 of the Integrity Act includes amendments to the *City of Brisbane Act 2010* (COBA) and *Local Government Act 2009* (LGA) to:

- provide a new process that clarifies and further strengthens how a Councillor's conflicts of interest are managed;
- establish a framework for Local Governments to engage Councillor advisors to assist Councillors in performing their responsibilities;
- require the interests of a Councillor advisor and a person related to a Councillor advisor to be disclosed in a register of interests;
- limit the involvement of Brisbane City Council (BCC) Councillors in the appointment of BCC employees to the Chief Executive Officer (CEO) and senior staff who report to the CEO (senior executive employees).

On 24 January 2020, the Crime and Corruption Commission (CCC) tabled *Operation Yabber – An investigation into allegations relating to the Gold Coast City Council* (Yabber Report) in Parliament which made two recommendations in relation to the LGA to ensure stricter governance and accountability in Local Government. On 17 June 2020, the Government's response to the Yabber Report was tabled. The Government response supported recommendation 1 and supported recommendation 2 in principle.

Recommendation 1 was to amend the LGA to ensure that mayoral directions under section 170 of the LGA cannot be used to undermine the authority of CEOs to carry out their responsibilities. The Government's response to this recommendation was implemented in the Integrity Act. Recommendation 2 was to amend the LGA to clarify the responsibilities of

Mayors and Councillors for the management of Local Government employees and Councillor advisors and their adherence to codes of conduct. The Government response was that recommendation 2 can be addressed through the proposed Councillor Advisor Code of Conduct and amendments to the Code of Conduct for Councillors.

The objectives of the *Local Government Legislation (Integrity) Amendment Regulation 2020* (the Regulation) are to further continue the Government's Local Government reform agenda by amending the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to:

- promote transparency, accountability and consistency in relation to the requirements for the organisation and conduct of meetings of a Local Government and a committee of the Local Government (Local Government meetings);
- promote transparency, accountability and consistency in relation registers of interests;
- provide for the following matters in relation to Councillor advisors:
 - prescribe which Local Governments may engage Councillor advisors and the maximum number of Councillor advisors that may be appointed by Councillors in those Local Governments;
 - the criteria to which the Local Government Remuneration Commission must have regard when making a recommendation to the Minister about making a regulation relating to Councillor advisors;
 - register of interests requirements for Councillor advisors and persons related to them;
- approve a new Code of Conduct for Councillors under the LGR to implement recommendation 2 of the Government's response to the Yabber Report and to reflect the new process in the Integrity Act for managing Councillors' conflict of interest;
- make other minor and/or consequential amendments as necessary.

Human Rights Issues

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

In my opinion, the human rights relevant to the Regulation are:

- taking part in public life (section 23 of the HR Act)
- privacy and reputation (section 25 of the HR Act)

Consideration of reasonable limitations on human rights (section 13 HR Act)

Local Government and committee meetings

Taking part in public life (section 23 of the HR Act); privacy and reputation (section 25 of the HR Act)

(a) the nature of the right

The Regulation amends the CBR and LGR to provide new and amended requirements for meetings of a Local Government and its committees, including to:

- require notice of meetings to be published on the Local Government's website and in other appropriate ways rather than in a local newspaper and that notice must be given of committee meetings, as well as meetings of the Local Government;

- require that notice of a meeting given to a Councillor must include the agenda for the meeting and be given at least 2 days, or 4 days for an Indigenous Regional Council, before the meeting unless it is impracticable to do so before this time;
- require the agenda for a meeting, including reports or documents related to an item on the agenda (related report), to be made available at a Local Government's public office and on its website (publicly available);
- require the minutes of a meeting to include reports or documents that are directly relevant to a matter considered or voted on at the meeting or were presented for consideration or information at the meeting and for these to be made publicly available;
- provide statutory timeframes by when agendas, related reports and unconfirmed and confirmed minutes must be made available to the public;
- provide that if a meeting is exempt from keeping minutes, it must provide information about Councillor conflicts of interest to the Local Government in a written statement;
- clarify that part of a meeting of a Local Government or committee (as well as the whole meeting) may be closed to the public;
- narrow the matters that a Local Government or committee may close a meeting to discuss;
- prohibit closing a meeting at which certain decisions about prescribed conflicts of interest and declarable conflicts of interest are to be considered, discussed, or voted on or made;
- require a resolution to close a meeting to state the prescribed matter to be discussed and an overview of what is to be discussed;
- make other minor amendments to clarify the operation of the provisions.

