



Department of Local Government,
Racing and Multicultural Affairs

Our ref: OUT18/1705

Your ref: A287274

16 MAR 2018

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

Dear Mr Power

I refer to your letter of 20 February 2018 to Ms Tamara O'Shea, then Acting Director-General, Department of Local Government, Racing and Multicultural Affairs regarding the Economics and Governance Committee's inquiry into the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018.

As requested, please find attached a written response prepared by the Department on the issues raised in submissions received by the Committee.

I note that one submission has been provided to the Committee in confidence. The Department's response does not include consideration of this submission.

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

Yours sincerely



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Economics and Governance Committee

LOCAL GOVERNMENT (COUNCILLOR COMPLAINTS) AND OTHER LEGISLATION AMENDMENT BILL 2018

Department of Local Government, Racing and Multicultural Affairs' (DLGRMA) response to submissions

Sub No.	Submitter	Sub No.	Submitter
1.	Gecko Environment Council	7.	Moreton Bay Regional Council
2.	Redland City Council	8.	Redlands2030 Inc.
3.	Local Government Association of Queensland	9.	Confidential
4.	J Burns	10.	Queensland Local Government Reform Alliance
5.	Crime and Corruption Commission	11.	P Coleman
6.	K Park	12.	Queensland Law Society

Submitter	Key points	Departmental response
<p>1 Gecko Environment Council</p>	<ul style="list-style-type: none"> ○ Supports the prompt re-tabling of the Bill and substantially agrees with the Government's response to the Independent Review Panel's recommendations and the Bill. ○ Concerns regarding Gold Coast City Council (GCCC) about the lack of transparency, failure to consult adequately, failure to comply with the City Plan, bullying/harassment of Councillors who seek to implement the City Plan more consistently or who raise questions about the decision-making process, and the influence of the development industry. ○ Submits the issues raised in public submissions on the 2017 Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill be considered. ○ Potential remains for unfair treatment of Councillors not to be redressed through the Office of the Independent Assessor (IA), for example, humiliating dressings down at Local Government meetings, cutting of divisional funds, removal from committees and Councillors being excluded from Local Government meetings by the Chairperson without reasonable cause. Submits there is currently no recourse. ○ Recommends that an aggrieved Councillor should be able to refer decisions about inappropriate conduct to the Independent Assessor for review. ○ Strongly supports a Code of Conduct being prescribed by legislation but suggests requiring Councillors to make a declaration that they will abide by the Code of Conduct. ○ Submits the Code of Conduct needs to be sufficiently rigorous to ensure fair dealings between Councillors and should also encompass the way a Councillor deals with the public. 	<ul style="list-style-type: none"> ○ DLGRMA welcomes the submitter's overall support of the Government's response to the Independent Review Panel's recommendations and the Bill. ○ Although concerns about the GCCC do not specifically relate to the Bill, the <i>Local Government Act 2009</i> (LGA) s4 provides that Parliament requires anyone who is performing a responsibility under the Act to do so in accordance with the local government principles. ○ The Bill further provides that any Councillor who experiences bullying or harassment by another Councillor/s may make a complaint to the IA without the fear of reprisal. Further, the introduction of a uniform Code of Conduct aims to help address the behaviour. ○ The Bill provides that: <ul style="list-style-type: none"> • a person may make a complaint to the IA about the conduct of a Councillor (proposed new s150O) • it is an offence for a Councillor to take detrimental action against another Councillor in reprisal for a complaint about the Councillor's conduct (proposed new s150AW) (The offence is considered serious and will carry a maximum penalty of 167 penalty units (approximately \$21,000) or two years imprisonment and will also be prescribed as an integrity offence under the LGA. A person who is convicted of an integrity offence is disqualified from being a Councillor for four years.) • the Minister must make a Code of Conduct that sets out the standards of behaviour for Councillors in performing their functions as Councillors under the LGA and the Code of Conduct may also contain anything the Minister considers necessary for, or incidental to, the standards of behaviour (proposed new s150D). ○ DLGRMA notes the submitter's recommendation for the IA to review decisions about inappropriate conduct. While the Bill does not provide a merits review of a decision by a Local Government in relation to inappropriate conduct, 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.

