



Department of Local Government,
Racing and Multicultural Affairs

Our ref: DGC18/185

Your ref: A287274

26 FEB 2018

Mr Linus Power MP
Chair
Economics and Governance Committee
egc@parliament.qld.gov.au

Dear Mr Power

Thank you for your letter of 20 February 2018 about the Economics and Governance Committee's inquiry into the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (the Bill).

Please find enclosed a written briefing on the Bill for the Committee's information.

The Department of Local Government, Racing and Multicultural Affairs will be pleased to provide a briefing to the Committee on 5 March 2018 at 12:15pm.

Details of the departmental officers attending the briefing have been provided to the Committee Secretariat by email.

Ms Josie Hawthorne, Acting Director, Legislation Services is the Department's contact officer. If you require further information, I encourage you to contact Ms Hawthorne on [REDACTED] or by email [REDACTED]

Yours sincerely

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Acting Director-General

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Briefing for the Economics and Governance Committee

Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018

The Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (the Bill) amends the *Local Government Act 2009* (LGA) to implement a more independent, transparent, streamlined and fairer system for investigating and dealing with the conduct of local government councillors in Queensland. The Bill also makes a minor consequential amendment to the *Public Service Act 2008* to provide that the Office of the Independent Assessor under the LGA is a public service office and the head of the office is the Independent Assessor.

Note: The Bill does not change the Brisbane City Council (BCC) councillor conduct system under the *City of Brisbane Act 2010* (COBA). A review of the new councillor complaints system is proposed to be undertaken within six months of its commencement to determine whether the BCC would benefit from adopting the new system.

Background and policy intent

On 21 April 2016, the Deputy Premier and then Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment announced the appointment of an independent panel to review the arrangements for dealing with complaints about the conduct of local government councillors.

The panel comprised Dr David Solomon AM — a former Integrity Commissioner, Mr Noel Playford OAM — nominated by the Local Government Association of Queensland (LGAQ) and Mr Gary Kellar PSM — nominated by the Local Government Managers Australia (Queensland) (LGMA).

The review was initiated in response to concerns raised by the LGAQ and the LGMA about the effectiveness of the current framework. Concerns included the role of local government chief executive officers (CEO) in assessing complaints, the inability to seek a review of decisions about councillor conduct complaints and the need to better ensure natural justice for all parties.

The review examined the councillor complaints provisions under the LGA and the COBA.

The Independent Councillor Complaints Review Panel's Report '*Councillor Complaints Review: A fair, effective and efficient framework*' (the Councillor Complaints Report) was provided to the Deputy Premier on 31 January 2017.

On 20 July 2017, the Councillor Complaints Report and the government's response were tabled in Parliament. The government's response supports, supports in principle or partially supports, 50 of the 60 recommendations from the Councillor Complaints Report.

The Bill implements the government's response to the Councillor Complaints Report.

Existing process for complaints about councillor conduct under the LGA

Making a complaint

Under the LGA, anyone — including a member of the public, a mayor, councillor, a local government CEO, or a council employee — may lodge a complaint about councillor conduct to the local government, the Department of Local Government, Racing and Multicultural Affairs (the department) or the Crime and Corruption Commission (CCC). Complaints may be made anonymously and the LGA does not prescribe a particular format for complaints, or require presentation of supporting evidence.

Timeframes for complaints

The LGA does not prescribe timeframes within which complaints about the conduct of a councillor may be made. It does, however, set some parameters as follows:

- a complaint may be made about a former councillor if the person was a councillor when the conduct is alleged to have happened and the complaint is made within two years after the person stopped being a councillor. The relevant decision-maker has the discretion to decide to take no further action in relation to such a complaint if they consider it is in the public interest to do so
- if there is evidence that a councillor may have committed a specific offence under the LGA and court action is being considered, the proceedings must be started either:
 - within one year after the offence was committed; or
 - within six months after the offence comes to the complainant's knowledge, but within two years after the offence was committed.

Preliminary assessment of complaints

Complaints about inappropriate conduct of councillors (other than a mayor or deputy mayor) are handled by the mayor of the local government, while allegations of misconduct are referred to the department's chief executive. Complaints about corrupt conduct may be made directly by a complainant to the CCC or may be referred to the CCC by, but not limited to, a local government CEO or the department's chief executive.

In most cases complaints are first considered by the local government CEO who makes a preliminary assessment. This could conclude that the complaint is: about a frivolous matter or made vexatiously; lacking in substance; or about 'another matter' (e.g. a more general complaint about council decisions or services). In those cases the complaint would not proceed, or may be referred elsewhere, and the complainant notified accordingly.

If the preliminary assessment concludes that the complaint has substance and is about inappropriate conduct, misconduct or corrupt conduct, then the CEO must refer the complaint for further action as follows:

- complaints about inappropriate conduct on the part of any councillor other than the mayor or deputy mayor — to the mayor
- complaints about misconduct by any councillor — to the department's chief executive
- complaints where there is a reasonable suspicion of corrupt conduct — to the CCC.

