

Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Steven Miles MP, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure

Title of the Bill

Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 (the Bill).

Objectives of the Amendments

The objectives of the amendments are to:

- correct minor drafting errors in the Bill
- make minor amendments to clarify the operation of a transitional arrangement in the Bill
- amend the *Local Government Electoral Act 2011* (LGEA) to address an unintended consequence of amendments in the *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023* (the Expenditure Caps Act).

Clauses 24 and 105 of the Bill amend section 178 of the *City of Brisbane Regulation 2012* (CBR) and section 186 of the *Local Government Regulation 2012* (LGR) to place additional annual reporting requirements on local governments in relation to councillor conduct matters. Amendments are required to both clauses to insert renumbering provisions in these sections.

Clause 46 of the Bill inserts new division 3A (Preliminary assessments) and new division 3B (Assessor may initiate assessments) into chapter 5A, part 3 of the *Local Government Act 2009* (LGA) to establish a preliminary assessment process for the Independent Assessor to consider and deal with complaints, notices and information about councillor conduct. New section

150SD(5) provides a non-exhaustive list of matters the Independent Assessor may consider in making a preliminary assessment. An amendment is required to section 150SD(5)(b) to insert a missing word.

Clause 102 provides the necessary transitional arrangements in relation to the councillor conduct complaints system. In particular, new section 350 of the LGA provides that the Independent Assessor must withdraw particular conduct applications from the Councillor Conduct Tribunal on the commencement. Minor amendments to section 350 are proposed to clarify the original intent in relation to when an undecided matter about an alleged contravention of the acceptable requests guidelines of a local government must be withdrawn. Conduct that relates solely to an alleged contravention of the guidelines must be withdrawn and not conduct of this nature that is connected to conduct of the councillor before the Tribunal that is alleged misconduct. A minor change to the section heading is also proposed to better reflect the method of withdrawal.

In relation to the LGEA amendments, the Expenditure Caps Act established the local government electoral expenditure caps scheme on 28 June 2023.

Sections 126(5) and 127(5) of the LGEA provide that a dedicated account must not, during a candidate's or group's disclosure period for an election, be used other than for receiving and paying amounts under subsections (3) and (4).

Sections 126(3) and 127(3) of the LGEA provide that all amounts received by a candidate or group, or a person acting with the authority of the candidate or group, during the candidate's or group's disclosure period for the election for the conduct of the candidate's or group's election campaign, including all gifts received by the candidate or group for the election, and all amounts received as loans to the candidate or group, must be placed in the account.

The Expenditure Caps Act amended sections 126(4) and 127(4) of the LGEA to provide that electoral expenditure incurred by a candidate or group must be paid out of the candidate's or group's dedicated account.

Before the commencement of the Expenditure Caps Act, sections 126(4) and 127(4) of the LGEA provided that amounts for the conduct of a candidate's or group's election campaign had to be paid out of the dedicated account. This allowed for payments of both 'electoral expenditure' and non 'electoral expenditure' campaign expenses to be made out of the account.

While the amendments in the Expenditure Caps Act were broadly consistent with section 221A of the *Electoral Act 1992* (EA), due to differences between the LGEA and EA provisions, the amendment had the unintended consequence of preventing gifts and loans being used to pay for non 'electoral expenditure' campaign expenses, such as expenditure on employing staff for a campaign purpose.

To address this issue, amendments are proposed to sections 126(4) and 127(4) of the LGEA to provide that all amounts paid for the conduct of a candidate's or group's election campaign, including electoral expenditure, must be paid out of the dedicated account. Related amendments to section 127B of the LGEA provide that candidates and groups must not use a credit card to pay amounts for the conduct of a candidate's or group's election campaign. The existing requirement in section 127B is that candidates and groups must not use a credit card to pay an amount of electoral expenditure.

Achievement of the Objectives

The objectives are achieved by:

- making technical amendments to clauses 24 and 105 of the Bill to renumber the subparagraphs under section 178(1)(f) of the CBR and section 186(1)(f) of the LGR as a consequence of the Bill omitting subsection (1)(f)(v) and (vi) from these sections
- amending new section 150SD(5)(b) of the LGA in clause 46 of the Bill to insert the word ‘of’ so that the provision reads ‘any steps taken by the councillor to mitigate or remedy the effects of of the conduct’
- amending the heading for new section 350 of the LGA in clause 102 of the Bill to replace ‘taken to be withdrawn’ with ‘to be withdrawn’ to reflect that the withdrawal of an application (in whole or in part) is not automatic
- amending new section 350(1)(c)(iv) and (2) of the LGA in clause 102 of the Bill to clarify that conduct that relates solely to an alleged contravention of a local government’s acceptable requests guidelines must be withdrawn from the Councillor Conduct Tribunal by the Independent Assessor on the commencement and that the whole of the application is to be withdrawn in this circumstance
- inserting clauses 113A-113C of the Bill to amend the LGEA sections 126, 127 and 127B to provide that all amounts paid for the conduct of a candidate’s or group’s election campaign, including electoral expenditure, must be paid out of the dedicated account and that candidates and groups must not use a credit card to pay amounts for the conduct of a candidate’s or group’s election campaign.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no anticipated costs for Government in implementing the amendments.