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		<ul style="list-style-type: none"> ○ In addition, all Local Governments are required under the LGA s268 to adopt a process for dealing with complaints made by affected persons about decisions of the Local Government. If an affected person remains dissatisfied with the Local Government's response, the person may seek the assistance of the Queensland Ombudsman or seek legal advice to resolve their issue. ○ Finally, the Government has supported recommendation 5.15 of the Independent Review Panel's Report for the Local Government Liaison Group to conduct a review, 12 months after the new Councillor complaints system commences, into the way Local Governments have been adjudicating inappropriate conduct to determine whether a specific purpose appeals process is merited. ○ DLGRMA welcomes the submitter's support for a Councillor Code of Conduct. Please note changes are proposed to s254 of the <i>Local Government Regulation 2012</i> to require Councillors to declare that they will abide by the Code of Conduct as part of their declaration of office. Also, a draft Code of Conduct is currently being developed by DLGRMA, in consultation with the Local Government Liaison Group, and it is proposed the standards of behaviour under the Code of Conduct will include conduct that is appropriate for democratically elected representatives such as treating people with dignity and respect, performing the role diligently and not bringing the Local Government into disrepute.
2 Redland City Council	<ul style="list-style-type: none"> ○ Supports and commends the Government's introduction of the Bill to strengthen Local Government transparency and integrity. ○ Recommends that: <ol style="list-style-type: none"> 1. All complaints are dealt with independently (except in meetings) by the Independent Assessor (IA) and no complaints are referred to Local Governments. 2. All requests for investigative information to the Local Government be sent to the CEO for action. 3. The Office of the IA be resourced appropriately to manage the Councillor complaints process in its entirety. 	<ul style="list-style-type: none"> ○ DLGRMA welcomes the submitter's support of the Bill's introduction. ○ Comments in response to the submitter's recommendations: <ol style="list-style-type: none"> 1. Local Governments will not deal with serious complaints under the Bill such as misconduct and corrupt conduct. The Bill implements the Government's response to recommendation 5.9 of the Independent Review Panel's Report for complaints about inappropriate conduct to be determined by Local Governments. As inappropriate conduct involves allegations of breaches of the Code of Conduct or other policies, procedures or resolutions of a Local Government, it is considered appropriate for Local Governments to deal with inappropriate conduct complaints locally with the aim of a quick and effective resolution. 2. The Bill provides that the IA may conduct an investigation in the way the IA considers appropriate and make any inquiries the IA considers

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	<ol style="list-style-type: none"> 4. The offence under new s150AW (Protection from reprisal) be amended to include any person making, assessing, providing information and/or deciding complaints to protect any person from reprisal both internal and external to an organisation. 5. There is a prohibition on disclosing information regarding a Councillor complaint until finalised (not just through the election caretaker period) and a penalty imposed for disclosing such information. 6. Only the outcome of substantiated and finalised complaints be disclosed on the Department's website or made available for public viewing. <ul style="list-style-type: none"> o Strongly supports the development of a standardised form (including a declaration) to further deter frivolous and vexatious complainants and reduce the number of unsubstantiated complaints. 	<p>appropriate (proposed new s150V). Accordingly, the IA has sole discretion with respect to requests for investigative information, including who a request is sent to.</p> <ol style="list-style-type: none"> 3. As stated above, the Bill implements the Government's response to recommendation 5.9 of the Independent Review Panel's Report for complaints about inappropriate conduct to be determined by Local Governments. Neither the Independent Review Panel's Report or the Government's response contemplates the Office of the IA managing the Councillor complaints process in its entirety. 4. The Bill (proposed new s150AW) provides it is an offence for a Councillor to take detrimental action against a protected person, i.e. another Councillor or Local Government employee, in reprisal for a complaint or notification about the Councillor's conduct. A notification about a Councillor's conduct to the IA is required under proposed new s150R and is relevant to the Mayor, Councillor and Local Government CEO only, all of whom are protected from reprisal under s150AW. For a complaint about a Councillor's conduct, the new reprisal offence in the Bill is specifically tailored to protect those in the field of Local Government, i.e. Councillors and Local Government employees, from detrimental action such as reputational damage and loss of employment and to encourage the reporting of inappropriate conduct and misconduct. 5. The Government is currently considering a Crime and Corruption Commission (CCC) Report which recommended the Government consider making it an offence for any person to publicise (a) allegations of corrupt conduct against a Councillor or candidate during a Local Government election period; or (b) the fact that a complaint (whether or not it involves corrupt conduct) has been, will be or may be made to the CCC against a Councillor or candidate during a Local Government election period, without first notifying the CCC and allowing the CCC at least three months to determine whether the allegations have merit. In relation to the disclosure of information about Councillor conduct complaints generally, DLGRMA reiterates its comments from the public briefing on the Bill that it would be very difficult for the State to seek to curtail members of the public in terms of what information they disclose

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		<p>publicly. Also, the Independent Review Panel's Report (page 70) acknowledged that almost any complaints system can be misused for political purposes and that complaints may be made public by complainants through social media. The Bill sufficiently provides for the confidentiality of information and investigations as follows:</p> <ul style="list-style-type: none"> • under proposed new s150CK if an investigator requires a person to give information or attend a place and answer questions as part of an investigation into a Councillor's conduct, the IA may give a notice to the person stating that the fact of the person's attendance or information given by the person, is confidential information (a maximum penalty of 85 penalty units applies for unlawful disclosure of the confidential information) • proposed new s150EA provides it is an offence for a person who is, or has been, the IA, an investigator or a staff member of the Office of the IA who obtains confidential information in the course of performing the person's functions under the <i>Local Government Act 2009</i> (LGA), to make a record of the confidential information, disclose the confidential information to another person or use the confidential information to benefit or cause detriment to a person (a maximum penalty of 100 penalty units applies). <p>6. It is considered that the Bill's requirements regarding Councillor conduct information to be published on the Department's website and as part of the Councillor Conduct Register on a Local Government's website are appropriate, as follows:</p> <ul style="list-style-type: none"> • proposed new s150AS – for decisions made by the Councillor Conduct Tribunal (CCT) about whether or not a Councillor has engaged in misconduct or to take disciplinary action for the misconduct, the CCT must give a summary of the decision, including reasons for the decision, to the Department's Chief Executive for publication on the Department's website. However, the CCT must not include in the summary to be published on the Department's website the name of the person who made the complaint or information that could reasonably be expected to identify the person

