Attachment 3

COUNCILLOR COMPLAINTS REVIEW

A fair, effective and efficient framework

REPORT BY THE INDEPENDENT COUNCILLOR COMPLAINTS REVIEW PANEL

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The willingness of these contributors to provide access to relevant material, to offer candid insights into current practices and informed suggestions for improvement is gratefully acknowledged and appreciated.

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Special thanks also go to the Department of Infrastructure, Local Government and Planning for resourcing the Panel's administrative needs. The unfailing support of Project Manager Ms Anita Kapernick was critical to the processing and analysis of the wide range of submissions received as well as to the expeditious compilation of the review documentation and is greatly appreciated.

Councillor Complaints Review Panel

30 January 2017

The Honourable Jackie Trad MP
Deputy Premier, Minister for Infrastructure,
Local Government and Planning
PO Box 15009
CITY EAST QLD 4002

Dear Deputy Premier

On 21 April 2016, you announced our appointment as an independent panel to review the councillor conduct and complaints policy and process. The review was to 'examine the statutory provisions relating to complaints to assess the effectiveness of the current legislative and policy framework and make recommendations about policy, legislative and operational changes required to improve the system of dealing with complaints about councillors' conduct.'

Having completed the review we now provide you with our report. It includes our recommendations for changes in the system of dealing with complaints about councillors' conduct and our reasons for proposing them.

Yours sincerely

David Solomon AM
Chair

Noel Playford OAM

Gary Kellar PSM

Level 12, 1 William Street
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ABOUT THE COUNCILLOR COMPLAINTS REVIEW PANEL

David Solomon AM, B.A., Ll.B. (Hons), Litt. D. (ANU) D. Univ. (Griffith) was a political and legal journalist in Canberra for 29 years until he was appointed Chair of the Electoral and Administrative Review Commission (EARC) in 1992. When EARC was abolished he became a contributing editor with the *Courier-Mail*. On his retirement he chaired an inquiry into Freedom of Information that resulted in the enactment of the *Queensland Right to Information Act 2009*. He was the Queensland Integrity Commissioner for five years from 2009-14. He has written and co-authored 11 books on government, politics, the High Court and constitutional law, including *Making of an Australian Prime Minister* (with Laurie Oakes in 1973), *Australia's Government and Parliament* (1973), *Elect the Governor-General!* (1976) and *The Political High Court* (1999). He is an Adjunct Professor at the University of Queensland.

Gary Kellar PSM has had a long and successful career in Queensland local government, beginning with 15 years fulfilling various roles within the Department of Local Government before taking up the position of Chief Executive Officer at Logan City Council, where he led that Council's organisation for over 25 years. Established as a dedicated professional with a strong academic and practical outlook, Gary has served on a wide range of government and professional working groups and committees in developing legislative and practice frameworks for local government.

Since 2005 Gary has conducted a successful management consulting business with local government as its primary client base. His long association with Local Government Managers Australia (Queensland), including his tenure as a past president, provides a solid foundation for his appointment to the Panel.

Noel Playford OAM has been involved with Queensland local government for over 30 years following his election as a councillor in 1982. Since then he has spent ten years as a councillor and 11 years as Mayor of Noosa. He has frequently represented local government interests as a member of ministerial and inter-governmental working groups, and was president of the Local Government Association of Queensland from 2000 until he stood down from Noosa Council in 2004. He later returned as Mayor of Noosa for two years to oversee the re-establishment of Noosa Council following its successful de-amalgamation in 2013.

Although Noel is no longer an elected member, he continues his long association with local government in his role as Chair of Local Government Mutual Services, which provides liability cover, asset protection and workers' compensation to local government throughout Queensland.

LIST OF TERMS

BCC	Brisbane City Council
CCRP	Brisbane City Council's Councillor Conduct Review Panel
CEO	Chief Executive Officer of a council
CoBA	*City of Brisbane Act 2010*
CAC	Conduct Advisory Committee
the Panel	Councillor Complaints Review Panel
CCA	Councillor Conduct Authority
the Tribunal	Councillor Conduct Tribunal: the new reconstituted Tribunal
CC Act	*Crime and Corruption Act 2001*
CCC	Crime and Corruption Commission
COI	conflict of interest
the Department	Department of Infrastructure, Local Government, and Planning
EARC	Electoral and Administrative Review Commission
FTEs	full-time equivalents
ICAC	Independent Commission Against Corruption
the tribunal	Local Government Remuneration and Discipline Tribunal
LG Act	*Local Government Act 2009*
LG Reg	Local Government Regulation 2012
LGAQ	Local Government Association of Queensland
LGLG	Local Government Liaison Group
LGMA	Local Government Managers Australia (Queensland)
MP	members of parliament
MPI	material personal interest
Ombudsman Act	Ombudsman Act 2001
PID	public interest disclosure
PID Act	*Public Interest Disclosure Act 2010*
RCRP	Regional Conduct Review Panel
OLG	State Office of Local Government
VCAT	Victorian Civil and Administrative Tribunal

CHAPTER 1
A FAIR, EFFECTIVE AND EFFICIENT FRAMEWORK

FRAMEWORK HIGHLIGHTS

Goal

A streamlined complaints system that is fairer, more efficient and more effective.

An improved model

- An independent Councillor Conduct Authority (CCA) containing both the office of the Independent Assessor to receive, categorise, investigate and if necessary prosecute complaints, and also a reconstituted Councillor Conduct Tribunal (the Tribunal) to determine misconduct matters.
- Inappropriate conduct matters to be determined by councils, although they may seek advice from a council-appointed Conduct Advisory Committee or a Tribunal member.
- More detailed definitions of misconduct and inappropriate conduct and more powers for the Tribunal and councils to impose appropriate penalties or orders.
- A mandatory uniform Code of Conduct for councillors and a model code of meetings procedures.
- The Department of Infrastructure, Local Government and Planning (the Department) to establish a Local Government Liaison Group (LGLG) to promote good governance and ethical conduct.

Strategic directions

- Create a new Independent Assessor to replace council chief executive officers (CEOs), mayors and the Department, in deciding whether a complaint about councillor conduct involves misconduct or inappropriate conduct, or should be treated as frivolous, vexatious, lacking in substance or is about another matter.
- Reduce the number of unwarranted or misdirected complaints by requiring complaints to be lodged on a standard form that collects essential basic information, defines clearly what may constitute a councillor conduct complaint, and provides advice on how other concerns can be handled in a different way.
- Devolve responsibility for handling complaints of inappropriate conduct to councils; subject to new procedures and safeguards.
- Merge the existing Regional Conduct Review Panels (RCRP) and the Local Government Remuneration and Discipline Tribunal (the tribunal) to form the new Tribunal – the current tribunal's remuneration function to be given to the Queensland Independent Remuneration Tribunal.
- Give the Independent Assessor power to speedily investigate complaints about councillor conduct (replacing the Department's role) and to prosecute complaints of substance before the Tribunal.
- Clarify the definitions of inappropriate conduct and misconduct.
- Expand the range of disciplinary orders and penalties for inappropriate conduct and misconduct available to councils and the new Tribunal.
- Increase natural justice and fairness for all concerned and introduce a limited right of appeal.
- Introduce a uniform state-wide Code of Conduct for councillors, plus a requirement for all councils to adopt a set of meeting procedures consistent with a model code of meeting procedure and the Code of Conduct.
- Retain the Department's role in prosecuting in the courts specific offences under the *Local Government Act 2009* (LG Act).
- Strengthen the role of the Department in promoting good governance and ethical conduct, and facilitate coordination amongst related agencies and entities by establishing a LGLG.

DISCUSSION OF KEY ELEMENTS

On 21 April 2016 the Deputy Premier and Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment, the Hon. Jackie Trad MP, announced the appointment of an independent Councillor Complaints Review Panel (the Panel) to review the arrangements for dealing with complaints about the conduct of local government councillors.

The Deputy Premier said:

> The review will examine the statutory provisions relating to complaints to assess the effectiveness of the current legislative and policy framework and make recommendations about policy, legislative and operational changes required to improve the system of dealing with complaints about councillors' conduct.[1]

The Panel was chaired by Dr. David Solomon AM, a former Queensland Integrity Commissioner. The other members were Mr. Noel Playford, OAM, nominated by the Local Government Association of Queensland (LGAQ), and Mr. Gary Kellar PSM, nominated by Local Government Managers Australia (Queensland) (LGMA).

In announcing the review, the Deputy Premier told Parliament that the complaints procedures:

> … have not been comprehensively reviewed since they were introduced in 2009. This review is timely to ensure there is a modern, fair, transparent and accountable system in place to manage complaints. This review follows a request from Local Government Managers Australia which wrote to me recently to express concerns about the role of local governments' chief executive officers in the preliminary assessment and general management of complaints. The Local Government Association of Queensland has also sought changes to the way in which complaints are dealt with under the *Local Government Act 2009*, including the current inability to seek a review of those decisions and the need to better ensure natural justice is afforded to all parties.

It is important to note the limited nature of this inquiry. The system being examined relates only to complaints about the conduct of councillors, including mayors – it is not about decisions of councils, such as planning decisions that may be reviewed under other legislation. Nor is it about the activities of council employees. The Panel's terms of reference are set out in full in Appendix 2.

The Panel conducted extensive consultations with, and surveys of, local government councils and other institutions involved in the operation of the current complaints system. It also sought public submissions, as well as conducting its own research. After reviewing the operation of the current system, we were convinced that although making minor adjustments to the complaints-handling system could result in some improvements, more fundamental changes were required. We decided to recommend major changes to the way the current system operates so as to improve its fairness, its effectiveness and its efficiency, and to make it more responsive and accountable. Our proposals would require substantial changes to the way complaints are processed and investigated and how alleged infractions are addressed. We also propose the introduction of a limited appeals process in misconduct matters.

The Panel's proposals and the reasons for making them are explained in detail in the following 11 chapters, which set out the major elements in the new recommended system;

1 Queensland Legislative Assembly, Hansard, 21 April 2016, p. 1318.

how they differ from the existing procedures; and how they would deliver a new system that is fairer, more efficient and more effective (refer to Table 1 for a summary).

The starting point for these reforms is the creation of the office of an Independent Assessor. At present the initial assessment of councillor complaints falls mainly to council CEOs and the Department. The decision maker must first decide whether a complaint is frivolous, vexatious, lacking in substance or about another matter, or whether it does raise an issue of inappropriate conduct or misconduct. Making such decisions can give rise to a clear conflict of interest for CEOs in assessing a complaint against one of their own councillors – one of their employers. Equally, assessment independent from the Department will more clearly separate the other oversight roles the Department has in dealing with offences under the LG Act. The Panel received overwhelming support for the proposition that this function should be transferred to an Independent Assessor.

The Panel believes the assessment process will be greatly improved if people making complaints do so using an approved form – as happens with other agencies such as the Ombudsman and the Crime and Corruption Commission (CCC). The form would prompt complainants to provide enough information to allow an informed assessment of the complaint. It would also ensure that the person making the complaint is provided with information about the conduct complaints process and about other options that might be available to deal with their concerns. Finally it would ask them for a declaration that they are acting in good faith, and they would be reminded that providing false or misleading information is an offence.

At present some complaints of inappropriate conduct and all complaints of misconduct are investigated by the Department before being given to mayors (in the case of inappropriate conduct), RCRPs or the tribunal (in the case of misconduct) to be dealt with. This can be a very lengthy process, partly because the LG Act does not give the Department adequate investigative powers.

The Panel believes that responsibility for investigating complaints should be transferred to the Independent Assessor who should be given adequate powers to conduct investigations. At the moment the LG Act gives the RCRPs and the tribunal full inquisitorial powers, but they rarely, if ever, use them. The Panel believes the Independent Assessor should share these powers.

At present, complaints about inappropriate conduct by councillors are dealt with by mayors and the disciplinary order that can be made is insubstantial – issuing a reprimand. The Panel considers that the full council, rather than the mayor, should determine the issue of inappropriate conduct and set the penalty; also that the range of conduct falling into the category of inappropriate conduct should be expanded, as should the orders that can be made. In a serious case, for example, the council could exclude the councillor from meetings and/or from any position representing the council, and require them to repay costs involved in dealing with the complaint. In making its decisions, the council should be able to seek advice from either a Conduct Advisory Committee (CAC) (a small committee of community leaders, which the council may appoint at its discretion) or a member of the Tribunal, who would have investigative powers.

However, individual breaches of meeting procedure should be treated as such by the chair of the meeting, and not labelled and penalised as inappropriate conduct.

The Panel also decided that the definition of misconduct, and the disciplinary orders that could be made, need to be expanded. The extended definition will make it clearer to councillors what constitutes misconduct.

Increasing the range of penalties will ensure that the Tribunal can match an offence with an appropriate penalty.