The Regulation also prescribes requirements for BCC committees, which were previously unregulated. The requirements for BCC committees generally align with those applying to committees of other Local Governments and include a number of additional provisions to manage the discretion the Mayor has in attending, participating in or voting at any meeting of a standing committee under section 26 of the COBA.

The amendments to the requirements for meetings of a Local Government and committee engages the right to take part in public life and the right to privacy and reputation.

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 **right to privacy and reputation** protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

The Regulation limits the right to take part in public life as the amendments will allow a Local Government or committee to close all or a part of a meeting to discuss certain prescribed matters which will prevent the public from attending all or part of a meeting.

The right to privacy and reputation is limited to the extent that an advisory committee that is exempt from taking minutes must give the Local Government a written statement containing

the information about a Councillor's prescribed conflict of interest or declarable conflict of interest specified in section 177X COBA and section 150FA LGA. As a report or document directly relevant to a matter considered or voted on, or presented for consideration or information at the meeting at a meeting of a Local Government will be required to be included in the minutes for the meeting and made publicly available, the written statement containing a Councillor's conflict of interest could be disclosed to the public. This may also include personal information of persons who are 'close associates' or 'related parties' of the Councillor, as defined in the COBA and LGA, if the Councillor's conflict of interest arises from the interests of the close associate or related party. A Councillor's 'close associate' or 'related party' includes a Councillor's parents, spouse, sibling or child.

(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 to be imposed in relation to closed meetings is to ensure that Local Governments are able to manage sensitive information, such as legal advice and industrial matters affecting employees, confidentially while also ensuring the public is sufficiently aware of the matters being discussed in closed meetings.

The purpose of the requirement for information about a Councillor's conflict of interest to be given to the Local Government is to promote accountability and transparency and ensure that Local Government decision-making in relation to a report made by an advisory committee is in the public interest. The opportunity for the public to scrutinise the written statement in the minutes of a meeting of a Local Government will also foster public confidence that Local Government decisions are made in the public interest.

These purposes are consistent with a free and democratic society where the community expects a Local Government to act with integrity and in the public interest but also to uphold stakeholder expectations and Local Government obligations to manage sensitive information confidentially.

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

The limitations imposed on the rights to take part in public life and privacy and reputation will help achieve the purpose of promoting accountability and transparency in Local Government decision-making and assist Local Government with managing sensitive information.

The Regulation provides for a balance between transparency and confidentiality by providing clear guidance to a Local Government and its committee about when and how a meeting may be closed. The amendments to the list of prescribed matters that may be discussed in closed meetings will ensure that a Local Government and committee are only permitted to discuss appropriately sensitive matters in closed meetings. Further, it is clarified that a part of a meeting can be closed to discuss a prescribed matter to ensure that a whole meeting is not closed for all matters to be discussed because one matter may be discussed in a closed meeting.

The Regulation also requires that a resolution to close a meeting must state which type of matter from the prescribed list is to be discussed and an overview of what is to be discussed while the meeting is closed, rather than simply stating the nature of the matter to be discussed. This will

increase transparency by giving the community a better overview of the matters discussed by the Local Government without breaching the confidentiality of the matter.

The right to take part in public life is promoted by the amendments requiring additional public notification of dates and times for meetings, agendas, report and documents and minutes of meetings. This promotes dialogue between the public and Councillors about matters affecting the community by ensuring the community is informed about when the Local Government and its committees are to meet, what matters are to be discussed and has access to related reports provided to Councillors. The statutory timeframes for making agendas, related reports and minutes available will also provide certainty to the community and ensure that this information is provided in a timely manner.

The right to take part in public life is also promoted by the amendments relating to BCC committees which ensure that the Brisbane community has access to the same information about matters to be discussed by BCC committees as communities in other Local Government areas.

