



28 February 2018

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: egc@parliament.qld.gov.au

Dear Sir/Madam,

Thank you for the opportunity to make a submission on the Local Government (Councillor Complaints) Amendment Bill 2018.

The Local Government Association of Queensland (LGAQ) was consulted throughout the development of the Government's response to the Councillor Complaints Report and the drafting of the Bill. The LGAQ would like to express its appreciation for the Government's collaborative approach to the development of the new councillor complaints system reflected in the Bill.

Overall, the LGAQ supports the Bill and the new system dealing with councillor complaints it seeks to implement. The LGAQ is particularly supportive of the establishment of the independent assessor which is expected to address the biggest shortcoming of the current system, namely the lack of filtering of complaints at the front end which results in the system being overloaded with complaints that are ultimately found to be unsubstantiated and unable to deal with genuine complaints in a timely fashion. An effective triage system at the front end is the key to an improved system dealing with councillor complaints.

However, there are a small number of outstanding issues and concerns which the LGAQ wishes to draw to the Committee's attention.

Referral of inappropriate conduct matters to council for investigation

As noted consistently by the LGAQ throughout the consultations, the LGAQ's preferred position is not to have inappropriate conduct complaints referred to the council, as this is a significant departure from the current regime of the *Local Government Act 2009* which requires the mayor (not the council) to deal with allegations of inappropriate conduct. The LGAQ acknowledges the following provisions in the Bill which go some way towards addressing the LGAQ's concerns:

- Allowing councils to delegate inappropriate conduct decisions to the mayor or a standing committee of the local government;
- Allowing councils to ask the president of the tribunal to investigate and make recommendations to the council about dealing with the conduct of a councillor;
- Limiting the definition of inappropriate conduct to exclude unacceptable councillor conduct that occurs at a council meeting;
- Obliging the assessor to first give a notice to the councillor of the particulars of the complaint and allow the councillor an opportunity to provide a response to same (which



may result in further complaints being dismissed at this relatively preliminary stage of the process); and

- Specifically stating that the investigation policy to be adopted by councils must be consistent with the principles of natural justice (which will help eliminate future episodes of councillors being disciplined for inappropriate conduct in circumstances where they were not given a prior opportunity to respond to the complaint made against them).

Notwithstanding these provisions, the LGAQ remains concerned about the potential that the responsibility to investigate inappropriate conduct allegations and determine disciplinary action could be abused or applied inconsistently between councils depending on the make-up of the council and working relationships between councillors. To address these outstanding concerns, the LGAQ proposes that the independent assessor should also be empowered to recommend the type of sanction to impose (from the range of sanctions identified in proposed section 150AH), if the council decides a councillor has engaged in inappropriate conduct.

The LGAQ suggests that the independent assessor will be ideally placed to advise councils across the state on appropriate penalty standards that councils could consider in each case referred to council. This would ameliorate the risk of councils (through inexperience in these matters and situations) making determinations on penalties that are inconsistent from council to council for similar instances of inappropriate conduct. It is noted that councils will be required to give reasons for making determinations outside the recommended range of sanctions.

At the very least, the LGAQ proposes an additional paragraph (d) to the proposed section 150AC, subsection (3), as follows:

(d) information about the types of disciplinary action taken by other local governments in relation to similar instances of inappropriate conduct.

Furthermore, the LGAQ proposes an additional amendment requiring the local government to inform the independent assessor of the outcomes of its investigation, i.e. its decision about inappropriate conduct and what action to take. In the LGAQ's view, there would be considerable benefit in "closing the loop" in this way as it would encourage timely action on the matters and contribute to greater consistency in the way councils investigate inappropriate conduct matters.

Recommendation: That the Bill be amended to empower the assessor to recommend the type of sanction to impose or require the assessor 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 independent assessor of the outcomes of its investigation.

Other issues

In relation to notification of a tribunal hearing (proposed section 150AK(2)), potentially giving a councillor only 7 days' notice of a tribunal hearing is an unacceptably short notice period. In the LGAQ's view, that notice period should be at least 21 days, if not 28 days.

Recommendation: That the Bill be amended to extend the period giving notice to a councillor of a tribunal hearing from 7 to 28 days.

In relation to the types of disciplinary action that the tribunal may decide to take against a councillor (proposed section 150AR), the LGAQ notes the option in subsection (1), paragraph (b), subparagraph (vi) for the tribunal to order "that the councillor is not to act as the deputy mayor ... for the remainder of the councillor's term". This is not a type of disciplinary action available to the tribunal under the current Act, and starkly conflicts with the council's own right



to appoint and remove its deputy mayor, as presently found in section 165, subsections (3), (4) and (5) of the current Act. The LGAQ opposes this particular type of disciplinary action.

Recommendation: 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.

The LGAQ trusts this submission will assist the Committee with its consideration of the Bill. Any questions about it should be directed to Mr Stephan Bohnen, Principal Advisor – Intergovernmental Relations, on _____ or _____

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Greg Hallam', is written over a horizontal line.

Greg Hallam AM
CHIEF EXECUTIVE OFFICER