Parliamentary Committees

Economics and Governance Committee

Report No. 38, 56th Parliament

Subordinate legislation tabled between 16 October 2019 and 26 November 2019

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 16 October 2019 and 26 November 2019. It reports on any issues identified by the committee relating to the policy to be given effect by the subordinate legislation, its consistency with fundamental legislative principles (FLPs), and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).[1]

2 Subordinate legislation examined

No.	Subordinate legislation (SL)	Date tabled	Disallowance date
216 of 2019	State Penalties Enforcement (Approved Sponsors) Amendment Regulation 2019	26 November 2019	02 April 2020
228 of 2019	Proclamation made under the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*	26 November 2019	02 April 2020
229 of 2019	Local Government Legislation (Implementing Stage 2 of Belcarra) Amendment Regulation 2019	26 November 2019	02 April 2020

3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the policy, consistency with FLPs, or lawfulness of the subordinate legislation.

The explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA.

3.1 SL No. 216 of 2019 – State Penalties Enforcement (Approved Sponsors) Amendment Regulation 2019

The objective of SL No. 216 of 2019 is to facilitate the approval and administration of entities as approved sponsors of work and development orders (WDOs), to support the expansion of the WDO program operated through the State Penalties Enforcement Registry (SPER).[2]

The WDO program, which commenced in December 2017, enables SPER debtors who are in hardship, with the support of approved sponsors, to undertake activities to discharge their debts in a non-monetary way, as an alternative to a financial payment.[3]

---

1 All Acts referenced are Queensland Acts unless otherwise specified.

2 State Penalties Enforcement (Approved Sponsors) Amendment Regulation 2019 (SL No. 216 of 2019), explanatory notes, p 2.

3 SL No. 216 of 2019, explanatory notes, pp 1-2.

Section 32H of the *State Penalties and Enforcement Act 1999* (SPER Act) allows debtors to be eligible for a WDO if they:

- are experiencing financial hardship
- have a mental illness
- have a cognitive or intellectual disability
- are homeless
- have a substances use disorder, or
- are experiencing domestic and family violence.

Participation in the WDO Program is voluntary. The types of activities undertaken under a WDO, as set out in s 32G of the SPER Act, are:

- unpaid work for, or on behalf of, an approved sponsor
- medical or mental health treatment under an approved sponsor's treatment plan provided by a health practitioner
- an educational, vocational or life skills course as decided by an approved sponsor
- drug or alcohol treatment as decided by an approved sponsor
- if the person is under 25 years of age – a mentoring program, and
- if the person is an Aboriginal or a Torres Strait Islander person and lives in a remote area – a culturally appropriate program.

Currently, Queensland Corrective Services (QCS) is the sole approved sponsor for the WDOs (QCS is approved only for unpaid work-type WDOs), and has been since the December 2017 commencement of the amendments to the SPER Act to provide for WDOs.[4] The explanatory notes to SL No. 216 of 2019 advise that a statutory regime is required to support the expansion of the WDO Program beyond the QCS and thereby provide eligible debtors with access to a greater range of WDO activities,[5] with the 2017 amendments to the SPER Act having provided for a regulation to be made for this purpose.[6]

SL No. 216 of 2019 establishes the statutory regime necessary to support this expansion, providing for the approval and administration of government agencies, not-for-profit organisations and health practitioners as approved sponsors under the WDO Program. This includes setting out:

- eligibility requirements for applicants to become approved sponsors for the different activity types, including requiring that staff delivering activities have the appropriate qualifications, training and experience; that the applicant has suitable insurance cover; and that the applicant has appropriate risk management and governance in place
- standard conditions for approval, including requirements to: comply with reporting and record keeping requirements; report conflicts of interest; adhere to the *Information Privacy Act 2009*; and maintain appropriately qualified staff, insurance, and risk management relevant to the activity type
- a process for the consideration of applications by SPER and the notification of applicants of the outcome and reasons for decisions (including, for a refusal, the grounds for refusal)

4 SL No. 216 of 2019, explanatory notes, p 2.

5 SL No. 216 of 2019, explanatory notes, p 3.

6 State Penalties Enforcement Amendment Bill 2017, explanatory notes, pp 5; 15; 21; 28; 40. See also, for example, *State Penalties Enforcement Registry Act 1999*, s 165(12).

