



# QUEENSLAND PARLIAMENT COMMITTEES

## Housing, Big Build and Manufacturing Committee

### Report No. 12, 57th Parliament

#### Subordinate legislation tabled between 6 March and 15 March 2024

#### 1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 6 March and 15 March 2024. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).<sup>1</sup>

The report also notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No. 2024	Subordinate legislation	Date tabled	Disallowance date*
14	Local Government Legislation (Councillor Conduct) Amendment Regulation 2024	15 March 2024	12 June 2024

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

#### 3 Committee consideration of the subordinate legislation

The committee did not identify any significant issues regarding the policy to be given effect, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or compliance with the HRA.

The committee considers that the explanatory notes tabled with the subordinate legislation noted in this report comply with the requirements of section 24 of the LSA.

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with the HRA.

#### 4 Local Government Legislation (Councillor Conduct) Amendment Regulation 2024

The Local Government Legislation (Councillor Conduct) Amendment Regulation 2024 (SL No. 14) amends the City of Brisbane Regulation 2012 (CBR) and the Local Government Regulation 2012 (LGR).

SL No. 14 amends the CBR and LGR to:

- approve a new *Code of Conduct for Councillors in Queensland* (code of conduct)
- prescribe the statutory documents relevant to a new conflict of interest exemption

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

- prescribe the required information for approved councillor training
- provide for an updated *Financial Management (Sustainability) Guideline* (guideline).<sup>3</sup>

Amendments relating to the code of conduct, conflict of interest exemption, and councillor training implement changes introduced by the *Local Government and Other Legislation Amendment Act 2023* (LG Amendment Act).<sup>4</sup>

#### 4.1 Code of conduct

The explanatory notes state that a new code of conduct was made by the Minister for Housing, Local Government and Planning and Minister for Public Works on 22 February 2024 to support reforms in the LG Amendment Act.<sup>5</sup> Changes include:

- clarifying 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
- updating the term 'inappropriate conduct'
- making changes to several definitions.<sup>6</sup>

According to the human rights certificate, clearly excluding behaviour engaged in by a councillor in a personal capacity recognises and promotes the right to freedom of expression and the right to privacy and reputation.<sup>7</sup>

SL No. 14 amends the LGR to approve the new code of conduct.

#### 4.2 Financial Management (Sustainability) Guideline

According to the explanatory notes, a new *Sustainability Framework for Queensland Local Governments* commenced on 1 July 2023. This was supported by 9 new measures of financial sustainability and an updated guideline.<sup>8</sup> The guideline describes the new measures and how they apply to a local government's financial planning and accountability documents.

In response to stakeholder feedback, a new *Financial Management (Sustainability) Guideline 2024, version 1* was made to 'improve its usability for local governments, the Queensland Audit Office (QAO) and other stakeholders, including by simplifying and refining definitions to ensure clarity and alignment with QAO requirements'.<sup>9</sup>

The new guideline replaces the previous guideline, the *Financial Management (Sustainability) Guideline 2023, version 1*.<sup>10</sup> The new guideline lists the following key changes from the previous guideline:

- The leverage ratio formula now includes finance costs in the calculation to eliminate the impacts from interest expenses on council loans
- The definition of infrastructure assets has been updated to exclude specific asset types for consistency given that councils control a diverse range of assets
- Clarity on the definition of depreciation and amortization to exclude right of use assets

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<sup>3</sup> Explanatory notes, p 1.

<sup>4</sup> Explanatory notes, pp 2-4.

<sup>5</sup> Explanatory notes, pp 1-2.

<sup>6</sup> Explanatory notes, p 2.

<sup>7</sup> Human rights certificate, p 2.

<sup>8</sup> Explanatory notes, p 3.

<sup>9</sup> Explanatory notes, p 3.

<sup>10</sup> Explanatory notes, p 3.