The proposed definitions of inappropriate conduct and misconduct are set out as part of Table 2 (Proposed classification of conduct and disciplinary orders/penalties) at the end of this chapter. Major additions to the existing definitions include:

- For inappropriate conduct: offensive or disorderly behaviour as a councillor, which happens outside formal council meetings; exerting, or attempting to exert, inappropriate influence over staff; and exercising, or purporting to exercise, an unauthorised power, duty or function.
- For misconduct: unauthorised use of council staff or resources for private purposes, bullying or harassment, and seeking gifts or benefits of any kind.

The penalties for inappropriate conduct and misconduct have also been varied by increasing their scope and potential severity.

The Panel also considers there will be benefits if a uniform Code of Conduct is reintroduced and made mandatory. The LG Act has previously contained a provision for a Code of Conduct but this was inexplicably dropped in 2009. There is now general agreement that a code should be introduced. This is particularly important now because there is a very high turnover of councillors – at each of the last two elections about half of those elected had no previous experience on a council.

This has led the Department to increase its programs to educate and inform people standing for councils and provide induction for those elected. The LGAQ and LGMA are also active in providing assistance for their respective members.

However, the Panel believes there would be considerable value in the creation of the LGLG (Local Government Liaison Group), with the Department, the CCC, the Ombudsman, the Auditor-General, the LGAQ and the LGMA all represented, to encourage good governance and ethical conduct by councillors, and to coordinate the provision of assistance to councillors in meeting their responsibilities under the LG Act. This would include providing information about declarations of interest, conflicts of interest, declarations of material personal interest, audit requirements and the interpretation of provisions in the legislation. The Panel includes in an appendix to this report a draft of a suggested Code of Conduct for councillors, but this should be reviewed and properly drafted by the LGLG before it is submitted to the Minister for approval (Appendix 7—Draft code of conduct).

The Panel's proposals would largely remove the Department from the councillor complaints process, though the Department would still retain responsibility for prosecuting breaches of the specific offences defined in the LG Act. It would also be responsible for advising the Minister if the Tribunal recommends the long-term suspension of a councillor for misconduct[2].

The Panel is recommending that the statutory authority that is at presently constituted by the Local Government Remuneration and Discipline Tribunal be transformed into a Councillor Conduct Authority (CCA)[3]. This would be comprised of the Independent Assessor (who would be the Authority's CEO) and the Councillor Conduct Tribunal (which would be an amalgam of the former tribunal and the RCRPs). Having a single Tribunal, which would sit with three members to hear misconduct complaints, will greatly reduce inconsistencies in hearing procedures that have been a feature of the current system.

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[2] Flowcharts are provided in Appendix 6—Proposed councillor complaints

[3] Refer to Figure 3 - Proposed structure of Councillor Conduct Authority

The former tribunal's responsibilities for recommending the remuneration of councillors should be transferred to the Queensland Independent Remuneration Tribunal which sets salaries and allowances for members of parliament (MP).

To ensure their independence and accountability, both the Independent Assessor and the president of the Tribunal would be statutory appointments, though the president would be only part-time.

The present disciplinary system specifically excludes appeals, though some matters can be reviewed by the Ombudsman – for example, the way a CEO deals with a complaint. The Panel considers that in misconduct matters there should be an appeal on questions of law to the District Court, which also should be given jurisdiction to determine a claim that the Tribunal has acted beyond its jurisdiction.

The Panel considers that the model it is proposing is in every respect superior to the current system. It will allow complaints to be dealt with more effectively, more efficiently, in a more timely manner, and with a greater degree of fairness. It will reduce the time spent on complaints that are vexatious, frivolous, lacking in substance or about another matter, and lower their number. Processing complaints through investigation and prosecution will be speedier. The adjudicative system will be improved through the redefinition of misconduct and inappropriate conduct and the introduction of a more appropriate range of penalties. Councils, rather than mayors, will determine inappropriate conduct matters. Introducing a code of conduct and other governance measures will make councillors more aware of their obligations. The system will be efficient, effective, fair and transparent, far simpler than that it replaces, and will produce a more timely response to genuine complaints.

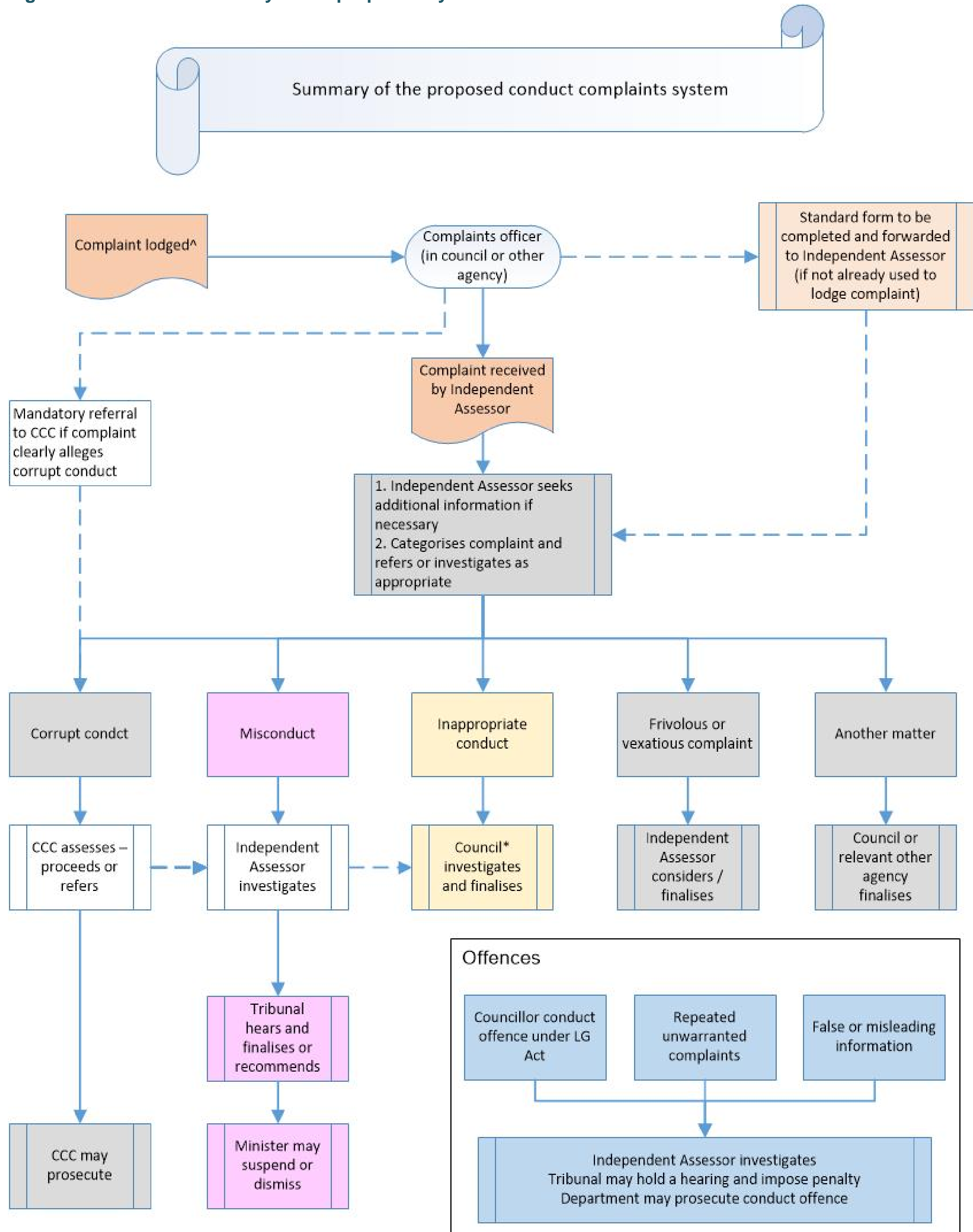
A consolidated list of the Panel's recommendations is provided in Appendix 1.

SUMMARY OF COMPONENTS

Table 1 - Key components of the proposed arrangements

Component	Actor/s	Notes
Making and receiving councillor conduct complaints	• Anyone with good reason may make a complaint. • Complaints may be received by the council concerned, Independent Assessor, the Department, CCC or another agency.	• Conduct complaints must be made on the standard form. • If necessary, receiving agency seeks completion of the standard form and/or essential additional information. • Mandatory referral to CCC if complaint clearly alleges corruption. • Matters that are clearly not conduct complaints to be referred to relevant area of council or other agency, otherwise receiving agency forwards to Independent Assessor.
Categorisation and investigation of complaints	• Independent Assessor	• Preliminary assessment of complaints. • Complaints categorised as corrupt, misconduct, inappropriate conduct, frivolous/vexatious or another matter. • Independent Assessor forwards for further action, investigates misconduct, or finalises frivolous/vexatious matters.
Breach of meeting code in a formal meeting (not to be treated as 'complaints' or inappropriate conduct unless serious and/or repeated – see below)	• Chair of meeting or council vote. • Council vote to take action on serious and/or repeated breaches constitutes a complaint.	• Increased range and potential severity of disciplinary orders.
Inappropriate conduct (see Table 2 for definition)	• Depending on advice of Independent Assessor, council may investigate itself, or refer to CAC or a Tribunal member. • Council then makes determination and applies a disciplinary order.	• Responsibility fully delegated to councils. • Council must have standard procedures to investigate and determine conduct complaints. • First step may be mediation. • Increased range and severity of penalties.
Misconduct (including specific offences under the LG Act)	• Independent Assessor investigates, determines need for a Tribunal hearing, and 'prosecutes' case at the hearing. • Specific offences under the LG Act referred to the Department for prosecution.	• Tribunal to be reconstituted as hearings arm of new part of the CCA. • Tribunal hearings may be inquisitorial rather than adversarial, using existing investigative powers under LG Act. • Abolish separate system of RCRP.
Corrupt conduct	• CCC – no change	• Independent Assessor becomes unit of public administration for CCC referrals.
Mandatory Code of Conduct	• Minister on advice of LGLG	• Uniform across state. • Sets out principles, expected standards of behaviour and processes to be followed in cases of inappropriate conduct. • Robust but respectful debate in meetings is not a breach.
Model code of meeting procedure	• Minister on advice of LGLG	• Provides a basic framework and defines unacceptable behaviour in formal meetings that warrants disciplinary action. • Councils may adapt/expand but not include provisions that are inconsistent with the basic framework or the Code of Conduct.
LGLG	• The Department, LGAQ, LGMA, CCC, Ombudsman, QAO	• LGLG to facilitate coordinated action and advice to promote sound, ethical local governance, and advise the Minister on specific issues as required.

Figure 1 - Flowchart summary of the proposed system



^All complaints and outcomes to be posted on council and Independent Assessor/Tribunal websites

*Council must have formal procedures, it may form a Conduct Advisory Committee and seek its advice, or engage a Tribunal member to investigate and make a recommendation

Table 2 - Proposed classification of conduct and disciplinary orders and penalties

Type of breach	Decision maker	Disciplinary orders/penalties*
Breach of meeting procedures: • Behaviour contrary to the Code of Conduct or code of meetings procedure in full council or formal committee meetings	Chair of meeting/ council vote	• Withdrawal/apology as ordered and/or exclusion from meeting
Inappropriate conduct: • Serious or repeated conduct contrary to the code of conduct or meeting practice in formal council or committee meetings. • A failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the meeting chairperson. • Failure to comply with the council's other policies, codes or resolutions. • Offensive or disorderly behaviour as a councillor that happens outside formal council meetings. • Failure to work respectfully and constructively with other councillors or staff. • Exerting or attempting to exert inappropriate influence over staff. • Repeated unreasonable requests for information (contrary to council guidelines). • Exercising, or purporting to exercise, an unauthorised power, duty or function.	Decision by vote of full council following appropriate internal investigation and/or on the advice of council's CAC or a Tribunal member	One or more of the following: • Censure of the councillor. • Formal reprimand. • Requirement for an apology. • Mandatory training or counselling. • Councillor to be excluded for up to two meetings of the council. • Councillor removed from any position representing the council and not to chair or attend committees or other specified meetings for up to two months. • Payment of costs attributed to the actions of the councillor. • An order that any repeat of the inappropriate conduct be referred to the Tribunal as misconduct. In all instances a councillor against whom a complaint of inappropriate conduct has been upheld may not participate in council or committee meetings until any disciplinary order imposed has been discharged in full, section s. 162(1)(e) of the LG Act would apply. Where an order is made that the councillor be excluded from council meetings such an absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act.
Misconduct: • The performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial. • A breach of the trust placed in the councillor. • A misuse of information or material acquired in, or in connection with, the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else. • Unauthorised use of council staff or resources for private purposes. • Use of information obtained as a councillor to the financial detriment of the council or the public interest. • Failure to cooperate with the council, CAC or Tribunal member during inappropriate	Tribunal	One or more of the following: • Mandatory training or counselling. • An order that the councillor reimburses the local government and/or pay up to 50 penalty units. • An order that a councillor may not remain or become deputy mayor, or a committee chair for the remainder of the term. • Councillor to be excluded for up to three meetings of the council. • Councillor removed from any position representing the council for a period of up to three months. • Councillor not to attend committees and/or other specified meetings for a period of up to three months. • An order suspending the councillor (without pay) for a period of up to three months. • A recommendation to the Minister that the councillor be suspended for more than three months and up to six months (without pay), or dismissed. • A recommendation that the Department prosecute the councillor for an offence under the LG Act.