- safeguards to verify the compliance of approved sponsors with the WDO Program requirements, including requiring the supply of documents to the SPER registrar or another person appointed by the registrar on request
- grounds for the SPER registrar to take disciplinary action against approved sponsors, including for breaching a condition of approval, contravening the Act or regulation, and/or posing an unacceptable risk to the integrity of the WDO Program
- processes for the SPER registrar to take disciplinary action against an approved sponsor (such as suspension or cancellation of approval), including a show cause process giving notice and 28 days to respond, and
- processes for applicants and approved sponsors to apply (to the Queensland Civil and Administrative Tribunal) for external review of decisions taken by the SPER registrar to refuse to grant an application; impose additional conditions on an approval; or suspend or cancel an approval.[7]

The explanatory notes advise that targeted consultation with key non-government and government stakeholders revealed 'overwhelming support for the implementation of a WDO Program in Queensland'.[8] Further:

> *An implementation reference group, comprising representatives from peak advocacy groups and government and non-government community service providers, was established to facilitate consultation on the operational aspects of implementing WDOs, including requirements for entities to obtain approval as approved sponsors and their responsibilities. Feedback and advice provided by the implementation reference group and inter-agency governance group has been used to inform development of the Amendment Regulation.*[9]

Committee comment

The committee identified no issues regarding the consistency with FLPs or lawfulness of the subordinate legislation. The explanatory notes comply with the requirements of part 4 of the LSA.

3.2 SL No. 228 of 2019 – Proclamation made under the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*

The objective of SL No. 228 of 2019 is to fix commencement dates of 18 November 2019, 20 January 2020 and 30 March 2020 for various provisions of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* (Stage 2 of Belcarra Act).

Specifically, SL No. 228 of 2019 provides for the commencement on 18 November 2019 of:

- amendments to the *City of Brisbane Act 2010* (COBA) and the *Local Government Act 2009* (LGA) to improve councillor access to advice and information relating to their respective local governments, including information across all wards for councillors of the Brisbane City Council (BCC)
- amendments to the LGA to repeal the responsibility of mayors to prepare a budget to present to the local government, to recognise that budget preparation is the responsibility of the whole council (not applicable to the BCC)
- amendments to the LGA to provide that the responsibilities of mayors include directing the chief executive officer (CEO) in accordance with a resolution, or a document adopted by resolution, of the local government (not applicable to the BCC)
- amendments to the COBA and *Right to Information Act 2009* to remove the 10-year exemption from right to information requests for the BCC's Establishment and Coordination Committee

---

7 SL No. 216 of 2019, explanatory notes, pp 2-3.

8 SL No. 216 of 2019, explanatory notes, p 5.

9 SL No. 216 of 2019, explanatory notes, p 6.

- amendments to the *Local Government Electoral Act 2011* (LGEA) to:
  - implement the Government's response to recommendation 3 of the Crime and Corruption Commission's (CCC's) report *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Belcarra Report), by requiring candidates to disclose details of their interests on their nomination form (recommendation 3)
  - implement the Government's response to recommendation 15 of the Belcarra Report, by requiring that a nomination form for a candidate must contain information about the candidate's dedicated account
  - require the Electoral Commission Queensland (ECQ) to publish election information in relation to first preference votes and the distribution of preferences and to provide elector information to particular persons on request, for a purpose related to an election
  - provide that the returning officer may arrange for a polling booth for electors to cast a pre-poll vote to be located at a place that is within or outside of the local government area or division for which the election is to be held (to provide greater flexibility to arrange polling booths which are more convenient for voters casting pre-poll votes)
  - provide for a definition of 'silent elector' which references the relevant provisions of the *Electoral Act 1992* (Electoral Act), and
- other minor clarifying and consequential amendments, and amendments to conform with current drafting practices.[10]

Amendments commencing on 20 January 2020 include:

- amendments to the LGEA to implement the Government's policy in relation to other Belcarra Report recommendations, including by:
  - requiring disclosure of electoral expenditure by candidates, groups of candidates, registered political parties and third parties (recommendation 2)
  - for groups of candidates: 1) prohibiting specified group campaigning activities unless undertaken by members of a group of candidates or candidates endorsed by the same political party; 2) requiring groups of candidates for an election to give a record of membership to the ECQ during the period between the polling day for the last election and noon on the last day for receipt of nominations for the election; and 3) requiring that the record of membership for a group contains information about the group's dedicated account (recommendations 5 and 15)
  - requiring additional details for disclosures about gifts, loans and third-party expenditure (recommendations 6, 18 and 19)
  - requiring gift recipients to notify donors of the donor's disclosure obligations (recommendation 8)
  - requiring prospective notification to proposed donors of recipients' disclosure obligations (recommendation 10)
- amendments to the LGEA to:
  - mandate that the ECQ publishes returns and other documents on its website
  - amend the definition of 'candidate' under the LGEA to provide for election gift disclosure requirements for sitting councillors and others within the new definition of candidate, and to amend the disclosure period for election expenditure by third parties
  - amend the definition of 'gift' to align with the definition in the Electoral Act, as recommended by the report of the independent panel, *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election* (Soorley Report)

---

[10] Proclamation made under the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* (SL No. 228 of 2019), explanatory notes, p 2.

  - provide that a donor to a candidate, group of candidates, registered political party or third party must disclose the source of a gift or loan
  - provide for an offence of publishing false or misleading information about a gift

- amendments to the LGA, COBA and LGEA to provide that an elected councillor's office becomes vacant if a summary return about gifts, loans and electoral expenditure is not given to the ECQ within specified periods, and
- other minor and technical amendments, and amendments to conform with current drafting practices.[11]

Finally, SL No. 288 of 2019 provides that the following amendments commence on 30 March 2020:

- amendments to the COBA and LGA to apply the LGA's State intervention provisions and councillor conduct framework to the BCC, and
- amendments to the LGA to clarify that a proposed 'local government change' could include multi-member divisions.

The explanatory notes advise that the Local Government Association of Queensland (LGAQ), the Office of the Independent Assessor (OIA), the ECQ, and the BCC were consulted on the commencement dates.[12]

Committee comment

The committee identified no issues regarding the consistency with FLPs or lawfulness of the subordinate legislation. The explanatory notes comply with the requirements of part 4 of the LSA.

3.3 SL No. 229 of 2019 – Local Government Legislation (Implementing Stage 2 of Belcarra) Amendment Regulation 2019

SL No. 229 of 2019 is intended to complement reforms contained in the Stage 2 of Belcarra Act, by prescribing a range of matters to support the operation of the amendments contained in the Act (including those commenced by SL No. 228 of 2019), as well as establishing new requirements relating to the budgeting and reporting of discretionary funds by local governments, and the use of discretionary funds by councillors.

The regulatory amendments accompanying the Stage 2 of Belcarra Act amendments, which are scheduled to commence at the same time as the relevant parent provisions in the Act, include:

- amendments to the Local Government Electoral Regulation 2012 (LGER) commencing on 20 January 2020, which implement real-time disclosure requirements by specifying the following disclosure deadlines:
  - for giving returns about gifts or loans received by candidates, groups of candidates or persons acting on behalf of groups during the disclosure period, the seventh business day after the gift or loan is received, and for gifts or loans received seven business days or less before polling day, within 24 hours
  - for giving returns about electoral expenditure incurred by candidates, groups of candidates, registered political parties and associated entities that total $500 or more, the seventh business day after the expenditure is incurred, and if the expenditure is incurred seven business days or less before polling day, within 24 hours

[11] SL No. 228 of 2019, explanatory notes, pp 2-3.

[12] SL No. 228 of 2019, explanatory notes, p 3.

