



**Queensland
Government**

Department of Local Government,
Racing and Multicultural Affairs

Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020

Information paper on recent changes to local government legislation

Updated August 2020

| www.dlgrma.qld.gov.au |

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An electronic copy of this document is available on the Department of Local Government, Racing and Multicultural Affairs' website at www.dlgrma.qld.gov.au.

Acronyms and glossary

BCC Brisbane City Council

CEO Chief Executive Officer

COI Conflict of interest

DLGRMA Department of Local Government, Racing and Multicultural Affairs

ECQ Electoral Commission of Queensland

LGRC Local Government Remuneration Commission

OIA Office of the Independent Assessor

ROI Register of interests

RTI Right to Information

THIRD PARTIES Entities in an election that participate in the electoral process by publishing electoral material or making a donation

Background: rolling local government reforms

The Queensland Government is delivering a rolling reform agenda in the local government sector. The reforms further strengthen the transparency, accountability and integrity measures that apply to the system of local government in Queensland.

Several inquiries including the Crime and Corruption Commission's Operation Belcarra have identified a range of opportunities to further enhance the quality of local government in Queensland through reform, including the way Councillors are elected.

The Belcarra Report, finalised in October 2017, found that good government requires elections to be held on a level playing field, with equal participation available to all. It also stressed the need for complete transparency in elections.

This document begins with a high-level summary of the rolling reforms, for background and context, and then provides more detail on the local government amendments within the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*.

LEGISLATIVE REFORM PRINCIPLES

- Integrity: ensuring current and future Councillors are fully informed about their obligations as candidates and Councillors, and requiring Councillors to uphold the highest levels of honesty and impartiality when making decisions in the public interest
- Transparency: clarifying and strengthening requirements before, during and after an election to enable voters to better know who they are voting for and to reduce corruption risks, and ensuring that the community can understand why Councils make the decisions they do in the public interest
- Diversity: promoting Councils being representative of their communities and making it easier for potential candidates to nominate and campaign
- Consistency: aligning local government election requirements with state and federal electoral processes and aligning requirements between Brisbane City Council (BCC) and other local governments

BELCARRA STAGE 1

Following the Belcarra Report, the government assessed a number of changes as requiring priority, with a first stage of legislative changes under the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*.

Stage 1 changes:

- prohibition of donations from property developers
- new regime for dealing with conflicts of interest (COIs).

BELCARRA STAGE 2

Following consultation with stakeholders and review by the Economics and Governance Parliamentary Committee, on 16 October 2019 the Queensland Parliament passed the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*, which received Governor's assent on 30 October 2019.

Stage 2 changes included:

- mandatory So you want to be a Councillor? training for election candidates
- transparent dedicated candidate bank accounts and financial returns
- new restrictions on decisions during the election period (i.e. caretaker period)
- Right to Information laws to cover Brisbane City Council civic cabinet meetings
- expanded Councillor rights to access Council information
- clarified responsibilities for Councillors in preparing Council budgets
- changes to mayoral powers to direct CEOs and senior executive officers and the appointment of senior executive officers
- improved real-time donation disclosures
- improved disclosures of real donation and gift sources

- real-time expenditure disclosures
- the Office of the Independent Assessor (OIA) to investigate Councillor complaints for Brisbane City Council.

Refer to the [Stage 2 local government reforms information paper](#) for more detailed information on each of the stage 2 changes.

ELECTORAL AND OTHER LEGISLATION (ACCOUNTABILITY, INTEGRITY AND OTHER MATTERS) AMENDMENT ACT 2020

The Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020 was passed by the Legislative Assembly on 18 June 2020 and received assent on 30 June 2020 and includes amendments relating to state elections, Ministerial conduct, and conduct in local government. The majority of local government amendments come into effect on 12 October 2020.

Changes in the amendment Act affecting local government include:

- new registers of interests requirements
- new and clarified conflict of interest requirements
- new requirements for Councillor advisors and Councillor administrative support staff
- provisions relating to the dissolution of a local government and interim administrators
- stopping Mayors from giving directions about the appointment or discipline of local government employees
- changes for filling Councillor and Mayor vacancies.

In addition to the amendment Act's requirements there are also a number of regulatory amendments which come into effect 12 October 2020. These include improvements to transparency through changes to requirements for meeting agendas, minutes, and when matters can be considered in closed meetings.

See pages 7–12 below for more detailed information on each of the changes contained in the amendment Act and additional regulatory amendments.

