

State Development and Regional Industries Committee

Report No. 6, 57th Parliament

Subordinate legislation tabled on 8 September 2020

1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled on 8 September 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992 (LSA)*¹ and discusses the committee's consideration of compliance with the *Human Rights Act 2019 (HRA)* and the human rights certificates tabled with the subordinate legislation.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
156	Local Government Legislation (Integrity) Amendment Regulation 2020	8 September 2020	10 March 2021

*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 identified no issues regarding the policy to be given effect by the subordinate legislation. The committee, however identified a number of fundamental legislative principles issues in its examination of Local Government Legislation (Integrity) Amendment Regulation 2020 (SL 156). These were not considered significant and the committee is satisfied that the inconsistencies or breaches are reasonable and sufficiently justified.

The committee considers that the explanatory notes tabled with the subordinate legislation comply with part 4 of the *Legislative Standards Act 1992*.

The committee considered that the subordinate legislation raised two human rights issues – taking part in public life, and the right to privacy and reputation. In each case, the committee was satisfied that the various limitations on human rights are reasonably and demonstrably justified. The committee was also satisfied that the human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

4 Local Government Legislation (Integrity) Amendment Regulation 2020 (SL 156)

To inform its consideration of the subordinate legislation, on 22 February 2021 the committee held a public briefing with officers from the local government division of the Department of State Development, Infrastructure, Local Government and Planning (department / DSDILGP). At the public

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

briefing, the committee raised a number of issues with the department, including: local government meetings requirements; council advisers; changes around registers of interest; timing of the regulation commencement; consultation; and training for councils. The full transcript of the public briefing is available [here](#).

Overview

Following the release of the Crime and Corruption Commission's Belcarra report in 2017 and consultation with local government stakeholders, the Queensland Government is continuing to roll out its reform agenda in the local government sector.

Chapter 5 of the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (Integrity Act) includes local government reform amendments to the *City of Brisbane Act 2010* (COBA) and *Local Government Act 2009* (LGA). The objective of this subordinate legislation is to further local government reforms by amending the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to:

- promote transparency, accountability and consistency in relation to the requirements for the organisation and conduct of meetings of a local government and a committee of the local government (local government meetings)
- promote transparency, accountability and consistency in relation to registers of interests
- provide for the following matters in relation to councillor advisors:
 - prescribe which local governments may engage advisors and the maximum number of advisors that may be appointed by councillors in those local governments
 - the criteria to which the Remuneration Commission must have regard when making a recommendation to the Minister about making a regulation relating to advisors
 - a register of interests requirements for advisors and persons related to them
- approve a new Code of Conduct for Councillors under the LGR³
- make other minor and/or consequential amendments as necessary.⁴

At the public briefing, the department explained the timing of the regulation commencement:

The regulation commenced on 12 October 2020, and this aligned with the commencement of a lot of the provisions in the Integrity Act. The Integrity Act received assent on 30 June, but large parts of it did not actually start until 12 October. ... Any matters dealing with conflicts of interest or registers of interest are complex, and we need to make sure that councillors understand what is required of them under the legislation. The gap between assent and 12 October gave the department enough time to do training with the councillors.⁵

4.1.1 Costs

The explanatory notes state that 'any costs to Government of implementing the regulation will be met through normal budgetary processes'.⁶

4.1.2 Consultation

At the public briefing, the department provided an overview of its consultation:

Consultation formed a really large part of the work the department did in the lead-up to the making of the regulation. We worked closely with the CEO network, which is a network established by the Local Government Association of Queensland [LGAQ]. We ran workshops jointly with the CEOs. That was excellent because the CEOs were a really good source of intelligence around how something that sits on

³ The regulation approves a new Code of Conduct to implement the Government's response to rec. 2 of the Yabber Report to ensure stricter governance and accountability in local government (EN, SL 156, p 15).

⁴ Explanatory notes, SL 156, p 2.

⁵ Public briefing transcript, Brisbane, 22 February 2021, p 2.

⁶ Explanatory notes, SL 156, p 15.

a piece of paper actually works in practice. We also worked with the local government liaison group to make sure they understood the issues and to seek their feedback. In 2019 the department also released a discussion paper regarding these matters. We received a large number of submissions from councils, councillors and even community groups.⁷

The department advised that it held training on the new legislation for 75 councils and that over 500 councillors attended those sessions. A further six sessions were held on registers of interest. The department advised it will continue its training with councils, as well as its consultation:

We receive regular feedback from council staff, CEOs and councillors, and we will pull all of that together at some point and work out if there are any further tweaks required to the Integrity Act or the regulation to make sure that what we have in the regulation works in practice on the ground for our councils.⁸

4.1.3 Stakeholders issues

According to the explanatory notes, while key stakeholders, including the LGAQ and the Local Government Managers Australia, generally supported the proposal, some stakeholders did have concerns.