  - for giving a return about a gift received or expenditure incurred by a third party during the disclosure period, the seventh business day after the gift is used or the expenditure is incurred[13]

- amendments to the City of Brisbane Regulation 2012 (CBR) commencing on 30 March 2020, which update the particulars to be included in the BCC's annual report in relation to councillor conduct, as a consequence of the Stage 2 of Belcarra Act applying the LGA councillor conduct framework to the BCC[14]

- amendments to the Local Government Regulation 2012 (LGR) commencing on notification (15 November 2019), which implement minor consequential amendments to the annual reporting requirements of other local governments regarding councillor conduct, as a consequence of other Stage 2 of Belcarra Act amendments to the LGA councillor conduct framework,[15] and

- amendments to the LGER commencing on 18 November 2019, which prescribe the information or statements that must be published by a returning officer about the nomination of a person for a local government election, including:
  - the candidate's name, address and occupation
  - for a candidate nominated by the registered officer of a registered political party, the name of the registered officer, the political party, and the fact that the candidate is endorsed by the party
  - for a candidate nominated by electors under s 271(b) of the LGEA (which requires such a candidate to be nominated by at least six electors for the relevant local government area or division), the name of each elector, and
  - information relating to the candidate's interests, including details of:
    - any membership of a registered political party or trade or professional organisation within the previous year (or a null statement if the candidate has had no such memberships)
    - any contractual arrangements with the local government to which the candidate, or a close associate of the candidate, has been a party during the previous year
    - any involvement of the candidate, or a close associate of the candidate, in a contractual process with the local government, and
    - any representations the candidate, or a close associate of the candidate, has made for which a decision has not been reached before the candidate's nomination, and which relate to a development application, a change application, or an extension application for which the local government is the assessment manager.[16]

---

[13] Local Government Legislation (Implementing Stage 2 of Belcarra) Amendment Regulation 2019 (SL No. 229 of 2019), explanatory notes, p 4. See also: SL No. 229 of 2019, s 12 (replacement of ss 5-9 of the Local Government Electoral Regulation (LGER)). This includes a provision (new s 9B of the LGER) clarifying that the name and business address of the person who supplies the goods or services on which electoral expenditure is incurred – details that are required to be specified in a third party return under amendments in the Stage 2 of Belcarra Act – are to be withheld when the ECQ publishes returns and documents on its website (so that these businesses are not publicly taken to be promoting a particular candidate, group of candidates, party, or issue in the election merely by the provision of goods and services).

[14] SL No. 229 of 2019, explanatory notes, p 5. See also SL No. 229 of 2019, s 5 (amending s 178 of the City of Brisbane Regulation 2012 (CBR)) and s 8 (transitional provisions for the commencement of amended s 178 of the CBR).

[15] SL No. 229 of 2019, explanatory notes, p 5. See also SL No. 229 of 2019, s 16 (amending s 186 of the Local Government Regulation 2012 (LGR)) and s 17 (inserting transitional provisions for the commencement of amended s 186 of the LGR).

[16] SL No. 229 of 2019, explanatory notes, pp 4-5. See also SL No. 229 of 2019, s 11 (inserting new s 2A into the LGER). See also: *Local Government Electoral Act 2011,* Schedule 1.

The new requirements set out in SL No. 229 of 2019 which relate to the budgeting and reporting of discretionary funds by local government and the use of discretionary funds by councillors, include:

- amendments to the LGER commencing on 18 November 2019, which specify that a councillor must not allocate discretionary funds from 1 January of a quadrennial election year to the conclusion of the election, other than discretionary funds allocated for capital works for a community purpose[17]
- amendments to the CBR and LGR commencing on 30 March 2020, which specify that:
  - a local government may, for a financial year, budget a total amount of discretionary funds for use by councillors for either or both of: a) capital works of the local government that are for a community purpose, or b) for other community purposes
  - the amount that a local government must not budget more than 0.1 per cent of their revenue from general rates from the previous financial year (the prescribed amount) as discretionary funds for allocation by councillors for community purposes other than for capital works of the local government
  - the amount of discretionary funds a local government budgets for allocation by each councillor in a financial year must be the same for all councillors
  - a local government must, within 20 business days after adopting its budget for a financial year, make publicly available a notice (the availability notice) stating:
    - the total amount budgeted for the financial year as the local government's discretionary funds
    - the prescribed amount for the local government for the financial year
    - the total amount of discretionary funds budgeted for the financial year for all councillors (aggregated) to allocate for each of: a) capital works of the local government that are for a community purpose, and b) other community purposes, and
    - the amount budgeted for each councillor for these purposes and how community organisations may apply for funds[18]
  - a councillor may only allocate an amount of discretionary funds if the funds do not exceed the amount stated in the availability notice; may make an allocation only in the financial year for which the funds were budgeted; must not allocate discretionary funds to assist the councillor administratively with performing the councillor's responsibilities under the COBA or LGA; and must not allocate discretionary funds from 1 January in the year a quadrennial election is to be held until the conclusion of the election[19]
  - a councillor must, within seven business days after making an allocation of discretionary funds, give a notice to the CEO containing details about the allocation,[20] and the local government must publish the notice on its website within seven days of the CEO receiving the notice,[21] and