COUNCIL MEETINGS AND 2020 ELECTION

On Thursday 26 March 2020 the Governor in Council approved the Local Government Electoral (2020 Quadrennial Election) Regulation 2020. The Regulation introduced several measures to help minimise COVID-19 health risks to candidates, voters, Councillors and the broader community.

Temporary changes have been made to provisions of both the Local Government Regulation 2010 and City of Brisbane Regulation 2012 including allowing Council meetings to occur via phone or teleconference.

FINANCE REFORMS

The Department of Local Government, Racing and Multicultural Affairs is proposing financial management and reporting amendments to the Local Government Regulation 2012 and City of Brisbane Regulation 2012.

Detailed information on the proposed financial management and reporting amendments which are available at www.dlgrma.qld.gov.au/local-government-reform/finance-and-reporting-reform.html.

Proposals include:

- strengthening the requirements on the use of Council-controlled entities
- clarification of the provisions for the sale of land for rate arrears.

MORE INFORMATION

The Queensland Government is committed to ensuring the community and stakeholders are aware of the legislated and proposed reforms and their impacts.

The Department of Local Government, Racing and Multicultural Affairs (DLGRMA) is available to answer questions on (07) 3452 6747 and by email to lgreforms@dlgrma.qld.gov.au.

You can also visit the department's website at www.dlgrma.qld.gov.au/lgreform for more information including resources and fact sheets.

1-MINUTE FEEDBACK SURVEY

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Electoral and Other Legislation (Accountability, Integrity and Other Matters) Act 2020

Below is the summary of the local government reforms within the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*. This includes changes to the *Local Government Act 2009*, *City of Brisbane Act 2010* and *Local Government Electoral Act 2011*.

CLARIFICATION OF CONFLICTS OF INTEREST (COI) REQUIREMENTS (COMMENCES 12 OCTOBER 2020)

Key changes include the following:

- Changing the names of the two categories for simplicity so that both are known by the common term 'conflicts of interest'
- Providing more certainty about the matters that are and are not COIs
- Expanding the range of related people and organisations

Definition	Prescribed conflict of interest Have you: received gifts, loans and/or travel/ accommodation from one donor totalling \$2000 or more; or does the decision relate to a contract with Council, application or submission to Council or the CEO's employment?
Applies to	You or your spouse, parent, child, sibling, employer, business partner, a private company, or a public company (5% or more ownership), or board/committees you're on
Effect	<ul style="list-style-type: none"> • You cannot participate in the decision • You cannot influence others participating in the decision

Definition	Declarable conflict of interest Have you received gifts, loans and/or travel/ accommodation totalling \$500 or more from one donor? Is there another conflict between your interests and the public's interests? This mainly means: do you have an interest in a decision other than those listed as a prescribed interest, that might cause you to be biased or someone else to think that you might be biased? For example, if the decision will affect the price of your properties, or will it help out a friend or someone else you know.
Applies to	You or your spouse, parent, child, sibling, employer, business partner, a private company, or board/ committees you're on, public companies, spouse's parents or children or siblings, other people close to you (e.g. close friends or other relatives). Does not apply to clubs or organisations that you're merely a member or patron of.
Effect	<ul style="list-style-type: none"> • You must stop participating in the decision • You must declare your bias/interest • You may voluntarily leave the meeting considering the decision • It's up to other Councillors to decide if and how you can participate in any decision-making about the issue (including adding conditions if they wish) • You cannot influence others unless other Councillors have decided you can participate

<p>Definition</p>	<p>Ordinary business</p> <p>Means decisions about:</p> <ul style="list-style-type: none"> • Councillor remuneration, reimbursement of Councillor expenses, superannuation, or insurance for Councillors • Rates, charges and cost-recovery fees • New planning scheme or planning scheme amendment that applies to the whole Council area • Adoption or amendment of the budget • Matters that are of interest merely as a candidate for election or appointment as Mayor or Deputy Mayor or Councillor or committee member, or Council- appointed member of board or corporation or association • Matters where the decision affects a significant proportion of people in the community, as much as you or your related parties or donors, for example a new park that will benefit the whole neighbourhood where you live <p>No longer includes the following:</p> <ul style="list-style-type: none"> • The terms on which goods, services and facilities are to be offered by Council for use or enjoyment of the public in the local government area (still not an interest but considered ordinary business because a significant proportion of the community is affected) • Matters that are of interest merely as a state government employee, elector, ratepayer, resident, general public user of Council services or facilities, beneficiary of Council insurance • Member of non-profit organisations (still not an interest but considered an 'other interest' in the section below)
<p>Effect</p>	<p>Not considered an interest in decisions that relate solely to ordinary business</p>