Council advisors

The Gold Coast City Council (GCCC) did not support the prescription of limits on the number of councillor advisors who may be appointed or the matters to which the Remuneration Commission must have regard in relation to Councillor advisors.⁹

In response to a question from the committee regarding a situation whereby councils may need to employ more people than the prescribed number of councillor advisors, the department advised that councils can do so, as long they don't go over the prescribed number:

... the number of people employed by a council is purely a budgetary decision. Then there is the issue of how they classify them. There are a number of types of employees: a CEO, local government employees, councillor advisers and administrative support staff. What category that person falls into will depend on the council. They cannot go over that maximum number prescribed in the regulation, but if you have other people providing services to councillors that is fine; that is a budgetary decision for the council. Keep in mind that unless they are a councillor adviser under the legislation the power of direction might become a problem. For instance, if a council was dealing with a particular issue they could say, 'We need another 10 people.' If the budget permits, great—bring the 10 people on—but you must make sure that the person who is defined as a councillor adviser does not go over the maximum number in the regulation.¹⁰

Local government meetings

The GCCC also did not support the amendments relating to the publishing of related reports with a council meeting agenda, making decisions about conflicts of interest in a closed meeting, or the inclusion of donations in the register of interests.¹¹

At the public briefing, the department explained the process for determining a conflict of interest:

... there now is a process where councillors who think they have a declarable conflict of interest will disclose that to their fellow councillors. Their fellow councillors will then discuss the nature of that conflict of interest. ... If it is a conflict of interest, can that councillor still participate in the meeting? Not every interest amounts to a conflict of interest. ... A lot of times they are not actually reaching that threshold for what is a conflict of interest.

⁷ Public briefing transcript, Brisbane, 22 February 2021, p 2.

⁸ Public briefing transcript, Brisbane, 22 February 2021, p 2.

⁹ Explanatory notes, SL 156, p 16.

¹⁰ Public briefing transcript, Brisbane, 22 February 2021, p 6.

¹¹ Explanatory notes, SL 156, pp 16-17.

... we encourage councillors to get advice before their meeting. ... if it is a conflict of interest and, importantly, why they think they can still participate in the meeting or why they think they should leave the meeting.¹²

Members of the CEO Network group also raised concerns regarding the proposed requirement to include related reports in meeting minutes. According to the explanatory notes, the department stated the requirement has been 'tightly drafted so that it only captures those reports actively considered by councillors'.¹³

Some stakeholders raised concern about the limitations to be imposed in relation to closed meetings. The explanatory notes stated that limiting the instances where a meeting can be closed to the public will assist in promoting greater transparency.¹⁴ At the public briefing on 22 February 2021, the department provide the following justification:

We are trying to strike a balance in relation to an ordinary business matter where we need matters to be dealt with confidentially and matters where the public should get more information.¹⁵

4.2 Fundamental legislative principle issues

The committee considers that the subordinate legislation raises two FLPs issues.

4.2.1 Rights and liberties of individuals – proportionality of penalties (s 4(2)(a) LSA)

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, offences and penalties in the legislation are reasonable and proportionate. A penalty should be proportionate to the offence:

Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties should be consistent with each other.¹⁶

Section 275(2) of the CBR and s 297(2) of the LGR provide for an offence for incorrectly disclosing information obtained from a register of interests of a CEO, a Brisbane City Council senior executive employee or a person related to them, with a maximum penalty of 85 penalty units (\$11,086.75).¹⁷

There are also offences created under s 275(2) of the CBR and 297(2) of the LGR in relation to the disclosure of information from a register of an advisor or a person related to the advisor.

The explanatory notes provided the following justification:

The offence restricts the disclosure of personal information of local government employees and persons related to them. This information should be reserved for internal use of a local government in managing conflicts of interests risks or as otherwise permitted by law. As a councillor advisor is also employed by a local government and is not an elected public official like a councillor, it is appropriate that their personal information, along with the personal information of a person related to them, should be similarly restricted and equivalent penalties should apply for knowingly disclosing the information.¹⁸

Committee comment

The committee is satisfied that the subordinate legislation's offences and penalties are reasonable and proportionate, noting the explanation provided by the department.

¹² Public briefing transcript, Brisbane, 22 February 2021, p 4.

¹³ Explanatory notes, SL 156, p 17.

¹⁴ Explanatory notes, SL 156, p 17.

¹⁵ Public briefing transcript, Brisbane, 22 February 2021, p 3.

¹⁶ Office of the Queensland Parliamentary Counsel, FLPs: *The OQPC Notebook*, p 120.

¹⁷ One penalty unit is \$130.55.

¹⁸ Explanatory notes, SL 156, p 15.

4.2.2 Rights and liberties of individuals – retrospectivity (s 4(3)(g) LSA)

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, it adversely affects rights and liberties, or imposes obligations, retrospectively.

