



ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Ms NA Boyd MP
Mr ST O'Connor MP
Mr DG Purdie MP
Ms KE Richards MP
Mr RA Stevens MP

Staff present:

Ms T Struber (Acting Committee Secretary)
Ms M Salisbury (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE LOCAL GOVERNMENT (COUNCILLOR COMPLAINTS) AND OTHER LEGISLATION AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

MONDAY, 19 MARCH 2018

Brisbane

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The committee met at 9.37 am.

CHAIR: Good morning. I declare open the Economic and Governance Committee's public hearing for the committee's inquiry into the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018. I would like to acknowledge the traditional owners of the land on which we meet. My name is Linus Power. I am the member for Logan and chair of the committee. With me here this morning are: Ray Stevens MP, the member for Mermaid Beach and deputy chair; Nikki Boyd MP, the member for Pine Rivers; Sam O'Connor MP, the member for Bonney; Kim Richards MP, the member for Redlands; and Dan Purdie MP, the member for Ninderry.

On 15 February 2018 the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, the Hon. Stirling Hinchliffe MP, introduced the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 into parliament. The parliament referred the bill to the Economics and Governance Committee for examination, with a reporting date of 9 April 2018. The purpose of this hearing is to hear evidence from stakeholders who made submissions as part of the committee's inquiry. The hearing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. Any person may be excluded from the hearing at my discretion or by order of the committee. The hearing is being recorded and broadcast live on the parliament's website.

Media may be present and will be subject to my direction. The media rules are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. I ask everyone present to turn mobile phones off or switch them to silent. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. I now welcome Sarah Buckler and Mark Leyland from the Local Government Association of Queensland.

BUCKLER, Ms Sarah, General Manager, Advocate, Local Government Association of Queensland

LEYLAND, Mr Mark, Principal Adviser, Finance and Governance, Local Government Association of Queensland

CHAIR: I invite you to make a short opening statement after which committee members may have some questions for you.

Ms Buckler: Good morning and thank you for the opportunity to appear before this committee and present the position of local government on the bill. We have expressed our overwhelming support for the bill and welcome the Palaszczuk government's efforts to introduce, in our view, some sorely needed reform to the system of dealing with complaints for councillors.

The LGAQ believes the introduction of an independent assessor into the system and the removal of the role of the council CEO in undertaking preliminary assessments of complaints will lead to a better system for all involved. The current system is too complex and lacks an effective front-end triage process. This means that it often gets overloaded with unsubstantiated complaints and logjams occur. The Councillor Complaints Review Panel found that only 30 of a total of 245 complaints received by the then department of infrastructure, local government and planning over two years were ultimately upheld. This is only about 12 per cent.

We thank the government for ensuring that our association, the LGAQ, has been closely consulted throughout the review of this system as well as throughout the development of the subsequent legislation; however, local government still has some reservations about the bill. It proposes to refer inappropriate conduct matters back to the whole council for investigation. As we say in our submission, this could be abused or applied inconsistently between councils, depending on the makeup of the council and the working relationships that exist between various councillors.

We also welcome the fact that the new system will not apply in the first instance to the Brisbane City Council. We note the government's intention to roll this out to the City of Brisbane Act within six months. However, we would encourage the government to ensure that a thorough review and consultation process with the Brisbane City Council occurs before this is done. We have no further statement to make at this point.

Mr STEVENS: Thank you very much for that presentation. One concern I had in relation to the presentation we had from the department on this matter is that the Independent Assessor has been tasked with taking all complaints, dealing with them and making a value judgement. One of those types of complaints is anonymous complaints, which I have a great deal of difficulty accepting. Anybody can ring up and say anything about anybody and then working out what is a valid complaint is difficult.

From my experience, in terms of a complaint that someone makes, even if it is anonymous, it is very difficult for an independent assessor not to investigate it because if that is the one that turns out to be a valid complaint they are exposed to that later. Can you advise what the Local Government Association's opinion is of the Independent Assessor accepting anonymous complaints? I am happy with confidential complaints but what about totally anonymous complaints?

Ms Buckler: Our view is that the principles of natural justice need to be upheld as far as possible in the processing of complaints. Our view is that, where possible, a statutory declaration is made and that information is available to the Independent Assessor so that appropriate assessments can be made.

Mr STEVENS: So you do not support an anonymous complaint?

Ms Buckler: Not anonymous complaints, no.

Mr STEVENS: The Brisbane City Council is quite clearly a politically orientated council, whereas most other councils throughout Queensland are not. Do you perhaps see the politicisation of complaints being part of that government/opposition arrangement in the Brisbane City Council should this legislation be taken further to the Brisbane City Council?

Ms Buckler: I will pass to my learned colleague who spent 40 years working through complaints at the practical level. I would refer back to our opening statement on that. The Brisbane City Council has processes in place which appear to be working well at this point. I think we would need to consult very carefully with the Brisbane City Council about any attempt to apply this to them.

Mr Leyland: I really do not have much to add to that. As you say, there are very few councils in Queensland—Brisbane is probably reasonably unique—that have that government/opposition arrangement. However, in mainstream councils there are groups, and opposition flows a lot more and is less established. That makes Brisbane unique.

I have not had any experience with the Brisbane City Council's complaints management operations. As Sarah has said, it seems to be working okay. It does make the paper occasionally that there are complaints about the behaviour of some councillors, but that does not mean the system is not working well.

Mr STEVENS: Thank you very much.

CHAIR: You mentioned a front-end triage for complaints. Do you anticipate that the process would work smoother with an independent assessor looking at those complaints?

Ms Buckler: With a dedicated process that is specifically about making those assessments, we believe very much it will. Not only that, taking the responsibility away from the chief executive officer at the council will enable that relationship and those mechanics to work more effectively as well so, yes, we do.

CHAIR: You have also made a criticism of local governments, that after that process which has found there is some substance local government councillors themselves would be unable to process that as a council successfully or without politicisation.

Ms Buckler: Our preference is that we retain the current situation where the mayor would handle that referral. The mayor ultimately under the Local Government Act has responsibility for the conduct of the council, and we think that is the simplest and easiest way. While we would look to ensure in all instances that councils look to make appropriate decisions, there are clearly instances where majorities exist within councils and there is potential for inconsistency across councils. I guess we would be looking to try to minimise that where possible. Mark, do you have anything to add?

Mr Leyland: The only other comment I would make is that the role of the Independent Assessor provides an opportunity for consistency in managing complaints across the whole state. We have small councils, we have Aboriginal and Torres Strait Islander councils, we have rural councils
Brisbane

and we have large city councils, and my hope in this world of local government is that there would be consistency of decisions made about complaints that are proven to be correct and how those complaints are assessed, rather than 77 different sets of rules—or 76 if we exclude Brisbane for the time being. Assessment of the complaint first and then consistency in approach to the investigation. As I understand it, the Independent Assessor will be providing some guidance to councils and some oversight which I think will only be a good thing.