<p>Definition</p>	<p>Other matters not an interest [note: these exclusions apply only to declarable conflicts of interest]</p> <ul style="list-style-type: none"> • Interest merely because of religious beliefs or membership of a political party • If your interest is merely because you are a parent or former student at a school or child care service • If your interest is merely because you are a member or patron of a club or organisation, for example member of a local sporting club or environmental group, as long as you are not an executive or board member • Small gifts or donations from a donor totalling less than \$500 • Gifts, loans, travel or accommodation benefits from a donor given prior to your current and previous terms.
<p>Effect</p>	<p>Not considered an interest</p>

CONFLICT OF INTEREST OFFENCES (COMMENCES 12 OCTOBER 2020)

A Councillor who fails to declare a prescribed conflict of interest or who participates in a decision in which they have a prescribed conflict of interest will have engaged in misconduct. However, if they have done so *intentionally* to dishonestly gain a benefit or cause a detriment it is a serious integrity offence with a penalty of up to 200 penalty units or two years imprisonment.

If a Councillor with a prescribed conflict of interest fails to leave a meeting as required, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on, they commit an integrity offence with a penalty of up to 200 penalty units or two years imprisonment.

A Councillor who fails to declare a declarable conflict of interest will have engaged in misconduct. However, if they have done so *intentionally* to dishonestly gain a benefit or cause a detriment it is a serious integrity offence with a penalty of up to 200 penalty units or two years imprisonment.

If a Councillor fails to comply with a decision of eligible Councillors that they must not participate in a decision or leave a meeting, or any conditions on the participation imposed by the eligible Councillors, they commit an offence with a penalty of up to 100 penalty units or one year of imprisonment.

COUNCILLOR REGISTERS OF INTERESTS REQUIREMENTS (COMMENCES 12 OCTOBER 2020)

- Transitional provisions require Councillors to disclose their registers of interests within 30 days of the commencement of the new requirements
- Within 30 days of their election Councillors must submit new registers of interests for themselves and any specified related persons
- Councillors must notify of any changes to their registers of interests within 30 days
- Councillors must provide an update to their register within 30 days of the end of financial year

REGISTERS OF INTERESTS OFFENCES (COMMENCES 12 OCTOBER 2020)

A Councillor, with intent to dishonestly gain a benefit for the Councillor or another person, commits a serious integrity offence and could face penalty of up to 200 penalty units or two years imprisonment if they:

- fail to inform the CEO, in the approved form, of the particulars required to be recorded in a register of interests for the Councillor or a person related to them within 30 days of the start of their term
- fail to inform the CEO, in the approved form, of the particulars of the new interest or change of interest within 30 days after the interest arises or the change happens
- fail to inform the CEO, in the approved form, whether a register of interests for the Councillor or a person related to the Councillor is correct or the particulars of an interest to be recorded in the register of interests or a change to an interest recorded in the register of interests
- give the CEO a register of interests or information relating to a register of interests that the Councillor knew to be false or misleading.

NOTE: the conduct is also prescribed as misconduct.

COUNCILLOR ADVISORS AND ADMINISTRATIVE SUPPORT STAFF FOR COUNCILLORS (COMMENCES 12 OCTOBER 2020)

- New code of conduct for Councillor advisors to apply
- Councils must make a resolution to create Councillor advisor positions (except Brisbane City Council)
- Councillors can direct administrative support staff consistent with Council guidelines about administrative assistance
- Councillor advisors are appointed by contract for the Councillor's term, and cease if Councillor ceases to be a Councillor, unless re-appointed by a new Councillor
- Councillor advisors are required to submit registers of interests
- Councillor advisors are subject to offences about integrity matters and about the use of information obtained in their role
- Costs of Councillor advisors are to be reported (e.g. in annual report)

MAYOR DIRECTIONS ABOUT EMPLOYEES (COMMENCES ON 12 OCTOBER 2020)

In response to recommendation 1 of the Crime and Corruption Commission's Operation Yabba report, the Amendment Act stops Mayors from making a direction to the Council CEO about the appointment or discipline of local government employees, the discipline of Councillor advisors, or other matters that would result in the CEO contravening a provision of legislation.

BRISBANE CITY COUNCIL SENIOR CONTRACT EMPLOYEES (COMMENCES ON 12 OCTOBER 2020)

Under the Amendment Act changes, Brisbane City Councillors cannot be involved in the appointment of contract employees except for CEO and senior executive employees who report directly to the CEO.

BRISBANE CITY COUNCIL MAYORAL DIRECTIONS (COMMENCES 12 OCTOBER 2020)

Under the Amendment Act changes, the Brisbane City Council Lord Mayor may not give directions to the CEO and senior executive employees that are inconsistent with a resolution, or a document adopted by resolution, of the Council.

