# Local Government Legislation Amendment Regulation (No. 4) 2013

Explanatory notes for SL 2013 No. 273

made under the

*City of Brisbane Act 2010*
*Local Government Act 2009*

# General Outline

## Short title

*Local Government Legislation Amendment Regulation (No. 4) 2013*

## Authorising law

Section 252 of the *City of Brisbane Act 2010* and sections 260F and 270 of the *Local Government Act 2009.*

## Policy objectives and the reasons for them

The objectives of the regulation are to:

1. amend the *Local Government Regulation 2012* (LGR) to give the four new local governments of Douglas, Livingstone, Mareeba and Noosa the flexibility to manage their new financial responsibilities from 1 January 2014 (the changeover day); to require the new local governments to apply the code of competitive conduct to a building certifying activity; to require the new local governments to decide at their first meeting the day and time for holding future meetings; and to exempt the new local governments from complying with the requirement to identify and assess new significant business activities for possible reform until the 2015-16 financial year;
2. amend the *Local Government (De-amalgamation Implementation) Regulation 2013* to enable the four new local governments, from the changeover day, to comply with the requirements of the *Disaster Management Act 2003*;
3. amend the *City of Brisbane Regulation 2012* (CBR) and the LGR to:
    - make reference to new guidelines namely, the National Competition Policy Guidelines for Conducting Reviews on Anti-Competitive Provisions in Local Laws;
    - clarify the meaning of ‘a contract for the supply of goods or services’ and ‘the value of a contractual arrangement’;

- reinstate the requirement for local governments to follow a tender process when establishing a register of pre-qualified suppliers;
- reflect current local government practice to transfer long service leave entitlements from a former employer to a new employer after the entitlement accrues;
- align significant business activity provisions of the CBR and LGR with the *City of Brisbane Act 2010* (COBA) and the *Local Government Act 2009* (LGA) by removing the distinction between type 1 and type 2 significant businesses;
- increase the threshold for significant business activities by the consumer price index;
- increase the prescribed business activity threshold with respect to the application of the code of competitive conduct by the consumer price index;
- simplify the LGA arrangement provisions;
- correct a cross-reference in the LGR Dictionary; update the CBR and LGR Dictionaries as a consequence of several of the proposed amendments; and correct section 270 heading in the CBR;

4. repeal the *Local Government (De-amalgamation Polls) Regulation 2013*.

# Achievement of policy objectives

**Financial management of new local governments**

The government's Empowering Queensland Local Government Policy 9.4.9 provided that when establishing a new local government, as a result of communities voting for de-amalgamation, appropriate transitional and financial arrangements would support the change.

The LGA and LGR regulate the financial management and reporting responsibilities of local governments including the way in which a local government sets the budget and levies rates. The LGA was recently amended by the *Local Government and Other Legislation Amendment Act 2013* (LGOLAA13) to provide for appropriate transitional and financial arrangements to support the de-amalgamating councils of Douglas, Livingstone, Mareeba and Noosa, including the power to set a budget and to levy rates outside of the budget cycle for the remainder of the 2013-14 financial year. The explanatory notes to the LGOLAA13 Bill, at page 18, foreshadowed the government's intent to propose complementary amendments to the LGR before the end of 2013 with prospective commencement on 1 January 2014.

The regulation makes complementary amendments to the LGR to:

- require the new local governments to consider at their first meeting the day and time for holding other meetings, similar to the requirements of section 256 for all other local governments;
- clarify 'budget meeting' requirements applying to the first budget meeting of the new local governments;
- clarify 'financial year' requirements applying to the new local governments for the remainder of the 2013-14 financial year;
- clarify the reference to 'first rate notice' in the LGR section 88(2)(a) applies to the first rate notice of a new local government for the part of the 2013-14 financial year;
- exempt the new local governments from current timeframes for the adoption of the first budget (transitional provisions in LGOLAA13 section 305 sets the timeframes);
- clarify budget noncompliance by the new local governments with LGR section 169 (preparation and content of budget) will not invalidate the budget (LGR section 170(2) does not apply to the new local governments);