Ms RICHARDS: Thank you for your presentation. I want to talk about how important consistency is in the decision-making process. In your submission you have suggested that the Independent Assessor would be responsible for putting forward a suggested recommendation but that councils have the opportunity to disregard that. If we are looking to maintain consistency, can you elaborate on why you think councils should then be able to disregard that recommendation by an independent assessor?

Ms Buckler: Are you referring to us recommending that the Independent Assessor give an indication of potential sanctions should that investigation be founded?

Ms RICHARDS: Yes, that is right.

Ms Buckler: In essence, what we are suggesting is that if it is subsequently found not to be substantiated then those sanctions would clearly be disregarded. Certainly our preference is for consistency, and that is why we would recommend that the Independent Assessor give that indication as to 'if this is likely to be founded, this would be the appropriate or most likely sanction that would follow as a result of that finding'.

Mr Leyland: Yes, that is right. What we are really asking the Independent Assessor to do is provide guidance to councils, which will only strike this problem once every now and again, whereas the Independent Assessor will be dealing with it as part of day-to-day operations. We are suggesting that the Independent Assessor should indicate, as Sarah said, 'this is the type of disciplinary action that would be appropriate if this is found'. The other comment I would make is that if a council is not inclined to apply the recommended disciplinary action it would probably be obliged to provide reasons as to why it would not.

Ms BOYD: Thank you for coming today. In terms of the offence provisions for vexatious or frivolous complaints, the Queensland Law Society in its submission has said that it does not support the offence provisions laid out within the legislation and thinks there are other avenues that can be explored in situations where it is proven that complaints are vexatious or frivolous. Are you able to provide us with some commentary on that?

Mr Leyland: The only comment I would make is that one of the reasons the LGAQ and local government broadly are quite keen to see the Independent Assessor making that up-front assessment as to whether a complaint is frivolous or vexatious is, again, for the sake of consistency and because we would assume the Independent Assessor would be an experienced person with a background that would enable them to understand what 'frivolous' and 'vexatious' really mean and what the consequences and the causes of action are that are available.

In our view, one of the real benefits of an independent assessor is that it focuses the right sort of brain and mind to the question of whether it is frivolous or vexatious. How it is dealt with after that is probably not really a concern for local government; it is a concern for the Independent Assessor, who will be managing these repeat complaints or complaints that are without foundation.

Mr PURDIE: Your submission talks about councillors being given only seven days notice of a tribunal hearing and that being an unacceptably short notice period. Can you explain why you think seven days is unacceptable? Is there not enough time for natural justice, to seek legal advice?

Ms Buckler: Essentially that is our view. We think seven days is too short for that process.

Mr PURDIE: Do you have a 14-day or a 21-day period in mind?

Ms Buckler: Our preference would be 21 or 28 days. We think that would be appropriate.

CHAIR: There being no further questions from the committee, I thank you very much for your submission today.

OBERHARDT, Mr John, General Manager, Organisational Services, Redland City Council

CHAIR: Welcome. I invite you to make a short opening statement to the committee after which committee members may have some questions for you.

Mr Oberhardt: Thank you, Mr Chairman and committee members, for your kind invitation to be here today to talk about this proposed legislation. I think it is fair to say that our council supports this legislation in general terms, in principle and policy, that complaints should be dealt with independently and not by the council or various local governments. We have made some brief suggestions based on the legislation as it is drafted at the moment. Again, they revolve around some themes, and you all have our submission so I am happy to take any questions about our position.

Mr STEVENS: As a former local government participant—

Mr Oberhardt: I remember.

Mr STEVENS: Gee whiz, there would have been a few.

Mr Oberhardt: I think I started in 1983.

Mr STEVENS: Well done. Thank you very much for your attendance here today. This is a very important matter for councillors. As you have mentioned in your submission, you would like complaints to be resolved very quickly. You have suggested 40 days as a time frame which allows plenty of time to do investigations. Would you concede that there are some matters between councillors that might require a longer time period? If we legislate that it must be done in 40 days, it might not allow a full and proper investigation of the matter between councillors.

Mr Oberhardt: I am not sure our council is that worried about timetables or how long it will take. I think our view is: whatever it takes to do it properly. Under the current system it can take quite a long time for a complaint to be dealt with. I do not know about setting any limits on that time.

Mr STEVENS: From the council's perspective, the submission of one of your groups is not necessarily the council's view on the matter?

Mr Oberhardt: No. Our council has no view because it is essentially a judicial process. It will take how long it takes. Some will be resolved quickly; some will require detailed investigation.

Mr STEVENS: I have a further question in relation to a question I had for the department of local government. What is your view on the fact that the Independent Assessor under this legislation will be required to accept and assess anonymous complaints?

Mr Oberhardt: Our council has not turned our mind to that part of the legislation. Redland City Council has expressed no view on whether complaints, anonymous or otherwise, should be accepted. I think Mark said it well: we are hoping that the people working in this area will be suitably experienced and able to deal with those sorts of things. There are other layers to these complaints as well. If it reaches a higher benchmark, it will be the CCC that will deal with those sorts of complaints. It is not always going to go to the assessor, but we have expressed no view on whether complaints could be anonymous or not.

CHAIR: If an anonymous complaint does not have a strong evidentiary base and there is no ability to follow up, the Independent Assessor would have very little choice but to note that there is not much to act on, whereas if an anonymous complaint has a lot of details there is an ability to question and examine those things. It could possibly come from somebody who has concerns about their role, their job or their future within an organisation. Would it be valuable that detailed pieces of information that are provided be examined carefully by the Independent Assessor rather than ignored?

Mr Oberhardt: I think that would be a decision for them. It would obviously rest with the seriousness of the complaint. That would temper how far they wanted to go with investigating it. People will have different motivations for making anonymous complaints, but if they are a public official they will generally have protection through other legislative protections such as whistleblower protections. I do understand that there are people who will have reasons for not wanting to put their name to it which sometimes are genuine and sometimes are not. It is going to be a tough job for this person.

CHAIR: So it would be a tough job for the Independent Assessor to examine the motivation behind someone who is doing it anonymously?

Mr Oberhardt: It will be a tough decision to determine how far you go with the anonymous complaint. There will be some subjectivity. Once there is any of that, everyone is open to criticism, aren't they?

Ms RICHARDS: I have a question in regards to your submission's request for investigative information to a council sent only to the CEO for action. Could you explain why you are recommending that?

Mr Oberhardt: The council's position is that, again, it is to do with the independence. I think their motivation was not to involve the council in the process—the elected council—so not to take it to council, not to talk to the mayors, but to say it is simply an information request that the council will process administratively. Obviously it keeps tighter control over the information, as well, not for any reasons of particular secrecy, but just for management between the assessor and the council.

