



Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

7 March 2018.

**SUBMISSION ON LOCAL GOVERNMENT (COUNCILLOR COMPLAINTS)
AMENDMENT BILL 2018.**

Queensland Local Government Reform Alliance thanks the Committee for the opportunity to make a submission on the above proposed Bill.

The difficulty with the above proposed legislative changes is the failure of the Government to engage in meaningful action on the real issues of Council Corruption as have been exposed by the recent public hearings of the CCC Operation Belcarra.

Councillor behaviour during meetings and while on Council business has never been an issue of great significance, indeed it can be argued that Council already has the power to deal with inappropriate Councillor behaviour and has done so with success.

The comments from the Review Committee Chairman, Dr. David Solomon reflects the limited nature of the review and therefore the limited nature of legislative changes.

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

However, these issues aside, we submit for your consideration the points on which we see these proposed legislative changes as being flawed.

- Inclusion of LGAQ as members of the proposed CAC.

LGAQ have a real Conflict of Interest in being included here, and elsewhere (by inference) in the processes of the Tribunal.

The purpose of the LGAQ is to represent and protect councils and as such, places them in Conflict if included prior to, or during, investigations of the Tribunal.

Their inclusion also undermines the Independence of any such authority.

Any attempt to legalise Conflict of Interest, by any entity, by way of unacceptable and inappropriate legislation should be rejected.

- 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 write their own Code of Conduct but instead all councils should operate under one set of rules to circumvent any confusion.

- The Independence of any such proposed Tribunal must be first and foremost in the minds of those enacting legislation.

It therefore behoves such persons to familiarise themselves with areas of proposed legislation that lead to contradictory sections of the proposed legislation and avoid them.

It is our submission there are too many contradictory issues within the proposed legislative changes, by the addition of external entities within the workings of the Tribunal that will seriously erode its independence.

- One item of considerable concern is the following from page 12 of the proposed bill:

The Councillor Complaints Report recommendation 5.9 states: “*Section 181 of the LG Act be deleted and in its place the new s. 181 should recognise:*

- *That complaints about inappropriate conduct are to be determined by the council.*
- *That the council may seek advice from a council Conduct Advisory Committee (CAC) established under the LG Reg or from a member of the Tribunal selected by the president of the Tribunal. That councils consider the formation of a CAC to provide it with advice, when requested by the council, when an inappropriate conduct complaint against a councillor has to be determined by the council.*
- *A councillor whose conduct is being considered must cooperate with the council, the committee or the Tribunal member. Failure to do so could result in a misconduct complaint.”*

The Government’s response to recommendation 5.9 at page 7 “...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.”

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 Tribunal for consideration or action.

Summary:

QLGRA is of the firm opinion that until such time as the issues of Council Corruption are properly addressed then legislation such as proposed herein is a token band aid solution to very minor and insignificant issues.

The government has permitted the CCC to absolve itself of its legislated responsibilities by permitting the CCC to not pursue prosecution of those against whom they hold evidence of wrongdoing.

However, the CCC was most intent to pursue the vexatious persecution of the Mayor of Fraser Coast Council for matters that are, at worst, minor misconduct offences.

The government has permitted, without penalty or censure, the previous Minister for Local Government, Mark Furner, to usurp and deliberately abuse his legislated authority by issuing a “Show cause” notice to Fraser Coast Mayor, Chris Loft, while the government was in caretaker mode. The legislation is clear in that, a Minister or the government, can only act in the case of State Emergency, this was not, and cannot in any sense of propriety be taken to be a State emergency.

Such deliberate abuse of position and power should be dealt with by expelling the Minister from parliament.

The complaints system for corruption allegations remains unchanged whereby the CCC will, and does, immediately refer the complaint back to council for preliminary investigation. I.e. The alleged offender is more likely be 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 Tribunal could be best utilised.

The CCC is yet to present any Mayor or Councillor before a court although some complaints investigated under Operation Belcarra are the same complaints that were raised as far back as 1996 with the CJC.

CJC, CMC and now the CCC have received these same complaints but never acted on them due to the flawed system that has been allowed to continue under successive governments.

Councillors “behaving badly” is a minor issue when compared to the rampant corruption issues that have been revealed, which makes the Councillor Complaints legislation to appear as “much to do about nothing”

?? September 2016

SUBMISSION ON COUNCILOR COMPLAINT REVIEW.

QLGRA welcomes the opportunity to submit our submission on this review process.

We agree with the findings of the Independent Councillor Complaints Review Panel that the current system is complex and cumbersome. We contend the present system does not contribute in any way to encourage Councillors to raise the standards of their behaviour.

QLGRA believes the a new system that discourages the temptation of Councillors to behave in an unacceptable manner to the ratepayers whom they represent, is of critical importance.

Although the following ideas may be outside the guidelines of this Review Panel we believe it should be considered when reviewing the entire complaints process.

1. As these people are elected representatives they should operate under the same conditions as State and Federal politicians, whereby they are required to diarise all of their council activities.
2. This will place a responsibility on Councillors to adhere to the directions of the Local Government Act and conduct themselves in an open and transparent manner. As the requirements now stand Councillors have no accountability for their time or their dealings when on council business.
3. It will also remove the temptation to conduct themselves in such a manner that would warrant complaints against them.
4. All developer donations should be banned, thus again eliminating the current perceived trend for Councillors to favour applications from their financial backers.

Re the review.

Currently the system of referring complaints back to the councillors who are the subject of the complaint is akin to having criminals sit in judgement at their own trials.

Referring complaints back to the CEO of the council for investigation is inappropriate in the extreme. We believe such matters should be referred to an Independent Board of Review (or similar) for investigation and / or any follow up actions that maybe required.

We would suggest a board of three people with, one from a legal background, one with extensive local government knowledge and the last a person of repute from the community at large.

Such a review committee would be effective by being capable of covering most scenarios that may arise in a complaint.

Any complaints that are upheld could then be forwarded to a State board (or DILGP) for further investigation and action.

If a State Board is used, it should be empowered to take any actions necessary to discipline an errant councillor. If this board adjudicates an offence warrants dismissal the case would be referred to the Minister for final judgement and action.

Lesser complaints could be reviewed by Regional boards who would refer on to the State Board any councillors found at fault for disciplinary actions or councillor counselling and training. This board should be empowered to direct Councillors for training or

All Review Boards would need access to Forensic Accountants in the case of financial indiscretions to assist their investigations.

We further submit that the best cure for Councillor misconduct is to establish preventative measures thus reducing the temptation for Councillors to engage in corrupt activities. Works by Prof Tim Prenzler of the University of the Sunshine Coast are an excellent reference.

One of the measures for discouraging misconduct is to make public all investigations undertaken and have in place punitive measures that reflect the seriousness of any proven offence.

Another measure is to relax the definitions of misconduct, corrupt behaviour etc in terms of principles of acceptable and unacceptable behaviour and actions. i.e. Remove legalistic loopholes from the complaints process.

Any complaints process should not be handled by the CCC as they have appeared to dismiss as much as 98% of complaints forwarded to them based on information that has been supplied, plus it would be a duplication of the Review Board's investigations.

A situation whereby Councillors must conduct themselves in an open and transparent manner – refer earlier comments on keeping a diary – is in our opinion one of the best preventative measures to ensure complaints are kept to a minimum.

Yours Faithfully

Colin Hewett

Chairman,

QLGRA.

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