- clarify the first budget of the new local governments does not to include:
  - certain statements for the next 2 financial years (e.g. financial position, cash flow);
  - a long-term financial forecast;
  - relevant measures of financial sustainability;
  - the total value of the change in rates and utility charges compared with the previous financial year;
- exempt the new local governments from preparing a 5-year corporate plan;
- clarify the first budget of the new local governments must be consistent with the annual operational plan;
- clarify the annual operational plan is not to include a statement about how the new local governments will progress implementation of the 5-year corporate plan;
- clarify that the community financial report of the new local governments for the six month period 1 January 2014 to 30 June 2014 does not have to include relevant measures of financial sustainability;
- clarify that in the first six months the mayor, deputy mayor or chief executive officer of the new local governments may not have regard to the new local government's 5-year corporate plan when approving allocation of a councillor's discretionary funds under LGR section 202(4)(b);
- exempt the chief executive officer of a new local government from presenting the first budget meeting with a statement of estimated financial position;
- exempt the new local governments until the 2015-16 financial year from complying with section 18(1) LGR to identify and assess new significant business activities for reform as section 19 requires a full financial year of data for identification;
- require the new local governments to apply the code of competitive conduct to a building certifying activity.

The transitional provisions apply to the new de-amalgamating local governments for the remainder of the 2013-14 financial year only. For the 2014-15 financial year and onwards, Douglas, Livingstone, Mareeba and Noosa Shire Councils will be required to comply with the existing financial management requirements under the LGA and LGR.

The regulation provides for prospective commencement on 1 January 2014 of section 19 (amendment of the LGR section 38 to require the new governments to apply the code of competitive conduct to a building certifying activity) and section 29 (inserts new chapter 13 LGR to provide for transitional matters of the new local governments).

**Disaster management by new local governments**

Each local government affected by de-amalgamation has been appointed a transfer manager who is responsible for implementation to ensure the four new local governments are independently and effectively operational from 1 January 2014, the changeover day.

As the new local governments are not operational until 1 January 2014, the regulation requires the transfer manager for a new local government, before the changeover day, to take action to ensure that on the changeover day the new local government may operate effectively and immediately under the *Disaster Management Act 2003* (DMA). This includes establishing and appointing members of a Local Disaster Management Group, preparing a plan for disaster management in the new local government's area and appointing a person to be a member of a District Disaster Management Group.

**National Competition Policy Guidelines for Conducting Reviews on Anti-Competitive Provisions in Local Laws**

The new 'National Competition Policy Guidelines for Conducting Reviews on Anti-Competitive Provisions in Local Laws', approved by the Minister for Local Government, Community Recovery and Resilience on 13 August 2013, consolidate two previous guidelines. The new guidelines assist local governments in identifying anti-competitive provisions in local laws and prescribe procedures for reviewing anti-competitive provisions. The regulation amends the CBR and the LGR to update guideline references with references to the new guidelines.

**Meaning of contract for the supply of goods or services**

The COBA and the LGA provide that a local government must establish a system of financial management that ensures regard is had to the sound contracting principles when entering into a 'contract for the supply of goods or services'. Section 103(4) COBA and section 104(4) LGA provide that a contract for the supply of goods or services 'includes a contract about carrying out work'.

For consistency with the COBA and the LGA, the regulation amends the CBR and the LGR to clarify that a contract for the supply of goods or services includes a contract about carrying out work. Further, obsolete references to 'contracting activities' in the CBR section 206(1) and (2) and the LGR section 216(1) and (2) are omitted.

**Meaning of the value of a contractual arrangement**

The value of a contractual arrangement determines how the contract may be entered into, that is, quotation only for medium-sized contractual arrangements and by tender for large-sized contractual arrangements. The CBR and the LGR are unclear as to whether the words 'in a financial year' mean the value of a contractual arrangement is determined only within a financial year or over the term of a contractual arrangement covering more than one financial year.

The regulation amends the CBR and the LGR to clarify that the expected value of a contractual arrangement with a supplier for a financial year, or over the proposed term of the contractual arrangement, is the total expected value of all of the local government's contracts with the supplier for goods and services of a similar type under the arrangement.

**Register of pre-qualified suppliers**

The CBR section 222(2) and the LGR section 232(2) provide for a local government to enter into a contract without first inviting written quotes or tenders if the contract is entered into with a supplier from a register of pre-qualified suppliers. The definition of 'purchasing arrangement' was inadvertently not carried over to the new CBR and LGR resulting in the removal of the requirement to tender for the register of pre-qualified suppliers.

The regulation amends the CBR and the LGR to reinstate the requirement to tender for the register of pre-qualified suppliers similar to the preferred supplier arrangements under the CBR section 223 and the LGR section 233.

**Long service leave transfer obligations**

Sections 264 and 265 CBR and sections 286 and 287 LGR provide for recognition of previous periods of employment for council employees and the payment by the former employer to the new employer towards long service leave entitlements accrued with the former employer. In particular, section 265(1)(b) CBR and section 287(1)(b) LGR provide that the former employer must pay the new employer an amount for the number of days of long service leave that the person would have been entitled to take if there was no minimum period of employment to be completed before the entitlement accrued.