- The contextual financial measures not audited by the QAO have been separated from the measures that are audited on and included in a new appendix.<sup>11</sup>

SL No. 14 amends the LGR and CBR to refer to the new guideline.<sup>12</sup>

#### 4.3 Approved councillor training

According to the explanatory notes, compulsory training requirements for councillors were introduced by the LG Amendment Act.<sup>13</sup> Councillors are required to complete 'approved councillor training' about the responsibilities of councillors. These responsibilities are set out in section 14 of the *City of Brisbane Act 2010* (CBA) and section 12 of the *Local Government Act 2009* (LGA).<sup>14</sup>

The table below summarises the information for approved councillor training provided for by SL No. 14 as required by section 169A of the CBA and section 169A of the LGA:<sup>15</sup>

Act section	Required information	Summary of prescription under SL No. 14
<b>169A(2)(a)</b>	The period within which councillors must complete the training.	For a councillor elected at a local government election, 6 months after the conclusion of the local government election.
<b>169A(4)</b>	The period within which the department's chief executive must publish a notice about the training on the department's website.	5 business days after the commencement of the relevant section for the first training approved after the commencement of the Act. Otherwise, 20 business days after the training is approved by the department's chief executive.
<b>169A(5)(a)</b>	The period within which the department's chief executive must give a written notice about the training to each local government and councillor.	For a local government election other than a by-election, the period ending 20 business days after the conclusion of the local government election.
<b>169A(7)(a)</b>	The format of the training.	The training is provided through an electronic system that identifies each councillor who starts the training and records when the councillor completes the training.
<b>169A(7)(b)</b>	Requirements about how the training may be successfully completed.	Training relates to all of the following: <ul style="list-style-type: none"> <li>• the code of conduct</li> <li>• registers of interests</li> <li>• dealing with conflicts of interest.</li> </ul>

#### 4.4 Statutory documents for conflict of interest exemption

The LG Amendment Act amends the CBA and LGA to provide for conflict of interest exemptions to allow councillors to participate in the ordinary business of their local governments without giving rise to a conflict of interest.<sup>16</sup>

<sup>11</sup> Queensland Government, Financial Management (Sustainability) Guideline 2024 version 1, [https://www.statedevelopment.qld.gov.au/\\_\\_data/assets/pdf\\_file/0025/82384/financial-management-sustainability-guidelines.pdf](https://www.statedevelopment.qld.gov.au/__data/assets/pdf_file/0025/82384/financial-management-sustainability-guidelines.pdf).

<sup>12</sup> Explanatory notes, p 3.

<sup>13</sup> Explanatory notes, p 2.

<sup>14</sup> Explanatory notes, p 2.

<sup>15</sup> CBA; LGA; Explanatory notes, pp 3-4.

<sup>16</sup> Human rights certificate, p 2.

According to the explanatory notes, conflict of interest provisions do not apply if the matter is solely, or relates solely to, preparing, adopting or amending a document prescribed by regulation that the local government is required to prepare or adopt under a 'local government related law' as defined under the CBA or a 'Local Government Act' as defined under the LGA.<sup>17</sup>

SL No. 14 prescribes the following documents under 150EF(1)(d) of the LGA:

- a local government's investigation policy and annual operational plan
- a local government's annual operational plan.<sup>18</sup>

SL No. 14 makes similar provisions for the CBA.<sup>19</sup>

#### **4.5 Consultation**

The explanatory notes state that consultation was undertaken in 2022 and 2023 on the reforms contained within the LG Amendment Act, including with:

- the Local Government Association of Queensland
- Local Government Managers Australia (Queensland)
- the Crime and Corruption Commission
- the Queensland Law Society.

According to the explanatory notes, there was general support for the reforms.

The changes to the Financial Management (Sustainability) Guideline were made in consultation with QAO and Queensland Treasury Corporation.<sup>20</sup>

#### **4.6 Consistency with fundamental legislative principles**

SL No. 14 raises the following potential issue of FLP:

- regarding the institution of Parliament – subdelegation of power.

