

# Local Government (Empowering Councils) and Other Legislation Amendment Bill 2025

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## **Submission to the Inquiry into Local Government (Empowering Councils) and Other Legislation Amendment Bill 2025**

LGMA thanks the Committee for the opportunity to comment on the Local Government (Empowering Councils) Amendment Bill 2025. We note that some of our previously raised concerns have been addressed, in part, in the Bill tabled.

LGMA has not provided comment on the tabled amendments to the *City of Brisbane Act* as Brisbane City Council is providing a direct response.

### **Empowering local government**

#### Appointment of executive officers

Local governments are large, complex organisations operating in a vast statutory framework and with heavy scrutiny from the communities they serve. They also operate within a judicial and industrial relations framework that holds the actions of management accountable to a very high level. In the judicial and industrial relations context the role of ‘appointer’ of employees carries a “buck stops here” level of responsibility which under the existing unitary management model ensures that the local government performance, compliance and risk management drivers underpin the decisions of management.

Currently, the CEO, as ‘appointer’ of all employees (including senior executive officers), is the single point of accountability in all situations and the CEO’s role as appointer ensures that he/she can exercise unambiguous management direction.

LGMA estimates well over 50% of councils include elected members in the process of appointing senior executives as a matter of course. However, there are many instances when this does not occur. In some cases, elected members wish not to be, nor it is inappropriate that they be, involved. This may be:

- because they wish to maintain independence from the appointment;
- due to the time commitments involved in often lengthy processes;
- due to conflicts of interest (which are particularly prevalent in smaller communities where candidates might have strong links to different councillors);
- because they lack expertise and confidence in making what can be a complex assessment; and/or
- because of tensions in council which might be exacerbated by their involvement in an appointment.

In accordance with best practice, councils will often bring in different expertise where they believe it will enhance the selection process. This might include for reasons of equity (gender balance, for example), expertise and/or independence (the latter often deemed appropriate where there are internal applicants for a role).

A critical element of the current process is that it is flexible to suit the needs of councillors and the CEO/organisation and give consideration to the prevailing politics in council. For example, where there is significant conflict between the mayor and councillors, the approach taken may differ from



that taken in situations where there is trust between elected members. CEOs will (and should) work with their elected members to determine the process that: is appropriate for the role being appointed; will best engender the good function of the chamber; and is mindful of elected members' conflicts and needs.

The proposal to mandate the selection panel for senior executive appointments is considered to be fraught with risk while adding no enhancement to current practice. In situations where judicial or coronial scrutiny is brought to bear, the capacity of a panel to demonstrate its diligence as the "appointer" may be considered inadequate where due consideration has not been given to panel composition. Further, the added complications of duty of care to third parties (e.g. insurers, litigators, media) leaves open the question of accountability of the panel members and their diligence in exercising their responsibilities as "appointer".

In cases where conflicts of interest or skill deficiency arise, fixing the composition of the panel effectively forces the nominated panel members to act even though they may not be willing or able to do so with appropriate impartiality and or diligence.

LGMA also notes the practical implications of a set selection panel. Mandating that a selection panel comprises the Mayor, Deputy and CEO means that most panels will lack diversity (only slightly more than half of council panels will include a female, for example) and may not include the mix of skills and approaches good governance espouses for recruitment processes. For example, when looking for a Chief Engineer, the proposed amendments do not give council the option of bringing in different expertise to assist in assessing candidates for what may be a highly specialised role.

One of LGMA's key concerns is that the authority of the CEO to appoint not be reduced or clouded by legislative uncertainty. This could occur where the reference to the panel 'appointing' senior executives can be confused with the CEOs role as the 'appointer'. LGMA is strongly against an environment whereby a candidate objected to by the CEO can be appointed. This situation can undermine the internal authority of the CEO. It is not positive for either the candidate or the CEO.

LGMA notes that, in the current environment of exceptionally high turnover of CEOs, this proposed amendment has caused significant angst across directors and aspiring directors in Queensland councils. Many see as an inevitable consequence of the proposed amendment, the politicisation of the bureaucracy and increased instability as turnover becomes linked to election cycles. This reduces the attractiveness of Queensland local government as a career choice for senior executives which will have impacts on the pool of candidates for future roles.

Rather than amending the legislation and mandating panel composition, LGMA recommends the existing provisions be retained but that they be supported by a Guidance Note which outlines best practice involvement of the mayor and councillors at points in the selection process and the circumstances when alternative provisions may be appropriate. This would include matters such as management of conflicts, ensuring diversity and mitigation of bias, councillor workload management and council dynamics.

The Guidance Note could include a range of options to manage involvement in order to ensure rigorous process and protect councils and organisations from risk associated with skills gaps, lack of diversity and conflicts. For example, it could outline mechanisms such as councillors being involved from short-listing through to offer or it might be that the mayor and nominated councillors (for example portfolio chair) meet the final candidate/s before an appointment is made.



Access to quarry materials – amendment supported noting that the details will be important and there are variable circumstances and needs across the State.

