

# Local Government Legislation Amendment Regulation (No. 2) 2015

Explanatory notes for SL 2015 No. 173

made under the

*City of Brisbane Act 2010*  
*Local Government Act 2009*  
*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Local Government Legislation Amendment Regulation (No. 2) 2015*

### Authorising law

Section 252 of the *City of Brisbane Act 2010*, section 270 of the *Local Government Act 2009* and section 165 of the *State Penalties Enforcement Act 1999*.

### Policy objectives and the reasons for them

The objectives of the regulation are to:

1. amend the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to increase National Competition Policy business activity thresholds by the consumer price index for the 2016-2017 financial year;
2. amend the CBR to repeal chapter 3, part 3, division 2 which prescribes particular matters connected with managing vehicles and traffic on Brisbane City Council (BCC) malls, and to provide BCC with a general power to manage malls, including by local law, consistent with the LGR;
3. amend the LGR to prescribe Redland Investment Corporation Pty Ltd and Local Government Infrastructure Services Pty Ltd as local government entities to enable membership eligibility of the Local Government Superannuation Scheme; and
4. amend the *State Penalties Enforcement Regulation 2014* to repeal the related infringement notice offence against the CBR as a consequence of the repeal of the BCC mall provisions.

## **Achievement of policy objectives**

### **Increase business activity thresholds by the consumer price index**

The *City of Brisbane Act 2010* and the *Local Government Act 2009* and associated regulations contain particular requirements to ensure local governments comply with the National Competition Policy (NCP). The *City of Brisbane Regulation 2012* (CBR) section 16 and the *Local Government Regulation 2012* (LGR) section 19 prescribe thresholds used to determine if a business activity of a local government is a significant business activity. The CBR section 29 and the LGR section 39 prescribe thresholds for determining if a business activity of a local government is a prescribed business activity, for the purpose of applying the NCP code of competitive conduct.

Since the introduction of the NCP requirements for local governments in the 1990s, the original threshold amounts have been indexed annually by one of the consumer price index (CPI). The thresholds were last increased in December 2014.

The regulation part 2 sections 4 and 5 amend the CBR (sections 16 and 29) and part 3 sections 10 and 11 of the regulation amend the LGR (sections 19 and 39) to increase threshold amounts in line with the CPI to apply to local governments from the 2016-2017 financial year.

The new thresholds (rounded) are: CBR section 16(2) - \$9.2m (up from \$9m), section 29(1) - \$325,000 (up from \$318,000); LGR section 19(2)(a) - \$13.75m (up from \$13.6m), section 19(2)(b) - \$9.2m (up from \$9m), section 39(1) - \$325,000 (up from \$318,000).

### **Repeal of Brisbane City Council mall provisions / new broad and general power for Brisbane City Council to manage its malls**

Chapter 3, part 3, division 2 of the *City of Brisbane Regulation 2012* (CBR) prescribes particular matters connected with managing vehicles and traffic on Brisbane City Council (BCC) malls. At the request of BCC, the provisions were retained in the new CBR in 2012 until BCC made a local law to regulate activities in its malls.

On 4 November 2014, BCC (by resolution) made the *Public Land and Council Assets Local Law 2014* which includes provisions for the governance of its malls. In particular, sections 20 and 21 of the local law deal with mall traffic restrictions and permits for vehicles on malls. The local law commenced on notification in the Queensland Government Gazette on 7 November 2014 except for sections 20 and 21. Sections 20 and 21 come into effect upon repeal of chapter 3, part 3, division 2 of the CBR.

The regulation part 2 section 6 repeals chapter 3, part 3, division 2 of the CBR triggering the commencement of sections 20 and 21 of BCC's local law. For consistency with section 58 of the *Local Government Regulation 2012* for other local governments, the regulation inserts new section 46 into the CBR to give BCC a general power to manage its malls and to require BCC to include in its planning scheme all existing and proposed malls in its local government area.

Part 2 section 7 of the regulation inserts new sections 286 to 292 into the CBR to provide for transitional arrangements relating to offences, infringement notices, mall traffic restrictions, mall traffic permits, vehicles removed or moved from a mall, and

appeals against a decision of the chief executive officer to refuse to deliver possession of a vehicle to an entitled person.

Further, as a consequence of the removal of the BCC mall provisions (chapter 3, part 3, division 2) from the CBR, the regulation omits the definitions ***mall traffic permit*** and ***mall traffic restriction*** from schedule 4 of the CBR.

The regulation section 2 prospectively commences these amendments on 1 January 2016 to enable BCC to implement necessary process and system changes.

### **Prescription of two local government entities**

Section 218(2)(d) of the *Local Government Act 2009* (LGA) provides that an employee of a local government entity is eligible to become a member of the Local Government Superannuation Scheme (LG super scheme). Section 216A of the LGA defines a local government entity and provides that a local government entity must be prescribed under a regulation. Schedule 6 of the *Local Government Regulation 2012* (LGR) lists the entities prescribed as local government entities for section 216A of the LGA.

Redland Investment Corporation Pty Ltd (RIC) is a wholly owned subsidiary of Redland City Council and Local Government Infrastructure Services Pty Ltd (LGIS) is a wholly owned subsidiary of the Local Government Association of Queensland. It is considered that both entities meet the definition of a local government entity under the LGA and that to prescribe RIC and LGIS as local government entities is consistent with the other entities prescribed as local government entities under the LGR.

Therefore, the regulation part 3 section 12 amends schedule 6 of the LGR to prescribe RIC and LGIS as local government entities so that their employees are eligible to become members of the LG super scheme.

### **Consequential amendment to the *State Penalties Enforcement Regulation 2014***

As a direct consequence of the repeal of the BCC mall provisions (chapter 3, part 3, division 2) from the CBR, which includes the removal of an offence for contravening a mall traffic restriction, the regulation part 4 section 14 removes the related infringement notice offence/fine from schedule 1 of the *State Penalties Enforcement Regulation 2014*. The offence provision has been retained in BCC's local law at section 84.

These amendments prospectively commence on 1 January 2016 to enable BCC to implement necessary process and system changes.

### **Consistency with policy objectives of authorising law**

The regulation is consistent with the policy objectives of the authorising laws.

### **Inconsistency with policy objectives of other legislation**

The regulation is consistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The costs to Government as a result of the proposed amendments are negligible.

## **Consistency with fundamental legislative principles**

The regulation has been drafted with regard to the fundamental legislative principles as defined in the *Legislative Standards Act 1992* and is consistent with these principles.

## **Consultation**

The Local Government Association of Queensland, Brisbane City Council, Redland City Council, LGsuper and the Government Superannuation Officer are supportive of the regulation.

The Office of Best Practice Regulation was consulted and confirmed that the proposed amendments are excluded from further assessment under the Regulatory Impact Statement Guidelines.