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		<ul style="list-style-type: none"> proposed new s150DY provides that for decisions about inappropriate conduct and misconduct, the name of the subject Councillor may be included in the Councillor Conduct Register only if the Local Government or CCT decided the Councillor engaged in inappropriate conduct or misconduct or the Councillor agrees to the Councillor's name being included; and that the name of a person who made a complaint or information that could reasonably be expected to identify the person must not be included in the Councillor Conduct Register for dismissed complaints, proposed new s150DZ provides the name of the subject Councillor is not to be included in the Councillor Conduct Register unless the Councillor agrees to the Councillor's name being included; and that the name of a person who made a complaint or information that could reasonably be expected to identify the person must not be included in the Councillor Conduct Register. <p>In addition, the IA's annual report to the Minister about the operation of the Office of the IA must be prepared in a way that does not disclose the identity of a person investigated (proposed new s150EB(3)).</p> <ul style="list-style-type: none"> The Bill does not require that complaints be made using a standardised form. The Government's response to recommendation 4.3 of the Independent Review Panel's Report states '<i>The Government supports developing a standardised form (not incorporating a declaration) that can be used for the making of written complaints. Despite this, the Government wants to foster a culture that encourages complaints to be made, and thereby wishes to ensure that the way a complaint can be made is consistent with the way the CCC and Ombudsman allow complaints to be made. This includes making a complaint in writing, by phone, by fax, email or in person.</i>' The Bill (proposed new s150O) provides that a person may make a complaint to the IA about the conduct of a Councillor. The complaint may be made to the IA orally or in writing. Proposed new s150EC provides that the IA may approve forms for use under chapter 5A which may include an approved form for making a complaint about Councillor conduct.

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<p>3 Local Government Association of Queensland</p>	<ul style="list-style-type: none"> ○ Expresses appreciation for the Government's collaborative approach to the development of the new Councillor complaints system reflected in the Bill. ○ Supports the Bill overall and is particularly supportive of the establishment of the Independent Assessor (IA). ○ Outstanding issue/concern No. 1: preferred position is not to have inappropriate conduct complaints referred to the Local Government – the current regime requires the Mayor (not the Local Government) to deal with allegations of inappropriate conduct. (Acknowledges certain provisions in the Bill go some way towards addressing this issue, however remains concerned that the responsibility to investigate inappropriate conduct allegations and determine disciplinary action could potentially be abused or applied inconsistently between Local Governments depending on the make-up of the Local Government and working relationships between Councillors.) <u>Recommendation No. 1:</u> that the Bill be amended to empower the IA to recommend the type of sanction to impose or require the IA to include in the referral notice information about the types of disciplinary action taken by other Local Governments in relation to similar instances of inappropriate conduct, and to introduce a requirement for the Local Government to inform the IA of the outcomes of its investigation. ○ Outstanding issue/concern No. 2: giving a Councillor potentially only 7 days' notice of a Councillor Conduct Tribunal (CCT) hearing is an unacceptably short notice period. <u>Recommendation No. 2:</u> that the Bill be amended to extend the period giving notice to a Councillor of a hearing from 7 to 28 days. ○ Outstanding issue/concern No. 3: opposes an order that the CCT can make under proposed new s150AR in relation to misconduct, i.e. that the Councillor is not to act as the Deputy 	<ul style="list-style-type: none"> ○ DLGRMA welcomes the submitter's overall support of the Bill. ○ The following comments are provided in relation to the submitter's recommendations: <ol style="list-style-type: none"> 1. The Bill does not specifically provide for the IA to recommend to a Local Government the type of sanction to be imposed for inappropriate conduct or require the IA to include information in the referral notice about the types of disciplinary action taken by other Local Governments for similar instances of inappropriate conduct. The Bill does however allow under new s150AC the IA to make a recommendation to the Local Government (as part of the referral notice) about how the Local Government may investigate or deal with the Councillor's conduct. In relation to introducing a requirement for Local Governments to inform the IA of the outcomes of investigations, DLGRMA is of the view that imposing such an obligation is unwarranted given the Bill already requires such information to be included in a Local Government's Councillor Conduct Register. 2. The Bill does not change the minimum timeframe under the LGA for notifying a Councillor about a hearing of a complaint of misconduct, i.e. at least 7 days before the hearing. DLGRMA considers that the notification period does not need to be extended. It is imperative that complaints are dealt with swiftly. Nothing in the Bill prevents a councillor from seeking an extension of relevant timeframes from the Tribunal, which the Tribunal may decide on a case by case basis. 3. Recommendation 6.4 of the Independent Review Panel's Report proposed numerous penalties for misconduct, including an order of the CCT that a Councillor may not remain as or become Deputy Mayor or the Chairperson of a Local Government committee for the remainder of the Councillor's term. The Bill implements the Government's response to recommendation 6.4.

