Local Government Legislation Amendment Regulation (No. 1) 2014

Explanatory notes for Subordinate Legislation 2014 No. 290

made under the

City of Brisbane Act 2010
Local Government Act 2009
Local Government Electoral Act 2011

General Outline

Short title

Local Government Legislation Amendment Regulation (No. 1) 2014

Authorising law

Section 252 of the *City of Brisbane Act 2010*, sections 270 and 270A of the *Local Government Act 2009* and section 208 of the *Local Government Electoral Act 2011*.

Policy objectives and the reasons for them

The objectives of the regulation are to:

1. amend the *Local Government Electoral Regulation 2012* to:
   - prescribe proof of identity documents for local government elections;
   - change the 2016 quadrennial local government election date from 26 March 2016 to 19 March 2016, due to Easter Saturday on 26 March 2016;
2. amend the *Local Government Regulation 2012* (LGR) and the *City of Brisbane Regulation 2012* to:
   - increase National Competition Policy business activity thresholds by the consumer price index for the 2015-2016 financial year;
   - if a rates cap applies to a lot and part of the lot is acquired—require the rates to be reduced on the remainder lot (on a pro rata basis) until the council resolves otherwise at the next budget meeting;
   - clarify that local governments may re-offer for lease a valuable non-current asset without repeating the call for tenders;
   - validate rate/charge resolutions if rates/charges are incorrectly levied;
3. amend the LGR to prescribe for a minimum of 1 and a maximum of 2 councillors to be appointed to a local government audit committee;

4. amend the *Local Government (De-amalgamation Implementation) Regulation 2013* to extend the time prescribed for the new local governments of Douglas, Livingstone, Noosa and Mareeba to discharge the Queensland Treasury Corporation working capital facilities.

Achievement of policy objectives

Prescribe proof of identity documents for local government elections

The *Local Government Electoral Act 2011* (LGEA) was amended by the *Local Government Legislation Amendment Act 2014* (LGLAA14) to introduce proof of identity requirements to vote at a pre-poll or ordinary polling booth in local government elections. The LGEA Dictionary schedule (as amended by the LGLAA14) provides for proof of identity documents to be prescribed under a regulation.

The regulation part 4 section 16 makes complementary amendments to the *Local Government Electoral Regulation 2012* (LGER) to prescribe the documents related to the proof of a person's identity. The documents mirror those prescribed in the *Electoral Regulation 2013* for state elections.

To align with the commencement on 1 January 2015 of the proof of identity amendments in the LGLAA14, the regulation part 1 section 2 provides for part 4 to commence on 1 January 2015. On commencement, local government quadrennial elections, by-elections and fresh elections require an elector to show proof of identity to vote at a pre-poll or ordinary polling booth. An elector may make a declaration vote if the elector does not give an issuing officer the required proof of identity.

Change the 2016 quadrennial local government election date

The LGEA section 23 provides that a quadrennial local government election must be held on the last Saturday in March in every fourth year after 2012, however, a different day for a particular year may be fixed by regulation. The last Saturday in March 2016 is 26 March 2016. As Easter Saturday falls on 26 March 2016, also coinciding with the Queensland school holiday period, the regulation part 4 section 16 inserts in the LGER new section 2 to fix Saturday 19 March 2016 as the date for the 2016 quadrennial local government elections. The regulation part 1 section 2 provides for part 4 to commence on 1 January 2015.

Increase business activity thresholds by the consumer price index

The *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (CoBA) and associated regulations include requirements to ensure local governments comply with the National Competition Policy (NCP). The *Local Government Regulation 2012* (LGR) section 19 and the *City of Brisbane Regulation 2012* (CBR) section 16 prescribe thresholds for determining if a business activity of a local government is a significant business activity, and the LGR section 39 and the CBR section 29 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 2013.

The regulation part 2 sections 4 and 5 amend the CBR (sections 16 and 29) and part 5 sections 18 and 19 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 2015-2016 financial year.

The new thresholds (rounded) are: LGR section 19(2)(a) - $13.6m (up from $13.3m), section 19(2)(b) - $9m (up from $8.9m), section 39(1) - $318,000 (up from $312,000); CBR section 16(2) - $9m (up from $8.9m), section 29(1) - $318,000 (up from $312,000).

If a rates cap applies to a lot and part of the lot is acquired, the rates are reduced on the remainder lot (on a pro rata basis)

The LGA sections 94(1), 96(b) and the CoBA sections 96(1), 98(b) give local governments broad and general powers to levy rates. The LGR section 74 and CBR section 67 require a local government to calculate rates by using the rateable value of the land. The rateable value is the value of the land for the financial year or as averaged over a number of financial years. The LGR section 116 and CBR section 108 provide that when a local government resolves to levy rates or charges, the local government may also resolve to limit the increase in the rates or charges, that is, to cap the rates or charges.

The regulation part 2 section 8 inserts new section 108A in the CBR and part 5 section 22 of the regulation inserts new section 116A in the LGR to require that if rateable land is subject to a rates cap (applied under the CBR section 108 and the LGR section 116) and part of the rateable land is compulsorily acquired by a government entity, or acquired by the department administering the *Transport Planning and Coordination Act 1994*, the rates or charges levied on the remainder lot are reduced to the divided amount until the local government resolves otherwise at the next budget meeting.

The divided amount is worked out by dividing the amount of the rates or charges levied on the rateable land (before part lot acquisition) by the number of square metres of the rateable land (before part lot acquisition) and then multiplying that amount by the number of square metres of the remainder (following part lot acquisition) of the rateable land.