Type of breach	Decision maker	Disciplinary orders/penalties*
conduct proceedings, or to comply fully with a penalty for inappropriate conduct. • Third or subsequent finding of inappropriate conduct during council term. • Bullying or harassment. • Failure to declare and resolve conflict of interest at a meeting in a transparent and accountable way. • Seeking gifts or benefits of any kind. • Improper direction or attempted direction of staff. • Deliberate release of confidential information. • Prosecutable offences under the LG Act (where available disciplinary orders are deemed sufficient or a prosecution is unlikely to succeed).		In all instances a councillor against whom a complaint of misconduct has been upheld may not participate in council or committee meetings until any disciplinary order imposed has been discharged in full (unless they have lodged an appeal), s. 162(1)(e) of the LG Act would apply. Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act.
Prosecutable offences (conduct)^ • Misuse of information obtained as a councillor for financial advantage (personally or by a close associate) (s. 171). • Misuse of inside information for the financial benefit of the councillor or a close associate (s. 171A). • Failure to lodge/maintain accurate register of interests (s. 171B(2)). • Failure to declare and resolve material personal interest in a transparent and accountable way (s. 172(5)).	Court	• Fine and/or imprisonment as per LG Act. • Disqualification for up to 10 years as per LG Act (s.153).
Prosecutable offences (other)# • Making repeated frivolous or vexatious complaints. • Knowingly providing false or misleading information to the Independent Assessor or the Tribunal.	Tribunal	• Up to 50 penalty units

* All findings, disciplinary orders and penalties to be recorded in council minutes at the first available meeting, and published on the council website.
^ These are existing offences.
# These are new or modified offences proposed by the Panel.

CHAPTER 2
CURRENT POLICY AND LEGISLATIVE FRAMEWORK

> The state's overall objective is to maintain public confidence in transparent, accountable, well-governed, efficient and effective local government; to hold councillors to high standards of ethical and legal behaviour which puts the public interest ahead of their own individual interest; and to deter councillors from poor behaviour or abuse of their positions of trust…[4]

Local government in Queensland is established and governed by legislation of the Queensland Parliament – principally, the LG Act and the *City of Brisbane Act 2010* (CoBA). In most respects the provisions of the two acts are similar and reference in this report is made to the CoBA only where its provisions differ significantly from those of the LG Act.

The LG Act defines local governments (councils) as elected bodies that are responsible for the good rule and local government of a part of Queensland, and empowers them to do anything that is necessary or convenient to achieve that. Councillors must make sound decisions for the benefit of the entire local government area, and for the current and future interests of its residents.

Councillors hold public office and hold a position of trust. Trust in all levels of government is fundamental to building and maintaining a stable, law-abiding, prosperous and mutually cooperative community. Integral to public trust in local government is the notion that councillors should abide by high standards of behaviour, ethics, integrity, transparency and accountability.

PRINCIPLES AND STANDARDS OF CONDUCT

Councillors, like MPs, are democratically elected, and ultimately accountable to their constituents through the ballet box. However, there are few parallels between the discipline, scrutiny and penalties imposed on local government councillors in Queensland, and the behavioural requirements (in so far as there are any) to which members of the Commonwealth and state parliaments are subject. The MPs set their own standards to be supervised by Parliamentary Ethics Committees. Councillors have theirs determined by state legislation.

The LG Act aims to foster a culture of personal integrity and accountability for elected officials consistent with community expectations. It sets out the standards of behaviour expected of councillors through provisions about the:

- Local government principles (s. 4).
- Responsibilities of councillors [section also includes extra responsibilities for mayors] (s. 12).
- Obligations of councillors (s. 169–173).
- Conduct and performance of councillors (s. 176).[5]

The local government principles are:

a) Transparent and effective processes, and decision-making in the public interest.
b) Sustainable development and management of assets and infrastructure, and delivery of effective services.
c) Democratic representation, social inclusion and meaningful community engagement.

[4] Refer to Appendix 2 – Panel of Terms of reference, first page.

[5] These sections of the LG Act, and other relevant sections, are set out in detail in Appendix 8.

d) Good governance of, and by, local government.
e) Ethical and legal behaviour of councillors and local government employees.

Under s. 12 of the LG Act, a councillor must represent the current and future interests of the residents of the local government area and, among other things, is accountable to the community for the council's performance. He or she must provide high quality leadership to the council and community, and ensure that the council complies with its legislative obligations.

Sections 169–173 focus in particular on:

- Proper use and protection of 'inside' information acquired as a councillor (s. 171A).
- Maintaining a correct register of interests (s. 171B).
- Declaring and dealing with a material personal interest in matters before council, and dealing with potential conflicts of interest (s. 172 and 173).

These sections create offences and breaches of the LG Act may be prosecuted. Some of the penalties that could be imposed by a court are severe – for example, using insider information could result in a fine of up to 1,000 penalty units (about $120,000) or up to two years imprisonment. However prosecutions under these provisions are rare.[6]

Some offences may fall within the definition of corrupt conduct as set out in s. 15 of the *Crime and Corruption Act 2001* (CC Act). Examples of possible corrupt conduct include abuse of public office; bribery; extortion; fraud, stealing or forgery; perverting the course of justice; an offence relating to an electoral donation; and loss of revenue of the state. The Panel notes that this definition is currently under review by the Department of Justice and Attorney-General.

Setting standards

Most complaints about councillor behaviour concern either inappropriate conduct or misconduct. These are defined in s. 176(3) and (4), and are regarded as disciplinary matters.

Chapter 6, Division 6 of the LG Act deals with 'Conduct and performance of councillors'. It includes s. 176, mentioned above, and it explains in s. 176(1):

> This division is about dealing with complaints about the conduct and performance of councillors, to ensure that –
>
> (a) Appropriate standards of conduct and performance are maintained; and
> (b) A councillor who engages in misconduct or inappropriate conduct is disciplined.

Much of this report will be concerned with the provisions of this division of the LG Act, its implementation, enforcement and effectiveness.

Many of the 'standards' imposed on local government councillors in Queensland are expressed in imprecise terminology or have little relevance to an accusation of misconduct. For example, one of the definitions of 'misconduct' is:

> … conduct, or a conspiracy, or attempt to engage in conduct, of or by a councillor -
> (a) That adversely affects, or could adversely affect (either directly or indirectly) the honest and impartial performance of the councillor's

[6] The Department has prosecuted only once since the current provisions under the LG Act commenced in 2009 for a breach in maintaining an accurate register of interests. Between 2006 and 2009 there were four prosecutions relating to the register of interests (1), election gift register (1), and material personal interests (2).

responsibilities or exercise of the councillor's powers.[7]

The councillor's responsibilities, referred to in subsection (a) above, are set out in part in s. 12, and include matters that are not measurable or whose failure to achieve (for example, providing high quality leadership to the local government and the community[8]) could almost never result in a finding of misconduct.

Quoted at the beginning of this chapter was a sentence from the terms of reference for the Panel. It referred to an objective of deterring councillors from 'poor behaviour'. Whatever this means, the question arises as to whether this is an appropriate matter for disciplinary proceedings or rather one that needs to be considered by voters at a forthcoming election for councillors.

There is currently no statutory code of conduct imposed on councillors, other than the matters referred to above, under the heading 'Principles and standards of conduct', although s. 176(3) could be seen as a 'code of conduct' expressed in the negative. In 2006 the LG Act was amended to introduce a requirement for councils to adopt a code of conduct for councillors. This requirement was removed in the 2009 amendments to the LG Act, though some councils voluntarily maintain a code. Brisbane City Council (BCC) retains its code of conduct for councillors, although the legislative requirement for it to have one was removed in 2012.

Registers of interests

Councillors are required to complete a register of interests containing financial and non-financial matters prescribed in the regulations. Any changes to a councillor's interest have to be recorded within 30 days. The register is made available to the public by the council.

[7] s. 176(3).
[8] s. 12(3)(b).

In this instance, the matters required to be declared are almost identical to those required of Queensland MPs.

New audit requirements

From 1 July 2016, all local governments are required to identify and report on related party transactions in their audited financial statements. These statements are included in the council's tabled annual report, making them public documents.

This mandatory accounting standard requires councils to disclose relationships and transactions between themselves and the people and organisations that are closely connected to councillors, CEOs and senior executives. These disclosures are intended to improve transparency and accountability.

In a submission to the Panel, the Acting Auditor-General said that if managed well, this accounting standard has the potential to:

- Improve accountability, improving public awareness of related parties.
- Redress some concerns about poorly managed registers of interest.
- Reduce vexatious and frivolous complaints regarding conflicts of interest.

DISCIPLINARY MATTERS

'Misconduct' is defined by s. 176(3) to include use of a councillor's powers or authority in a way that is not honest or impartial; a breach of trust; misuse of information or material for the benefit of the councillor or someone else; failure to comply with a chairperson's direction to leave a council meeting; refusal to comply with a direction of a RCRP or the tribunal; repeated inappropriate conduct; release of confidential information; and failure to deal appropriately with a real or perceived conflict of interest.

Misconduct also includes failure to record or update the councillor's register of interests in the prescribed form and timeframe; prohibited

use of inside information; and failure to declare and/or deal appropriately with a material personal interest at a council meeting.[9]

'Inappropriate conduct' is broadly defined by s. 176(4) of the LG Act as conduct that is not appropriate for a councillor, but which is not 'misconduct'. Examples given by the Act include failure to comply with council procedures and behaving in an offensive or disorderly way at a council meeting.

PROCESSING COMPLAINTS

Making a complaint

Under the LG Act anyone – including a member of the public, a mayor, councillor, a council CEO, or a council employee – may lodge a complaint about councillor conduct to the council, the Department or the CCC. Complaints may be made anonymously and the LG Act does not prescribe a particular format for complaints, or require presentation of supporting evidence.[10]

Timeframes

The LG Act does not specifically prescribe timeframes within which complaints about the conduct of a councillor may be made.[11] It does, however, set some parameters as follows:

- A complaint may be made about a former councillor if the person was a councillor when the conduct is alleged to have happened and the complaint is made within two years after the person stopped being a councillor; nevertheless the relevant decision-maker has the discretion to decide to take no further action in relation to such a complaint if they consider it is in the public interest to do so.
- If there is evidence that a councillor may have committed a specific offence under the LG Act and court action is being considered, the proceedings must be started either:
    - Within one year after the offence was committed or
    - Within six months after the offence comes to the complainant's knowledge, but within two years after the offence was committed.

Preliminary assessments

The current system is based on a two-tier approach. Complaints about inappropriate conduct are normally handled by the council concerned, whilst allegations of misconduct or corrupt conduct must be referred to the department or CCC.

In both cases most complaints are first considered by the council's CEO, who makes a preliminary assessment. This could conclude that the complaint is: about a frivolous matter or made vexatiously; lacking in substance; or really about 'another matter' (e.g. a more general complaint about council decisions or services). In those cases the complaint would not proceed, or may be referred elsewhere, and the complainant notified accordingly.

If the preliminary assessment concludes that the complaint has substance and is indeed about inappropriate conduct, misconduct or corrupt conduct, then the CEO must refer the complaint for further action as follows:

- Complaints about inappropriate conduct on the part of any councillor other than the mayor or deputy mayor – to the mayor.
- Complaints about misconduct by any councillor – to the Department.

[9] Some of these could fall within the defined offences mentioned above, in ss. 169-173.
[10] Other complaints handling agencies such as the Queensland Ombudsman and the Human Rights Commission provide complaint forms and guidelines for complainants to use. These help ensure that a complaint contains sufficient information to enable the relevant decision maker decide whether it is in the public interest to further investigate the complaint.
[11] By comparison, the Queensland Ombudsman will generally not deal with a complaint if the person complaining has known about the matter for more than 12 months.

- Complaints where there is a reasonable suspicion of corrupt conduct – to the CCC.

If the complaint is about the mayor or deputy mayor, or is made by the mayor or the CEO, the preliminary assessment must be undertaken by the Department chief executive rather than the council CEO.

Inappropriate conduct

For allegations of inappropriate conduct, the mayor is responsible for making a decision on the action required. He or she may impose either or both of the following disciplinary orders:

- An order reprimanding the councillor.
- An order that any repeat of the inappropriate conduct will be treated as misconduct and referred to an RCRP.

