

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

Statement of Compatibility

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

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, 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 make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 (the Bill).

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

The Bill:

- recalibrates the councillor conduct framework to make it more effective and more efficient
- clarifies and enhances councillor conflict of interest requirements
- modernises local government advertising requirements
- gives the Electoral Commission of Queensland discretion about the recovery of local government election costs
- consequentially amends various Acts following the Moreton Bay City Council's change of classification
- makes minor amendments to the *Queen's Wharf Brisbane Act 2016*.

The objectives of the amendments to the Bill are to:

- include necessary renumbering provisions in clauses 24 and 105 of the Bill
- insert a missing word in new section 150SD(5)(b) of the *Local Government Act 2009* (LGA) in clause 46 of the Bill
- amend the heading for new section 350 of the LGA in clause 102 of the Bill to better reflect how the section operates
- amend 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conduct that relates solely to an alleged contravention of a local government's acceptable requests guidelines must be withdrawn from the Councillor Conduct Tribunal by the Independent Assessor on the commencement and that the whole of the application is to be withdrawn in this circumstance
- 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).

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 amendment in the Expenditure Caps Act was 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, and following consultation with the Local Government Association of Queensland and the Electoral Commission of Queensland, amendments to sections 126(4) and 127(4) of the LGEA 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.

Human Rights Issues

Human rights relevant to the amendments (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights engaged by the amendments to be moved during consideration in detail are:

- freedom of expression (section 21 of the HR Act)
- right to take part in public life (section 23 of the HR Act)
- privacy and reputation (section 25 of the HR Act).

If human rights may be subject to limitation if the Bill with these amendments is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The *right to privacy and reputation* protects the individual from unlawful or arbitrary interferences with their privacy, family, home, correspondence (written and verbal) and reputation. It also protects a person from having their reputation unlawfully attacked.

The right protects privacy in the sense of personal information, data collection and correspondence but also extends to an individual's private life more generally.

Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The European Court of Human Rights has also said that an interference will be lawful if it is authorised by a law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it.¹

Noting dedicated account bank statements are required to be provided to the Electoral Commission of Queensland and that they may be audited, requiring candidates in an election to use their dedicated accounts to pay for election campaign expenses that are not 'electoral expenditure' limits their right to privacy because the requirement allows collection of data regarding their financial activity with regards to payment of non 'electoral expenditure' election campaign expenses.

(b) the nature of the purpose of the limitation to be imposed by the amendments if enacted, including whether the limitation is consistent with a free and democratic society based on human dignity, equality and freedom

Sections 126(3) and 127(3) of the LGEA provide that all amounts received by a candidate or group of candidates during the candidate's or group's disclosure period for an election for the conduct of the candidate's or group's election campaign, including all gifts received by the

¹ *Sunday Times v United Kingdom* [1979] ECHR 1, [49]

candidate or group for the election, and all amounts received as loans to the candidate or group, must be placed in the candidate's or group's dedicated account.

The purpose of the limitation is to allow these amounts to be used to pay for non 'electoral expenditure' election campaign expenses, such as expenditure on employing staff for a campaign purpose.

In effect, this will make it easier for candidates and groups of candidates to fund their election campaigns and allow donors to support a candidate's or group's election campaign in more ways. This will promote the right to freedom of expression and the right to take part in public life for candidates and donors who are individuals.

- (c) the relationship between the limitation to be imposed by the amendments if enacted, and their purpose, including whether the limitation helps to achieve the purpose

Noting all amounts received for the conduct of a candidate's or group's election campaign must be placed in the dedicated account, to allow gifts and loans to be used to pay for non 'electoral expenditure' election campaign expenses, non 'electoral expenditure' election campaign expenses must be paid through the dedicated account. This is where the limitation arises.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments

Noting all amounts received for the conduct of a candidate's or group's election campaign must be placed in a candidate's or group's dedicated account, there are no less restrictive and reasonably achievable ways to achieve the purpose.

- (e) the balance between the importance of the purpose of the amendments, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The purpose of the limitation is consistent with a free and democratic society, as the amendments are intended to make it easier for candidates and groups of candidates to fund their election campaigns and to allow donors to support a candidate's or group's election campaign in more ways, thereby promoting the right to freedom of expression and the right to take part in public life for candidates and donors who are individuals.

The amendments would promote the right to freedom of expression and the right to take part in public life for candidates and donors who are individuals in a substantial way, because it could otherwise be difficult for an individual candidate to cover the costs of non 'electoral expenditure' election campaign expenses without using gifts or loans.

On the other hand, the limitation on the right to privacy is only minor. Candidates and groups are already required to disclose gifts and loans received (see sections 117, 118, 120 of the LGEA), and all amounts received by a candidate or group of candidates during the candidate's disclosure period for an 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 their dedicated account.

Therefore, allowing candidates to use gifts and loans to pay for these expenses is a substantial benefit and promotion of human rights, balanced against only a minor limitation of the right to privacy.

(f) any other relevant factors

The amendments are intended to address an unintended consequence arising from the Expenditure Caps Act.

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with human rights under the *Human Rights Act 2019* because they limit a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

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

© The State of Queensland 2023