The limitations imposed on the rights to privacy and reputation promote accountability and transparency in Local Government decision-making by requiring Councillors to give notice of their interests if the conflict arises in relation to a matter before an advisory committee that is exempt from taking minutes. The requirement to provide a written statement containing details required in the COBA and LGA about conflicts of interest that are notified in a meeting ensures that conflicts of interest are recorded in all circumstances. This promotes public confidence in the system of Local Government and ensures good governance of, and by, Local Government. Although the rights of a Councillor's close associates and related parties may be similarly limited, requiring the disclosure of information about them is necessary to achieve the purpose as their personal interests in a matter may also give rise to a conflict of interest on the part of the Councillor in that matter.

The extent of the limitation on the right to privacy and reputation of a Councillor is mitigated as a Councillor has a diminished expectation of privacy as an elected representative and public official. This is not, however, the same for the Councillor's 'close associates' or 'related parties', whose right to privacy is diminished. In the context of reputation, it could be said that disclosure of particulars of a conflict of interest may impact on the perception of the Councillor and their close associates or related parties by others.

The limitations promote transparency in Local Government decision-making and ensure good governance of, and by, Local Government, while balancing the need for sensitive matters to be managed confidentially.

(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 purposes of promoting accountability and transparency in Local Government and enabling Local Government to manage sensitive matters confidentially.

The limitation on the right to take part in public life could be lessened by removing the ability of a Local Government to close a meeting and requiring all meetings to be open to the public. However, this would not reflect that in a range of circumstances it is necessary and appropriate for Local Governments to confidentially discuss certain matters.

The limitation relating to the right to privacy and reputation could have been less restrictive if the Regulation did not prescribe the details to be disclosed or did not require disclosure of information about persons other than the Councillor. However, this may result in Councillors making rudimentary declarations which do not provide a sufficient level of detail to enable the community to understand the nature of a Councillor's conflicts of interest in a matter.

(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 take part in public life and the right to privacy and reputation, and having regard to the information and analysis above, I consider that the purpose of promoting accountability and transparency and balancing the necessity for a meeting of a Local Government or committee to be closed to confidentially manage sensitive matters outweighs the negative impact of the limitations.

Register of interests

(a) the nature of the right

The Regulation amends the CBR and LGR to provide new and amended requirements for register of interest requirements, to:

- provide for management of a register of interests for a Councillor advisor and a person related to them;
- clarify that a register of interests consists of all the forms or other documents used to inform the person required to maintain the register about an interest that must be recorded in the register;
- require a Local Government to keep registers of interests for specified periods and to make the register of interest of a former Councillor available for public inspection at the Local Government's public office for the period the Local Government is required to keep the register of interest;
- update the references to 'senior contract employees' in the CBR to refer instead to 'senior executive employees' to reflect a change made in the Integrity Act;
- amend the particulars to be included in a register of interests to provide for greater consistency with Statement of Interest requirements for State Members of Parliament and between persons required to disclose interests in a register of interest, to reflect changes to be made by the Integrity Act, to reduce duplication in disclosure requirements or to make drafting amendments;
- insert a new requirement to disclose executive officer appointments with organisations other than corporations, political party or trade or professional organisations and donations made totalling \$500 or more provide for greater consistency with Statement of Interest requirements for State Members of Parliament;
- make other minor amendments to clarify the operation of the provisions.

The amendments to the register of interest framework engages the right to privacy and reputation.

The **right to privacy and reputation** protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The

scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

The right to privacy and reputation is limited to the extent that the disclosure of the interests of a Councillor advisor and a person related to them will necessarily require the disclosure of personal information. A related person includes a spouse, a child or another person whose affairs are so closely connected to a Councillor advisor that a benefit derived by the person, or a substantial part of it, could pass to them.

The right to privacy and reputation is also limited for all relevant persons as the new and amended requirements for the particulars to be included in a register of interest will require identifying details of the interest and in some circumstances the name of a person, such as a donor.

(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 accountability and transparency in Local Government by ensuring that a relevant person's personal interests can be identified and managed if a personal interest may conflict with a Councillor's, CEO's, SEE's or Councillor advisor's duty to perform their responsibilities in accordance with the Local Government principles including decision-making in the public interest.