However, if the complaint is about inappropriate conduct of the mayor or deputy mayor, or made by the mayor or the CEO, the Department's chief executive decides what, if any, action will be taken and, if the complaint is upheld, whether one or both of the orders above will be made.

Misconduct

The Department's chief executive must consider complaints about misconduct and decide whether:

- The complaint should be dismissed on the basis that it is frivolous, vexatious or misconceived; lacking in substance; or otherwise an abuse of process.[12]
- The complaint is really about inappropriate or corrupt conduct rather than misconduct.
- The complaint is truly about misconduct and should be further investigated with a view to referral to either an RCRP or the tribunal.

[12] An abuse of process usually refers to the situation where the complainant is essentially repeating the same complaint that has already been dealt with by some other lawful process.

RCRPs are established by the Department, whilst members of the tribunal are appointed by the Governor in Council. The Department decides whether a complaint will be referred to an RCRP or the tribunal.

Disciplinary orders

Under s. 180 of the LG Act an RCRP may order or recommend one or more of the following disciplinary actions:

- An order that the councillor be counselled about the misconduct, and how not to repeat the misconduct.
- An order that the councillor make an admission of error or an apology.
- An order that the councillor participate in mediation with another person.
- A recommendation to the Department's chief executive to monitor the councillor or the local government for compliance with the LG Act.
- An order that the councillor reimburse the local government.
- A recommendation to the CCC or the police commissioner that the councillor's conduct be further investigated.
- An order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units (approximately $6,100).

The tribunal is expected to deal with more serious forms of misconduct. It may impose the same disciplinary orders as an RCRP, but can also order the councillor to forfeit payments or privileges. In addition, the tribunal may recommend to the Minister that the councillor be suspended or dismissed.

RCRP and tribunal hearings are intended to be straightforward and swift. The standard of proof is the balance of probabilities, which applies in civil matters, rather than the criminal standard of 'beyond reasonable doubt'. An accused councillor must be given adequate notice of a hearing and the principles of natural justice and a fair hearing must apply. Legal representation is at the

discretion of the RCRP or tribunal and is usually considered unnecessary, but anecdotal evidence suggests it is becoming more common.

In recent years most cases of misconduct have been referred to RCRPs, with comparatively few being referred to the tribunal. Disciplinary orders have been largely at the lower end of the range, and no recommendations have been made to the Minister for suspension or dismissal.

Corrupt conduct

Allegations involving a reasonable suspicion of corrupt conduct must be referred to the CCC, which may decide to take action itself or to refer them to the Department. The Department may consider prosecution through the courts, or in less serious cases refer the matter to an RCRP or the tribunal to hear and determine.

Brisbane City Council

Similar arrangements apply under the CoBA, except that BCC operates its own Councillor Conduct Review Panel (CCRP) and does not refer matters to the tribunal.

ROLE OF THE CRIME AND CORRUPTION COMMISSION

The CCC's jurisdiction is restricted to circumstances where the alleged conduct would, if proved, amount to a criminal offence (which includes offences under the LG Act).

If a council receives a complaint and the CEO reasonably suspects corrupt conduct, the complaint must be referred to the CCC. An exception is where the council has a pre-existing arrangement with the CCC under s. 40 of the CC Act and the complaint relates to a 'level 3' (relatively minor) matter, in which case the council must simply maintain a record of the complaint that may later be audited by the CCC.

In addition, the CCC's corruption prevention function provides a platform to make comment and provide guidance to council CEOs and councillors in managing complaints in a transparent and open manner.[13]

ROLE OF THE OMBUDSMAN

The Queensland Ombudsman is not authorised to investigate councillor conduct as such and nor can the Minister refer such matters to the Ombudsman.

Moreover, the Queensland Ombudsman cannot investigate administrative action (including imposition of disciplinary orders) taken by the tribunal or an RCRP, because the *Ombudsman Act 2001* (Ombudsman Act) prohibits the Ombudsman from investigating administrative action taken by a tribunal, or a member of a tribunal, in the performance of the tribunal's deliberative functions.[14]

However, the Ombudsman may investigate administrative action taken by councils and the Department, including how they deal with conduct complaints. Since July 2011, the Ombudsman has dealt with 87 cases that to some extent involved a complaint about councillor conduct.

ROLE OF THE MINISTER

As noted above, in cases of serious misconduct the Minister may act on a recommendation from the tribunal that s/he should advise the Governor in Council to suspend or dismiss a councillor.

In addition, and under another part of the LG Act (s. 122(b) or (c)), the Minister may act on advice from the Department to seek the suspension or dismissal of a councillor,

[13] See *Codes of conduct for councillors*: *A guide for councillors and CEOs*, Prevention Pointer Series, Number 2, May 2004; and *The Councillor Conduct Guide: For representatives elected under the Queensland Local Government Act 2009*, July 2013.
[14] *Ombudsman Act 2011*, s. 16(2)(a).

provided the Minister has followed the process prescribed and reasonably believes that:

- The councillor has seriously or continuously breached the local government principles or
- Is incapable of performing their responsibilities.

No councillor has been suspended or dismissed using these powers since they were introduced in 2009.

CHAPTER 3 BACKGROUND, TERMS OF REFERENCE AND METHODOLOGY

On its appointment, the Panel sought information from the Department about the complaints handling system. It also sought input from all Queensland councils, from the LGAQ, the LGMA, the CCC, the Auditor-General, the Queensland Ombudsman and the Integrity Commissioner. In addition, the Department engaged a researcher, Adjunct Professor Graham Sansom, former Director of the Australian Centre of Excellence for Local Government at the University of Technology, Sydney, to assist in reviewing all relevant material, including the way interstate jurisdictions handled complaints against local government councillors. Twenty-two formal submissions were received throughout the preliminary consultation.

Subsequently, the Panel circulated a Discussion Paper to all interested parties and publicly advertised its availability, seeking further submissions on a series of possible options for improving the system, while making it clear it was prepared to consider all proposals that were provided to it. The Panel received 115 formal submissions from stakeholders including councils, members of the community, community groups, councillors and mayors.

At the same time it sought further information from councils about complaints they had received and processed, but which had not been captured in the statistics made available by the Department and by the CCC. The Panel members also held meetings with key stakeholders to discuss the operations of the current complaints handling system and how it could be improved. In addition, the Panel held a seminar at the 2016 LGAQ Annual Conference to provide an update and additional opportunity for councillors and council CEOs to provide feedback.

Much of the complaints data was published in the Discussion Paper and is reproduced in the appendices (Appendix 3—Summary of complaints data). Also included are data received from councils about complaints received directly by them. That information is incomplete. Just over 40 councils responded to the Panel's request for this information. Nevertheless the Panel is confident it can safely use the material that is provided to indicate the nature of the complaints handled at the council level.

The previous chapter outlined the way the system is presently intended to operate. However its current complexity is best indicated by the flow chart on the following page (Figure 2).

ISSUES

Concerns and issues with the current complaints system were identified in several stages during the review.

STAGE 1

Initially, a range of issues were provided to the Panel from the government as part of the terms of reference. These were informed by the Department's experiences with the complaints handling system. The issues it identified included:

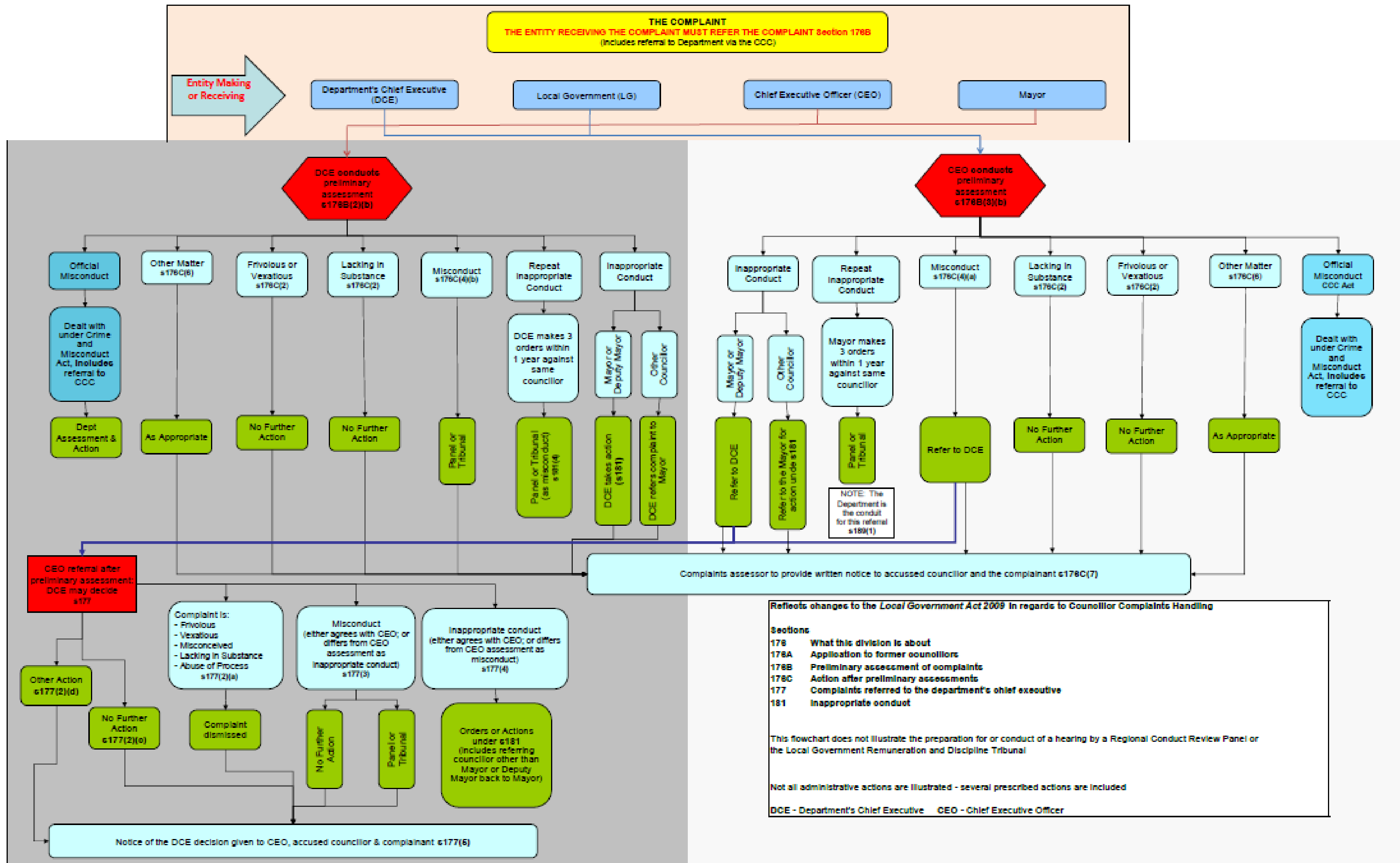
- Legislative concerns: lack of clarity in the definitions of inappropriate conduct and misconduct and other legislative anomalies.
- Natural justice concerns: inconsistent hearing processes used by RCRPs and the tribunal, problems with legal representation and the absence of entitlements for complainants. There is no right to appeal.

Figure 2 - Flow chart of the current complaints management system

Councillor Complaint Handling Flowchart - *Local Government Act 2009*

Department of Local Government - Councillor Complaint Handling

Local Government - Councillor Complaint Handling



- Effectiveness concerns: the Department has weak investigative powers and is unable to require timely compliance with requests for information and documents. There are a high number of unsubstantiated complaints. When findings of misconduct are made serious penalties are not imposed. There is a low incidence of prosecutions for serious offences, partly due to investigations either taking too long or not yielding sufficient evidence.
- Efficiency concerns: the current system is cumbersome and complex to administer. Significant Departmental resources are used to deal with complaints, with a disproportionate amount applied to allegations of inappropriate conduct.
- Conflicts of interest: CEOs of local governments are placed in a conflicted role by the LG Act's provisions requiring them to undertake preliminary assessment of complaints about the conduct of mayors and other councillors who are their employers.
- Complexity: the current process requires multiple steps and involves a range of alternative pathways dependent on who makes the complaint, who the complaint is about and the nature of the alleged conduct.

STAGE 2

The Panel, after its initial discussions, identified in its Discussion Paper these additional concerns arising from there being insufficient clarity in the complaints system:

- The purpose of the complaints system is very broadly defined: to ensure that 'appropriate standards' of conduct and performance are maintained, and that councillors who contravene those standards are disciplined. But in the absence of a commonly applied code of conduct, 'appropriate standards' are only defined by exception (neither inappropriate conduct nor misconduct) and 'performance' is not defined at all.
- The system attempts to deal with multiple types of complaints, including complaints about behaviour in council meetings and complaints by members of the public, staff and other councillors.
- There is no mandatory or model code of conduct, nor one for meeting procedures.
- The result seems to be a very large number of complaints, many of which lack substance or derive from disagreements and disputes rather than unsatisfactory conduct as such, or which are motivated by political considerations, particularly in the lead up to elections.