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	<p>Mayor or the Chairperson of a committee of the Local Government for the remainder of the Councillor's term. (Submits this is not a type of disciplinary action available to the current tribunal and starkly conflicts with the Local Government's own right to appoint and remove its Deputy Mayor under s165 of the <i>Local Government Act 2009</i> (LGA).) <u>Recommendation No. 3</u>; that the Bill be amended to remove from the types of disciplinary action the prohibition to act as the Deputy Mayor for the remainder of the Councillor's term.</p>	
<p>4 J Burns</p>	<ul style="list-style-type: none"> ○ Concurs with the intent of the Bill. ○ Questions why there is no mention of disciplining Mayors, no remedy for an obstructive Mayor or Chief of Staff. ○ Submits that under proposed new s150AR, a Councillor who is out of favour, not of the same political persuasion as the Mayor, or totally against a development proposal could be penalised for objecting strenuously. ○ Submits the Department, the Local Government Association of Queensland (LGAQ) and Local Government Managers Australia (LGMA) Queensland Branch should diligently plan the wording of the model Code of Meeting procedures. ○ Questions where the recommendations are on the way a Mayor should conduct, or act, at Council meetings, and as the figure head of the Shire, Town or City? 	<ul style="list-style-type: none"> ○ DLGRMA welcomes the submitter's agreement with most of the intent of the Bill. ○ The Bill applies to all Local Government Councillors in Queensland, including Mayors. The one exception is that the Bill does not deal with the unsuitable meeting conduct of a Mayor. This is because Mayors are the leaders of their Local Governments and are expected to model the standards of behaviour for other Councillors. If the conduct of a Mayor contravenes the standards of behaviour (set out in the Code of Conduct) in a meeting that the Mayor presides over as Chairperson, the conduct may be considered to adversely affect the honest and impartial performance of the Mayor's functions or the exercise of the Mayor's powers, and as such, the conduct may be dealt with as misconduct. In such instances, a complaint about the Mayor's conduct in a meeting may be made to the Independent Assessor (IA) for investigation to determine how it should be dealt with. ○ In relation to the submitter's comments about proposed new s150AR, the section prescribes the disciplinary action that can be taken by the Councillor Conduct Tribunal (CCT) against a Councillor (including a Mayor) for misconduct. Members of the CCT are appointed by the Governor in Council and cannot include Councillors or Local Government employees (proposed new ss150DN and 150DO). ○ The model Code of Meeting procedures will be drafted in consultation with the Local Government Liaison Group which comprises representatives from the Department and key stakeholders, including the LGAQ, the LGMA Queensland Branch, the Crime and Corruption Commission, the Queensland Ombudsman's Office as well as the Queensland Integrity Commissioner. The

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		IA will also be a member of the Local Government Liaison Group once appointed.
5 Crime and Corruption Commission	<ul style="list-style-type: none"> ○ States the submission is limited to matters directly related to the Crime and Corruption Commission (CCC) and its functions under the <i>Crime and Corruption Act 2001</i> (CC Act). ○ Generally supportive of the Bill's proposed model for dealing with Councillor complaints, including the establishment of the Independent Assessor (IA). ○ Notes the Bill maintains the CCC's primary responsibility for dealing with corrupt conduct and that instead of the Director-General of the Department administering the <i>Local Government Act 2009</i> (LGA) being the relevant public official for the purposes of s46(2) of the CC Act, that responsibility will be vested in the IA. ○ Notes the Bill prioritises the obligations of public officials under the CC Act and the LGA to ensure that Councillor conduct complaints will not compromise investigations under the CC Act. ○ Satisfied the Bill provides appropriate accountability and independent oversight regarding the exercise of coercive powers under the Bill for matters involving complaints of corrupt conduct against Councillors. 	DLGRMA welcomes the submitter's support of the Bill's proposed model for dealing with Councillor complaints and the submitter's satisfaction that the Bill provides appropriate accountability and independent oversight regarding the exercise of coercive powers under the Bill for matters involving complaints of corrupt conduct against Councillors.
6 K Park	<ul style="list-style-type: none"> ○ Agrees entirely with the Independent Councillor Complaints Review Panel that the current system is cumbersome and complex. ○ Submission covers: <ul style="list-style-type: none"> ● changing the culture of Local Government so that the opportunity and temptation for Councillors to do illegal or unethical things is reduced ● a redefinition of the Local Government Councillor offences based more on principles or guidelines of acceptable conduct rather than a codified system ● recommendations on the procedure for investigating complaints against Councillors 	<ul style="list-style-type: none"> ○ Although the submission is largely outside the scope of the Bill, DLGRMA welcomes suggestions to change the culture of Local Government so that the opportunity for unethical behaviour is reduced. ○ The Government has flagged a further reform agenda aimed at reinforcing integrity, minimising the risk of corruption and providing for increased transparency and accountability at both State and Local Government levels.