If the complaint is about the mayor or deputy mayor, or is made by the mayor or the local government CEO, the preliminary assessment must be undertaken by the department's chief executive rather than the local government CEO.

Inappropriate conduct

For allegations of inappropriate conduct, the mayor is responsible for making a decision on the action required. A mayor may impose either or both of the following disciplinary orders:

- an order reprimanding the councillor
- an order that any repeat of the inappropriate conduct will be treated as misconduct and referred to a Regional Conduct Review Panel.

However, if the complaint is about inappropriate conduct of the mayor or deputy mayor, or made by the mayor or the local government CEO, the department's chief executive decides what, if any, action will be taken and, if the complaint is upheld, whether one or both of the orders above will be made.

Misconduct

The department's chief executive or delegate must consider complaints about misconduct and decide whether:

- the complaint should be dismissed on the basis that it is frivolous, vexatious or misconceived; lacking in substance; or otherwise an abuse of process
- take no further action on the complaint or some other action on the complaint
- the complaint is about inappropriate conduct or corrupt conduct rather than misconduct
- the complaint is about misconduct and should be further investigated with a view to refer to either a Regional Conduct Review Panel or the Local Government Remuneration and Discipline Tribunal.

Regional Conduct Review Panels are established by the department, while members of the Local Government Remuneration and Discipline Tribunal are appointed by the Governor in Council. The department's chief executive or delegate decides whether a complaint will be referred to a panel or the tribunal.

Disciplinary orders - misconduct

Under the LGA, a Regional Conduct Review Panel may order or recommend one or more of the following disciplinary actions:

- An order that the councillor be counselled about the misconduct, and how not to repeat the misconduct
- An order that the councillor make an admission of error or an apology
- An order that the councillor participate in mediation with another person
- A recommendation to the department's chief executive to monitor the councillor or the local government for compliance with the LGA
- An order that the councillor reimburse the local government
- A recommendation to the CCC or the police commissioner that the councillor's conduct be further investigated
- An order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units (approximately \$6,300).

The Local Government Remuneration and Discipline Tribunal is expected to deal with more serious forms of misconduct. It may impose the same disciplinary orders as a Regional Conduct Review Panel, but can also order the councillor to forfeit payments or privileges. In addition, the tribunal may recommend to the Minister that the councillor be suspended or dismissed.

Hearings of a Regional Conduct Review Panel and the Local Government Remuneration and Discipline Tribunal are intended to be straightforward and swift. The standard of proof is the 'balance of probabilities', which applies in civil matters, rather than the criminal standard of 'beyond reasonable doubt'. An accused councillor must be given adequate notice of a hearing and the principles of natural justice and a fair hearing must apply. Legal representation is at the discretion of the panel or tribunal and is usually considered unnecessary, but anecdotal evidence suggests it is becoming more common.

In recent years, most cases of misconduct have been referred to Regional Conduct Review Panels, with comparatively few being referred to the Local Government Remuneration and Discipline Tribunal. Disciplinary orders have been largely at the lower end of the range, although monetary penalties of between \$100 and up to \$5,000 have been imposed by both panels and the tribunal. No recommendations by the Local Government Remuneration and Discipline Tribunal have been made to the Minister for suspension or dismissal of a councillor.

Corrupt conduct

Allegations involving a reasonable suspicion of corrupt conduct must be referred to the CCC, which may decide to take action itself or to refer them to the department. The department may consider prosecution through the courts or may, for example, refer matters to the Queensland Police Service for investigation. In

less serious cases the department has referred the matter to a Regional Conduct Review Panel or the Local Government Remuneration and Discipline Tribunal to hear and determine. The most recent prosecution by the department occurred in 2012.

Amendments in the Bill

The Bill:

- establishes the Independent Assessor and the Office of the Independent Assessor to investigate and deal with the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the Independent Assessor by the CCC, corrupt conduct
- streamlines the process for making, investigating/assessing and determining councillor complaints
- deals with the conduct of councillors at local government meetings that contravene the behavioural standards
- provides for local governments to investigate and deal with the suspected inappropriate conduct of councillors (where referred to a local government by the Independent Assessor), including taking appropriate disciplinary action
- reallocates the functions of the current Local Government Remuneration and Discipline Tribunal and Regional Conduct Review Panels by:
 - establishing the Councillor Conduct Tribunal — to hear and determine alleged misconduct, to decide what, if any, disciplinary action to take, and at the request of a local government to investigate the suspected inappropriate conduct of a councillor; and
 - establishing the Local Government Remuneration Commission — to establish the categories of local governments, decide the category to which each local government belongs and decide the maximum remuneration payable to councillors
- repeals chapter 6, part 2, division 6 of the LGA thereby repealing the declaration that a decision is not subject to appeal, allowing certain review rights for decisions about councillor conduct and judicial review of an administrative decision of a local government
- establishes clear standards of behaviour for councillors, by:
 - clarifying the definitions of ‘inappropriate conduct’ and ‘misconduct’ and introducing the concept of ‘unsuitable meeting conduct’; and
 - providing for the Minister to make a uniform and mandatory code of conduct to set appropriate standards of behaviour for councillors in performing their functions
- provides for the appointment of the Independent Assessor, the members of the Councillor Conduct Tribunal and the commissioners of the Local Government Remuneration Commission by Governor in Council
- provides for the appointment of investigators by the Independent Assessor to help the Independent Assessor perform his/her functions under the LGA, including investigating the conduct of councillors
- provides investigators with particular investigative powers
- provides for administration and governance matters, including requiring:
 - the department’s chief executive to make model procedures for the conduct of meetings of a local government and its committees
 - local governments to maintain a public register recording particular details about councillor conduct matters
 - the Independent Assessor to give the Minister an annual written report about the operation of the Office of the Independent Assessor and for the Minister to table a copy of the report in the Legislative Assembly
- strengthens offences to support the new councillor complaints system, including providing protection from reprisal for local government employees and councillors who make complaints against councillors; discouraging frivolous and improper complaints; and ensuring the confidentiality of investigations
- provides for appropriate arrangements necessary for the transition to the new councillor complaints system.