Enable a valuable non-current asset to be re-offered for lease without repeating the call for tenders

The LGR section 227 and CBR section 217 provide that a local government can not enter into a valuable non-current asset contract unless written tenders are invited for the contract or the non-current asset is offered for sale by auction.

The LGR section 224(5) and CBR section 214(5) define a valuable non-current asset contract as a contract for the disposal of a valuable non-current asset. Although disposal includes the granting or creation of a lease, the legislation is unclear.

Further, the LGR section 236(1)(a)(i) and CBR section 226(1)(a)(i) enable a local government to dispose of a valuable non-current asset other than by tender or auction if the

asset was previously offered for sale by tender or auction but was not sold. However, if the lease of a valuable non-current asset was previously offered by tender or auction but a lease was not granted, the LGR/CBR do not enable a local government to grant the lease of the valuable non-current asset other than by tender or auction.

The regulation part 2 section 10 amends the CBR section 214 and part 5 section 25 of the regulation amends the LGR section 224 to clarify ***disposal*** of a valuable non-current asset by a local government includes the disposal of all or any part of an interest in the asset.

Also, the regulation part 2 section 11 amends the CBR section 226 and part 5 section 26 of the regulation amends the LGR section 236 to enable the disposal of a valuable non-current asset if the lease of the valuable non-current asset was not granted when the asset was previously offered by tender or auction.

The regulation part 2 sections 9 and 12, and part 5 sections 24 and 27 of the regulation make minor consequential amendments.

Validate rates and charges resolutions if rates and charges are incorrectly levied

The LGR section 94(12) and CBR section 87(12) provide that special rates or charges may be different to the amount for other rateable land because:

- the land or its occupier specially benefits from the service, facility or activity, or has or will have special access to the service, facility or activity; or
- the land is or will be used in a way that specially contributes to the need for the service, facility or activity; or
- the occupier of the land specially contributes to the need for the service, facility or activity.

Local governments advise it is sometimes difficult to accurately levy special rates and charges on certain lots and from time to time anomalies occur. Accordingly, the LGR section 94 and CBR section 87 provide that in any proceedings, a local government resolution or overall plan for special rates and charges is not invalid merely because the resolution or plan inadvertently omits lots from the special rate or charge. For example, if a special rate or charge should have been levied on 10 lots because all 10 receive a benefit from particular infrastructure, but council only levies the charge on 9 lots, the resolution remains valid.

The regulation part 2 section 6 replaces the CBR section 87(14) and part 5 section 20 of the regulation replaces the LGR section 94(14) to apply the same policy intent to the converse situation where a local government resolves to impose special rates or charges on lots which receive no benefit.

The regulation part 2 section 7 makes a minor consequential amendment to the CBR section 91 and the regulation part 5 section 21 makes the same minor consequential amendment to the LGR section 98, to clarify that if a rates notice includes special rates that do not apply, or should not have applied, the rates notice is not invalid but the local government must, as soon as practicable, return the special rates to the person who paid the special rates.

Prescribe for a minimum of 1 and a maximum of 2 councillors to be appointed to a local government audit committee

Under the LGA section 105 each large local government must establish an audit committee. The LGR section 209 prescribes a large local government as a local government belonging to a remuneration category of 3 or a higher number mentioned in the remuneration schedule. The LGR section 246 requires the Local Government Remuneration and Discipline Tribunal to prepare a remuneration schedule and prepare a report.

The Tribunal's 2013 Report re-assigned all Special Category and Category 1 and 2 councils to Category 3, effective from 1 July 2014. The *Queensland Audit Office Report 14: Results of Audit: Local Government entities 2012-13* notes the effect of the Tribunal's decision requires all local governments to have an audit committee from 1 July 2014. The QAO Report recommends that the Department of Local Government, Community Recovery and Resilience retain the current legislative provisions requiring each council to have an audit committee.

To give greater flexibility to local governments in the composition of audit committees, the regulation part 5 section 23 amends the LGR section 210(1)(b)(i) to prescribe that a minimum of 1 and a maximum of 2 councillors must be appointed by the local government to the audit committee, instead of the current minimum requirement of 2 councillors.

Extend the time for the discharge of QTC working capital facilities

The de-amalgamation of the local government areas of Cairns, Rockhampton, Sunshine Coast and Tablelands (the continuing local governments) were effected on 1 January 2014 (changeover day) when the related new local governments of Douglas, Livingstone, Noosa and Mareeba commenced operations.

To facilitate the de-amalgamation of the continuing local governments, working capital facilities were established by Queensland Treasury Corporation (QTC). Under section 37 of the *Local Government (De-amalgamation Implementation) Regulation 2013* (LGDIR) a facility had to be transferred from the continuing local government to the related new local government on changeover day. Section 37 requires that a new local government must discharge the facility by 31 December 2014.

To enable the new local governments to be in a financial position to discharge the QTC working capital facility, the regulation part 3 amends the LGDIR section 37 to extend the date for the discharge of the facility from 31 December 2014 to 30 June 2015.

Consistency with policy objectives of authorising law

The regulation is consistent with the main objective of the LGEA to ensure the transparent conduct of the election of Queensland local government councillors.

The regulation is consistent with the main objectives of the LGA and the COBA to provide for the way a local government is constituted, the nature and extent of its responsibilities and powers, and to provide a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Not applicable.

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 the principles.

Consultation

The Department of Local Government, Community Recovery and Resilience consulted the Local Government Association of Queensland, the Local Government Managers Australia, the Brisbane City Council, the Electoral Commission of Queensland, the Department of Transport and Main Roads, the Department of Natural Resources and Mines, the Department of State Development, Infrastructure and Planning, the Department of the Premier and Cabinet and Queensland Treasury and Trade.

The proposed amendments are supported.

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.