Ms RICHARDS: To follow up on that, when recommendations are coming back, and we just had that with the LGAQ's submission talking about the decision coming back to the mayor, what are your thoughts on it coming back and those sorts of things being vested with one individual?

Mr Oberhardt: I am not sure I am really qualified to answer that question as a Redland City Council employee, but our council really did not express a view on whether it should go to the mayor or the council. We would be happy to live with whatever the policy outcome was.

Mr O'CONNOR: I have a question about keeping the complaint private until it is finalised. What was the reasoning behind recommending that? Was that to prevent frivolous complaints?

Mr Oberhardt: It is not about preventing frivolous complaints. The legislation obviously envisages that people may try to use this at an election time to discredit an individual, a councillor—mudslinging, if you like. There has been a lot of work over the past couple of elections to try to stop that. I think what our council is saying is, let the investigation run its course. If it is substantiated, absolutely publicly disclose it and let everybody know, but they do not think anyone, the complainant nor the commission nor the council, should be speaking about them until they are finalised, which is really to avoid that mudslinging, I guess.

Mr O'CONNOR: Often you see that it is the actual making of the complaint that can be a bigger story than the resolution.

Mr Oberhardt: Unfortunately I have seen that, yes.

Ms RICHARDS: Going back to that and going back to your initial comments on time frames, for very similar reasons privacy might want to be maintained during those periods. I go back to your comments that a time frame might be valid and warranted, particularly if things are drawn out and taken over a longer time than they necessarily warrant, so there is some sort of guiding policy or principle around time frames for the fair and reasonable assessment of complaints.

Mr Oberhardt: If I am talking about the public process, there will be reasons why I think a statutory time limit might be difficult to achieve. I understand people will be frustrated that things can take a long time, but again at the moment the government is going to have to resource this. It is a question that those resources will, in some way drive, those time frames, as well. It is like you can run a call centre and have calls answered in 10 minutes, but it costs you a fortune. The government is going to have to weigh up resourcing, which will drive that. I think sometimes investigations and information are difficult to obtain, such as a witness could be overseas. There are circumstances where I am not sure that you can just put a number of days to finalise an investigation. In saying that, we would all love them to be resolved as quickly as is humanly possible. Our preference would be sooner rather than later, but we would not like to see it rushed to compromise an outcome.

Ms RICHARDS: Perhaps some guide that suggests what reasonable time frames might exist?

Mr Oberhardt: You can get a judgement in a month; you can get it in a year. It depends on the resourcing of the courts and the complexity of the matter and who is able to deal with it. Our council has not considered a time frame. I am really speaking from experience now, but we did not talk about it because I think it would be difficult.

Mr STEVENS: John, you would be aware that in many cases there is a close relationship between a CEO and a mayor for the effective operation of the local authority. Your council has recommended that requests for investigative information go straight to the CEO. I take it that you want them all to go to the CEO. Can you see some conflict there in that there may be councillors who have difficulty—even though it is the CEO—with the mayor and the CEO and the relationship that is often formed there?

Mr Oberhardt: Obviously for a council to run efficiently, the better the working relationship between a CEO and a mayor the better the outcomes that will be delivered. Our council is really saying to keep the politics out of it. It is not about the mayor nor about the council; it is just that these processes get run independently. I think what they are saying is that we get asked for information and the administration is asked for information now which we do not necessarily share at the political level, because there are statutory requests for information that we just process and this is really falling into that category. I expect a lot of the complaints may require information that might be on a council file or within a council's system—emails and the like. We would just be asked to produce documentation or information that is needed as part of that investigation. As best as we can track it down, we would supply that, but it would not be something that would be discussed at the councillor level. We will have appropriate protections in there. As is in the Local Government Act now, the director-general can ask us for information and we have to provide it.

CHAIR: At an officer level?

Mr Oberhardt: Yes.

CHAIR: There are no further questions from the committee. Thanks, John, for the information you have given us this morning and thanks to the Redland City Council for their submission. Thank you for your attendance.

CHIN FAT, Mr Kelvin, Senior Legal Officer, Moreton Bay Regional Council

CHAIR: I now welcome Kelvin Chin Fat from the Moreton Bay Regional Council. Good morning. I invite you to make a short opening statement, after which members of the committee may have some questions for you.

Mr Chin Fat: At the outset, I start by thanking the chair and the committee for giving us this opportunity, not only to make submissions on this important bill but also verbal submissions. You will see from our submission that we are broadly in support of the bill, particularly the role of the Independent Assessor. That is one of the troubling aspects of the current regime. At the outset I would like to say that the background to this is that this is just one part of the whole complaints management process for council. Right from members of the public saying, 'Look, we need a pothole fixed' or 'We have a neighbour with a barking dog', right through to complaints of serious corruption and whatnot. It is right across local governments right across Queensland. These things are rarely clean-cut. Sometimes it might be starting out as a dog complaint and then council may have investigated and made a response to the ratepayer. They might not be happy with the result. They might ring their local councillor. The councillor might say, 'What's going on with this particular complaint?'

CHAIR: They might ring their state member of parliament at that point.

Mr Chin Fat: They might ring all three levels of government. These matters are rarely clean-cut. Then they might not be happy with the response, because the council might have referred the matter back to the department to review and then to give a response to the councillor as to why no action had been taken. Sometimes these matters are across the spectrum of council; sometimes they are very simple and are isolated to simple incidents; other times they are quite broad. Anything that helps council in assessing these complaints I think Moreton Bay Regional Council supports. At the moment, it is quite a difficult task for the CEO to undertake. I would say you have gone three-quarters of the way by separating it out in the Office of the Independent Assessor.

One of the difficult things is that the test between misconduct and corrupt conduct is actually very similar. We are submitting that if our referral is directly to the Independent Assessor it is a one-stop shop, understanding that sometimes these complaints might come in an email form or in a very informal context, so we might have to ask two or three times before we get enough information to even form a view that it is a councillor complaint. It might just say, 'I talked to my local councillor and I am not happy with the process'. You then say, 'Why aren't you happy with the process?' to tease out what the actual complaint is.

We would say that with some of these issues that come through with a bit of a mixture to them, it is going to make it a lot quicker for our referral process if we can just give it to straight to the Independent Assessor, so the CEO and his legal team do not need to sit down and say, 'There's all sorts of grey in this complaint. Which body do we need to refer to? Do we need to refer it to both bodies at the same time?' We think that it would be a lot quicker if the Independent Assessor had a working relationship—and they will have a working relationship with the CCC, because it is clear in the legislation that matters will pass between them as they do more investigation and find, no, this is actually a corrupt conduct matter and not a misconduct matter or vice versa. We would say submit, I guess, in the first instance that if we could have a one-stop shop that is going to help council.