---

17 SL No. 229 of 2019, s 4 (inserting new s 194(8) of the CBR) and s 18 (inserting new s 202(9) of the LGR). See also SL No. 229 of 2019, explanatory notes, p 2.

18 SL No. 229 of 2019, s 7 (inserting new s 193A and 193B of the CBR) and s 20 (inserting new ss 201A and 201B of the LGR). See also SL No. 229 of 2019, explanatory notes, pp 2-3.

19 SL No. 229 of 2019, s 7 (replacing s 194 of the CBR) and s 20 (replacing s 202 of the LGR). See also SL No. 229 of 2019, explanatory notes, p 3.

20 The details required to be included in the notice of allocation include the amount allocated and the date the amount was allocated; whether the amount was allocated for capital works of the council that are for a community purpose, to a community organisation for a community purpose, or for another community purpose; if the amount was allocated to a person or organisation, the name of the person or organisation; and the purpose for which the amount was allocated, including sufficient details to identify how the funds were, or are, to be spent. See: SL No. 229 of 2019, s 7 (inserting new s 194A(1) of the CBR) and s 20 (inserting new s 202A(1) of the LGR).

21 SL No. 229 of 2019, s 7 (new s 194A of the CBR) and s 20 (new s 202A(1) of the LGR). See also SL No. 229 of 2019, explanatory notes, p 3.

- a local government's annual report must include information about the budgeting and use of discretionary funds, including detailing:
  - the total amount budgeted for the financial year
  - the prescribed amount for the local government for the financial year
  - each of the total amounts budgeted for councillors to allocate for capital works of the local government that are for a community purpose and for other community purposes
  - the total amount budgeted for use by each councillor for the financial year, and
  - if a councillor allocates discretionary funds, the amount allocated; the date the amount was allocated; the community purpose for which the amount was allocated; if the funds were allocated to a person or organisation, the name of the person or organisation; and the purpose for which the amount was allocated, including identifying how the funds were, or are, to be spent.[22]

The explanatory notes advise that the LGAQ, Local Government Managers Australia Queensland, the OIA, the ECQ, and the BCC have been consulted on SL No. 229 of 2019, and that 'there are no objections to the Regulation being made'.[23]

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness. The explanatory notes comply with the requirements of part 4 of the LSA.

4 Recommendation

The committee recommends that the House notes this report.

Linus Power MP
Chair

March 2020

Economics and Governance Committee

Chair:	Mr Linus Power MP, Member for Logan	**Contact details**	
Deputy Chair:	Mr Ray Stevens MP, Member for Mermaid Beach	Post:	Parliament House
Members:	Ms Nikki Boyd MP, Member for Pine Rivers		Brisbane Queensland 4000
	Mr Sam O'Connor MP, Member for Bonney	Email:	egc@parliament.qld.gov.au
	Mr Dan Purdie MP, Member for Ninderry	Phone:	07 3553 6637
	Ms Kim Richards MP, Member for Redlands	Web:	www.parliament.qld.gov.au/egc

22 SL No. 229 of 2019, s 6 (replacing s 181 of the CBR) and s 19 (replacing s 189 of the LGR). See also SL No. 229 of 2019, explanatory notes, p 3.

23 SL No. 229 of 2019, explanatory notes, p 6.