Provided below is further information about the Bill’s principle amendments.

The Independent Assessor and the Office of the Independent Assessor

The Bill establishes the position of the Independent Assessor as well as the Office of the Independent Assessor (new section 150CT and new section 150DG respectively).

The primary functions of the Independent Assessor will be:

- to investigate and deal with the conduct of councillors if it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the Independent Assessor by the CCC, corrupt conduct; and
- to provide advice, training and information to councillors, local government employees and other persons about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct; and
- to prosecute offences against the conduct provisions.

The Bill also provides that the Independent Assessor is the public official responsible for dealing with a complaint about the corrupt conduct of a councillor for the purposes of consultation about, or a referral of, the complaint under the *Crime and Corruption Act 2001*. (The responsible public official is currently the department's chief executive.)

The Independent Assessor is to be appointed by the Governor in Council under the LGA for a term of not more than 5 years. The Independent Assessor will not be subject to direction by another person about the way his/her powers are to be exercised or the priority given to investigations. The Independent Assessor may delegate any of his/her functions to an appropriately qualified staff member of the Office of the Independent Assessor, except for the power to give a notice about confidentiality under new section 150CK. (New chapter 5A, part 5, division 1, subdivision 1 refers).

The Office of the Independent Assessor will consist of the Independent Assessor and the staff of the office. The office's function is to help the Independent Assessor perform the Independent Assessor's functions. The office is to be controlled by the Independent Assessor but this will not prevent the attachment of the office to the department for the purpose of ensuring the office is supplied with the administrative support services it requires to carry out its functions effectively and efficiently. (New chapter 5A, part 5, division 1, subdivision 2 refers).

Making a complaint

The Bill (new section 150O) provides that a person may make a complaint to the Independent Assessor about the conduct of a councillor orally or in writing.

The Bill (new section 150EC) provides that the Independent Assessor may approve forms for use under new chapter 5A which may include an approved form for making a complaint about councillor conduct. The Bill does not require that complaints be made using an approved form.

If a government entity, other than the Independent Assessor, receives a complaint about the conduct of a councillor, the entity must refer the complaint to the Independent Assessor (including all information held by the entity that relates to the complaint) unless the entity has a duty to notify the CCC of the complaint under section 38 of the *Crime and Corruption Act 2001* or the entity has the power to investigate the complaint or the councillor's conduct under another law and decides to carry out the investigation under that law (new section 150P).

The Bill does not restrict who can make a complaint about councillor conduct or who a person can complain to about councillor conduct, nor does it prohibit anonymous complaints.

Timeframes for complaints / former councillors

The Bill does not prescribe timeframes for the receipt of complaints about councillor conduct, including complaints about former councillors.

New section 150M provides that new chapter 5A (Councillor conduct) applies in relation to a person who was, but is no longer, a councillor if the person was a councillor when conduct the subject of a complaint or investigation is alleged to have happened.

The Independent Assessor has the discretion under new section 150X to dismiss a complaint against any councillor, including a former councillor, if satisfied:

- (a) the conduct—
 - (i) has already been, or is being, dealt with by another entity; or
 - (ii) does not constitute inappropriate conduct or misconduct; or
- (b) the complaint—
 - (i) is frivolous or vexatious; or
 - (ii) was not made in good faith;

Examples—
a complaint made for a mischievous purpose, recklessly or maliciously

 - (iii) lacks substance or credibility; or
- (c) dealing with the complaint—
 - (i) would not be in the public interest; or
 - (ii) would be an unjustifiable use of resources.

Investigation of a complaint

The Bill (new section 150T) provides that the Independent Assessor must investigate the conduct of a councillor if the conduct is the subject of:

- a complaint made or referred to the Independent Assessor under new chapter 5A, part 3, division 2;
- a notice given to the Independent Assessor by a local government or local government official about particular conduct under new chapter 5A, part 3, division 3;
- information given to the Independent Assessor by a local government under new section 150AF that a councillor may have engaged in misconduct;
- a complaint referred to the Independent Assessor by the CCC.