The second string to that bow is that we feel if it is inappropriate conduct or it is assessed as inappropriate conduct, it should not bounce straight back to council to deal with. This is one of those bills where I think everyone supported it. When I read through the 12 or so submissions, for different reasons they supported the Office of the Independent Assessor. We would say do not bounce it back to council to decide. We would recommend that it be dealt with by an independent body, either the Independent Assessor or by the chief executive of the department, as is currently the case for some matters.

The other two matters are more minor in nature. One is to do with—and I want to get my wording right—the duty in section 150P(3), when a local government official becomes aware of information. We think that is a very low threshold that may capture things such as innuendo or rumour, third- or fourth-hand information that gets passed through. We would like something more concrete. We do not have a test that we are putting in replacement of that, but we think a more concrete duty would help council in determining whether something is a referable matter. Of course, we would err on the side of caution with these matters. If it is less grey than becoming aware of information, especially because the Independent Assessor is going to be receiving things anonymously, they are going to have a tip-off line, they are going to be able to respond to things that arise out of investigations, they are going to be responding to information that gets revealed by the press. There is going to be a whole range, so anything that makes it easier for local government to comply, I think, is what we are supporting.

The last point is just about if the matter is bounced back, so if you decide to put through the bill unamended, we would be saying that we do not support different avenues of appeal for inappropriate conduct matters. Our reasoning is a bit similar to the Redlands: it is along the lines of, for the harmonious running of the elected council, these matters can bang around for a long time. If there is a judicial review of a particular decision that has been made by the local government, it could go on for a year and we think that is not healthy. We would probably support the current position, which is no appeal for those matters at the moment. We would not want that to be taken away. Are there any questions?

Mr STEVENS: Thank you for the presentation this morning, Kelvin. You said you believe the threshold is too low, particularly with the anonymity of the complaints process. Earlier we discussed with the department how the commission will have to work out what is an appropriate complaint and what is not by an anonymous donor. First, can you advise whether you support anonymous complaints being taken by the Independent Assessor? Local government suggested a statutory declaration might be a better process. Secondly and importantly, you said that the threshold is too low and you would like a higher and more concrete threshold. What type of concrete threshold would your council suggest?

Mr Chin Fat: Our system of justice has worked on a complaints basis for hundreds and hundreds of years. It is an easy system to interface with, because you have something formal that you can respond to and you can clarify that.

In terms of your original question as to whether we support anonymous complaints, I have not been given a view by council around that. Council have reviewed this material. The CEO and I had a session with them. They asked a few questions and they were supportive of the submission, but that was not one of the areas that we went into. I could not really proffer a view apart from the greater clarity. I would expect that if that anonymous complaint is directed to the Independent Assessor, the Independent Assessor would come to us for some sort of clarity because they would be asking for more information from council anyway around a particular matter so we would have something that we could certainly respond to. A lot of the things that council respond to are in a written form: a right to information request, allegations of privacy breaches. They are things that we can go about investigating and responding to. If it was to the Independent Assessor then I do not see it as being largely a problem because they are actually undertaking the filtering process in one way.

Mr STEVENS: The second part was the concrete level, if you like, of investigative complaint: worthwhile. What is your council's position on a concrete level for investigation?

Mr Chin Fat: It would certainly be in terms of the more detailed the better. Some of these matters are emotive, for instance. If someone was making a verbal complaint and was quite emotive about it, it is quite possible that we do not have enough information to act on so we would need to respond to that anyway. Being a lawyer, I prefer the written form. Although I would say we like hearing our own voice, in the written form you can ask more questions to find out the nub of the complaint. Often, what kind of complaint it is is the first assessment process you undertake: 'Is this a complaint about privacy?' Often when a complaint is made, unless it is a particular incident, it is not very easy to categorise. You might be asking for more detail about it, but your role is just to make an assessment of what kind of matter it is. If it comes to you in a written form it is much easier to make that assessment.

Often these things are complaints that tie in many layers. Sometimes they tie in history. I am just talking about complaints in general. A written form is certainly easier to interface with as a council because you have something concrete that can you either respond to them on or something that you can make an assessment on. I would suggest that the Independent Assessor is going to at some stage need to commit something to paper, even though they can take things verbally. Does that sufficiently answer your question?

CHAIR: It is difficult to anticipate all the circumstances in the future. You talked about the process the CEO goes through now and the difficult judgements they have to make. If they received an anonymous complaint that had strong evidence, the CEO would still act on that anonymous complaint if there was enough evidence that they felt it worthwhile to further look at the information that had been provided, even though it was anonymous.

Mr Chin Fat: I have not actually got an anonymous complaint. Most of the complaints that we get in are via email or via writing.

CHAIR: For example, if someone said that council had breached privacy and provided very strong evidence, your recommendation to the CEO would be to actually act on that even though you did not know the name of a complainant?

Mr Chin Fat: We would be investigating it, yes.

CHAIR: Given that basis, that a CEO with strong evidence from an anonymous complaint would investigate it, it would seem strange that we cut off that avenue for the Independent Assessor.

Mr Chin Fat: I was not saying that we need to cut that off. I was saying that the preference of council is to get something concrete and in writing because it is easier to respond to. I was not saying that we were against that. In fact, I do not have any instructions at all about our position on anonymous complaints. I was asked whether it would be easier or what council's preference would be. Council's preference would be to have it in writing because it is easier to respond to.

Traversing one of the matters that the previous speaker spoke on in terms of Redland, they were talking about the anonymity of an investigation. Keeping the complainant's identity anonymous under our duties under the Privacy Act is probably of primacy anyway. We are used to assessing a matter, keeping the matter in a particular part of council, and then making an assessment based on that. It is not going to trouble us to do that. I was just saying that our preference would be for something to be in writing. It makes the job more difficult because if we do not feel that there is sufficient detail in it to actually make an assessment on what sort of conduct it is then you have no-one to go back to.

CHAIR: That is a strong challenge for the Independent Assessor as well.

Ms BOYD: Thank you, Mr Chin Fat, for coming in today. I wanted to ask you a question and take you back to inappropriate conduct. The scope that the bill provides for in terms of an appeal mechanism is not, in fact, an appeal of the merits of the review of the decision; it is an appeal to see whether the local government has acted outside the limits of its power. Can you provide us with some commentary around that? I appreciate what you have already put on record, but it is not actually reprosecuting the case in terms of whether a councillor is not playing well with others or not; it is about seeing whether the grounds to seek the review are based in that jurisdictional space.

Mr Chin Fat: Sure. Our comment was in relation to time. At the moment under the current act a whole range of potential actions are carved out by the act itself, as you know. Underneath the new provisions, this just might elongate the time taken to deal with quite small matters. They are obviously going to be very important to the individuals involved. They feel strongly enough about it to be litigating against this. This could just take a long, long time and still be impacting on council for a long period of time.

