

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

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, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure provide this human rights certificate with respect to the *Local Government (Fraser Coast Regional Council—Suspension of Councillor) Amendment Regulation 2023* (the Regulation) made under the *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

The purpose of the Regulation is to amend the *Local Government Regulation 2012* (LGR) to give effect to the recommendation of the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure as the Minister for Local Government to suspend from office Councillor James Victor Hansen, councillor of the Fraser Coast Regional Council (FCRC).

On 28 July 2023, the Councillor Conduct Tribunal (CCT) handed down a decision about three allegations of misconduct against Councillor Hansen, 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 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 Minister for Local Government may recommend that the Governor in Council suspend or dismiss the councillor.

Under section 122(2)(a) of the LGA, the Minister for Local Government recommended that the Governor in Council suspend Councillor Hansen as councillor of the FCRC for a period of one month.

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

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-fraser-coast-regional-council.pdf

Human Rights Issues

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

In my opinion, the human rights under the HR Act that are relevant to the Regulation are:

- freedom of thought, conscience, religion and belief (section 20 of the HR Act);
- freedom of expression (section 21 of the HR Act);
- the right to take part in public life (section 23 of the HR Act); and
- the right to privacy and reputation (section 25 of the HR Act).

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

(a) the nature of the rights

The *right to freedom of thought, conscience, religion and belief* encompasses the right of everyone to develop autonomous thoughts and conscience, to think and believe what they want and to have or adopt a religion, free from external influence, and to demonstrate the religion or belief through worship, ritual, practice and teaching. It protects religious belief as well as atheistic, agnostic, cultural, philosophical, academic, social or personal beliefs. There is no requirement in the right that the religion or belief have any ‘institutional characteristics’ or practices associated with traditional or mainstream religions.

The right recognises that people are entitled to have differing beliefs in a pluralistic society. Freedom has been characterised to mean that, ‘subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.’²

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 impart information and ideas of all kinds (including verbal and non-verbal communication). The forms of protected expression are broad, and include almost all forms of expression, including verbal (oral, writing and print), or through art or conduct. The right to freedom of expression and the free flow of information and ideas between people and through the media, particularly about public and political issues, is considered to be a foundation stone of a free and democratic society.

The underlying values and interests represented by a right to the freedom of expression have been described as ‘freedom, self-actualisation and democratic participation for individuals personally; and freedom, democracy under the rule of law and ensuring governmental transparency and accountability for society generally’. The right includes a concept of freedom of expression as a political right, aimed at integrating the individual in society with the focus on the political, collectivising function.

The CCT found Councillor Hansen engaged in misconduct concerning three allegations that the Councillor had made posts, comments or ‘likes’ on Facebook which were inappropriate statements relating to the COVID-19 pandemic (allegation 1), or were offensive, racist and discriminatory towards Indigenous persons (allegation 2) and transgender persons (allegation 3)³.

² *R v Big M Drug Mart Ltd* [1985] 1 SCR 295, 336–7, 351

³ 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-fraser-coast-regional-council.pdf

These allegations relate to thoughts and opinions held and expressed by Councillor Hansen. Therefore, suspending Councillor Hansen due to his misconduct in relation to making these statements limits his right to freedom of thought, conscience, religion and belief and his right to freedom of expression because the suspension could deter Councillor Hansen, while he holds a position as Councillor, from making certain kinds of statements in the future, including the expression and publication of his personal views and beliefs.

In the same way, the suspension limits other councillors' rights to freedom of thought, conscience, religion and belief and rights to freedom of expression because the suspension could deter other councillors from making certain kinds of statements in the future, including the expression and publication of their personal views and beliefs.

The *right to take part in public life* protects the right and opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. Every eligible person has the right, and is to have the opportunity, without discrimination, to vote and be elected at State and local government elections that guarantee the free expression of the will of the electors, and to have access, on general terms of equality, to public office.

Suspending Councillor Hansen limits his right to take part in public life because, for the one-month period of his suspension, he will not have access to the public office to which he was elected and will not be able to carry out the role and responsibility of a councillor.

Suspending Councillor Hansen also limits the rights of constituents in his division to be represented by Councillor Hansen during the period of his suspension.

The *right to privacy and reputation* protects the individual from unlawful or arbitrary interferences with their privacy, family, home, correspondence (written and verbal) and reputation. It also protects a person from having their reputation unlawfully attacked.

The right to privacy also extends to an individual's private life more generally. For example, the right to privacy protects the individual against interference with their freedom of thought and conscience.

Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The European Court of Human Rights has also said that an interference will be lawful if it is authorised by a law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it.⁴

As discussed above, suspending Councillor Hansen limits his right to freedom of thought and conscience. Therefore, suspending Councillor Hansen also limits his right to privacy and reputation because the right to privacy protects an individual against interference with their freedom of thought and conscience.

In addition, Councillor Hansen's right to privacy and reputation is limited because his reputation could be negatively impacted by the disciplinary action being taken against him in his role as a councillor in the form of a suspension from office, enacted by a regulation made by the Governor in Council.