STAGE 3

Subsequently, the Panel's surveys and continued discussions revealed further problems with the complaints handling system. Among the significant issues raised were:

- The need for a mechanism that could fast-track preliminary assessments and allow early dismissal of repeated, frivolous, vexatious or political purpose complaints.
- The possibility of imposing penalties or other consequences on those who lodge repeated frivolous, vexatious and unsubstantiated complaints.
- A requirement that complainants read and sign a coversheet explaining what is and what isn't an offence.
- Whether to legislate timeframes to improve timeliness of complaint handling.
- Consideration of mechanisms to encourage informal internal resolution of disputes and/or mediation.
- Consideration of whether restrictions could be placed on the public release of complaints.
- Whether anonymous complaints should be accepted.

ANALYSIS OF DATA

The Departmental data covered complaints received by the Department in the two financial years from 1 July 2014 to 30 June

2016. Of the 396 complaints only 30 (12%) were ultimately upheld by the Department's chief executive, an RCRP or the tribunal leading to a penalty being imposed. A similar number (31) were settled by providing information to the complainant, 52 were referred to another agency, such as the Ombudsman, while 131 were not sustained because they lacked substance or credibility or were able to be dismissed after preliminary assessment.[15] The tables demonstrate that many of the complaints that are received should be filtered out at a very early stage, not necessarily because they are not significant but because they are fundamentally requests for information, or they are the expression of grievances, or they need to be dealt with through other channels.

The time taken to deal with complaints has been unsatisfactory. During the two-year period under review it took the Department an average of 61 days to assess and investigate a matter and refer it to another body, if that was required, and it took 117 days on average to finalise a matter. This included the time taken to conduct investigations, often involving the use of external investigators, and for an RCRP or the tribunal to convene and conduct hearings.

The two major areas of complaints were: (a) conflict of interest and failing to declare interests or maintain accurate registers, and (b) breach of trust and lack of honest and/or impartial performance of duties. These are areas where many councillors appear to need more guidance.

The tribunal and the RCRPs in practice relied on the Department to tell them the particulars of misconduct they were to judge. In the Panel's view, this was contrary to the intent of the law. The LG Act empowered the tribunal and the RCRPs to conduct their own investigations, much as civil law investigating magistrates do. The LG Act gave the tribunal and RCRPs substantial inquisitorial powers. For the most part, these have not been used – certainly not in the manner apparently intended by parliament.

The costs of hearings (including investigations that lead to a hearing) are borne by the council against whose member misconduct has been alleged. Over the two year period these amounted to almost $300,000. It is possible that a council can be burdened with a $30-50,000 bill for an external investigation, which cannot generally be anticipated and budgeted for.

Allegations about corruption must be referred to the CCC (as required by the CC Act). While allegations about corrupt conduct in the local government sector have comprised about eight per cent of all corrupt conduct allegations received by the CCC since July 2014, only about one-eighth of these concern the personal conduct of councillors – the remainder are about council staff or council decisions. The figures show a recent decline in the number of allegations. This probably results from changes in the CC Act tightening the definition of corrupt conduct and requiring allegations to be made by means of a statutory declaration. Of the 70 allegations against councillors received by the CCC in 2014-15, it retained only five for further investigation, referred three to the Department to investigate (under CCC monitoring), referred 19 to the Department to be dealt with, and took no further action on 43.

[15] The full tables are in Appendix 3—Summary of complaints data along with CCC data.

CHAPTER 4
MAKING COMPLAINTS, ASSESSMENT, INVESTIGATION AND HEARING

Anyone wanting to complain about the conduct of a local government councillor has a number of choices about where to lodge the complaint. They can submit it to the council itself; through the mayor or the council office; to the state government, through the Minister or the Department (perhaps using the services of their local MP); or send it to the Ombudsman or the CCC.

Some complaints may be filtered out of the councillor complaints system when they are received because they do not involve councillor conduct, but are simply airing general grievances, or are requests for information, or are directed at a council decision (for example, on planning matters – where an appeal may be possible under the *Sustainable Planning Act 2009*[16]) or are concerned with the actions or inactions of council staff.

But if a complaint is about a councillor it is then the responsibility of the council's CEO to determine first whether it is about a frivolous matter or made vexatiously or is lacking in substance. If it is none of these, the CEO then decides whether the complaint is about inappropriate conduct, misconduct, corrupt conduct or another matter (e.g. a general complaint).

The CEO then refers complaints about inappropriate conduct to the mayor (unless the complaint is about the mayor, in which case it is then referred to the Department chief executive), complaints about misconduct to the Department chief executive, and complaints about corrupt conduct to the CCC which may, and often does, refer such complaints to the Department chief executive as the relevant 'public official' to deal with as appropriate, or in some circumstances refers it back to the council to deal with in accordance with an established protocol it has developed with the particular council.

The very beginnings of the complaint-handling process outlined here are controversial. The major issues identified in the Panel's Discussion Paper and/or in submissions concern:

1. The role of the council CEO.
2. The way in which a complaint is made.
3. Whether a complaint can be made anonymously.
4. Frivolous or vexatious complaints.
5. Investigations.
6. Prosecutions.

THE ROLE OF THE COUNCIL CEO

The Discussion Paper said the requirement for CEOs to undertake preliminary assessments of complaints, as well as monitor the adequacy of registers of interests and possible corrupt conduct 'can lead to perceptions of bias and severely prejudice their relationships with the mayor and councillors – sometimes leading to their dismissal'. It said that perhaps as a consequence, questions had been raised about the quality of many preliminary assessments by CEOs. It also said that CEOs may be placed in a similarly difficult position because of their responsibilities under the CC Act to report suspected corrupt conduct to the CCC.

Later the paper raised several options for removing from CEOs the requirement that they make preliminary assessments of complaints, and in particular, giving that task to an Independent Assessor.

[16] From mid-2017 this will be replaced by the *Planning Act 2016*

There was near unanimous support for this proposal from those who made submissions, and no opposition to it.

The main problem discussed was that the relationship between the CEO and the council was compromised by the CEO being responsible for making these preliminary assessments.

As the Queensland Ombudsman put it in his submission, the councillor conduct processes should 'recognise the inherent conflict, and potential bias, associated with a council CEO investigating alleged misconduct and corrupt conduct by a councillor'.

One of the options mentioned in the Discussion Paper was the appointment by councils, individually or in groups, of a local Independent Assessor to make preliminary assessments. This attracted little support. One council expressed concern that such a system could lead to variations between regions in the assessment and handling of complaints; the assessor might not place the appropriate importance or priority in the assessment of complaints; could easily lose sight of objectivity; it could be problematic in smaller regions where some mayors or councillors had a high public profile; independence and neutrality could be a challenge in smaller regions; depending on where the assessor came from, knowledge of local government and the relevant rules and regulations could be an issue; conversely, if the assessor was too far removed, understanding the local political issues and local environment could be an issue.

Notwithstanding the last point, there was strong support for a centralised Independent Assessor. One council said any councillor complaints system needed to be:

- Independent of direct local government involvement.
- Streamlined and efficient.
- Able to focus on dealing with councillor complaints.
- Able to access staff with core skills and relevant experience, and be.
- Fair and consider the principles of natural justice.

A key advantage of a centralised system would be the consistent application of assessment standards state-wide.

The Panel considers that council CEOs should be removed from their present role as preliminary assessors of complaints about councillor conduct, both because CEOs may be compromised in carrying out this task and because the task would be seen to be more objectively performed by an Independent Assessor.

The Panel recommends:

That the LG Act be amended to provide that the 'preliminary assessment' of any complaint against a councillor should be made by an Independent Assessor, and not by a council CEO, or the Department's chief executive (sub-sections (ss.) 148H(2), 176B, 176C, 177 and 177A).

In later parts of this report, the Panel will make recommendations about the nature of the office of the Independent Assessor, including its powers.

THE OMBUDSMAN

The Panel's Discussion Paper in dealing with options for the investigation of misconduct complaints, raised the issue of the involvement of the Queensland Ombudsman, in a manner similar to that employed in South Australia where the Ombudsman, after completing investigations, makes recommendations to councils as to what actions they should take (they almost invariably do as he suggests). However several submissions in response to the Discussion Paper suggested that the Ombudsman could be involved in the preliminary assessment process, as well as in

investigations. It is therefore appropriate that the Ombudsman's possible role be considered here.

A number of submissions supported the idea of using the Ombudsman in both roles (assessor and investigator) but most were opposed. Discussing what might be called the South Australian option, one submission argued this proposal would amount to a turn-around of the Ombudsman's jurisdiction and enable binding recommendations to be made. The view that it would not be desirable or realistic to involve the Ombudsman was supported by the LGAQ.

The Queensland Ombudsman's function is to investigate administrative actions of agencies. An administrative action is any action about a matter of administration.[17]

The Ombudsman Act defines agencies to include local councils. During the 2015-16 year the Ombudsman received 1,687 complaints about councils. Relatively few complaints, however, concerned individual councillors. The Ombudsman has informed the Panel that in the five years since July 2011, the office received just 87 cases involving 'complaints broadly about councillor conduct matters' of which 33 concerned just one councillor while the remainder were spread across 30 councils.

The Ombudsman said a preliminary analysis of these cases showed they generally fell into the following categories:

- Preliminary assessments undertaken by CEOs.
- Preliminary assessments undertaken by the Department's chief executive.
- Whether the complaint relates to a decision by the CEOs or Department's chief executive about conduct that is frivolous, vexatious or lacking in substance, or the categories of inappropriate conduct, misconduct or corrupt conduct or another matter.
- Whether the complaint relates to conduct in a council or committee meeting.
- Disciplinary action taken by a mayor, RCRP, tribunal or for the CCRP.

While the Ombudsman can investigate most decisions that cannot be appealed[18] the Ombudsman may not investigate administrative action taken by a tribunal in performance of the tribunal's deliberative functions.[19] This therefore excludes investigation of the administrative actions of RCRPs and the tribunal.

The Ombudsman continues to investigate how council CEOs and the Department deal with councillor complaints. The Ombudsman is obliged to send allegations of corruption to the CCC.

The Panel does not recommend any additional involvement of the Ombudsman in the complaints handling process. However it notes that the Ombudsman may review complaints about the administrative actions of a council dealing with inappropriate conduct matters.

THE WAY IN WHICH A COMPLAINT IS MADE

At present, complaints may be made in any way acceptable to the CEO, the Department or the CCC (which has strict requirements, set down in legislation). Under the LG Act, anyone may lodge a complaint about councillor conduct to the council, the Department or the CCC. Complaints may be made anonymously and the LG Act does not prescribe a particular format for complaints, or require presentation of supporting evidence. Other complaints handling agencies such as

[17] *Ombudsman Act 2001*, s. 7(1)

[18] s. 14(2).
[19] s. 16(2)(a).

the Queensland Ombudsman and the Human Rights Commission provide complaint forms and guidelines for complainants to use. These help ensure that a complaint contains sufficient information to enable the relevant decision maker decide whether it is in the public interest[20] to further investigate the complaint.

The Panel's Discussion Paper suggested, as an option for change, that complainants should be required to complete a standard form detailing the grounds for their complaint, and to provide as much supporting evidence as possible, so that a preliminary assessment could be made on the basis of the information provided, and without further investigation, as to whether there was a possible case of inappropriate conduct, misconduct or corruption.

It also suggested that the standard form should explain the purpose and scope of the complaints system, and indicate alternative pathways by which the complainant's concerns might be addressed if the matter is not one of councillor conduct.

Again, this proposal attracted support. As the LGMA commented, this 'would have the effect of weeding out complaints that have no basis – thereby mitigating the workload issue'. In a similar vein, the LGAQ remarked, 'The biggest problem with the current system is the lack of filtering of complaints at the front end which results in the system being overloaded. Therefore an effective triage system at the front end is the key to an improved system dealing with councillor complaints'.

A properly designed standard form would make it possible for the Independent Assessor to deal with many complaints 'on the papers' as well as determining what matters required further investigation if the complaint was to proceed. Complaints would also be able to be dealt with in a more timely manner.

The Independent Assessor should be empowered to prescribe the standard form following consultation with the LGLG.

Adoption of the proposed standard form should result in the following procedures and consequences:

- The processing of a complaint would not commence until it had been properly submitted in the prescribed form and received by the Independent Assessor (this would not apply where a complainant clearly alleges corrupt conduct, in which case the recipient is required to forward it to the CCC if they have a reasonable belief that the alleged conduct could constitute corruption. Nor would it apply where the complaint is about another matter).