Probably where I would lean would be towards natural justice in terms of an independent assessor giving the party a right to be heard and a right to make submissions and the justice of the matter being dealt with at that stage. When we get it assessed and then returned to local government, if the bill is passed in its current form, it would have been assessed as inappropriate conduct. It would have gotten over the low hurdle of having sufficient evidence to, at least at that high bar, be conduct that could constitute inappropriate conduct. Our submission after that is more in terms of if that has gone to that process and then come back, taking a short or long amount of time, then to provide an answer for that and then for there to be an appeal period based on that decision made by council.

I understand what you are saying in terms of not relitigating, but a whole range of potential challenges to the way the decision was made would elongate the time. I guess the heart of our submission in that respect was just around the timing. If these matters are quite minor and they have already passed a fairness test by going to the assessor and the assessor asking many questions, we feel that natural justice needs to be built in at that stage. Then if it is bounced back, that should be the end of the matter, bearing in mind that these things have to be balanced with the remedies available to the decision-maker. Inappropriate conduct is reprimand, it is a whole range of lower end punishments, to use the vernacular. We feel the risk is low for the removing of that kind of remedy for the accused.

Ms BOYD: Some of those consequences are that the councillor is removed or must resign from a position representing the local government or the office of the council. There are some pretty hefty punishments. The ability for people to have some kind of recourse I think for them individually is very important. I get what you say about time frames and things dragging on for councillors, but surely there will not be very much goodwill or a workable relationship if this stuff is sitting under the surface and festering and there is no right of appeal or recourse for particular people who feel as though perhaps there were things brought in or not included that are not within the scope.

Mr Chin Fat: It depends on which side of the fence you sit. It is an either/or. First of all we would be saying that the Independent Assessor should be dealing with the whole thing. The matter goes off the table and out of our hands to a certain extent, but we say if you do not agree with that we do not want the matters to drag on. There is going to be a little bit of ill will because a complaint

is made in the first place. We would be arguing that closure of the process would actually let council move on quicker. They could still get a right to be heard and litigate it through different legal means and still the decision upheld so there still might be ill will, but the nub of the ill will is around the complaint being made in the first place, not necessarily a finding. If you cut off appeal rights and they do not have those appeal rights then everyone just gets on with it at that stage.

Our strong preference would be for all the matters to go to the Independent Assessor—either go as corrupt conduct, inappropriate conduct, misconduct—and that happens outside of council. Council gets on with the job of governing and then a result comes back at some stage, however long that takes. The decision-makers are not council and they are not the ones elongating it by needing further information via an investigation or then having some sort of quasi hearing or quasi decision-making process, whether it is spun off to the mayor or spun off to the CEO and then that coming back and then that being open again for another period of time. The matters could go on for six to 12 months. I agree with you: there are some serious repercussions, even for inappropriate conduct. I am not denying that.

Ms RICHARDS: Following on from the member for Pine Rivers and talking about the bouncing back after an inappropriate conduct finding, did you want to elaborate any further on the challenges that might be faced by council with that inappropriate conduct finding coming back to council to deal with?

Mr Chin Fat: I am a sporting person—I watch sport; at my age, playing it is not off the table but mostly—and I think of the current system as 160 different referees making different decisions. The NRL has enough trouble getting eight to stay on the same page for 24 rounds. Consistency of decision-making is the first thing. I do agree that there are different contexts in different places. There are some places where it is more casual and there might be things that are definitely not inappropriate conduct that in other settings might be completely inappropriate conduct. These things are contextual and I would not like to argue about what is and what is not, but if it is bounced back to a council there is going to be an inconsistency of approach, just by the nature of 160 different decision-makers. They will all decide to deal with it differently.

There is a lot of flexibility under the current provisions. Some will decide the mayor is the arbiter; some will decide the CEO is. This is outlined in more detail in our written submission. What happens if council decides that it is going to have an open council meeting because these things are best litigated in public and what happens if there is no substance to the particular thing? The current process is: what is the evidence at its highest level? These complaints are pitched at their highest level, almost like a committal hearing. They come in and you say, 'Is that kind of conduct inappropriate conduct?' If the answer is yes then it is referred on. When it comes back to us, it is not saying there is definitely inappropriate conduct; it is just saying that the accusation at its highest level could constitute inappropriate conduct and nothing else. During the investigation there might be more things revealed and it might turn out to be misconduct and it might get bounced back. We think councils will deal with this differently, given that level of flexibility.

There are some challenges and advice needed for council. They will need legal advice as to how this interfaces with the potential conflict of interest provisions under the Belcarra legislation. They will need advice on provisions of secrecy: 'How do we keep the identity of the complainant secret?' Some of these matters are very specific so it is almost impossible to give a councillor a fair hearing without revealing the identity of the complainant. One of the aims of the Privacy Act is to keep these things as secret as they can be, or the identity of the complainant as secret as it can be in the circumstances. What happens if the identity of the complainant is revealed by the type of complaint that they have made and council decides they want to do it in an open, public meeting? There are a couple of challenges there. I think they need to be teased out. They might be adequately addressed in the three documents that still have to be produced in terms of the code of conduct, the meeting procedures and maybe if the department produces some investigation policy drafts. Things along those lines might be able to tease out some of these issues, but we see that the broad approach of the legislation leads to potential problems if these matters are bounced back. Council's preference is that the IA deals with these things.

Ms RICHARDS: There was mention of standardisation of complaint forms. Perhaps there is consideration about standardisation of policy that guides that legislation framework, that it is consistent across councils as well.

Mr Chin Fat: That would be of assistance.

CHAIR: Thank you very much for attending the committee and for the submission of the Moreton Bay Regional Council. Those points highlighted at the end might be something that the department, while no doubt it is working on them, wants to reflect on.

WALKER, Mr Chris, Secretary, Redlands2030

CHAIR: I welcome Chris Walker from Redlands2030. I invite you to make a short opening statement, after which committee members may have some questions for you.

Mr Walker: Thank you, Chair and committee members, for the opportunity to appear and the opportunity to have made our written submission. Redlands2030 is a community organisation. Our aim is to basically encourage better governance at all levels. We generally regularly draw attention to decision-making by state and federal governments, but our main focus is upon local government and in particular our local council, Redland City Council.

We certainly support the government's initiative in reviewing the councillor complaints process. Our observation of how complaints have been dealt with over a few years in Redland City, being the council we are familiar with, has certainly led us to believe that there are many improvements that are needed. We agree in particular with having an impartial investigator dealing with complaints. Our view is that the current process, where a mayor assesses many of the complaints about other councillors, leads to concerns about bias or perceptions of bias.

I will make just a few key points that were in the written submission. We are concerned about lack of transparency. We have been trying to obtain data about complaints that have been made, which the council is required to make available for inspection under the current laws, and we have been trying to do this for weeks. It is a bit of a struggle to get just the basic data of what complaints are being made. That is an example of lack of transparency right now and it is a fairly procedural thing.