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	<ul style="list-style-type: none"> • some recommendations on punishments for offending Councillors. ○ Acknowledges comments may be outside the scope of the inquiry, but in general, better conduct will follow if there are more opportunities for public and media scrutiny. ○ Concludes that: <ul style="list-style-type: none"> • the best cure for Councillor misconduct is prevention i.e. reducing the opportunities and temptations by establishing an environment, an ambience in Local Government where such offences are not considered as a possibility. This is best achieved by shining the light of public and media scrutiny on every aspect of Council activity • Councillor offences be defined loosely (rather than exhaustively codified) in terms of principles of acceptable and unacceptable conduct • establishment of two tiers of Local Government Boards for investigating and adjudicating complaints against Councillors; with the courts as a third tier for more serious offences. 	
7 Moreton Bay Regional Council	<ul style="list-style-type: none"> ○ Considers the requirements under the <i>Crime and Corruption Act 2001</i> (CC Act) for the CEO of a Local Government to notify the Crime and Corruption Commission (CCC) if the CEO reasonably suspects a complaint involves or may involve corrupt conduct places CEOs in a difficult position when dealing with complaints about Councillor conduct. ○ Preferred position is that a Local Government's duty to notify corrupt conduct be discharged by notification to the Independent Assessor (IA) instead of the CCC. ○ Submits the requirement under proposed new s150R for a Local Government official to notify the IA of particular conduct (if the official becomes aware of information indicating a Councillor may have engaged in conduct that would be inappropriate conduct or misconduct) should be revised to 	<ul style="list-style-type: none"> ○ In relation to the submitter's comments about the notification of corrupt conduct, the Bill implements the Government's response to recommendation 7.2 of the Independent Review Panel's Report for the IA to be the public official who works with the CCC on Councillor complaints and not the Director-General of the Department. The Bill in no way removes the obligation of a public official under the CC Act (such as Directors-General and Local Government CEOs) to notify the CCC of suspected corrupt conduct. ○ One of the functions of the IA is to provide advice and information to Councillors and Local Government employees about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct. As such, a Local Government official may seek clarification from the IA about their obligation under s150R. ○ Local Governments will not deal with serious complaints under the Bill such as misconduct and corrupt conduct but because inappropriate conduct involves

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	<p>make the obligation more concrete. Notes that the threshold 'becomes aware of information' is so low that a duty may arise to act without any credible basis.</p> <ul style="list-style-type: none"> ○ Submits reasons why it is inappropriate and impractical for a Local Government to deal with, investigate, and make decisions in respect of suspected inappropriate conduct by Councillors. Submits inappropriate conduct be dealt with by external parties, for example, the Department's Chief Executive or the IA. ○ Submits that if decisions regarding inappropriate conduct remain with Local Government any right of appeal should be specifically excluded under the new provisions, as is currently the case, because legal avenues of appeal will remain open for aggrieved parties which will unnecessarily elongate the resolution of matters. 	<p>allegations of breaches of the Code of Conduct or other policies, procedures or resolutions of a Local Government, it is considered appropriate for Local Governments to take responsibility for dealing with inappropriate conduct complaints locally so that they may be resolved quickly and effectively. The Bill implements the Government's response to recommendation 5.9 of the Independent Review Panel's Report for complaints about inappropriate conduct to be determined by Local Governments.</p> <ul style="list-style-type: none"> ○ The Bill provides certain review mechanisms for Councillors. For misconduct, the Bill provides a merits review of a decision by the Councillor Conduct Tribunal to QCAT. While the Bill does not provide a merits review of a decision by a Local Government in relation to inappropriate conduct, 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. The Bill also removes the prohibition on judicial review of an administrative decision of a Local Government. ○ As stated above, the Government supports recommendation 5.15 of the Independent Review Panel's Report for the Local Government Liaison Group to conduct a review, 12 months after the new Councillor complaints system commences, into the way Local Governments have been adjudicating inappropriate conduct to determine whether a specific purpose appeals process is merited.
8 Redlands2030	<ul style="list-style-type: none"> ○ Supports the Bill's approach in relation to the making of complaints and submits the proposed provisions aimed at preventing frivolous and/or vexatious complaints appear adequate. ○ Submits required timeframes for complaints to be investigated and determined should be written into the legislation to ensure that complaints are resolved expeditiously. Submits that: <ul style="list-style-type: none"> • a person making a complaint should receive advice within 20 business days as to whether the complaint will be investigated or not and who will be doing the investigation • any complaint about inappropriate conduct should be resolved within a further period of 20 business days 	<ul style="list-style-type: none"> ○ DLGRMA welcomes the submitter's support for the provisions relating to the making of complaints and frivolous and/or vexatious complaints. ○ The Bill does not prescribe timeframes for the investigation and determination of Councillor conduct complaints. This reflects the fact that every complaint is different, some being resolved quickly and easily and others requiring a fuller investigation. It is considered that the new Councillor complaints system will streamline the process and make it quicker. Also, the Independent Review Panel's Report (page 81) considered <i>the system will reduce the time taken for initial assessment of complaints, with a flow-on effect on the time needed for investigations and processing by Councils (for inappropriate conduct) or the Tribunal (for misconduct)</i>. ○ It is considered that the information to be stated in a notice of the CCT under proposed new s150AS(2)(b) about the CCT's decisions, i.e. the decision and