The Bill (new section 150U) also provides that the Independent Assessor may initiate an investigation of the conduct of a councillor if the Independent Assessor:

- is aware of information indicating the councillor may have engaged in conduct that would be inappropriate conduct or misconduct; and
- has not received a complaint about the conduct; and
- reasonably believes it is in the public interest to investigate the information and the conduct is not likely to involve corrupt conduct.

New section 150V provides that the Independent Assessor may exercise the Independent Assessor's powers as an investigator under chapter 5A, part 4 for an investigation under new section 150T or new section 150U. Subject to new chapter 5A, part 4, the Independent Assessor may conduct the investigation in the way the Independent Assessor considers appropriate and may make any inquiries that the Independent Assessor considers appropriate.

New section 150W provides that, after investigating the conduct of a councillor, the Independent Assessor may decide to:

- if the conduct was the subject of a complaint made or referred to the Independent Assessor under chapter 5A, part 3, division 2—dismiss the complaint about the conduct under section 150X; or
- if the Independent Assessor reasonably suspects the councillor’s conduct is inappropriate conduct—refer the conduct to the local government to deal with; or
- if the Independent Assessor is reasonably satisfied that the councillor’s conduct is misconduct—make an application to the Councillor Conduct Tribunal about the conduct; or
- take no further action in relation to the conduct under section 150Y.

Standards of behaviour for councillors

The Bill clarifies the definitions of ‘inappropriate conduct’ and ‘misconduct’ and introduces the concept of ‘unsuitable meeting conduct’. These changes along with the introduction of a code of conduct provide consistent and clear standards of behaviour for elected representatives.

The Bill (new section 150K) defines ‘inappropriate conduct’ as follows:

- (1) The conduct of a councillor is inappropriate conduct if the conduct contravenes—
 - (a) a behavioural standard; or
 - (b) a policy, procedure or resolution of the local government.
- (2) Also, the conduct of a councillor is inappropriate conduct if—
 - (a) the conduct contravenes an order of the chairperson of a local government meeting for the councillor to leave and stay away from the place at which the meeting is being held; or
 - (b) it is part of a course of conduct at local government meetings leading to orders for the councillor’s unsuitable meeting conduct being made on 3 occasions within a period of 1 year.
- (3) For subsection (2)(b), the conduct that led to the orders being made, taken together, is the inappropriate conduct.
- (4) However, inappropriate conduct does not include conduct that is (a) unsuitable meeting conduct, to the extent the conduct is not conduct mentioned in subsection (2); or (b) misconduct; or (c) corrupt conduct.

The Bill (new section 150L) defines ‘misconduct’ as follows:

- (1) The conduct of a councillor is misconduct if the conduct—
 - (a) involves or adversely affects, directly or indirectly, the honest and impartial performance of the councillor’s functions, or the exercise of the councillor’s powers; or
 - (b) is or involves—
 - (i) a breach of the trust placed in the councillor, either knowingly or recklessly; or
 - (ii) a misuse of information or material acquired in, or in connection with, the performance of the councillor’s functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person; or
 - (c) contravenes any of the following—
 - (i) an order of the local government or the tribunal;
 - (ii) the acceptable requests guidelines of the local government under section 170A;
 - (iii) a policy of the local government about the reimbursement of expenses;
 - (iv) section 150R, 170(2), 171(3) or 173(4) or (5).
- (2) Also, the conduct of a councillor is misconduct if the conduct—
 - (a) is part of a course of conduct leading to the local government taking action to discipline the councillor for inappropriate conduct on 3 occasions within a period of 1 year; or
 - (b) is of the same type stated in an order of the local government that if the councillor engages in the same type of conduct again, it will be dealt with as misconduct.
- (3) For subsection (2)(a), the conduct that led to the 3 occasions of disciplinary action, taken together, is the misconduct.

(4) It does not matter if the conduct happened outside the State.

The Bill (new section 150H) defines ‘unsuitable meeting conduct’ as follows:

The conduct of a councillor is unsuitable meeting conduct if the conduct—

- (a) happens during a local government meeting; and
- (b) contravenes a behavioural standard.

Code of conduct

The Bill (section 150D) requires the Minister to make a code of conduct that sets out the standards of behaviour for councillors in performing their functions as councillors under the LGA. The code of conduct may also contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

Section 4 of the LGA requires the Minister in making the code of conduct to do so in a way that is consistent with the local government principles already prescribed under the legislation.

The Bill (new section 150E) provides that the code of conduct will not take effect until approved by a regulation. Also, the approved code of conduct must be tabled in the Legislative Assembly with the regulation approving the code, and must be published on the department’s website. These requirements are to ensure that the delegated legislative power is subject to the scrutiny of the Legislative Assembly.

It is proposed to amend the *Local Government Regulation 2012* at the appropriate time to require councillors to declare that they will uphold the code of conduct as part of their declaration of office.

Model meeting procedures

The Bill (new section 150F) requires the department’s chief executive to make model procedures for the conduct of meetings of a local government and its committees. The model meeting procedures must state how the chairperson of a local government meeting may deal with unsuitable meeting conduct by a councillor, and how the suspected inappropriate conduct of a councillor referred to the local government by the Independent Assessor must be dealt with at a local government meeting.