Moving to the concept of a regional conduct panel hearing complaints of misconduct, our concern is that we do not know who is on the regional conduct panel. The names—the identities—of those people are not made public. We think that lack of transparency does not inspire any confidence in the process. We would like to know who is making the decisions. It is fairly simple.

We note that the proposed new laws require that a brief statement of reasons be provided to a complainant. We would suggest that that drafting may need a little bit of further thought, because our perception is that local government in Queensland has a tendency to be very secretive where it can and any opportunity to provide less information will potentially be abused by councils. We just think that wording should be looked at more carefully and just say 'provide a statement of reasons'. We cannot imagine that a conduct panel will waste too much time writing a very long statement of reasons. If the reasons will be written, we would like to see them. I think that is a matter for some further thought.

On the subject of time frames, we certainly believe that complaints should be dealt with as soon as possible. In our submission we did suggest setting some deadlines for dealing with complaints. We gave some suggested time frames. They were fairly arbitrary. As an indication of how this might work, the right-to-information laws set out time frames in which people who want information are required to get a response from the agency. Those laws provide the agency with opportunities to take further time. They can ask the person requesting the information for more time and that person has the opportunity to say yes or no. We think if a bit of thought went into it you could set some benchmarks.

In the first instance, the initial decision on what sort of treatment the complaint gets should be able to be made within a certain time frame. If the person doing the assessment—the Independent Assessor—finds it particularly complex or problematic, there should be a process of them requesting more time to deal with the matter. We think the parliamentary draftsmen should be able to offer some thoughts along those lines. In our submission we have identified one particular complaint which in our view was a very straightforward, open-and-shut case, and it eventually took nearly a whole year to be resolved. We just could not believe that it would take such a long time. You have the details in the written submission.

On confidentiality, we oppose any restrictions on people discussing complaints or behaviour of councillors. If you imagine that in the community people might be concerned about particular councillors but may not have a great deal of familiarity with the complaints process, which is fairly arcane, being able to talk about what to do and get guidance from other people who have had to deal with that same issue is a way of people gaining confidence in what their opportunities for remedies are. We certainly see no reason that you should not be able to say, 'I have submitted a complaint against Councillor X,' if you choose to do so. Many people would not choose to do so—they would prefer to deal with it privately and quietly with the council—but if someone wished to air their issue or their grievance I do not see why they should not be able to do that.

There were some questions about anonymous complaints, so I will anticipate that and just simply say that it depends. A person who has an issue who prefers to make their complaint by disclosing their identity is probably going to have greater credence with the people making the assessment. I can quite easily imagine some hypothetical situations where a person might have evidence of some misbehaviour or wrongdoing or criminal activity and, for any kind of reason, they choose not to get involved. They may be a council employee or they may be hanging off some council decision on a matter that is of great concern to them, so I think it all depends on the quality of the evidence provided to the Independent Assessor. If he is provided with a photo of a councillor doing something totally inappropriate in a brown paper envelope, he should be able to look at it and form his own view on the matter.

I think under the new laws the Independent Assessor also has the capacity to initiate his own complaint. I think the two almost go together. If you give them the evidence and you say, 'I think this person has done something wrong,' the Independent Assessor should be able to deal with it, even if the person who provided the information in the first place is not known to them. That is my observation on the subject, but I cannot imagine that there would be too many complaints of serious matters that are made like that. I think it would be better to allow them to, if wrongdoing has taken place, rather than force people to comply with rules which they may not choose to do.

We certainly believe it should be made easy for people to make complaints. If there is a problem, that is how you fix the problem. You get the complaints, you consider them and if there is merit in the complaint then there is an opportunity to correct whatever is going wrong. Any suggestion of signed statements and statutory declarations and trying to pin people down and make it more uncomfortable for some people to make a complaint we would certainly disagree with, and I think the government's policy is that it should be a system wherein people are encouraged to complain without too many of those procedures. We are happy with the way it is currently proposed. We note that the initial part of the triage process does allow for any complaints which are frivolous or vexatious to be categorised as such and not taken further.

One point we made in our submission is about evidence, and it is a concern. It may reflect our lack of understanding of current and proposed legislation. If a complaint is made about a particular councillor and the investigation relies upon statements made by that councillor, we would like to get some clarity about what the consequences are if the councillor makes a statement that is wilfully misleading, which potentially somebody might do in an attempt to prevent the Independent Assessor from making a finding. It is not clear to me, from reading current and proposed laws, what the consequences are for a person who has a complaint made against them committing perjury or telling a lie or making a wilfully misleading statement. We would leave that perhaps as a question for the committee. I think it is a matter that could be usefully attended to and cleared up, one way or another.

Finally on the consequences, we think some more thought might need to go into the consequences of bad behaviour. We have seen instances where a councillor has been found to have committed inappropriate conduct and the consequence is a reprimand from the mayor. Our question is: does that really mean anything? If the mayor says to a councillor, 'You are now reprimanded,' in the privacy of the mayor's office, so what? Most people will not know about it. The councillor might think nothing of it. The question really is: does the punishment fit the crime?

We also question the idea of suspending councillors from meetings as a consequence of bad behaviour, because the people elect the councillor to do their job and part of their job is to vote on matters in council meetings. If you suspend a councillor from a council meeting—or two or three—you are potentially hurting the community more than the councillor. One suggestion—and it is just a suggestion—is that more thought could go into it. For example, if a councillor is reprimanded it should at least be noted at a formal council meeting so that there is some appropriate awareness for the community about what has happened. Perhaps at a higher level, the council could write to that councillor's voters and explain what has happened, and that could be done at that councillor's cost. Those potentially would be the sorts of sanctions that might encourage better behaviour.

CHAIR: I note, Chris, that you are going over directly what you have put in your submission. We have all had the opportunity to read it.

Mr STEVENS: And it is very good, too.

CHAIR: And it is very good, but make sure that you leave time for questions. Please go on.

Mr Walker: No, I have finished. That was it.

CHAIR: I apologise, Chris.

Mr Walker: That is all right.

Mr STEVENS: Chris, congratulations on a very wide coverage of the issues. We do appreciate you making your submission and being here this morning. Your submission suggests that complainants should not be prohibited from disclosing that they have made a complaint. In other words, part and parcel of the process, if you like, particularly councillor versus councillor, is, 'Hey, I've gone and said they're a crook.' Can you elaborate on why you think it is important that they cannot run off to the media as soon as they have made their complaint? Do you understand that there may be circumstances for further investigation by the appropriate bodies—the Independent Assessor et cetera—where it might be to great advantage to not have that factor in there?

Mr Walker: Our suggestion was that there should be no explicit prohibition on discussing the fact that a complaint has been made.

Mr STEVENS: I understand that.

Mr Walker: I understand the concept of concern about mudslinging, particularly just before elections. I know that the government—and I think it was the CCC—went through a fairly extensive consultation process to deal with that. My recollection is that, at this point in time, nothing is happening. There was no decision to implement a—

Mr STEVENS: That is correct.