Stakeholders sought clarification of long service leave entitlements where council employees have not worked a minimum period of employment. Without amendment, the legislation requires councils to make provision for future long service leave payments at the time of transfer even where the entitlement has not accrued and that funds are transferred from the former employer to the new employer to enable the new employer to meet the entitlement when it accrues.

During consultation stakeholders advised that in practice no immediate payment is made by the former employer at the time of transfer to the new employer if the entitlement has not accrued. Once the entitlement accrues with the new employer a payment is made from the former employer to the new employer for the years of service with the former employer. If the employee leaves the new employer before the entitlement is accrued, no payment is made from the former employer to the new employer.

The regulation amends the CBR and the LGR to reflect current local government practice. Note, the *Local Government (De-amalgamation Implementation) Regulation 2013* provides for the entitlements of transferred employees in relation to the new councils.

**Significant business activities and prescribed business activities**

The COBA and the LGA provide for the application of the National Competition Policy Agreements to the significant business activities of local governments, but no longer make the distinction between ‘type 1’ and ‘type 2’ business activities and instead reference is made to thresholds in the CBR and LGR.

The CBR section 15 and the LGR section 18 provide that councils must identify and assess each new significant business activity for possible reform in line with the competitive neutrality principle. The thresholds are set out in the CBR section 16 and the LGR section 19 by reference to ‘type 1’ significant businesses and ‘type 2’ significant businesses.

The regulation aligns the CBR and the LGR with the COBA and the LGA by removing the distinction between type 1 and type 2 significant businesses. The regulation does not reduce the obligation on councils to comply with National Competition Policy obligations as the lower threshold is maintained. Further, the regulation amends the CBR and the LGR by increasing the thresholds for significant business activities and prescribed business activities (LGA section 47(7) and COBA section 51(7)) by the consumer price index.

**Minor amendments**

- The LGA arrangements put the Local Government Association of Queensland (LGAQ) in the place of a council entering into a contract with a supplier on the register of pre-qualified suppliers or a contract with a supplier under a preferred supplier arrangement. Stakeholders suggested clarifying the definition of LGA arrangement in CBR section 224(2)(a) and (b) and LGR section 234(2)(a) and (b). The regulation amends the definition to clarify the policy intent without altering the policy intent.
- The regulation amends the CBR section 270 heading to replace 'senior executive employees' with 'senior contract employees' to ensure consistent terms are used.
- The regulation amends the LGR Schedule 8 (Dictionary) to replace an incorrect reference to section 1 with section 2 in the definitions of *current local government*, *former local government*, *relevant area* and *transfer day*.

**Repeal of the *Local Government (De-amalgamation Polls) Regulation 2013***

The *Local Government (De-amalgamation Polls) Regulation 2013* provided for the running of polls about de-amalgamation in the former Douglas, Livingstone, Mareeba and Noosa local government areas. As the polls were conducted on 9 March 2013 the regulation is proposed for repeal. The Electoral Commission of Queensland supports the proposal.

# Consistency with policy objectives of authorising law

The regulation is consistent with the main objectives of the COBA section 252 and the LGA section 270 that enables a regulation may be made about the financial planning and accountability of a local government, including the systems of financial management. The regulation is also consistent with the LGA section 260F that provides for the implementation of de-amalgamation of the local government area under a regulation and for the regulation to provide for anything that is necessary or convenient to facilitate the implementation of the de-amalgamation of the local government area.

# Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation including the policy objectives of the *Disaster Management Act 2003* (DMA) in relation to the transfer managers of the de-amalgamating local governments of Douglas, Livingstone, Mareeba and Noosa taking the necessary action to ensure that on the changeover day of 1 January 2014, the new local governments operate effectively and immediately under the DMA.

# Benefits and costs of implementation

Not applicable.

# Consistency with fundamental legislative principles

The proposed regulation has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and is consistent with these provisions.

# Consultation

A draft regulation was released for targeted consultation with Brisbane City Council, the Transfer Managers of the four new local governments of Douglas, Livingstone, Mareeba and Noosa, the Local Government Association of Queensland, the Local Government Managers Australia Queensland, Local Buy Pty Ltd and the Electoral Commission Queensland. As a result of consultation minor changes were made to the regulation to clarify policy intent.

The Office of Best Practice Regulation, Queensland Competition Authority was consulted in relation to the proposed amendments and confirmed that a Regulatory Impact Statement is not required.