The model procedures must be published on the department’s website.

New section 150G requires a local government to either adopt the model procedures or prepare and adopt other procedures for the conduct of its meetings and meetings of its committees. Any other procedures adopted by a local government must not be inconsistent with the model procedures.

Dealing with the conduct of councillors at local government meetings — unsuitable meeting conduct

The Bill (new section 150F) requires the department’s chief executive to make model procedures for the conduct of meetings of a local government and its committees. The model meeting procedures must state how the chairperson of a local government meeting may deal with unsuitable meeting conduct by a councillor.

The conduct of a councillor is ‘unsuitable meeting conduct’ if the conduct happens during a local government meeting and contravenes a behavioural standard (new section 150H). The Bill (new section 150C) defines a ‘behavioural standard’ to mean a standard of behaviour for councillors set out in the code of conduct approved under section 150E.

If, at a local government meeting, the chairperson of the meeting reasonably believes a councillor is engaging in unsuitable meeting conduct, the chairperson may make an order reprimanding the councillor, and/or an order requiring the councillor to leave the place at which the meeting is being held, and/or, if the councillor fails to comply with an order to leave and stay away from the place, an order that the councillor be removed from the place (new section 150I).

Also, the chairperson must ensure that the details of any orders made by the chairperson are recorded in the minutes of the meeting.

Local governments to investigate and deal with the suspected inappropriate conduct of councillors (when referred to a local government by the Independent Assessor)

The Bill provides that if the Independent Assessor reasonably suspects a councillor's conduct is inappropriate conduct, the Independent Assessor may decide to refer the suspected inappropriate conduct to the relevant local government to deal with (new section 150W). However, before referring the councillor's conduct to the local government to deal with, the Independent Assessor must give a notice to the councillor and allow the councillor an opportunity to respond to the allegations. The Independent Assessor must consider any statement or information provided by the councillor before making a decision to refer the suspected inappropriate conduct to the local government to deal with (new section 150AA).

The Independent Assessor refers a councillor's conduct to a local government to deal with by giving a referral notice to the local government (new section 150AC). As part of the referral to the local government, the Independent Assessor may give a recommendation to the local government about how the local government may investigate or deal with the conduct including for example, whether the local government should refer the conduct to another entity for consideration.

Also, the Bill provides that a local government must adopt, by resolution, an 'investigation policy' about how it deals with the suspected inappropriate conduct of councillors referred by the Independent Assessor to the local government to be dealt with (new section 150AE). The policy must include a procedure for investigating the suspected inappropriate conduct of councillors, state the circumstances in which another entity may investigate the conduct, be consistent with the principles of natural justice, and require councillors and persons who make complaints about councillors' conduct to be given notice about the outcome of investigations. The policy may allow the local government to ask the president of the Councillor Conduct Tribunal to investigate the conduct of a councillor and make recommendations to the local government about dealing with the conduct. The policy must be published on the local government's website.

Further, the Bill provides that local governments must investigate the suspected inappropriate conduct of a councillor (new section 150AF) and decide whether or not a councillor has engaged in inappropriate conduct and if the councillor has engaged in inappropriate conduct—what action the local government will take to discipline the councillor (new section 150AG). New section 150AH prescribes the actions a local government can take to discipline a councillor if the local government decides the councillor has engaged in inappropriate conduct, including that no action be taken against the councillor.

The Bill (clause 29) provides that a local government may delegate the power to make a decision about a councillor's conduct under new section 150AG to the mayor or a standing committee of the local government.

Establishment of the Councillor Conduct Tribunal and the Local Government Remuneration Commission

The Bill establishes the Councillor Conduct Tribunal (new section 150DK) and the Local Government Remuneration Commission (new section 176) to take over the functions of the current Local Government Remuneration and Discipline Tribunal and Regional Conduct Review Panels.

Councillor Conduct Tribunal

The members of the Councillor Conduct Tribunal are to be appointed by the Governor in Council — a president of the tribunal and the number of casual members the Governor in Council considers appropriate. A member is to hold office for a term of not more than 4 years (see new sections 150DM, 150DN and 150DP of the Bill).

The Councillor Conduct Tribunal will primarily be responsible for conducting hearings about a councillor's alleged misconduct, deciding whether or not a councillor has engaged in misconduct and deciding what, if any, action to take to discipline a councillor for misconduct.

The Bill provides that if the Independent Assessor is reasonably satisfied a councillor's conduct is misconduct, the Independent Assessor may make an application to the Councillor Conduct Tribunal about the conduct (new section 150W). However, before making an application to the tribunal the Independent Assessor must give a notice to the councillor and allow the councillor an opportunity to respond to the allegations. The Independent Assessor must consider any statement or information provided by the councillor before making a decision to apply to the tribunal to decide whether the councillor's conduct is misconduct (new section 150AA).