The Regulation requires gifts totalling \$500 or more to a relevant person to be disclosed in the person's register of interests. The Regulation provides for transitional provisions about gifts and donations if a relevant person's reporting term includes a period that occurred partly before the commencement. This will mean the reporting of these gifts may have a retrospective element.

The explanatory notes provide the following justification:

Although gifts given to a relevant person prior to commencement are required to be disclosed, the obligation to disclose those gifts arises on commencement. In this way, the Regulation does not impose obligations that impact on the rights and liberties, retrospectively.¹⁹

Committee comment

The committee is satisfied, that the limitation on this fundamental legislative principle is reasonable and demonstrably justified.

4.3 Explanatory notes

The explanatory notes tabled with SL 156 comply with part 4 of the *Legislative Standards Act 1992*.

4.4 Human rights considerations

Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it 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 that Act.

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

In the human rights certificate accompanying the amendment regulation, the then Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs stated his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA²⁰, and
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom²¹.

The committee considers that the subordinate legislation raises two human rights issues.

4.4.1 Taking part in public life (s 23 HRA)

Under s 23 of the HRA, every person in Queensland has the right and the opportunity, to participate in the conduct of public affairs. It ensures all persons have the opportunity to contribute to the political process and public governance.

The regulation limits the right to take part in public life as the amendments will allow a Local Government or committee to close all or a part of a meeting to discuss certain prescribed matters which will prevent the public from attending all or part of a meeting.

The Minister provided the following justification:

¹⁹ Explanatory notes, SL 156, p 16.

²⁰ Human rights certificate, SL 156, p 1.

²¹ Human rights certificate, SL 156, p 9.

The purpose of the limitations to be imposed in relation to closed meetings is to ensure that Local Governments are able to manage sensitive information, such as legal advice and industrial matters affecting employees, confidentially while also ensuring the public is sufficiently aware of the matters being discussed in closed meetings.²²

Committee comment

The committee is satisfied that the limitations on human rights are reasonably and demonstrably justified, noting the explanation provided by the Minister and the department.

4.4.2 Privacy and reputation (s 25 HRA)

According to s 25 of the HRA, a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked.

An advisory committee that is exempt from taking minutes must give the Local Government a written statement containing the information about a Councillor's prescribed conflict of interest or declarable conflict of interest. This will constitute a report or document directly relevant to a matter considered or voted on, or presented for consideration or information at a meeting of Local Government is required to be included in the minutes for the meeting and made publicly available. This means the written statement containing a Councillor's conflict of interest could be disclosed to the public.

The Minister provided the following justification:

The purpose of the requirement for information about a Councillor's conflict of interest to be given to the Local Government is to promote accountability and transparency and ensure that Local Government decision-making in relation to a report made by an advisory committee is in the public interest. The opportunity for the public to scrutinise the written statement in the minutes of a meeting of a Local Government will also foster public confidence that Local Government decisions are made in the public interest.²³

Committee comment

The committee notes the explanation provided by the Minister. The committee is satisfied that the subordinate legislation's limitation on privacy is reasonably and demonstrably justified.

4.4.3 Privacy and reputation (s 25 HRA)

The regulation makes a number of amendments to the register of interest framework in the City of Brisbane Regulation 2012 and the Local Government Regulation 2012 to include:

- providing for management of a register of interests for a Councillor advisor and a person related to them
- requiring a Local Government to keep registers of interests for specified periods and to make the register of interest of a former Councillor available for public inspection at the Local Government's public office for the period the Local Government is required to keep the register of interest
- inserting a new requirement to disclose executive officer appointments with organisations other than corporations, political party or trade or professional organisations and donations made totalling \$500 or more.

These amendments impact on a person's right to privacy. The Minister provided the following justification:

There is a reasonable expectation from members of the general public that the interests of a relevant person are appropriately identified, monitored and managed so that a Local Government can mitigate the risk of undue influence to ensure all decisions are made in the public interest. This purpose is consistent with a free and democratic society where the community expects Local Governments to act

²² Human rights certificate, SL 156, p 4.

²³ Human rights certificate, SL 156, p 4.

with integrity and in the public interest and that processes will be in place to minimise corruption risks in Local Government decision-making.²⁴

Committee comment

The committee notes the explanation provided by the Minister. The committee is satisfied that the subordinate legislation's limitation on privacy is reasonably and demonstrably justified.

4.5 Human rights certificate

Section 41 of the *Human Rights Act 2019* requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation. The human rights certificate tabled with SL 156 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.



Mr Chris Whiting MP
Chair

March 2021

State Development and Regional Industries Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
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	Mr Robbie Katter MP, Member for Traeger
	Mr Jim Madden MP, Member for Ipswich West
	Mr Tom Smith MP, Member for Bundaberg

²⁴ Human rights certificate, SL 156, p 7.