

Office of the CEO

Moreton Bay
Regional Council

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Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: lacsc@parliament.qld.gov.au

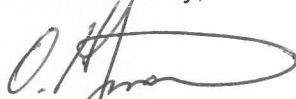
Dear Sir/Madam,

Submission on the *Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017*

Thank you for the opportunity to make a submission on the *Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017*.

We have included our submission in the attached schedule for your consideration.

Yours sincerely,



Daryl Hitzman
Chief Executive Officer

attach

Moreton Bay Regional Council Submission: <i>Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017</i>	
Section	Comment
Clause 12 - Insertion of section 150P(3) (Complaints about councillor conduct must be referred to assessor)	<p>One of the advantages of the new provisions, is that the threshold for determining what is inappropriate conduct and what is misconduct has been devolved from the Chief Executive Officer (CEO) of the local government to the Independent Assessor. While this is a significant improvement, it is important to note that there is still a duty for a government entity (defined to include a local government, a mayor, a councillor or the CEO of a local government) to refer corrupt conduct to the Crime and Corruption Commission (CCC) under the proposed section 150P(3) of the <i>Local Government Act 2009</i> (the Act). This will still require the local government to assess conduct and determine the appropriate body for referral.</p> <p>Under the <i>Crime and Corruption Act 2001</i> (the CCC Act), the CEO of a local government must notify the CCC if the CEO reasonably suspects that a complaint involves or may involve corrupt conduct (section 38 of the CCC Act). The duty to notify is paramount (section 39 of the CCC Act). It follows that a local government CEO is often the referring party for complaints about councillors that must be notified to the CCC. The CEO is appointed by the local government, (section 194 of the Act) and the efficiency and effectiveness of any local government is significantly influenced by the relationship between its CEO and councillors. Complaints about councillors can be politically motivated. The operation of these provisions of the CCC Act place CEO's in a difficult position when dealing with complaints about councillor conduct. At best the relationship between CEO's and councillors is strained, and the operations of the local government compromised. At worst a CEO might be seen to have a conflict between their personal interest in maintaining a relationship directly impacting on their employment and the public interest in, and statutory duty to, notify matters to the CCC that might involve corrupt conduct. The difficulties are obviously exacerbated when a complaint is perceived to be politically motivated. The Council submits that it would be beneficial for the Committee to consider ways in which the CEO of a local government can be insulated from this position.</p> <p>Consequently, Council's preferred position is that the duty to notify corrupt conduct be discharged by notification to the Independent Assessor instead of the CCC. No injustice would occur as behaviour would still be referred, however, the Independent Assessor will be in a stronger position to consistently determine whether complaints are about inappropriate conduct, misconduct or corrupt conduct. The Independent Assessor also has the power to refer matters to the CCC. The proposed provisions will potentially result in inconsistent application of referral powers by local governments. The recommended change will result in expedited handling of the matter because a local government can immediately refer a matter to the Independent Assessor without consideration of the appropriate entity.</p>
Clause 12 - Insertion of section 150R (Local government official must notify assessor about particular conduct)	<p>When a local government official has 'become aware of information' indicating reportable conduct under section 150R, despite not being the subject of a complaint, there is a duty of referral placed upon that official.</p> <p>Council notes that the threshold of 'becoming aware of information' is so low that a duty may arise to act without any credible basis. This requirement should be revised to make the obligation more concrete.</p>
Clause 12 - Insertion of section 150W(b) (Decision about conduct)	<p>After investigation of the relevant councillor conduct, if the Independent Assessor 'reasonably suspects' that the councillor's conduct is inappropriate conduct, the Independent Assessor refers the suspected inappropriate conduct to the local government to deal with (section 150W(b)).</p>

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	<p>The creation of the Independent Assessor alleviates the requirement under the current provisions for the Chief Executive Officer to determine the nature of complaints about councillors (apart from complaints in respect of corrupt conduct) which, in turn, determines how and by whom the complaint is dealt with.</p> <p>The CEO is currently placed in the invidious position of making decisions that may have real practical consequences for the subject councillor. The position is exacerbated when the complainant is also a councillor.</p> <p>Given the close working relationship that must exist between a CEO and all councillors, this arrangement is inappropriate and impractical. The amended provisions partially alleviate the current situation, however, by the same token it is inappropriate and impractical for the local government to deal with, investigate, and make decisions in respect of suspected inappropriate conduct by councillors.</p> <p>It is contended that the more appropriate and practical arrangement is for complaints and referrals of inappropriate conduct to be dealt with by parties external to the local government. For example, all complaints about the inappropriate conduct of councillors could be determined by the Chief Executive of the Department or by the Independent Assessor. The following are some additional reasons why referral to the local government of suspected inappropriate conduct by the Independent Assessor is inappropriate:</p> <ol style="list-style-type: none"> 1. This will be especially pertinent in the case of a referral of inappropriate conduct involving the mayor. It is untenable for the local government to deal with such a circumstance. 2. Given: <ol style="list-style-type: none"> (a) the local government must adopt an investigation policy which is consistent with the principles of natural justice under section 150AE(2)(c); and (b) the clear intent of section 150DY(3) is that the name of the councillor should <u>not</u> be included within the publicly available Councillor Conduct Register without a finding of inappropriate conduct by the local government or by consent of the councillor, <p>it seems incongruous that by section 150AF(2) a local government acting through a meeting of the Full Council could make a resolution naming the councillor and determining the way the investigation into the councillor's conduct will be conducted in a meeting that is open to the public.</p> 3. Likewise, under section 150AG what if the local government decides that consideration of the investigation report and a decision in respect of that inappropriate conduct investigation should be at a meeting of the Full Council which is open to the public? How does this interact with section 150DY(3) if the Council decides that the councillor has not engaged in inappropriate conduct? 4. Also, how would the above be handled if the new conflict of interest provisions in the <i>Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017</i> are passed without amendment? What if, under proposed section 175E(4) of the <i>Local Government Act 2009</i>, the Full Council decides that the accused councillor should be entitled to a right to be heard in respect of the allegation and decides that the councillor should remain in the room?

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Section 176(9) and 244 of the <i>Local Government Act 2009</i>	<p>Unlike the existing provisions, there isn't any immunity from appeal for the decisions of the local government regarding inappropriate conduct under the new provisions. Consequently, such decisions may be subject to review.</p> <p>Council submits that if decisions regarding inappropriate conduct remain with local government, any right of appeal should be specifically excluded under the new provisions. The explanatory notes are silent on why the immunity from appeal has been removed in respect of such decisions. Consequently, because appeals are not specifically excluded, as is currently the case, legal avenues of appeal will remain open for aggrieved parties which will unnecessarily elongate the resolution of matters.</p>