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	<ul style="list-style-type: none"> • complaints about misconduct should be resolved within a further period of 60 business days. ○ To provide greater transparency, submits an amendment to proposed new s150AS(2)(b) to require the Councillor Conduct Tribunal (CCT) to give a notice about a decision made by the CCT in relation to misconduct that states 'the decision, the reasons for the decision and a summary of the evidence considered'. Submits the current wording in the Bill as to what information is to be stated in the notice, i.e. 'the decision and briefly states the reasons for the decision' may result in very little information being divulged. ○ Submits the names of the members who sit on the CCT should be disclosed to the complainant and the information publicly available. Submits that information about the membership of the current Regional Conduct Review Panels is kept secret from complainants and the community. ○ Any suggestion that people should be prohibited from disclosing they have made a complaint against a Councillor and penalised for doing so should be viewed with great concern. Submits such restrictions would conflict with the principles of free speech which underpin our democratic form of Government. ○ Considers the Bill does not adequately deal with the possibility of a Councillor who is the subject of a complaint wilfully misleading the Independent Assessor (IA) or the CCT when providing a statement in their own defence. 	<p>a brief statement about the reasons for the decision, is appropriate and sufficient. The Bill implements the Government's response to recommendation 10.4 of the Independent Review Panel's Report for the CCT to keep reasons for its decisions.</p> <ul style="list-style-type: none"> ○ The CCT is an independent body and its members will be appointed by the Governor in Council. ○ As stated above, it is considered that it would be very difficult for the State to seek to curtail members of the public in terms of what Councillor conduct information is disclosed publicly. However, to ensure the confidentiality of information and investigations, the Bill provides: <ul style="list-style-type: none"> • under proposed new s150CK if an investigator requires a person to give information or attend a place and answer questions as part of an investigation into a Councillor's conduct, the IA may give a notice to the person stating that the fact of the person's attendance or information given by the person, is confidential information (a maximum penalty of 85 penalty units applies for unlawful disclosure of the confidential information) • proposed new s150EA provides it is an offence for a person who is, or has been, the IA, an investigator or a staff member of the Office of the IA who obtains confidential information in the course of performing the person's functions under the <i>Local Government Act 2009</i> (LGA), to make a record of the confidential information, disclose the confidential information to another person or use the confidential information to benefit or cause detriment to a person (a maximum penalty of 100 penalty units applies). ○ It is considered that the Bill adequately addresses the submitter's issue in relation to a Councillor wilfully misleading the IA or the CCT. In this regard, the Bill amends s234 of the LGA to provide a person commits an offence if the person gives false or misleading information (either orally or in a document) to the IA or a staff member of the Office of the IA, an investigator, or the CCT. A maximum penalty of 100 penalty units applies.
10 Queensland Local	<ul style="list-style-type: none"> ○ Submits that Councillor behaviour during meetings and while on Council business has never been an issue of great significance and indeed it can be argued that Council already 	<ul style="list-style-type: none"> ○ DLGRMA offers the following in relation to the suggested legislative flaws: <ul style="list-style-type: none"> • New s150AG provides a default position for decisions on suspected inappropriate conduct to be made by a Local Government. However, the

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Government Reform Alliance	<p>has the power to deal with inappropriate Councillor behaviour and has done so with success.</p> <ul style="list-style-type: none"> ○ Submits the comments from the Independent Review Panel Chair, Dr David Solomon, reflects the limited nature of the review and therefore the limited nature of legislative changes – <i>'It is important to note the limited nature of this inquiry. The system being examined relates only to complaints about the conduct of councillors, including mayors – it is not about decisions of councils, such as planning decisions that may be reviewed under other legislation.'</i> ○ Submits the following proposed legislative changes are flawed: <ul style="list-style-type: none"> • inclusion of the Local Government Association of Queensland (LGAQ) as members of the proposed CAC [CAC refers to a Council Conduct Advisory Committee proposed for establishment in recommendation 5.9 of the Independent Review Panel Report]. Submits the LGAQ have a real conflict of interest in being included here, and elsewhere (by inference) in the processes of the Councillor Conduct Tribunal (CCT) and their inclusion also undermines the independence of any such authority • referring complaints back to the sole discretion of the Mayor is counter-productive and leaves the complaints process open to abuse. Documented conflicts between Mayors and Councillors could see a Councillor being unfairly dealt with purely based on personal dislike. If matters are required to be 'referred', then such matters should be referred to the entire Council for a decision based on fact and consensus of the majority • the proposed unilateral Code of Conduct, to be compiled by the appropriate Minister, should be in place prior to this Bill being acted upon. In the interests of consistency, Councils should not have the option to 	<p>Local Government may, by resolution, delegate responsibility for deciding these complaints to the Mayor or a Standing Committee of the Local Government if considered appropriate. Standing Committees of a Local Government are comprised only of Councillors. Also, the LGAQ plays no role in the processes of the Councillor Conduct Tribunal.</p> <ul style="list-style-type: none"> • Under proposed new s150AC the Independent Assessor (IA) refers suspected inappropriate conduct to a Local Government to deal with, not the Mayor. However, as stated above a Local Government may, by resolution, delegate responsibility for deciding suspected inappropriate conduct to the Mayor or a Standing Committee of the Local Government if considered appropriate. In cases where several Councillors are involved in an allegation, it would not be appropriate for the complaint/s to be dealt with by the full Local Government. The delegation is designed to mitigate perceptions of bias or conflicts of interest in dealing with a complaint, or to avoid a situation where a majority of Councillors are the complainant and those Councillors would then be making the decision about their own complaint. • Under the Bill a uniform and mandatory Code of Conduct will apply to all Local Government Councillors in Queensland (proposed new s150D) and will set consistent and very clear standards of behaviour. Subject to the Bill being passed, it is proposed the approved Code of Conduct will be in place on commencement of the new Councillor complaints system. • The CCT's primary responsibility will be hearing and determining alleged Councillor misconduct referred to it by the IA, including what disciplinary action should be taken. A hearing about a misconduct application must be conducted in accordance with chapter 7 part 1 of the <i>Local Government Act 2009</i> (Way to hold a hearing). In addition, the CCT may investigate suspected inappropriate conduct, if requested by a Local Government to do so, and make recommendations to the Local Government about dealing with the conduct. The CCT is an independent body and its members will be appointed by the Governor in Council. ○ Complaints about alleged corruption are a matter for the CCC. The Bill does however implement the Government's response to recommendation 7.2 of the Independent Review Panel's Report for the IA to be the public official who

