

Local Government (Gold Coast City 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 (Gold Coast City Council—Suspension of Councillor) Amendment Regulation 2023* (Amendment Regulation) made under the *Local Government Act 2009* (LGA).

In my opinion, the Amendment 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 Amendment Regulation is to amend the *Local Government Regulation 2012* (LGR) to give effect to the recommendation of the Deputy Premier as the Minister for Local Government to suspend from office Councillor Ryan Bayldon-Lumsden, councillor of the Gold Coast City Council (GCCC) until 30 April 2024, or the conclusion of the GCCC's 2024 quadrennial election, whichever is earlier.

Councillor Ryan Bayldon-Lumsden of the 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 appeared in the Southport Magistrates Court on 24 August 2023, pleading not guilty to murder.

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.

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 Amendment Regulation are:

- 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 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 Bayldon-Lumsden limits his right to take part in public life because, for the 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 Bayldon-Lumsden also limits the rights of constituents in his division (division 7 of GCCC) to be represented by the councillor 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.

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.

Councillor Bayldon-Lumsden'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

The suspension gives effect to the Deputy Premier's recommendation that Councillor Bayldon-Lumsden be suspended from office, with pay, until 30 April 2024, or the conclusion of the GCCC's 2024 quadrennial election, whichever is earlier.

The purpose of suspending Councillor Bayldon-Lumsden is to uphold the public interest, noting the Deputy Premier considered it is in the public interest to suspend Councillor Bayldon-Lumsden.

The decision to suspend Councillor Bayldon-Lumsden is consistent with the purpose of the LGA which includes to provide for a system of local government in Queensland that is accountable, effective, efficient and sustainable (section 3 of the LGA) and the local government principle of transparent and effective processes and decision-making in the public interest (section 4 of the LGA).

(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 Bayldon-Lumsden from office, which is considered to be in the public interest as per section (b), above.

(d) 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 upholding the public interest by suspending Councillor Bayldon-Lumsden and the importance of preserving the human rights in question.

As discussed under section (b), above, suspending Councillor Bayldon-Lumsden from office is considered by the Deputy Premier to be in the public interest. The Deputy Premier weighed the public interest considerations in favour of suspending Councillor Bayldon-Lumsden and competing public interest considerations.

In addition, as discussed under section (b), above, the suspension is in accordance with the purpose of the LGA and the local government principles.

In terms of the nature and extent of the human rights limitations, regarding the right to take part in public life for constituents in Division 7 of GCCC, section 12 of the LGA places a responsibility on all councillors to represent the current and future interests of all the residents of the local government area.

Regarding Councillor Bayldon-Lumsden’s right to take part in public life, Councillor Bayldon-Lumsden is not being dismissed, and even as a suspended councillor, he has the opportunity to run for election as a suspended councillor in the 2024 local government quadrennial election.

Regarding the right to privacy and reputation, the limitation is lawful and non-arbitrary; the authority to suspend a councillor by regulation is provided for in section 122 of the LGA and the suspension is reasonable, necessary and proportionate, noting the Deputy Premier considers it in the public interest to suspend Councillor Bayldon-Lumsden.

(e) any other relevant factors

The Amendment Regulation gives effect to the Deputy Premier’s recommendation under section 122 of the LGA. The Deputy Premier made his recommendation having weighed the public interest considerations in favour of suspending Councillor Bayldon-Lumsden, and competing public interest considerations, and considered his recommendation compatible with human rights under sections 8 and 13 of the HR Act.

Conclusion

I consider that the *Local Government (Gold Coast City 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.

STEVEN MILES MP
DEPUTY PREMIER
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