DISSOLUTION OF A LOCAL GOVERNMENT (NOW IN EFFECT)

Changes within the Amendment Act include the following:

- The term of an administrator may expire at the conclusion of a quadrennial local government election (rather than requiring a 'fresh election')
- Provision for short-term absences of an administrator
- State government can recover the costs of an Interim Management Committee from the local government

**COUNCILLOR VACANCIES
(COMMENCES 12 OCTOBER 2020)**

	First 12 months	Middle period	Last 12 months
Brisbane Lord Mayor and Councillors (no changes)	By-election	By-election	Councillors appoint May leave Councillor positions vacant in last 3 months
Other Mayors and Councillors in both divided and undivided Councils	Appoint next candidate	By-election	Councillors appoint May leave Councillor positions vacant in last 3 months

**CORPORATE PLANS
(COMMENCES 12 OCTOBER 2020)**

The Amendment Act removes the requirement for local government corporate plans to have a length of five years.

**POLITICAL PARTY RESPONSIBILITIES
(NOW IN EFFECT)**

The Amendment Act requires executive committee members of political parties to be responsible for requirements under the *Local Government Electoral Act 2011* in the absence of an appointed agent.

**TECHNICAL AMENDMENTS
(NOW IN EFFECT)**

The Amendment Act made technical amendments to provisions about formal and informal ballots and preliminary counting to assist the Electoral Commission of Queensland to run elections, and amends requirements for reminder notices to be sent by the ECQ for electoral returns.

Regulation changes

Below is a summary of changes to local government regulations made by the Local Government Legislation (Integrity) Amendment Regulation 2020 and Councillor code of conduct to support the above Act changes.

REGISTERS OF INTERESTS (COMMENCES 12 OCTOBER 2020)

- Donations made totalling \$500 or greater must be recorded
- Gifts received totalling \$500 or greater must be recorded
- Electoral gifts do not need to be recorded
- Clarification that being a member of a board of a community organisation needs to be declared but not memberships
- Clarification of when interests arising from official duties are not included in register
- Councils to keep ROIs for 10 years after Councillor's term or officer employment ends

MEETING AGENDAS (COMMENCES 12 OCTOBER 2020)

- Agenda and associated reports and other documents to be published on Council website by 5pm on the day following the day it is made available to Councillors
- Reports to be considered at the meeting provided after the agenda is sent are to be published on Council website as soon as practicable after they are made available to Councillors
- Confidential information in reports or papers is exempt from publication on the website

MEETING MINUTES (COMMENCES 12 OCTOBER 2020)

- Committee meetings must have minutes
- Unless previously made available with the agenda, minutes must include reports and other associated information used or presented in the meeting
- Unconfirmed minutes to be published by 5pm on the tenth day after the meeting
- Confirmed minutes to be published as soon as practicable after the meeting at which they are confirmed
- Clarification that a Councillor can confirm the meeting minutes despite having a conflict of interest in a matter discussed or decided in the meeting and regardless of whether they were present at the meeting
- Confidential information in reports or papers are exempt from publication on the Council website

COUNCILLOR CODE OF CONDUCT (COMMENCES 12 OCTOBER 2020)

- Amendments to the Councillor Code of Conduct to require Councillors with advisors to ensure the advisor is aware of their obligations under the Advisor Code of Conduct

CLOSED MEETINGS (COMMENCES 12 OCTOBER 2020)

The Amendment Regulation tightens the topics that can be discussed in closed session as follows:

Removed	<ul style="list-style-type: none"> • Appointment, dismissal or discipline of employees other than the CEO (or senior executive employees for Brisbane City Council) • Contracts proposed to be made • Starting or defending legal proceedings involving the Council • Actions or decisions under the <i>Planning Act 2016</i> • Other business where public discussion may prejudice the interests of the Council or someone else, or enable a person to gain a financial advantage
Added	<ul style="list-style-type: none"> • Appointment, dismissal or discipline of a CEO or a BCC senior executive employee • Legal advice obtained by the Council or legal proceedings involving the Council • Matters that may directly affect the health and safety of an individual or group • Negotiations relating to a commercial matter involving the Council • Negotiations relating to the taking of land by the Council under the <i>Acquisition of Land Act 1967</i> • A matter required to be kept confidential under a law of, or formal arrangement with, the Commonwealth or a State
Retained	<ul style="list-style-type: none"> • Industrial matters affecting employees • The Council budget • Rating concessions

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