Consistency with Fundamental Legislative Principles

The amendments are generally consistent with fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* (LSA). Issues in relation to the FLPs are addressed below.

Rights and liberties of individuals

The FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals (section 4(2)(a) of the LSA).

Proportion and relevance

Legislation should be reasonable and fair in its treatment of individuals and should not be discriminatory. Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

There is an existing offence provision (maximum penalty 100 penalty units) in sections 126(8) and 127(8) of the LGEA, providing that a candidate or member of a group must take all reasonable steps to ensure the requirements of subsections (2) to (7) are complied with. Sections 126(8) and 127(8) are also listed as integrity offences under schedule 1, part 2 of the LGA and the *City of Brisbane Act 2010*. Amending sections 126 and 127 of the LGEA to require an additional category of expenditure to be paid out of the dedicated account expands the circumstances in which the penalty applies.

The amendments have sufficient regard to rights and liberties of individuals because they are intended to allow candidates and groups of candidates to use gifts and loans to pay for non 'electoral expenditure' election campaign expenses, thereby making it easier for candidates and groups of candidates to fund their election campaigns and allowing donors to support a candidate's or group's election campaign in more ways. This promotes the right to freedom of expression and the right to take part in public life.

The offence which will apply under the expanded circumstances is proportionate and reasonable, as the maximum penalty of 100 penalty units is the same penalty that applies if a candidate or group of candidates fails to take all reasonable steps to comply with the existing requirements for the operation of dedicated accounts (including that electoral expenditure must be paid out of the account). It is also the same penalty that applied before the commencement of the Expenditure Caps Act in circumstances where a candidate or group failed to pay expenses for the conduct of their election campaign out of their dedicated account.

Section 127B(1) of the LGEA currently provides for a maximum penalty of 100 penalty units. Amendments to prohibit an additional category of expenditure from being paid using a credit card expand the circumstances in which the penalty applies. The amendments have sufficient regard to rights and liberties of individuals because they are consistent with the amendments in relation to payment from the dedicated accounts. The offence which will apply under the expanded circumstances is proportionate and reasonable, as the maximum penalty of 100 penalty units is the same penalty that currently applies where a credit card is used to pay an amount of electoral expenditure.

Human rights

The amendments limit the right to privacy and reputation (section 25 of the *Human Rights Act 2019* (HR Act)) and promote the right to freedom of expression (section 21 of the HR Act) and the right to take part in public life (section 23 of the HR Act).

The limitation on the right to privacy and reputation is addressed in the Statement of Compatibility, which concludes the right is limited only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Consultation

The Local Government Association of Queensland and the Electoral Commission of Queensland support the proposed amendments to the LGEA.

Notes on provisions

Amendment 1 amends clause 24 of the Bill to renumber section 178(1)(f)(vii) to (ix) of the *City of Brisbane Regulation 2012* as a consequence of the Bill omitting section 178(1)(f)(v) and (vi).

Amendment 2 amends clause 46 of the Bill to insert the word ‘of’ in new section 150SD(5)(b) of the *Local Government Act 2009*.

Amendment 3 amends the heading for new section 350 of the *Local Government Act 2009* in clause 102 of the Bill to read ‘Particular conduct tribunal applications to be withdrawn’.

Amendment 4 amends new section 350(1)(c)(iv) of the *Local Government Act 2009* in clause 102 of the Bill to clarify the circumstance in which the Independent Assessor must, on the commencement, withdraw conduct relating to an alleged breach of a local government’s acceptable requests guidelines from the Councillor Conduct Tribunal, i.e. if the conduct relates solely to a contravention of the acceptable requests guidelines mentioned in former section 150L(1)(c)(ii) of the *Local Government Act 2009*.

Amendment 5 amends clause 102 of the Bill, as a consequence of amendment 4 above, to include a reference to subsection (1)(c)(iv) in new section 350(2)(a) of the *Local Government Act 2009* to capture conduct that relates solely to a contravention of the acceptable requests guidelines.

Amendment 6 amends clause 102 of the Bill, as a consequence of amendment 4 above, to replace the lead-in words for new section 350(2)(b) of the *Local Government Act 2009* with ‘otherwise’.

Amendment 7 amends clause 105 of the Bill to renumber section 186(1)(f)(vii) to (ix) of the *Local Government Regulation 2012* as a consequence of the Bill omitting section 186(1)(f)(v) and (vi).

Amendment 8 inserts clause 113A to amend section 126(4) of the *Local Government Electoral Act 2011* to provide that all amounts paid for the conduct of a candidate’s election campaign, including electoral expenditure, must be paid out of the dedicated account.

Amendment 9 inserts clause 113B to amend section 127(4) of the *Local Government Electoral Act 2011* to provide that all amounts paid for the conduct of a group’s election campaign, including electoral expenditure, must be paid out of the dedicated account.

Amendment 10 inserts clause 113C to amend section 127B of the *Local Government Electoral Act 2011* to provide that candidates and groups must not use a credit card to pay amounts for the conduct of a candidate’s or group’s election campaign.