Section 150D of the LGA requires the Minister to make a code of conduct for councillors. Section 150E of the LGA provides that the code of conduct does not take effect until it is approved by regulation. The code of conduct must be tabled in the Legislative Assembly with the regulation approving the code and published on the Department's website.<sup>21</sup> A new code of conduct was made by the Minister on 22 February 2024.<sup>22</sup> SL No. 14 amends section 239A of the LGR to approve the code of conduct dated 22 February 2024.<sup>23</sup>

SL No. 14 also amends the definition of 'financial management (sustainability) guideline' in schedule 4 of the CBR and schedule 8 of the LGR to mean the document called *Financial Management (Sustainability) Guideline 2024, version 1*, made by the chief executive and published on the department's website.<sup>24</sup>

This raises the issue of whether SL No. 14 has sufficient regard to the institution of Parliament. In relation to the subdelegation of power, this will depend on whether the subordinate legislation allows the subdelegation of power in appropriate cases and to appropriate persons and if authorised by an Act.<sup>25</sup>

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<sup>17</sup> Explanatory notes, p 3; LGA, s 150EF(1)(d).

<sup>18</sup> SL No. 14, s 9.

<sup>19</sup> SL No. 14, s 4.

<sup>20</sup> Explanatory notes, p 6.

<sup>21</sup> LGA, s 150E.

<sup>22</sup> Explanatory notes, p 2.

<sup>23</sup> SL No. 14, s 8.

<sup>24</sup> SL No. 14, ss 5, 11.

<sup>25</sup> LSA, s 4(5)(e).

**Committee comment**

The committee is satisfied that SL No. 14 has sufficient regard to the institution of Parliament, noting that the code of conduct sets out the standards of behaviour expected of councillors which is detailed information more appropriate to include in a code than legislation. The committee also notes that the code of conduct is made by the Minister and the subdelegation of power is authorised by the LGA.

The sustainability guideline to be made by the chief executive is also a comprehensive document for local governments to use in calculating financial sustainability measures and would be unnecessarily complex to include in legislation.

The committee notes that both documents will still be subject to the scrutiny of the Legislative Assembly as the code of conduct must be tabled in the Legislative Assembly with the approving regulation and published on the Department's website. Further, any updates of the sustainability guideline will require an amendment to the regulations.

**4.6.1 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

**4.7 Compatibility with human rights**

The following human rights<sup>26</sup> are relevant to SL No. 14:

- freedom of expression
- taking part in public life
- privacy and reputation.<sup>27</sup>

These human rights arise in relation to the following amendments in SL No. 14:

- The code of conduct only applies in relation to a councillor's conduct while acting in their official capacity. This exclusion of behaviour in a personal capacity recognises and promotes the right to freedom of expression and the right to privacy and reputation.<sup>28</sup>
- Sections 4 and 9 of SL No. 14 amend the CBR and LGR to include a reference to a local government's investigation policy and annual operational plan.<sup>29</sup> The amendments allow councillors to participate in ordinary council business without giving rise to a conflict of interest. This promotes the right to take part in public life and the right to freedom of expression.<sup>30</sup>
- Sections 4 and 9 of SL No. 14 amend the CBR and LGR to make provision for councillor training.<sup>31</sup> The amendments to prescribe the required information, topics and how the training is to be accessible to councillors promotes the right to take part in public life.<sup>32</sup>

**Committee comment**

The committee is satisfied that the subordinate legislation is compatible with human rights.

<sup>26</sup> Section 8 of the *Human Rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

<sup>27</sup> HRA, ss 21, 23, 25; SL No. 14, human rights certificate, p 2.

<sup>28</sup> SL No. 14, human rights certificate, p 2.

<sup>29</sup> SL No. 14, ss 4 (new s 242AA CBR), 9 (new s 254AB LGR).

<sup>30</sup> SL No. 14, human rights certificate, pp 2-3.

<sup>31</sup> SL No. 14, ss 4 (new s 242AB CBR), 9 (new s 254AA LGR).

<sup>32</sup> SL No. 14, human rights certificate, p 3.

#### **4.7.1 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **5 Recommendation**

The committee recommends that the House notes this report.



Chris Whiting MP

**Chair**

**June 2024**

#### **Housing, Big Build and Manufacturing Committee**

<b>Chair</b>	Mr Chris Whiting MP, Member for Bancroft
<b>Deputy Chair</b>	Mr Jim McDonald MP, Member for Lockyer
<b>Members</b>	Mr Don Brown MP, Member for Capalaba
	Mr Michael Hart MP, Member for Burleigh
	Mr Robbie Katter MP, Member for Traeger
	Mr Tom Smith MP, Member for Bundaberg