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	<p>write their own Code of Conduct but instead all Councils should operate under one set of rules to circumvent any confusion</p> <ul style="list-style-type: none"> • the independence of any such proposed CCT must be first and foremost in the minds of those enacting legislation. Submits there are too many contradictory issues within the proposed legislative changes, by the addition of external entities within the workings of the CCT that will seriously erode its independence. ○ Submits considerable concern with the Government's response to recommendation 5.9 at page 7 '<i>...supports in principle that complaints about inappropriate conduct (other than conduct within a meeting) be determined by council. However, the government also supports that a council can resolve to delegate its decision-making powers, in respect to inappropriate conduct, to either the Mayor or an appropriate committee of the council. The government also supports that a council should be able to seek advice from any person or entity it considers necessary, including an advisory committee established by the council.</i>' <p>Submits this seems to completely undermine the purpose of recommendation 5.9. Within this section we believe the entire process of complaints against Councillor behaviour can be circumvented and never reach the CCT for consideration or action.</p> <ul style="list-style-type: none"> ○ Submits the complaints system for corruption allegations remains unchanged whereby the Crime and Corruption Commission (CCC) will, and does, immediately refer the complaint back to Council for preliminary investigation. That is, the alleged offender is more likely investigating the complaint then reporting back to the CCC. This is where the system fails to address the major issues arising from Council and Councillor conduct and where a truly independent CCT could be best utilised. 	<p>works with the CCC on Councillor complaints and not the Director-General of the Department.</p>

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11 P Coleman	<ul style="list-style-type: none"> ○ Submits that asking for the Bill to be amended in any fashion is within the inquiry's remit. ○ Submits amendments to the Bill to: <ul style="list-style-type: none"> ● bring back optional preferential voting at State elections ● ban certain types of donations. ○ Supports the submission from Gecko Environment Council in relation to the anomalies created in relation to the potential for a Councillor or Councillors being ganged up upon by a majority to capriciously and improperly exclude that person/s from the functions of an elected official. ○ Questions the legality of the suspension of a Councillor under proposed new s150K in regard to contravening an order of the Local Government or the Independent Assessor (IA). ○ Submits it is time to legislate for compulsory verbatim hansard and filming of Council, committee and in-camera proceedings. ○ Submits that Recommendation 7 from the Belcarra Report (that candidates must be taken to know where their donations have come from) must be legislated for. ○ Submits that while the Government means to keep it that a person can still make a complaint to the Crime and Corruption Commission (CCC) as well as the IA, it is foreshadowed by the Government that they seek to remove the ability of the CCC to recommend proceedings be commenced by the DPP. ○ Notes that it is proposed that matters relating to Councillor or Council conduct are to be referred to a Tribunal. Submits that all proceedings must be held in an open court for people to witness, and from which an accused or complainant can appeal. ○ Submits that the IA is being proposed to be given capricious powers to dismiss a complaint and have a person fined more than any corrupt Councillor would be fined given the amount of penalty units. Submits a refusal to investigate by the IA be justiciable as would any fine and for the normal procedural rules about abuse of process in the courts to apply. 	<ul style="list-style-type: none"> ○ The various issues raised by the submitter are noted. DLGRMA is of the view that predominantly the issues do not specifically relate to the Bill. ○ In relation to the submitter's reference to the Belcarra Report recommendations, on 6 March 2018, the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 (the Belcarra Bill) was introduced into the Legislative Assembly and referred to the Economics and Governance Committee for detailed consideration. The Committee is to report to the Legislative Assembly by 23 April 2018. The Belcarra Bill aims to implement the Government's response to recommendations 20 and 23 to 26 of the Belcarra Report to ban donations from property developers for candidates, third parties, political parties and councillors, extended to Members of State Parliament, and to strengthen the processes associated with the management of conflicts of interest and penalties for non-compliance, extended to material personal interests where appropriate. ○ As the short title of the Belcarra Bill suggests, the Government has flagged further reforms aimed at not only implementing the remaining recommendations of the Belcarra Report, but also aimed at providing for increased transparency and accountability at both State and Local Government levels. ○ In relation to dot point 3, please refer to the Departmental response to submission No. 1 from Gecko Environment Council. ○ In relation to appeals, the Bill provides certain review mechanisms for Councillors. For misconduct, the Bill provides a merits review of a decision by the Councillor Conduct Tribunal to QCAT. While the Bill does not provide a merits review of a decision by a Local Government in relation to inappropriate conduct, 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. The Bill also removes the prohibition on judicial review of an administrative decision of a Local Government. ○ Also, the Government supports recommendation 5.15 of the Independent Review Panel's Report for the Local Government Liaison Group to conduct a review, 12 months after the new Councillor complaints system commences,