Mr Walker: Sorry, that is my recollection. It may be wrong. Generally, I think you have to live with what you do. If you throw mud, you will have to live with the fact that you have been found to have done that.

Mr STEVENS: The question I asked was whether it may affect the investigative powers, or the independence of the investigation to follow.

Mr Walker: Again, if you are making a complaint, you have to think about what you are doing. Surely, if you want the complaint to be properly investigated then the smartest thing is to hand the complaint in and let it be processed. Creating noise and fuss is potentially counterproductive, I would have thought.

Mr STEVENS: You are agreeing with prohibition?

Mr Walker: No, I am saying that a person who is thoughtful who has made a complaint—if they were serious about that complaint being investigated—would choose to let it be done properly.

CHAIR: I think Mr Stevens is indicating that some have different motivations.

Mr Walker: I understand that some councillors might be throwing a bit of mud just before an election, but I do not think that happens in our part of the world too often. It might happen in other councils—

Mr STEVENS: It is a beautiful part of the world, the Redlands.

CHAIR: I have a question around the time frames for resolution. We all hope that matters that are put before any judicial or semijudicial body are resolved as quickly as possible, but I have two concerns about putting hard time frames around complex matters. Firstly, sometimes there would be complex matters that they wish to take longer on but they are bound to make a decision. Secondly—and this may make reference to some of the concerns that Mr Stevens had—putting in a 40-day time line might mean that people line up their complaints in order to bring about the publicity of those issues in a certain time frame, and that may not be useful. Do you have any reflections on those two issues about a hard time frame and whether you had any concerns about those?

Mr Walker: I certainly understand that things can take longer if they are complex and that the process needs to be flexible enough to allow that to happen, but I also think it is important that people get reasonably swift justice if there is a bit of wrongdoing that has happened. I agree that it is a difficult juggling act to try to balance those two requirements of doing it quickly and doing it fully, but there are other instances—and I quoted one, the Right to Information Act—where there are hard time frames for responding to requests. I think there is potentially the ability to put in some rules that say, 'In the first instance, the expectation is that this has to be done within a certain time frame, but in extenuating circumstances more time can be taken.'

If people understood, 'I put in a complaint about a fairly obvious, cut-and-dried matter. I should get an outcome within one, two, or three months,' then they could get on with their lives. When complaints drag on for any sort of reason—for a year or more—not only does the complainant wonder about the quality of the process but also, I would imagine, the person who has had the complaint made against them is also under pressure and duress because of the uncertainty.

CHAIR: Certainly.

Mr O'CONNOR: In terms of the weighting of evidence, why did you think it was necessary to give greater value to something that comes in the form of a statutory declaration or a sworn testimony?

Mr Walker: We were just concerned about the way in which an investigation might be conducted where you believe something has happened that is inappropriate or is misconduct. An investigator says to the person the complaint is about, 'Did you do this?' and the person says no. If the person is lying, the investigator just writes, 'The councillor said 'no' so I'm inclined to believe the councillor.' That is the end of the story. If that councillor had lied, what is the consequence of it?

Mr O'CONNOR: You meant the councillor the complaint is made against, not the complaint?

Mr Walker: Yes, I am talking about the person who is the subject of the complaint misleading the person making the inquiries and at the conduct panel—potentially. I am not saying it has definitely happened; I am just thinking hypothetically about a situation that we do not believe is clear. It may be clear to a lawyer, but our reading of the rules and the laws does not make it clear to us what the consequences are.

In other areas of government and law the consequences or sanctions for misleading an investigator are clearer. That is why we wanted to air that issue for the committee as it fine-tunes the legislation. You do not put in a complaint—hopefully—for no reason at all. If it is entirely frivolous, it has already been swept to one side in the initial assessment process. The presumption is that there might be something that has happened that is inappropriate, misconduct or worse. I think you have to think carefully about what reliance you place upon a person who is suspected of committing some kind of offence and form a view about how much you can rely on that.

CHAIR: Not so much the complainant, but the defendant.

Mr Walker: No, it is the witness who is the subject of the complaint.

Ms RICHARDS: Just going back to the time frames, perhaps something for the department to consider as part of this legislation is some sort of guidelines around what is reasonable to be expected in time frames. Maybe it is not something that can be legislated, but due consideration, as in what could reasonably be expected, I think is something that could be considered.

Mr Walker: Yes.

CHAIR: There being no further questions, I thank you very much, Mr Walker, for your submission and for your testimony here today.

Proceedings suspended from 10.53 am to 11.30 am.

BRODNIK, Ms Kate, Senior Policy Solicitor, Queensland Law Society

DE SARAM, Ms Binny, Acting Advocacy Manager, Queensland Law Society

TAYLOR, Mr Ken, President, Queensland Law Society

CHAIR: Good morning. I invite you to make a short opening statement after which committee members may have some questions for you.

Mr Taylor: Thank you for inviting the Queensland Law Society to appear at the public hearing on this bill. As the committee will be aware from our written submission, the Law Society is an independent, apolitical representative body and the peak professional body for the state's legal practitioners, nearly 13,000 of whom we represent, educate and support. In carrying out its central ethos of advocating for good law and good lawyers, the society proffers views which are representative of its member practitioners. It is on this basis that we reviewed the bill and made the points outlined in our written submission. These included our concerns about the offence provisions relating to frivolous complaints, ensuring procedural fairness and natural justice, requiring someone to make an admission that he or she would not otherwise make and ensuring that the right to claim privilege against self-incrimination is preserved. We have noted that some of the other submissions requested that the bill be amended to provide for certain time frames. We would generally support that as it would provide certainty in those respects. We are happy to answer any questions the committee may have.

CHAIR: Thank you very much. Are there any questions?

Mr STEVENS: Thank you for making your submission to what is a very important area in terms of local government. One area that I would like the Law Society's view on is in relation to the fact that the Independent Assessor under this legislation is compelled to accept and consider anonymous complaints. He will then arbitrate on the matter as to whether it is important or frivolous or whatever. The problem is—as is the case in other jurisdictions about other areas of complaint—that the one you say is trivial is the one that causes the problem. Therefore, there will be a tendency by the Independent Assessor to follow up on anonymous complaints rather than let them go through to the keeper in most cases. What is the Law Society's view in relation to the acceptance of anonymous complaints?

Mr Taylor: At the outset I note that the proposed legislation does make provision for the Independent Assessor to dismiss those complaints if he is not satisfied that there is sufficient evidence to proceed with them. I want to check that I had that understanding correct.

Mr STEVENS: That is absolutely correct, yes.

Mr Taylor: We have not had the opportunity to consider that in detail in our submission. Could we take that question on notice so we can give a full and considered response?

CHAIR: I am happy to receive correspondence on that issue if you wish to follow up on that.