The Bill new chapter 5A, part 3, division 6 (Application to conduct tribunal about misconduct) provides the following:

- an application by the Independent Assessor to the Councillor Conduct Tribunal must be in writing, include details of the alleged misconduct and any complaint received about the misconduct, state why the Independent Assessor is reasonably satisfied the councillor has engaged in misconduct, and include information about the facts and circumstances forming the basis for the reasonable satisfaction
- the Independent Assessor must give a copy of an application to the subject councillor which includes the details of the hearing of the application (day, time and place)
- the Councillor Conduct Tribunal must conduct a hearing about an alleged misconduct application and is to be constituted by the president or not more than 3 members chosen by the president, for a particular hearing
- the Independent Assessor is a party to hearings about misconduct and bears the onus of proof to prove a councillor engaged in misconduct
- a hearing must be conducted in the way currently set out in chapter 7, part 1 of the LGA.

Further, the Bill provides that after conducting a hearing, the Councillor Conduct Tribunal must decide whether or not the councillor engaged in misconduct and if the tribunal decides the councillor has engaged in misconduct—what action the tribunal will take to discipline the councillor (new section 150AQ). New section 150AR prescribes the actions the tribunal can take to discipline a councillor for misconduct, including that no action be taken against the councillor.

Local Government Remuneration Commission

The Commissioners of the Local Government Remuneration Commission are to be appointed by the Governor in Council — a chairperson of the commission and the number of casual commissioners the Governor in Council considers appropriate. A commissioner is to hold office for a term of not more than 4 years. For a particular matter, the commission is to be constituted by the chairperson or no more than 3 commissioners of the commission chosen by the chairperson, for the matter (new sections 178-182 of the Bill refer).

The Local Government Remuneration Commission will primarily be responsible for:

- establishing the categories of local governments; and
- deciding the category to which each local government belongs; and
- deciding the maximum amount of remuneration payable to the councillors in each of the categories.

Appointment and powers of investigators

The Bill inserts new chapter 5A, part 4 which provides that the Independent Assessor may appoint particular persons as investigators to ensure that the Independent Assessor has appropriately qualified persons available who can help the Independent Assessor to perform their functions under chapter 5A. The Independent Assessor is also an investigator (new section 150AZ).

Investigators are given powers under chapter 5A, part 4 including:

- the power to enter places by consent or under a warrant or to enter a public place when it is open to the public (new section 150BI)
- general powers after entering places including the power to search, inspect, examine or film any part of the place or anything at the place, the power to take for examination a thing at the place and to take extracts or copies of documents at the place (new section 150BU)
- the power to seize evidence under prescribed conditions (new section 150BX)
- the power to require a person to give the investigator information (new section 150CH) and the power to require a person to attend a meeting and answer questions (new section 150CJ).

The Bill includes appropriate safeguards and limitations on the exercise of these powers by investigators, including:

- requiring an investigator to produce or display an identity card when exercising their powers in a person's presence (new section 150BE)
- requiring an investigator to explain the purpose of entry to an occupier before asking for consent to enter a place and to advise the occupier that they are not required to consent, and if consent is given it may be subject to conditions and withdrawn at any time (new section 150BM)
- prescribing entry procedure when entering a place under a warrant (new section 150BS)
- restricting the things that may be seized after entry by consent or under warrant (new section 150BX) and providing safeguards in relation to seized things (new chapter 5A, part 4, division 4, subdivision 3) including a requirement to give the owner or person in control of the thing an information notice advising that the person may apply to the Independent Assessor for a review of the decision and, if the person is dissatisfied with the review decision by the Independent Assessor, the person may apply to QCAT for a review of the review decision (new chapter 5A, part 4, division 7)
- requiring an investigator to take all reasonable steps to cause as little inconvenience, and do as little damage as possible when exercising a power (new section 150CL)
- providing that a person may claim compensation for any loss incurred through the exercise of a power (new section 150CN).

The Bill also inserts a number of offences relating to investigators' powers, which are discussed below under the heading 'Offences'.

Offences

The Bill inserts a number of new offences and amends existing offences to apply to new entities established under the Bill or to increase the maximum penalties for the offences. Further information about the new offences is included in the Explanatory Notes for the Bill in relation to the Bill's consistency with fundamental legislative principles.

Frivolous and other improper complaints

The LGA provides that it is an offence to make a repeated complaint that was frivolous, vexatious or lacking in substance (current section 176C(8) of the LGA). The Bill inserts two new offences applying to frivolous and other improper complaints (new sections 150AU and 150AV). The maximum penalties for these offences are increased from 10 penalty units (for the offence in current section 176C of the LGA) to 85 penalty units.

The new offence for frivolous complaints will apply only to repeated complaints, however, it will be an offence to make an improper complaint whether the complaint is repeated or not.

Protection from reprisal

The Bill inserts a new offence that provides that a councillor must not take detrimental action against a protected person (a councillor or a local government employee) in reprisal for a complaint or notification about the councillor's conduct (new section 150AW). This offence is similar to the offence in section 41 of the *Public Interest Disclosure Act 2010* (PID Act) which protects a person making a public interest disclosure under that Act. The proposed maximum penalty for the new offence is 167 penalty units or 2 years imprisonment which is equivalent to the PID Act offence.

