

Local Government Legislation (Councillor Conduct) Amendment Regulation 2024

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, Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works provide this human rights certificate with respect to the *Local Government Legislation (Councillor Conduct) Amendment Regulation 2024* (Amendment Regulation) made under the *City of Brisbane Act 2010* (COBA) and 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 *Local Government (Councillor Conduct) and Other Legislation Amendment Act 2023* (Amendment Act) commenced on assent on 22 November 2023. The Amendment Act amended the COBA and the LGA to, among other things, recalibrate the councillor conduct framework and clarify and enhance councillor conflict of interest requirements.

To support the implementation of the Amendment Act, the Amendment Regulation amends 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’ which was made on 22 February 2024 in accordance with sections 150D and 150E of the LGA
- provide that the conflict of interest requirements for councillors do not apply in relation to a conflict of interest in a matter if the matter is solely, or relates solely to, the preparation, adoption or amendment of a local government’s investigation policy or annual operational plan, in accordance with section 177C(1)(d) of the COBA and section 150EF(1)(d) of the LGA
- prescribe information about ‘approved councillor training’ as required under section 169A of the COBA and section 169A of the LGA, including that councillors must complete online training relating to the code of conduct, registers of interests and dealing with conflicts of interest within the period ending 6 months after the conclusion of a local government election.

In addition, the Amendment Regulation amends the definition ‘financial management (sustainability) guideline’ in schedule 4 of the CBR and schedule 8 of the LGR to provide for an updated guideline called ‘Financial Management (Sustainability) Guideline 2024’, version 1, made by the chief executive and published on the department’s website; and makes a range of minor technical corrections.

Human Rights Issues

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

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

- Freedom of expression (section 21 of the HR Act)
- Taking part in public life (section 23 of the HR Act)
- Privacy and reputation (section 25 of the HR Act).

In my opinion, the Amendment Regulation does not limit any human rights.

Code of conduct

The code of conduct sets out the principles and standards of behaviour expected of councillors when carrying out their roles, responsibilities and obligations as elected representatives for their communities.

The key change to the code of conduct clarifies 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. In addition, updates have been made to reflect changes made to the legislative definitions of conduct breach and misconduct.

The proposal promotes the right to freedom of expression and the right to privacy and reputation.

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. The *right to privacy and reputation* protects individuals from unlawful or arbitrary interferences with their privacy, family, home, correspondence and reputation. It also protects a person from having their reputation unlawfully attacked.

Through the clear exclusion of behaviour engaged in by a councillor in a personal capacity, the code of conduct recognises and promotes these human rights.

Conflict of interest exemption

Chapter 6, part 2, division 5A of the COBA and chapter 5B of the LGA make provision for the management of councillor conflicts of interest, including a number of exemptions which allow councillors to participate in the ordinary business of their local governments without giving rise to a conflict of interest.

The proposal to prescribe a local government's investigation policy and annual operational plan as documents a councillor can participate in preparing, adopting or amending without giving rise to a conflict of interest promotes the right to take part in public life and the right to freedom of expression.

The *right to take part in public life* protects the right and opportunity, without discrimination, of all persons to participate in the conduct of public affairs, directly or through freely chosen representatives, covering all aspects of public administration and the formulation and

implementation of policy at all levels of government. The nature of the *right to freedom of expression* is outlined under ‘Code of conduct’ above.

Removing a potential limitation on councillors participating in these ‘everyday’ local government business matters promotes these human rights. Councillors will be able to freely participate in these matters without giving rise to a conflict of interest thus allowing the ordinary business of local governments to continue and the equal representation of all constituents by their elected representatives. Further, the exemptions provide an appropriate balance between transparency and accountability and the need for local governments to make decisions efficiently for the communities they represent.

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.

The proposal to prescribe the required information for approved councillor training, including the training topics that must be undertaken and how the training is accessible to councillors, promotes the right to take part in public life.

The nature of the *right to take part in public life* is outlined under ‘Conflict of interest exemption’ above.

Ensuring an equal standard of accessibility and professional learning opportunities to assist councillors in discharging their responsibilities as elected officials promotes this human right.

Conclusion

I consider that the *Local Government Legislation (Councillor Conduct) Amendment Regulation 2024* is compatible with the HR Act because it does not limit human rights.

MEAGHAN SCANLON MP
MINISTER FOR HOUSING, LOCAL GOVERNMENT AND
PLANNING AND MINISTER FOR PUBLIC WORKS

© The State of Queensland 2024