Where a complaint is submitted to an entity other than the Independent Assessor:

- If it is on the prescribed form, the complaint should be referred to the Independent Assessor.
- If not on the form, the entity should send the complainant the standard form to complete and forward to the Independent Assessor.
- If it is anonymous it should be referred to the Independent Assessor.

The Panel recommends:

That complaints against councillor conduct should be made on a standardised form that requests the complainant to provide details of any supporting evidence, and/or witnesses and such other material as the Independent Assessor specifies. It should also explain the purpose and scope of the complaints system and explain the appropriate ways in which complaints about matters other than councillor conduct may be made.

[20] Employing the criteria in the LG Act

The standard form should contain a declaration that the complainant is acting in good faith and has provided information that is correct and true to the best of their knowledge. It should contain a warning that it is an offence to provide any information to the Independent Assessor that the complainant knows is false or misleading in a material particular.[21]

The LG Act should be amended to allow the form to be prescribed by the Independent Assessor.

ANONYMITY

A number of submissions raised the question of whether complaints made in the manner described above could be anonymous.

There are several technical and practical problems with allowing anonymous complaints to be considered, along with some political and philosophical ones. One mayor, said:

> I am deeply concerned about the way complaints can be made. They may be made anonymously and without presentation of supporting evidence. I and my fellow councillors have been the victims of several vexatious, frivolous and complaints lacking substance and it seems to me that pub talk and perceived issues are taken just as seriously as if they were supported by a factual brief of evidence. A solution would be to require all complaints to be made in writing and be supported by evidence in the first place.

A member of an RCRP criticised the current practice of the Department in accepting and acting upon anonymous complaints. He said:

> Whilst I acknowledge the importance of protecting the identity of complainants, particularly where they might be council employees, this situation does provide an undue opportunity for politically-motivated complaints, particularly by existing councillors against other councillors.
>
> I have been involved in a number of cases where complaints were anonymous, and in all these I had reason to believe the above provided motivation for making the complaint.
>
> Also, not being able to address the complainant does raise concerns about natural justice for the accused.

The LGAQ Ethics and Integrity Advisor, goes even further. She said that to eliminate frivolous, vexatious and often political complaints before election campaigns, all complaints to the Department and the CCC, should be accompanied by a signed statutory declaration by the complainant.

The Liberal-National Government in 2012 established a review into the *Crime and Misconduct Act 2001* that was conducted by former High Court Justice Ian Callinan and University of Queensland Professor Nicholas Aroney (Callinan/Aroney review). Their review recommended that all complaints to the CCC should be made in the form of a statutory declaration, thus eliminating anonymity and making it possible to more easily prosecute sham complaints. However the current CCC policy is to allow anonymity. Its complaints form allows complainants to give themselves an alias with contact details so that they can be asked for further information if necessary.

The CCC is in a unique position. Its task is to identify and prosecute corruption and major crime. Receiving anonymous tip-offs may

[21] This warning is dependent on an amendment to s. 234 of the LG Act amending subsection (1)(f) to replace 'a regional conduct review panel' with 'the Independent Assessor'.

assist it.[22] However the councillor complaints system is a system designed to deal with complaints about councillor behaviour. Any investigations are based initially on the evidence that can be provided by complainants. The assessor and later the investigator may need to obtain further information from the complainant.

As will be seen, there is a desire on the part of some respondents to the Panel's surveys that attempts should be made in some cases at mediation. Others believe that the accused councillor is entitled in a hearing to challenge the evidence of the accuser. Neither can be done if the complaint is anonymous. That is particularly the case when the complainant is another councillor. Under the LG Act at present, before conducting a hearing, an RCRP or the tribunal 'must require the complainant to appear before the panel or tribunal to confirm the complaint' if the complainant is a councillor.[23] A councillor/complainant would avoid this by making an anonymous complaint.

Another issue that will be considered in a later chapter is the publicity that may be given to complaints and the damage that may be caused to a councillor who ultimately is demonstrated not to have been guilty of inappropriate conduct or misconduct.

One submitter commented:

> I suggest that all complainants have to sign an oath/declaration that they are making a complaint in good faith and that they will be bound by any reasonable requirements that are included in the complaint-handling process, including the requirement to not disclose details of the complaint to anyone who does not have an official role in handling the complaint. Potential complainants should be warned about the risks and possible implications of making defamatory statements.

The Panel, after considering all these issues, considered that while there were considerable advantages in requiring complainants to identify themselves, there could be occasions when a complaint by someone who wished to remain anonymous could result in misconduct by a councillor being revealed, leading to that person being dealt with as appropriate by the Tribunal.

The Panel recommends:

That only those anonymous complaints that provide enough information to action a complaint against a councillor for possible inappropriate conduct or misconduct should be dealt with under the complaints process. Where the complaint cannot be actioned without further information, it should be dismissed.

FRIVOLOUS OR VEXATIOUS COMPLAINTS

The Discussion Paper included the suggestion that there should be higher penalties for frivolous or vexatious complaints that have been found to lack substance and are then either repeated without justification, or have been made and timed deliberately to inflict unwarranted damage on the subject councillor.

It is currently an offence for someone to make a complaint about a councillor that is substantially the same as one they have made before, if the complainant was advised by the CEO or Department that the previous complaint had been assessed as frivolous, vexatious or lacking in substance. Any prosecution for this offence would have to be launched by the Department – probably in the Magistrates Court. However the maximum

[22] Several years ago the CCC received one such tip-off about the 'Tahitian Prince' scam. As it happened, it did not follow it up and it was the Department of Health that eventually uncovered it.
[23] s. 177A(5)(a).

penalty is only 10 penalty units – about $1200. Also, there is no definition of what constitutes 'substantially the same' complaint. Yet in some instances – notably during election campaigns – even a single well-timed vexatious complaint can be very damaging.

The LGAQ submission said:

> In order to combat the problem of increases in frivolous and vexatious complaints in the lead up to local government elections, there is merit in considering increasing the penalties for complaints found to be frivolous or vexatious in the six months preceding the elections. The LGAQ is also investigating the possibility of appointing an electoral monitor as an additional mechanism to discourage frivolous and vexatious complaints.

One council raised the possibility of a lodgement fee, reimbursable if the complaint is upheld, as a strengthened deterrent against vexatious complaints, or some form of penalty if the complaint is found to be vexatious, or, perhaps, repeatedly so.

The CC Act also deals with frivolous complaints in a manner similar to that under the LG Act. However the maximum penalty under the CC Act is 85 penalty units (about $10,000) or one year's imprisonment.[24] A similar penalty applies under the CC Act if:

- the person—
  - (a) makes a complaint to the commission—
    - (i) vexatiously; or
    - (ii) not in good faith; or
    - (iii) primarily for a mischievous purpose; or
    - (iv) recklessly or maliciously; or
  - (b) counsels or procures another person to make a complaint to the commission as mentioned in paragraph (a).[25]

Similar penalties also apply under the CC Act for 'stating anything to the commission the person knows is false or misleading in a material particular'[26] or giving a document to the commission the person knows is false or misleading in a material particular.[27] It appears that very few prosecutions occur.

In addition to these possible penalties the person is also liable to pay compensation to the CCC for the cost of any investigation or other action taken by it because of the false information.

The offences in ss. 216A, 217 and 218 in the CC Act are not mirrored in the LG Act. However, it is possible that a complaint alleging corruption that is made under the LG Act but referred (as it must be) to the CCC would make the person liable under the CC Act if the document contained material satisfying the description in one or more of these sections in the CC Act.

The very high penalties available under the CC Act are no doubt intended to act as a deterrent and it is difficult to imagine any penalties at the higher end of the scale actually being imposed. In any event, the warning is generally sufficient. On the other hand, the penalty under the LG Act (10 penalty units) for frivolous complaints where the complainant has been warned off after making an earlier complaint in similar terms, is probably unconvincing, given that the Department is unlikely to pursue a prosecution when such a small sum is at stake.

[24] s. 216.

[25] s. 216A

[26] s. 217

[27] s. 218

The Panel considers that the present penalty under the LG Act for repeated frivolous complaints should be increased, and also that the offences concerning meretricious complaints should be expanded to reflect those in the CC Act in s. 216A, 217 and 218 of that Act.

Given that these offences all arise from misuse of the complaints process it would be possible for the proposed Tribunal also to be empowered to deal with these matters and to impose fines and cost-recovery orders. If that were so, the Tribunal should be permitted to impose fines to a maximum of 50 penalty units (about $6,000) as well as to require reimbursement of costs.

The Panel recommends:

That the offence in s. 176C(8) – a person must not make a complaint about the conduct of a councillor if the complaint is substantially the same as a complaint the person has already made and the person has been warned not to repeat it – be deleted.

In its place the Act be amended to include a section making it an offence for a person to:

(a) make repeated complaints about a councillor —

(v) vexatiously; or
(vi) not in good faith; or
(vii) primarily for a mischievous purpose; or
(viii) recklessly or maliciously; or

(c) counsel or procure another person to make a complaint about a councillor as mentioned in paragraph (a).

That the Tribunal also be given jurisdiction in relation to this offence and that the maximum penalty that the Tribunal can impose be 50 penalty units. An order can also be made for reimbursement of costs of the Independent Assessor and the Tribunal.

DUTY TO INFORM COUNCIL

The Panel anticipates that once the proposed new system of receiving complaints is established, the Independent Assessor will be the primary recipient of complaints, through its website and otherwise, although some complaints will still come through councils and the Department. The Independent Assessor should inform a council when a complaint is received about one of its councillors and if it has been dismissed as being vexatious etc. or is considered to be about inappropriate conduct, misconduct or corruption, or is to be investigated before an assessment can be made.

The Panel recommends:

That on assessing a complaint about a councillor, the Independent Assessor should notify the relevant council about the complaint.

INVESTIGATIONS

At present, once it has been determined that a complaint should not be dismissed for any of the reasons specified in the Act (e.g., as being vexatious) an investigation is undertaken by the Department (or through an agent engaged by the Department) to determine whether the allegation involves possible inappropriate conduct or misconduct. If the allegation, on its face, concerns possible corruption it must be sent directly to the CCC which may dismiss it, refer it back to the Department or a council for further investigation (and possibly report back to the CCC) or itself carry out an investigation.

As noted in the previous chapter, the Department's investigative powers in relation to complaints about councillor conduct are not clearly defined and potentially limit its capacity to investigate as thoroughly as required. Generally, the Department relies on s. 115 of the LG Act to conduct its investigations using

either Departmental officers or contracted external investigators.

The section says:

> To monitor and evaluate a local government's or councillor's performance and compliance, the department's chief executive may—
> (a) examine the information contained in the local government's records and operations; or
> (b) otherwise carry out an investigation of the local government's or councillor's performance and compliance.

There are few powers here, other than the ability for the Department to examine a council's books including records such as declarations of interest that councillors must provide. The Department has often had difficulty trying to force councillors accused of misconduct to respond to allegations that have been made against them.

Its lack of real powers may in part explain why its investigations often take a long time.

Section 115 may be contrasted with the extensive powers possessed by such organisations as the CCC and the Queensland Ombudsman that can compel witnesses to attend hearings, answer questions and provide documents.

But such powers actually exist within the LG Act itself. Chapter 7, Part 1, of the Act is headed 'Way to hold a hearing'. Section 214 provides:

> (1) The investigator may require a person, by giving them a written notice, to attend a hearing as a witness in order to—
> (a) give evidence; or
> (b) produce specified documents.
>
> (2) The person must—
> (a) attend at the time and place specified in the notice; and
> (b) continue to attend until excused by the investigator; and
> (c) take an oath or make an affirmation if required by the investigator; and
> (d) answer a question that the person is required to answer by the investigator, unless the person has a reasonable excuse; and
> (e) produce a document that the person is required to produce by the investigator, unless the person has a reasonable excuse.
>
> Maximum penalty—35 penalty units.

The 'investigator' referred to in this part of the LG Act is not the Department. It is any of the RCRPs or the tribunal. However these powers, which were introduced into the LG Act in 2009, do not appear to have been utilised.

It seems that many of the problems the Department (and the tribunal and RCRPs) have faced in investigating and determining the outcome of complaints would have been resolved more quickly and satisfactorily if the Department's investigators had possessed these powers, or if the RCRPs or tribunal had used them.

The problems with the operation of the present system (leaving aside for the moment whether it is working as it was designed to) were explained in a submission by the tribunal.

It said:

> One aspect of the existing procedures which frequently delays resolution of allegations against councillors is the absence of a requirement that the complaint be put to the councillor in the first instance for a substantive response. This will mean that any investigation of

the complaint will necessarily involve consideration of whether all elements of the alleged offence have been or can be established even though the councillor, if asked, would not contest some or perhaps all of the matters alleged. In other words, what is needed is a procedure which will identify, at the earliest opportunity, the matters which are actually in dispute.