In addition, the reprisal offence is prescribed as an integrity offence under the LGA by the amendment to current section 153 in clause 13. A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction (current section 153(1)(d) of the LGA).

Offences relating to investigators

To support investigators in exercising their powers, the Bill inserts a number of new offences which apply if a person fails to comply with a requirement of an investigator (new sections 150BW, 150CA, 150CI and 150CJ) or tampers or interferes with a restriction imposed by an investigator (new section 150CB). These offences will have a maximum penalty of 50 penalty units.

It will also be an offence for an investigator to fail to return an identity card without a reasonable excuse (new section 150BF).

Secrecy and notices of confidentiality

The new offences in new sections 150CK and 150EA will ensure confidentiality of investigations undertaken by the Independent Assessor.

New section 150CK provides that the Independent Assessor may, if the Independent Assessor reasonably believes it is necessary to prevent the commission of an offence or ensure an investigation is kept confidential, give a notice stating that particular information is confidential information. It will be an offence to disclose confidential information unless the disclosure is permitted under subsection (5) or the person has a reasonable excuse. The maximum penalty for this offence is 85 penalty units.

New section 150EA provides that it is an offence for a person who is, or has been, the Independent Assessor, an investigator or a staff member in the Office of the Independent Assessor who obtains confidential information in the course of performing, or because of, the person's functions under the LGA to make a record of the confidential information, or directly or indirectly disclose the confidential information to another person, or use the confidential information to benefit a person or cause detriment to a person unless permitted under subsection (3). The maximum penalty for this offence is 100 penalty units.

Conflicts of interest

New sections 150DB and 150DT insert new offences relating to conflicts of interest of the Independent Assessor and members of the Councillor Conduct Tribunal respectively.

If the Independent Assessor or a tribunal member has a conflict of interest in an investigation or hearing about a matter, the Independent Assessor or member must not take part, or take further part, in consideration of the matter. The Independent Assessor must advise the Minister of the conflict as soon as practicable. The member must advise the president, or if the member is the president, the Minister of the conflict as soon as practicable. The maximum penalties for these offences are 35 penalty units.

Amendment of existing offences

The Bill will amend or insert new offences equivalent to the following existing offences to extend their application to new positions created by the Bill (that is, the Independent Assessor, an investigator, a member of the Councillor Conduct Tribunal, staff of the Office of the Independent Assessor and a commissioner of the Local Government Remuneration Commission) as appropriate:

- section 149 (Obstructing enforcement of Local Government Acts etc)
- section 150 (Impersonating authorised persons and authorised officers)
- section 234 (False or misleading information).

The maximum penalties for the offences are unchanged.

Disclosure of criminal convictions

Section 260B provides that, if the Independent Assessor, a member of the Councillor Conduct Tribunal or a commissioner of the Local Government Remuneration Commission is convicted of an indictable offence during the term of their appointment, they must, immediately give the Minister a notice about the conviction unless they have a reasonable excuse. The maximum penalty for failing to give the Minister notice is 100 penalty units.

Appeals

The LGA currently provides that decisions about inappropriate conduct and decisions of the Local Government Remuneration and Discipline Tribunal and Regional Conduct Review Panels about misconduct are not subject to appeal, so cannot be appealed against, challenged, reviewed, quashed, set aside or called into question in any way, including under the *Judicial Review Act 1991* (section 176(9) and section 244 of the LGA refer).

The Bill repeals chapter 6, part 2, division 6 of the LGA thereby repealing the declaration that a decision in relation to inappropriate conduct and a decision in relation to misconduct is not subject to appeal.

The Bill does not provide for merits review of a decision by a local government about inappropriate conduct, however if a local government acts outside the limits of its power there may be grounds to seek a review on the basis of jurisdictional error. Further, the Bill removes the prohibition on judicial review of an administrative decision of a local government.

The Bill provides review rights for decisions about misconduct made by the Councillor Conduct Tribunal, other than a decision to recommend the councillor's suspension or dismissal.

New section 150AS provides that a notice about a decision made by the Councillor Conduct Tribunal given to the Independent Assessor or councillor must be a QCAT information notice for the decision. New section 150AT provides that a person who is entitled to be given a QCAT information notice for a decision of the tribunal may apply to QCAT as provided under the *Queensland Civil and Administrative Tribunal Act 2009* for a review of the decision.

Councillor Conduct Register

The Bill (new section 150DX) requires that a local government must keep an up-to-date register that contains information about (a) orders made about unsuitable meeting conduct, (b) decisions about suspected inappropriate conduct referred to the local government, (c) decisions made by the Councillor Conduct Tribunal about misconduct, (d) complaints dismissed by the Independent Assessor, and (e) decisions of the Independent Assessor to take no further action in relation to a councillor's conduct.

The Councillor Conduct Register must be published on the local government's website and made available at the local government's public office for inspection by the public.