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	<ul style="list-style-type: none"> ○ Initiation of police investigations – for proposed new s150P which requires a Government entity who receives a complaint to refer it to the IA, the submitter suggests a new sub-paragraph be inserted under 150P(3)(b) <i>'If, but for the operation of the Electoral Act 1992 (QLD) or The Local Government Electoral Act the Qld Police Service could have proceeded by way of a criminal prosecution for an offence against The Criminal Code of Qld provisions relating to corrupt practices relating to public officials or election conduct then in force in Qld, then, such a criminal proceeding may be begun by the Qld Police Service under the code.'</i> ○ Refers to the Belcarra Report (pages 87-89) in relation to the removal of Councillors. States that as there is no legislation in place to rid legislation of time limits for prosecutions for corruption and other electoral offences, increase the penalties for such offences, or who should be allowed to prosecute them, changes must be made to the Bill to bring that about. ○ Requests amendments to the Right to Information Act to abolish the fees for personal affairs. 	<p>into the way Local Governments have been adjudicating inappropriate conduct to determine whether a specific purpose appeals process is merited.</p> <ul style="list-style-type: none"> ○ In relation to the powers of the IA to dismiss a complaint, proposed new s150X of the Bill specifies the circumstances under which the IA may dismiss a complaint. The IA may dismiss a complaint if satisfied that dealing with the complaint would not be in the public interest or would be an unjustifiable use of resources. Further, the IA may decide to take no further action about the conduct of a Councillor under proposed new s150Y including if the IA is satisfied taking further action would be an unjustifiable use of resources.
12 Queensland Law Society	<ul style="list-style-type: none"> ○ Does not make comment as to the policy intent of the Bill except endorses the clear complaints and investigation procedures being adopted by Local Governments. ○ Commends the drafters of the Bill for modifying provisions imposing powers given to investigators to the extent they do not allow entry to a place that is not a public place without consent or a warrant and they do not seek to abrogate the right to claim privilege against self-incrimination. ○ Expresses concerns about the proposed orders under ss150AH(i)(b)(i) and 150AR(i)(b)(i). Submits requiring a person to make an admission is a breach of a fundamental tenant of the justice system. Supports a finding being made public and the person to disclose the finding however it is not appropriate to require the making of a non-genuine admission. 	<ul style="list-style-type: none"> ○ DLGRMA offers the following in relation to the suggested legislative flaws: <ul style="list-style-type: none"> • Under proposed new ss150AH(i)(b)(i) and 150AR(i)(b)(i) an order can be made that the Councillor make a public admission the Councillor has engaged in inappropriate conduct or misconduct respectively. The proposed sections are based on the wording in current s180 of the <i>Local Government Act 2009</i> (LGA). Section 180 of the LGA allows an order to be made that a Councillor make an admission of error or an apology. Findings of inappropriate conduct and misconduct are made public and there is no requirement in the proposed sections to prescribe the form of admission that is made. • In relation to the comments about proposed new s150AP, a hearing must be conducted in the way set out in chapter 7 part 1 of the LGA (Way to hold a hearing). There is already provision in chapter 7 part 1 (s214) for persons to provide oral evidence.

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	<ul style="list-style-type: none"> ○ Submits in relation to the conduct of the hearing under proposed new s150AP that a Councillor be given the opportunity to present their case and respond to submissions in either written or oral form. ○ Supports the right of review and considers this be extended to a Councillor in all matters. ○ Concerns with the offence provision in part 2 division 7, particularly proposed new ss150AU and 150AV. Refers to the assessment process by the Courts to declare a 'vexatious litigant' which does not result in charges. Submits there are more effective, fair and just ways to discourage frivolous or improper complaints and such action does not warrant the imposition of an offence. Any steps taken to prevent frivolous or improper complaints should not deviate from a person's ability to make a complaint. ○ Submits the right to claim privilege against self-incrimination should be preserved and it should be made clear in proposed new s233A that a refusal to provide information etc. will not be considered obstruction. 	<ul style="list-style-type: none"> ● In relation to review rights, for misconduct, the Bill provides a merits review of a decision by the Councillor Conduct Tribunal to QCAT. While the Bill does not provide a merits review of a decision by a Local Government in relation to inappropriate conduct, 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. The Bill also removes the prohibition on judicial review of an administrative decision of a Local Government. Given the less serious nature of inappropriate conduct the review rights are appropriate. ● In relation to concerns about frivolous and vexatious complaints, the offence provision in proposed new s150AU only applies if a complainant has been given a notice under proposed new s150Z that if the person makes the same or substantially the same complaint that has been dismissed by the Independent Assessor because it was frivolous. In relation to improper complaints under proposed new s150AV, there needs to be a sufficient deterrent to prevent these types of complaints being made. ● While proposed new s233A does not specifically refer to the right to claim privilege against self-incrimination, it would fall within the ambit of a reasonable excuse which is provided for in the section.