Rating in indigenous councils – amendment supported

### **Empowering mayors**

Mayor is the official spokesperson of a local government – supported. The additional clarity this amendment provides is helpful from an organisational perspective.

Mayor is the default chair – supported. The additional clarity this amendment provides is helpful from an organisational perspective.

### **Councillor conflicts of interest and register of interest frameworks**

#### Conflicts of interest

LGMA agrees that the current conflict of interest provisions have created some confusion and are complex to manage. However, the changes from the 2013-2028 legislation were brought about not just for political reasons but because the framework was ineffective in providing transparency and certainty. Returning to those provisions is a retrograde step and LGMA's preferred approach is that the current process be simplified.

In particular, the narrowing of the definitions of conflict and circumstances when a conflict needs to be managed is detrimental to transparency. The amendment means a conflict of interest need only be managed when in a local government meeting or committee meeting, giving rise to the potential application of undue influence at other times. The determination that a councillor who has a conflict must always act as if they have that conflict and apply the relevant provisions, regardless of the type of council discussion occurring, was brought in to stop inappropriate influence and ensure that that decision making was transparent. Retaining the current definition provides clarity about how and when to manage a conflict (always) and leads to more defensible decision making.

The removal of the concept of 'close personal relationship' is not considered to improve transparency or practice. The reputation of local government relies on public perceptions of integrity and failing to include key relationships in the conflict considerations would be detrimental to this. Instead, improved definition would be supported.

It is not clear that the proposed amendments will make it easier for councillors and CEOs to reliably interpret and apply the framework. In fact, it creates additional grey areas.

The requirement for non-conflicted councillors to vote on whether to allow a conflicted councillor to participate is supported, as is the removal of the requirement to report suspected conflicts of other councillors. What is unclear, is how and when discussions about conflicts will occur. There are many instances where councillors are unsure about their conflicts and the discussion in chamber is useful to enhance councillors understanding and support public perceptions of transparency.

Register of interests – no comment



## **Removing red tape**

General approval for DRFA assistance – amendment supported

### Councillor conduct framework

LGMA agrees that the management of conduct breaches is costly and that elements are ineffective in the current form. In particular, the requirement for local governments to investigate conduct breaches for which the penalties if found guilty are tokenistic at best.

The intent of the proposed changes is generally supported, however, under the proposal, and as was experienced under previous legislation, the boundaries between unacceptable behaviour and misconduct will inevitably become blurred. Even though the legislation suggests this responsibility will fall to the mayor, in reality most of these matters will ultimately fall to the CEO to manage. This places CEOs in a very awkward position and diverts attention away from strategic leadership. Based on OIA statistics, a not insignificant percentage of conduct breaches historically arise from councillor-to-councillor interactions, and it is this area where any intervention should be targeted.

Given the removal of 'conduct breaches', LGMA does support the inclusion of the three misconduct provisions to include:

- work health and safety risks;
- sexual harassment; and
- an order of the chairperson to stay away.

LGMA is concerned that other breaches outlined in the Councillor Code of Conduct (which are currently deemed 'conduct breaches' by virtue of the fact that the behaviour occurs outside a local government meeting) do not appear to be enforceable.

Conduct register publication – no comment

### Councillor Training

LGMA notes that this provision now includes a requirement for all elected members to undertake training in the event of legislative change. This is supported.

Councillor advisors – no comment

Postal ballot – amendment supported

Review of divisions – both amendments supported (assuming councils can initiate a review where community demands)

Review of divisions/wards – amendment supported

Removal of public benefit assessment report provision to Minister – supported on the basis it is publicly available.

Clarity on commencement dates – supported

## **Providing certainty to councils regards remuneration, leave and eligibility**

### Leave of absences and clarification of remuneration

Amendments supported although it is noted that, in some councils, the de-coupling (or perceived de-coupling) of remuneration from attendance will lead to increased absenteeism.



Automatic vacation of office if appointed Mayor – no comment

Automatic removal of office upon nomination as candidate – no comment

### **Promoting good governance and decision-making**

Parliamentary privilege exemption – no comment

**Enhancing safeguards for election candidates** – no comment

**Minor, administrative and technical** – supported

Trustee councils – supported

Councillor conduct registers – no comment

Competitive neutrality complaints – supported. This is a useful amendment.

Appointment of acting Independent Assessor – supported. This is appropriate given the review being undertaken.

### **Cost of implementation**

It is noted that the Explanatory Notes indicate that the proposed amendments have “no financial implications or can be implemented through existing resources”. This is not the case for local governments.

Councillors and local government officers at various levels will require training and support in understanding the amendments and their application. Local governments will have a wide range of policies, procedures, guidelines and templates which will require amendment. This will involve the reallocation of resources and in some cases additional resourcing. In addition to the direct costs of implementation, there are the lost opportunity costs as resources are diverted from other activities.

Even with the assistance the LGAQ, LGMA and the Department of local government will provide, this is a significant cost to Queensland communities.