New sections 150DY and 150DZ prescribe the information that must or must not be contained in the Councillor Conduct Register in relation to decisions and dismissed complaints. For instance, information to be included in the register for dismissed complaints is not to include the name of the councillor against whom the complaint was made (unless the councillor agrees to their name being included) or the name of the person who made the complaint, including information that could be expected to result in identification of the complainant.

Annual Report – Office of the Independent Assessor

The Bill (new section 150EB) requires the Independent Assessor to give the Minister a written report about the operation of the Office of the Independent Assessor as soon as practicable after the end of each financial year. The report must include information about particular matters, including complaints made or referred to the Independent Assessor about councillor conduct, investigations conducted by the office, suspected corrupt conduct notified to the CCC by the Independent Assessor, and the number of times the Independent Assessor and other investigators have exercised each of their investigatory powers.

The report must be prepared in a way that does not disclose the identity of a person investigated and a copy of the report must be tabled by the Minister in the Legislative Assembly.

Transitional provisions

The Bill (clause 32) provides transitional arrangements for the commencement of the new councillor complaints system.

Existing complaints

Transitional arrangements will provide that complaints about a councillor's conduct or performance made before commencement (existing complaints) are to be dealt with as follows:

- if, immediately before the commencement, an existing complaint has not been assessed, the Independent Assessor must deal with the complaint under chapter 5A as if the complaint was made or referred to the Independent Assessor under that chapter (new section 317)
- if, immediately before the commencement, an existing complaint was assessed as being about inappropriate conduct and a final decision dealing with the complaint had not been made, former chapter 6, part 2, division 6 continues to apply to the complaint as if those provisions had not been repealed by the Bill (new section 318)
- if, immediately before the commencement, an existing complaint was assessed to be about misconduct and a final decision dealing with the complaint had not been made, the Independent Assessor must deal with the existing complaint under chapter 5A as if the complaint was made or referred to the Independent Assessor under that chapter (new section 319).

Existing orders and recommendations

Transitional arrangements will apply to orders or recommendations made before commencement as follows:

- if, before the commencement, an order was made against a councillor under former section 180 or 181 and the order is substantially the same as an order that may be made under new chapter 5A the order may be taken into account for particular purposes (new section 320)
- if, before the commencement, the Local Government Remuneration and Discipline Tribunal had recommended the suspension or dismissal of a councillor to the Minister under former section 180; and the Minister had not considered or made a decision in relation to the recommendation, the recommendation is taken to be a recommendation made by the Councillor Conduct Tribunal under section 150AR (new section 321).

Pre-commencement conduct

New section 322 provides that conduct engaged in by a councillor before commencement, including conduct that is the subject of an existing complaint must be dealt with by the Independent Assessor, a local government official, the local government and the Councillor Conduct Tribunal as follows:

- the former definitions of inappropriate conduct and misconduct must be applied to the conduct
- a local government may only make an order that is substantially the same as an order that could have been made under former section 181
- the tribunal may only make an order that is substantially the same as an order that could have been made under former section 180.

Adoption of meeting procedures and investigation policy

Transitional arrangements will apply as follows in relation to the adoption of meeting procedures and an investigation policy by a local government:

- if, immediately before the commencement, a local government has not adopted the model procedures or other procedures, the local government is taken to have adopted the model procedures on the commencement until the local government adopts either the model procedures or other procedures under section 150G (new section 323)
- if, on or after the commencement, a local government is required to deal with the inappropriate conduct of a councillor but has not yet adopted an investigation policy, the local government must decide, by resolution, the procedure for investigating the conduct or, if the Independent Assessor has made a recommendation about how the conduct may be dealt with, follow that process or decide by resolution to deal with the complaint in another way (new section 324).

Consultation

The Government worked in partnership with key stakeholders to develop the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017 (2017 Bill), including with the LGAQ and the LGMA.

A draft exposure 2017 Bill was provided for consultation to the LGAQ, the LGMA, the QCAT and the CCC, and consultation continued with these bodies throughout the 2017 Bill's development.

The 2017 Bill met with support from local governments, their peak representative bodies, and the public, as evidenced by the 13 public submissions received on the 2017 Bill when it was first introduced and referred to the then Legal Affairs and Community Safety Committee.

Only minor drafting amendments have been made by the Office of the Queensland Parliamentary Counsel to the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 since the 2017 Bill was introduced last year.

Further, the preparation of the Councillor Complaints Report by the Independent Review Panel involved extensive consultation with, and surveys of, local governments and other institutions involved in the operation of the current complaints system. The Independent Review Panel also sought public submissions, conducted its own research, and sought input from all Queensland local governments, the LGAQ, the LGMA, the CCC, the Auditor-General, the Queensland Ombudsman and the Integrity Commissioner.

A discussion paper released by the Independent Review Panel for public consultation from 17 August 2016 to 23 September 2016 attracted 115 formal submissions from stakeholders, including local governments, members of the community, community groups, councillors and mayors.

Fundamental Legislative Principles

Potential breaches of the fundamental legislative principles are outlined on pages 23-34 of the Explanatory Notes to the Bill and justification provided.

Costs

Additional costs associated with the implementation of the new system will be considered through the established budgetary processes.