(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

⁴ *Sunday Times v United Kingdom* [1979] ECHR 1, [49]

The suspension gives effect to the CCT’s recommendation that Councillor Hansen be suspended from office for not less than one calendar month. The purpose of suspending Councillor Hansen is, pursuant to section 150AR(1)(b)(xi) of the LGA, to take disciplinary action against Councillor Hansen’s misconduct as defined in section 150L(1)(b)(i) of the LGA in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.

The CCT found Councillor Hansen’s misconduct was inconsistent with the local government principles of ‘democratic representation, social inclusion and meaningful community engagement’ and ‘ethical and legal behaviour of councillors, local government employees and councillor advisors’ (section 4(2)(c) and (e) of the LGA), the councillor’s responsibility to provide ‘high quality leadership to the local government and community’ (section 12(3)(b) of the LGA) and the Code of Conduct for Councillors standards of behaviour to:

- respect and comply with all policies, procedures and resolutions of Council;
- have proper regard for other people’s rights, obligations, cultural differences, safety, health and welfare; and
- ensure conduct does not reflect adversely on the reputation of Council.⁵

Disciplinary action reinforces the appropriate standards for the behaviour of councillors as provided for in the LGA and the Code of Conduct for Councillors (Chapter 5A of the LGA), with the purpose of achieving a local government that is accountable, effective, efficient and sustainable (section 3 of the LGA), an important outcome for the community. The disciplinary action is in accordance with, and upholds, the local government principles of democratic representation, social inclusion and meaningful community engagement and ethical and legal behaviour of councillors, local government employees and councillor advisors.

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

The identified human rights are limited by suspending Councillor Hansen for a period of one month, which is a disciplinary action as defined in section 150AR of the LGA. The disciplinary action reinforces the appropriate standards for the behaviour of councillors by encouraging Councillor Hansen to, while he is a Councillor, express his views and act in a way that is in accordance with the local government principles of democratic representation, social inclusion and meaningful community engagement and ethical and legal behaviour of councillors and the Code of Conduct for Councillors.

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

Noting the CCT’s recommendation was to suspend the Councillor from office for not less than one calendar month, the Minister for Local Government had the option to recommend Councillor Hansen be suspended for more than one month.

In addition, under section 150AR(4) of the LGA, a recommendation to suspend a councillor may include a recommendation about the details of the suspension, including, for example, whether the councillor should be remunerated during the period of the suspension. The Deputy Premier had the option to recommend Councillor Hansen be suspended without pay.

⁵ Code of Conduct for Councillors in Queensland, made by the then Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs on 30 August 2018
https://www.statedevelopment.qld.gov.au/__data/assets/pdf_file/0017/45170/code-of-conduct-for-queensland-councillors.pdf

Therefore, suspending Councillor Hansen for a period of one month, with pay, is the least restrictive way to implement the CCT's recommendation and to achieve the purpose of taking disciplinary action against Councillor Hansen's misconduct and upholding the appropriate standards for the behaviour of councillors.

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

There is a balance between the importance of taking disciplinary action against Councillor Hansen's misconduct and the importance of preserving the human rights in question.

Taking disciplinary action against Councillor Hansen's misconduct by suspending him from office reinforces appropriate standards for the behaviour of councillors which is necessary to maintain a system of local government in Queensland that is accountable, effective, efficient and sustainable, an important outcome for the community of Queensland.

Taking the 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.

In terms of the nature and extent of the human rights limitations, Councillor Hansen had the ability to regulate his conduct in accordance with the appropriate standards for the behaviour of councillors as provided for in the LGA and the Code of Conduct for Councillors, which are easily accessible to councillors and formulated in a way that enables a councillor to regulate their conduct by the standards.

The CCT noted in its summary of the decision and reasons that a person voluntarily seeks election as a councillor, and upon becoming a councillor is given significant training on their obligations and responsibilities arising under the LGA. Councillors may resign, retire, or not seek re-election at any time and for any reason (or for no reason) and may resign if they disagree with the limitations on their freedoms as required by the LGA and the Code of Conduct for Councillors.

The CCT also noted that to achieve a local government that is accountable, effective, efficient and sustainable as required by the LGA, it is a necessary and legitimate restriction on persons who voluntarily seek election as councillors that their conduct be circumscribed by a set of standards, which were endorsed by Parliament in full recognition of the potential implications of those standards on the human rights of persons so affected.⁶

(f) any other relevant factors

Suspending Councillor Hansen for a period of one month is a recommendation of the CCT. There is no compelling reason to not follow the CCT's recommendation, noting the CCT has conducted a hearing, Councillor Hansen was given natural justice through both an investigation process undertaken by the Office of the Independent Assessor and the hearing before the CCT, and that, following this process, the CCT has determined that suspending the Councillor is an appropriate sanction for the Councillor's conduct.

⁶ 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-fraser-coast-regional-council.pdf

Conclusion

I consider that the *Local Government (Fraser Coast Regional Council—Suspension of Councillor) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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DEPUTY PREMIER
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and Minister Assisting the Premier
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