It can also mean that allegations arrive at the Tribunal without any indication of the extent (if any) to which allegations are contested or as to what facts will be contested by the councillor at the hearing of the complaint. This means that, if the councillor is to be called upon to defend the allegation, the Tribunal must first be satisfied that, in the absence of evidence or submissions to the contrary from the councillor, the allegations would be made out.

There will be some instances where the councillor is able to provide a complete response to the allegations. Obtaining that response at an early stage would enable matters to be resolved expeditiously and without incurring unnecessary expense for all parties concerned.

In order to ensure that this works in practice, it is submitted that there should be a statutory obligation imposed on councillors to provide, within a definite period, a substantive response to the allegations, together with copies of any relevant documentation. Failure to do so should then constitute misconduct for which the councillor is liable to prosecution in addition to the existing allegations (though any such prosecution would form part of the same proceedings).

The Panel notes that these powers already exist in s. 214 in the LG Act, but are only available to the RCRPs and the tribunal. The Panel considers that they should be available both to the Independent Assessor and to the new Tribunal. The Tribunal would be able to use them if, in the hearing of a complaint, it decides it needs more information that has been provided to it by the Independent Assessor.

The Panel recommends:

That the Independent Assessor be given the same powers as an investigator is given at a hearing in s. 214 of the LG Act, subject to the same requirements of s. 213 to provide natural justice.

The Independent Assessor should be enabled to initiate own-motion investigations – that is, investigations that are not in response directly to an external complaint about councillor conduct. The need for such a power could arise in a number of ways. For example, during the investigation of a complaint against a councillor the Independent Assessor could find information suggesting misconduct or even an offence under the LG Act that has not been complained about. Or the investigation could point to misconduct or worse by another councillor.

Similarly, the Tribunal could be provided with information that would warrant the investigation by the Independent Assessor of a councillor other than the councillor whose conduct they are judging. The Tribunal would not be able to conduct this investigation as it would be limited to investigating the councillor whose matter is before them.

However information detrimental to persons other than councillors should not be further investigated by the Independent Assessor, who instead should pass it to the relevant authorities – e.g. the CCC or the police commissioner. If the Independent Assessor obtains information that could reasonably be considered to amount to corruption, the CCC must be informed.

The Panel recommends:

That the Independent Assessor may initiate own-motion investigations of councillor conduct if sufficient cause arises during the course of another investigation, or if the Independent Assessor considers it in the public interest to do so.

The Tribunal may provide the Independent Assessor with information about a councillor's conduct that the Tribunal considers should be brought to the attention of the Independent Assessor for possible investigation by the Independent Assessor.

PROSECUTIONS

The tribunal's submission, under the heading 'Who investigates and prosecutes complaints?' also said:

> Efficiency in dealing with complaints will best be achieved if these tasks are performed by someone with sufficient levels of knowledge, skill and experience. There are insufficient numbers of complaints to expect that those attributes can be found or developed within any one council or group of councils sharing resources. Accordingly, it would be preferable for these functions to be centralised in an office dealing with complaints on a state-wide basis.

The Queensland Ombudsman, in his submission, said his preference was:

> … that a statutory officer be able to assess and, where necessary, investigate and prosecute allegations of misconduct against councillors. The statutory officer should:
>
> - Be given statutory guarantee of independence in relation to decision-making.
> - Have the ability to decline to investigate vexatious or frivolous complaints.
> - The ability to refer inappropriate conduct complaints to councils to deal with and corruption matters to the CCC.
> - Have appropriate investigative and prosecutorial powers.
> - Be subject to statutory recognition of the duty to afford procedural fairness.
> - Have a duty to report to the Minister if a reasonable view is formed that the Minister should take action under either the LG Act or CoBA.
> - Have an appropriate complaints management system, including provision for internal review of decisions.
> - Be supported by a duty on council CEOs to report all new allegations of inappropriate conduct and misconduct to the officer.
> - Be empowered to conduct audits in relation to compliance with the above duty.

There is established precedent for an entity being both an investigator and a prosecutor. This is the way, for example, that the Legal Services Commission is structured and operated. That commission also includes an internal mechanism for reviewing the investigation, as suggested by the Ombudsman.

The Panel will discuss the nature of the office of the Independent Assessor, its staffing and related matters in Chapter 12.

The Panel recommends:

That the Independent Assessor be given a statutory guarantee of independence in relation to decision-making and:

- **Be responsible for assessing whether complaints against councillors are vexatious or frivolous, or for another reason, should be dismissed.**

- **Refer corruption complaints to the CCC and investigate such complaints that are referred back by the CCC.**
- **Investigate allegations of inappropriate conduct and misconduct, being armed with appropriate powers to do so.**
- **Be able to initiate investigations into possible misconduct.**
- **Have an appropriate complaints management system, including provision for internal review of decisions.**
- **Refer allegations of inappropriate conduct to councils.**[28]
- **Prosecute allegations of misconduct.**[29]

[28] The reasons for this part of the recommendation will be dealt with in the following chapter.
[29] Consequential amendments will be required, inter alia, to ss. 148H(2), 177, 177A and 182.

CHAPTER 5
INAPPROPRIATE CONDUCT

'Inappropriate conduct' is currently defined in the following terms in the LG Act s. 176(4):

Inappropriate conduct is conduct that is not appropriate conduct for a representative of a local government, but is not misconduct, including for example –

(a) a councillor failing to comply with the local government's procedures; or

(b) a councillor behaving in an offensive or disorderly way in a meeting of the local government or any of its committees.

The Panel's Discussion Paper noted that there was a widespread view that the terms 'inappropriate conduct' and 'misconduct' required clearer definition. This included the question of what constituted repeated inappropriate conduct that had to be dealt with as misconduct – s. 176(3)(c) includes in the definition of misconduct that is a repeat of inappropriate conduct that the mayor or the Department's chief executive has ordered to be referred to an RCRP.

The penalty provisions of the LG Act make it clear that the conduct complained of is not of a serious nature. It is primarily a behavioural problem. The mayor or the Department's chief executive may make an order reprimanding the councillor for the inappropriate conduct, and/or an order that any repeat of the inappropriate conduct be referred to an RCRP as misconduct.

If the inappropriate conduct happens during a meeting of the council or its committees, the chairperson of the meeting can:

- Order that the inappropriate conduct be noted in the minutes of the meeting.
- Order that the councillor leave the meeting for the remainder of the meeting.
- Order that they be removed if the councillor refuses to leave.

Only a few of the responses to the Discussion Paper dealt with inappropriate conduct, but those that did mostly agreed on the need for more clarity. One confidential submission from a community group commented:

> This definition is so vague that it is open to subjective opinion and evaluation, and it is to a great degree vulnerable to the political and other circumstances that might differ considerably from one council to another, and within a council from one time to another.

The penalties for inappropriate conduct listed above are clearly insubstantial. This possibly explains why in most cases the person who has to decide whether a councillor's conduct has been inappropriate is the mayor, acting alone. No appeal against a decision of inappropriate conduct, or against the penalty imposed, is available.

The Panel considers the disciplinary system governing inappropriate conduct by councillors needs to be changed in three ways:

1. The types of conduct falling within the description and definition of inappropriate conduct needs to be changed and clarified.
2. The penalties available need to be increased.
3. The mayor should be replaced as the adjudicator of complaints.

BEHAVIOUR IN COUNCIL AND COMMITTEE MEETINGS

BCC submitted:

> … Council believes that it is critical that conduct of Councillors at a meeting of Council or its committees under rules which relate specifically to the conduct of those meetings, such as the Meetings Local Law 2001, should remain outside the Councillors complaint system. The

disciplinary process under that local law is timely, responsive, and streamlined.

The Panel agrees that breaches of a meeting code or code of conduct in a meeting should not be classified as inappropriate conduct. Rather they should be regarded as conduct that is contrary to the council's code of meeting procedure. Such conduct breaches should be dealt with immediately by the chair of the meeting (council or committee) who, as appropriate, should be able to require a withdrawal (of words said), an apology (for what had been said or done) or to remove the offending councillor from the remainder of the council or committee meeting.

The Panel also considers that the council itself may decide whether such meeting conduct is so serious, or so repeated, that it does need to be treated as inappropriate conduct and dealt with as such.

For this recommendation to be adopted, it would be necessary for all councils to put in place specific meeting standing orders, which give force to a model code of meeting procedure.

CODES OF CONDUCT

The *Local Government Act 1993* required councils to adopt a code of conduct for councillors. This requirement was removed from the 2009 LG Act, though the Panel has been unable to ascertain why this occurred. The CoBA retained the requirement for a code of conduct for Brisbane City councillors until that Act was amended in 2012. However, like many other councils the BCC retains a code of conduct for councillors.

In its Discussion Paper one of the options suggested by the Panel was a requirement that all councils adopt codes of conduct and meetings procedure. There was strong (though not unanimous) support for the adoption of a code of conduct. The meetings procedure proposal was largely ignored, although the tribunal supported the adoption of both a standard code of conduct for all councillors and the adoption of standard meeting procedures, via a local law, as occurred with the BCC. Also, the LGMA supported 'the introduction of a code of conduct by all councils which would set a standard for councillor conduct at meetings and in the community. Our preference would be for the development of a basic, standard template that councils can adjust upwards to suit local needs.'

The Ombudsman supported 'the provision of a model code of conduct and the development or enhancement of model policies about council meeting procedures, how to deal with conflicts of interest, how to complete a register of interest and about other topics that give rise to the overwhelming majority of complaints against councillors'.[30]

The LGAQ saw 'merit in reintroducing the requirement for a code of conduct to demonstrate the importance of holding councillors to high standards of ethical and legal behaviour'. The LGAQ provided the Panel with an existing model code, and asked that it be involved in the drafting of a new code.

Codes of conduct are increasingly being used to set standards of ethical behaviour for public and governmental organisations. Such codes have been adopted in Queensland, for example, by the parliament, the cabinet and the public service. The Panel considers that there should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting practice; the latter setting minimum standards and capable of being modified by individual councils. The Code of Conduct should be developed by the LGLG (see Chapter 11) and approved by the Minister. The model code of

[30] As to the matters other than the codes, see the discussion in Chapter 12.

meeting procedure should be developed by the Department in conjunction with the LGAQ and the LGMA.

In New South Wales and South Australia there is a standard, mandatory code of conduct to be applied by all councils which sets out conduct principles and distinguishes between behavioural breaches and misconduct. In Victoria, there is a requirement for each council to have a councillor code of conduct that incorporates prescribed provisions and all councillors are required to make a declaration that they will abide by the code (see Appendix 4—Ideas and lessons from other states). The Panel considers there should be a similar requirement in Queensland that councillors should make a declaration that they will abide by the Code of Conduct.

OTHER CONDUCT BREACHES

In addition to failing to comply with the local government's procedures, the two inappropriate conduct matters referred to in s. 176(4) of the LG Act (see above), there are several other conduct breaches that the Panel considers should be treated as inappropriate conduct. These are:

- Serious or repeated conduct contrary to the code of conduct or meeting practice in formal council or committee meetings.
- A failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting.
- Failure to comply with the council's other policies, codes or resolutions.
- Offensive or disorderly behaviour as a councillor that happens outside formal council meetings.
- Failure to work respectfully and constructively with other councillors or staff.
- Exerting or attempting to exert inappropriate influence over staff.
- Repeated unreasonable requests for information (contrary to council guidelines).
- Exercising, or purporting to exercise, an unauthorised power, duty or function.

These breaches would normally be the subject of complaints which would be passed through to the Independent Assessor by the council, or made directly to the Independent Assessor, who would determine whether the councillor had a case to answer and then refer them back to the council for investigation and disciplinary action if warranted.

DISCIPLINARY ORDERS FOR INAPPROPRIATE CONDUCT

There was widespread agreement in those submissions that considered the disciplinary orders that are available for use in a case of inappropriate conduct, in that they should be broadened and in some cases increased in severity. The LGAQ, for example, supported the suggestion that there should be tougher disciplinary orders for inappropriate conduct (and for misconduct). It also suggested there should be better mechanisms for enforcing disciplinary orders, 'for example by requiring councillors against whom a complaint has been upheld not to participate in council meetings until the penalty has been paid'. The Panel agrees.

The disciplinary order needs to be matched against the conduct or behaviour that has been objected to. Given the broader range of matters that the Panel proposes should be considered as inappropriate conduct, it considers that the following be included in the range of available disciplinary orders:

- Censure of the councillor.
- Formal reprimand.
- Requirement for an apology.
- Mandatory training or counselling.
- Councillor to be excluded for up to two meetings of the council.
- Councillor removed from any position representing the council, and not to chair

or attend committees or other specified meetings for up to two months.
- Payment of costs attributed to the actions of the councillor.
- An order that any repeat of the inappropriate conduct be referred to the Tribunal as misconduct.