The Regulation promotes the right to privacy and reputation for certain BCC senior staff, and a person related to them. The Integrity Act will amend the COBA to provide that BCC will be responsible only for appointing senior staff who report directly to the CEO (senior executive employees) rather than all employees who are employed on a contractual basis and classified by the Council as 'senior executive service' (senior contract employees). The CBR currently requires senior contract employees and persons related to them to have a register of interest. The Regulation will be amended to reflect the COBA change which will mean that any staff who were senior contract employees but who do not report directly to the CEO are no longer required to disclose their interests in a register of interests.

There is a reasonable expectation from members of the general public that the interests of a relevant person are appropriately identified, monitored and managed so that a Local Government can mitigate the risk of undue influence to ensure all decisions are made in the public interest. This purpose is consistent with a free and democratic society where the community expects Local Governments to act with integrity and in the public interest and that processes will be in place to minimise corruption risks in Local Government decision-making.

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

The limitations imposed on the right to privacy and reputation will help achieve the purpose of promoting accountability and transparency in the management of conflicts of interest and Local Government decision-making.

The register of interests requirements apply to persons who may make decisions on behalf of the Local Government, either as a Councillor making a decision in a Local Government meeting or as a delegate, and persons related to them. For a Councillor advisor, the need for accountability and transparency arises because of their proximity to decision-makers and ability to influence decision-making in Local Government in their role in advising Councillors, including about confidential and sensitive Local Government matters.

The matters to be disclosed in a register of interest relate to financial or other interests that may give rise to a conflict of interest or corruption risk in relation to matters to be considered and decided by Local Governments. For example, if a relevant person is an executive officer of a company that has submitted a tender to a Local Government, this may present a conflict of interest risk, whether they are related to, have influence over, or are themselves a decision-maker for the tender.

The new and amended requirements for particulars to be disclosed by a relevant person makes it abundantly clear what the expectations are in relation to their disclosure obligations. The Regulation provides clear guidance about which interests are required to be disclosed and what particulars are required to accompany the disclosure. Further, gifts, sponsored travel and accommodation benefit and donations received from or made to family members and friends are exempted from disclosure if the relevant person is satisfied that they could not give rise to a conflict of interest in relation to a relevant person's duties under the COBA or LGA. This ensures only relevant information is disclosed to assist with identifying any conflicts that may arise.

In the context of reputation, the limitation on the right is lessened for a relevant person, other than a Councillor, to the extent that their register of interests may only be inspected by a Councillor, the CEO or another person permitted by law. Although a Councillor's register of interest is required to be made publicly available, there is a diminished expectation of privacy for a Councillor due to their role as an elected representative and public official.

This will help achieve the purpose of promoting accountability and transparency in a Local Government by assisting with the monitoring and management of any potential conflicts of interest to ensure Local Government decisions are informed and made in the public interest.

(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 accountability and transparency in Local Government and assisting Local Government with managing interests of a relevant person to mitigate undue influence over a Local Government decision.

The Regulation minimises the limitation to the right to privacy and reputation of a Councillor advisor and a person related to them, by specifying the interests and details of the interests to be disclosed and restricting access to their register of interests to a Councillor, CEO or another person permitted by law and providing a penalty if a register of interest is knowingly disclosed to another person. This will reserve the disclosure of personal information for internal use of a Local Government to manage conflicts of interests risks or as otherwise permitted by law.

The limitation on the right in relation to the interests and information to be disclosed, including the new and amended requirements, could be have been less restrictive if the Regulation did

not prescribe the details to be disclosed or did not require disclosure of information about persons other than a relevant person, for example, the disclosure of the name of a donor of a gift or recipient of a donation from a relevant person. However, this may result in disclosures that are insufficient to identify personal interests that may unduly influence a Local Government decision.

(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 privacy and reputation, and having regard to the information and analysis above, I consider that the purpose of promoting accountability and transparency by ensuring that a relevant person's personal interests can be identified, managed and monitored if an interest conflicts with their duty to serve the public interest outweighs the negative impact of the limitations.

Conclusion

I consider that the Regulation 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.

HON. STIRLING HINCHLIFFE MP
MINISTER FOR LOCAL GOVERNMENT,
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