Mr STEVENS: The Law Society supports the right of review of decisions and believes that that should be extended to a councillor in all matters. Could you elaborate on that?

Mr Taylor: There is provision for most decisions to be appealed, but they did exclude several options in that area. We believe that the right of appeal should extend to all decisions. We would like that provision to be extended so that it covers all decisions so that anybody has that right of appeal.

Mr STEVENS: Could you expand on why you think that, rather than just making a blanket statement that everyone can appeal?

Mr Taylor: On our principles of natural justice we believe that people should always have the right of review. It is not fair on anyone to be restricted in any particular areas—in one area have a right of review and another area not have a right of review. We think the right of review should extend everywhere to take into account if there are any particular errors or if people have something wrong in their decision or if something has not been given particular weight that it should have. It gives another safety net for the provision of natural justice to all concerned.

CHAIR: One of the councils brought up an issue, effectively saying that they did not support a further expansion of appeal and felt that if a decision is made the punishment should be accepted within that framework and move on. This is about a principled position. Do you want to expand on that any further?

Mr Taylor: Yes. The Law Society always views that the principles of natural justice should be adhered to wherever possible. In this case there does not seem to be any restriction on why any person coming with an offence should not have a right of appeal—again, as I stated to Mr Stevens, Brisbane

so that the person could have a right of review if there is a perceived error or if there is an obvious error. It gives confidence in the system. It also allows for that aspect in terms of the person who may be charged with that offence. I think that will allow a more open process as well. I note that there is a push to have these matters dealt with quickly and resolved, but I think that needs to be tempered with the provisions for natural justice to be given to all.

Mr O'CONNOR: With regard to the offence provisions around vexatious complaints, I believe that the Law Society took issue with that. What would you recommend instead of having those provisions in the bill? How would you discourage that in another way?

Mr Taylor: We certainly recognise the importance of deterring vexatious complaints. We have had regard to what has happened in other jurisdictions. In New South Wales they have the ability to decide not to investigate the complaint and also that compensation may be awarded against the vexatious litigants. In South Australia they may dismiss a complaint if they regard the matter as being frivolous. In the Victorian jurisdiction they can again dismiss the complaint. They can also be reviewed by QCAT in that respect.

Ms Brodnik: Following on from that, each disciplinary body and investigation body can dismiss a complaint. As we said in our submission, there still needs to be a balance between deterring those types of complaints and ensuring that members of the public are able to bring a complaint if they do feel there is a need and have that complaint appropriately investigated—again, allowing for those natural justice provisions that we were speaking about earlier.

Mr Taylor: If the committee would like a short written summary of the other jurisdictions—it is a very brief summary—and if that would be of assistance, we could add that to the answer to the question on notice.

CHAIR: Is leave granted to table a document about the other jurisdictions? There being no objection, leave is granted.

Ms BOYD: Does the Law Society have any suggestions for alternative ways to discourage vexatious or frivolous complaints?

Mr Taylor: The compensation aspect might be another one to look at, rather than creating the separate offence. The court system itself does not create an offence when we have vexatious litigants. If somebody is filing repeated vexatious court matters, they can be declared a vexatious litigant and then have to go through a process before they are allowed to proceed with any more claims or actions. There is no actual offence created in that process, so we do not see why it should be an offence here. We are also concerned with the vast increase in the penalty in that respect. Certainly compensation may be something that the committee could consider. There are some alternatives from other jurisdictions which we have tendered to the committee.

Ms BOYD: I am not a lawyer, so I would be really interested to get your opinion on this. My understanding is that there is currently a similar provision to the one that is proposed in this legislation in the Local Government Act. Can I get your commentary on that and whether you are aware of any instances where perhaps that has been misused or is not used to its full capacity or anything else that you feel is relevant for the committee?

Mr Taylor: We are not aware of any, Ms Boyd. We have not had the opportunity to look through that aspect of it.

Ms BOYD: How would you see the provision that currently sits within the Local Government Act compared to the one that is proposed in this legislation?

Mr Taylor: One of the major differences is the vast increase in the penalty. I think in the Local Government Act it remains at 10 penalty units. The proposal in the bill at the moment is to increase that to 85 penalty units. We think that, if that increase in the penalty were to remain, it is out of line with the Local Government Act.

Ms Brodnik: It is also higher than what the government recommended in its response to the report that was the genesis of this bill. The recommendation of the government was 50 penalty units, which is also considerably higher. The bill has increased it to 85 penalty units, which is actually \$10,752 that a complainant would be ordered to pay, potentially.

Ms BOYD: It seems to me as a layperson that that would be a pretty good deterrent to making a vexatious or frivolous or improper complaint.

Mr Taylor: It is just whether it is out of proportion with other members of the community and other legislation around there and to make sure that a genuine complaint does not get missed.

Mr O'CONNOR: What were the issues that you had around section 233A with obstruction and providing information?

Mr Taylor: There is no definition of 'obstruction' in the bill. We are concerned if somebody was not able to be compelled to give evidence against themselves that that is not deemed as being obstruction and they are charged with an offence. That is the essential objection that we have in that respect.

CHAIR: Each of the 76 councils would have to have a process whereby they fulfil their requirements under the act to hear complaints. At the initial stage there would be costs involved in making a determination as to whether the complaints are substantive to go forward. This process obviously shifts a lot of that cost on to a separate tribunal. Should there be some mechanism for council to contribute towards that cost because they are in that way a beneficiary of that new process?

Mr Taylor: With respect, that may be a little out of the brief of the Law Society. I think that would be a matter that will come down to a decision for our lawmakers.

Mr PURDIE: We heard earlier this morning from the Local Government Association. They raised concerns that currently the bill allows seven days notice of a tribunal hearing for a councillor. They have submitted that seven days is an unacceptably short notice period. They have suggested 21 days. From the legal side of things and in terms of natural justice, is seven days long enough or should it be longer?

Mr Taylor: As I said at the outset about general time frames in relation to submissions that were made, 21 days in this particular instance would also allow for people to obtain legal advice and to be properly prepared for any hearing, so we would generally support that increase.

Ms RICHARDS: We have heard from each of the submitters this morning in regard to time frames and setting some sort of guide. Does the Law Society have any commentary around the process and times?

Mr Taylor: Other than to say that the setting of time frames does usually provide certainty in the process. That is our general position to support that. There might be some variance within the actual time frames, as highlighted by Mr Purdie.

CHAIR: There are no further questions from the committee, so I will close the proceedings. I thank all the witnesses who have participated today. I particularly take the opportunity to thank the Queensland Law Society. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's web page in due course. Mr Taylor, you undertook to take a question on notice. Your response would be required by 5 pm tomorrow, Tuesday, 20 March, in order to be included in our deliberations. I declare the public hearing on the committee's inquiry into the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 closed.

The committee adjourned at 11.46 am.