Where the council orders the councillor to be excluded from council meetings for two months, such absence shall be deemed not to trigger a vacancy under s. 162(1)(e) of the LG Act.

To enforce orders made by councils, the Panel proposes that a councillor should be suspended until such time as any order is complied with. Where the councillor persisted in defying the order and missed two or more consecutive ordinary meetings of the council over at least two months, such absence would trigger loss of office under s. 162(1)(e) of the LG Act. The Panel also proposes that s.153 of the LG Act be amended to provide that a councillor who loses office in such circumstances following an order by a council in an inappropriate conduct matter, should be disqualified from standing for election to a council for four years.

ADJUDICATOR FOR INAPPROPRIATE CONDUCT

The Panel considers that in all cases of inappropriate conduct it should be for the council to make the final decision as to whether conduct has been inappropriate and what the penalty should be. The council's consideration of inappropriate conduct matters must be open and transparent.

One of the submissions the Panel received that dealt with this general issue was from a member of an RCRP:

> I believe the inappropriate conduct complaints should be handled as close as possible to the source. Local factors that provide background can be readily assessed. If the role of handling these cases were taken away from a mayor, then a certain amount of 'flavour of the case' would disappear. There are no doubt some cases where a mayor has had to act against a political ally or sought to undermine an opponent. Remedies may be available for some of those types of cases. That situation, of itself, does not justify a transfer of the jurisdiction away from local governments to another tribunal.

In the Panel's view, when such situations (and other difficult local problems) arise, the council should be able to seek the advice of either of two external bodies, while retaining the responsibility for the ultimate decisions that have to be made.

The Panel is proposing that a council may establish a CAC (Conduct Advisory Committee) made up of respected people from the community (local or regional) to provide advice on inappropriate conduct matters.[31] They would be chosen not by the mayor or CEO, but by the council. CACs would have an independent chair and from three to five members. Meetings of the CAC would normally be closed[32], though the meeting of the council considering its recommendation(s) would be open to the public.

Alternatively, the council could ask that a member of the Tribunal be appointed to undertake an investigation if required and recommend to the council what its decision should be. The member would be appointed by the president of the Tribunal.

The costs of the Tribunal member would be borne by the relevant council.

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[31] Local Government Regulation 2012, regs. 264 and 265 provide for councils to appoint advisory committees.
[32] LG Reg 275(1)(h).

A councillor whose conduct is being considered must cooperate with the council, the CAC or the Tribunal member. Failure to do so could result in a misconduct complaint.

The Independent Assessor, when referring a complaint about inappropriate conduct to the council, should indicate how serious the inappropriate conduct might be, whether any further information needed to be obtained before the complaint could be dealt with, and whether mediation might be appropriate and by whom. The Independent Assessor should also recommend to the council whether it should deal with the matter itself, refer it for advice to its CAC, or refer it for advice (and possible further investigation) to a Tribunal member.

Any councillor (including the mayor) who is the subject of a complaint must step aside from all decision-making in relation to the process.

The council CEO must inform the Independent Assessor of all council decisions on inappropriate conduct matters, place them on a public register and record them in the council's annual report, in accordance with regulation 186 in the Local Government Regulation 2012 (LG Reg).

REVIEW

The Panel considered whether a councillor should be able to appeal against an inappropriate conduct finding and/or the penalty imposed by a council. It also considered how an appeal system would operate. It decided that any appeal would have to be to the Tribunal – no other body would be appropriate.

If there were to be an appeal system, the Panel believes there should be no automatic right of appeal. Rather, a councillor would have to apply for leave to appeal. The application would be directed to the president of the Tribunal who would consider such matters as whether in the individual case there appeared to be a miscarriage of justice; whether the appeal would raise matters of general system-wide importance; and whether the penalty imposed appeared out of proportion to the offending conduct. If the president granted leave, the appeal would then be considered by a three-member hearing of the Tribunal, based on papers provided by the council and the councillor.

However the Panel decided that it would be premature to establish an appeal system for inappropriate conduct at this stage. There is no reason to believe that councils will not apply the principles of natural justice and reach appropriate decisions, particularly as they will be able to seek advice from their own CAC or from a member of the Tribunal.

The Panel recommends that 12 months after the system comes into operation, the LGLG should review its operation and consider whether an appeal system such as that described above should be introduced.

The Panel recommends:

That there should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting procedure.

A Code of Conduct should be developed by the LGLG and approved by the Minister.

That regulation 254 of the LG Reg, the declaration of office that s. 169 of the LG Act requires councillors to make before assuming office, be amended to include a statement that the councillor will abide by the Code of Conduct.

The Department, LGAQ and LGMA should develop the model code of meeting procedure.

That councils be required to adopt meeting standing orders, based on the model code of meeting procedure.

That breaches of a meeting code or code of conduct in a meeting should not be classified as inappropriate conduct. Such conduct breaches should be dealt with immediately by the chair of the meeting (council or committee) who, as appropriate, should be able to require a withdrawal (of words said), an apology (for what had been said or done) or to remove the offending councillor from the remainder of the council or committee meeting.

That a council may determine that a councillor's serious or repeated contrary conduct in meetings or committee meetings should be treated as inappropriate conduct and dealt with as such.

That the definition of 'inappropriate conduct' in s. 176(4) be amended as follows—

The two examples (a) and (b) be deleted and in their place be inserted:

a) **Serious or repeated conduct contrary to the code of conduct or meeting practice in formal council or committee meetings.**
b) **A failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting.**
c) **Failure to comply with the council's other policies, codes or resolutions.**
d) **Offensive or disorderly behaviour as a councillor that happens outside formal council meetings.**
e) **Failure to work respectfully and constructively with other councillors or staff.**
f) **Exerting or attempting to exert inappropriate influence over staff.**
g) **Repeated unreasonable requests for information (contrary to council guidelines).**
h) **Exercising or purporting to exercise an unauthorised power, duty or function.**

That s. 181 of the LG Act be deleted and in its place the new section 181 should recognise:

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

That the council, if it decides to take disciplinary action against the councillor, may make one or more of the following orders that it considers appropriate in the circumstances:

- **A censure of the councillor.**
- **A formal reprimand.**
- **A requirement for an apology.**
- **Mandatory training or counselling.**
- **Councillor to be excluded for up to two meetings of the council.**
- **Councillor removed from any position representing the council and not to chair or attend committees or other specified meetings for up to two months.**
- **Payment of costs attributed to the actions of the councillor.**

- **An order that any repeat of the inappropriate conduct be referred to the Tribunal as misconduct.**

Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act.

That councillors against whom a complaint of inappropriate conduct has been upheld may not participate in council or committee meetings until any disciplinary order imposed has been paid or otherwise discharged. Section 162 of the LG Act (When a councillor's office becomes vacant) would apply in relation to such resulting non-attendance.

That s. 153 of the LG Act (Qualifications of councillors) be amended to disqualify for four years a person who as a result of their failure to comply with an order of the council following a finding of inappropriate conduct has ceased to be a councillor as a result of the operation of s. 162(1)(e) of the LG Act.

That councils develop and include a process for dealing with inappropriate conduct in their complaints management system. This should be in accordance with the principles of natural justice.

That the Independent Assessor, when referring a complaint about inappropriate conduct to the council, should indicate how serious the inappropriate conduct might be, whether any further information needed to be obtained before the complaint could be dealt with, whether mediation might be appropriate and by whom. The Independent Assessor should also recommend to the council whether it should deal with the matter itself, refer it for advice to its CAC, or refer it for advice (and possible further investigation) to a Tribunal member.

That where councils elect to use a Tribunal member to investigate and make recommendations about a complaint of inappropriate conduct, the council should pay the member's costs.

That 12 months after the proposed system commences, the LGLG should review the way councils have been adjudicating inappropriate conduct matters with a view to determining whether it is necessary and desirable to introduce an appeal system such as that described in this report.

CHAPTER 6 MISCONDUCT

'Misconduct' is currently defined in s. 176(3) of the LG Act:

Misconduct is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—

(a) that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor's responsibilities or exercise of the councillor's powers; or

(b) that is or involves—

  (i) the performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial; or

  (ii) a breach of the trust placed in the councillor; or

  (iii) a misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else; or

  (iv) a failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting; or

  (v) a refusal by the councillor to comply with a direction or order of the regional conduct review panel (RCRP) or tribunal about the councillor; or

(c) that is a repeat of inappropriate conduct that the mayor or the department's chief executive has ordered to be referred to the regional conduct review panel under s. 181(2); or

(d) that contravenes s. 171(3) or 173(4).

As noted in the previous chapter, the Panel's Discussion Paper said there was a widespread view that the terms 'inappropriate conduct' and 'misconduct' required clearer definition and in some instances stronger disciplinary orders. In response, the tribunal said in a submission that the provision in the LG Act sets out a number of particular categories of conduct but suffers from the lack of a broader 'catch-all' component. It continued:

> That sometimes results in conduct which is considered to involve a serious breach of duty, but cannot comfortably fit into one of the categories in the definition, being characterised as a 'breach of trust' (s. 176(3)(b)(ii), apparently on the basis that the councillor was trusted to do the right thing but failed to do so and thereby breached the trust placed in him.
>
> It is therefore suggested that the definition should be expressed in more general terms. It is acknowledged that such a definition may, in some respects, be less certain in its meaning, but that is inevitable in a definition intended to have a broader operation, rather than merely identifying particular aspects of misconduct and making no provision for regulating conduct which falls outside those particular circumstances.

On the other hand, the Queensland Ombudsman, wrote:

> I do not believe that the definition of misconduct in the LG Act and the equivalent CoBA provision need elaboration. The definition of misconduct is well understood legally. I fear that altering it could produce unintended consequences.

The Panel's view is that the general terms of the definition in s. 176(3)(a) – that is, conduct 'that adversely affects, or could adversely affect, (either directly or indirectly) the honest

and impartial performance of the councillor's responsibilities or exercise of the councillor's powers' – does not need to be changed. It also considers that sub-clause 176(3)(b)(ii) – conduct that is or involves 'a breach of the trust placed in the councillor' – is an additional 'catch-all' provision, because the trust to which it refers is the requirement for a councillor to act in the public interest, not the interest of the councillor or any of her or his associates.[33]

Nevertheless, the Panel does consider the specific types of misconduct detailed in s. 176(3)(b) need to be expanded to include additional identifiable types of misconduct that might occur. Spelling them out may make framing a complaint against a councillor simpler. Equally important, the additional matters will make clear to councillors behaviour that will be considered as misconduct and hopefully reduce the chances of a councillor offending.

However the present definition contains one matter that the Panel believes should be treated as inappropriate conduct, rather than misconduct. Section 176(4)(b) currently includes this provision:

(iv) a failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting.

In Chapter 5 the Panel proposed that breaches of a meeting code in council and committee meetings should not be classified as inappropriate conduct but should be dealt with immediately by the chair of the meeting. It considers that as a result of this reclassification, failure to comply with a direction to leave the meeting should be treated as inappropriate conduct rather than misconduct. It notes that the disciplinary orders that may now be made for inappropriate conduct now include some that were previously available only for a misconduct finding. It also notes that repeated behaviour of the type described here would be treated as misconduct.

The Panel also considers the range of penalties available when there is a finding of misconduct should be increased. This could make it more likely that appropriate penalties are imposed. There is a general view in some of the submissions received that the present tribunal and RCRPs appear to have been reluctant to impose penalties that meet the circumstances of the misconduct and were not severe enough to act as a deterrent.

The Panel also considers that there is a need to reconstitute the bodies currently adjudicating misconduct complaints – the tribunal and the RCRPs (see Chapter 12).

DEFINING MISCONDUCT

As mentioned above, the Panel considers that the range of specific offences that are detailed in s. 176(3)(b) should be expanded. It proposes that the definition should encompass:

(i) The performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial.
(ii) A breach of the trust placed in the councillor.
(iii) A misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else.
(iv) Unauthorised use of council staff or resources for private purposes.
(v) Use of information obtained as a councillor to the financial detriment of the council or the public interest.

[33] See David Lusty, *'Revival of the common law offence of misconduct in public office'*, (2014) 38 Crim LJ 337.

(vi) Failure to cooperate with the council, CAC or Tribunal member during inappropriate conduct proceedings or to comply fully with a penalty for inappropriate conduct.
(vii) Third or subsequent finding of inappropriate conduct during council term.
(viii) Bullying or harassment.
(ix) Failure to declare and resolve conflict of interest at a meeting in a transparent and accountable way.
(x) Seeking gifts or benefits of any kind.
(xi) Improper direction or attempted direction of staff.
(xii) Deliberate release of confidential information.

In Chapter 9, the Panel discusses the offences created in the LG Act that may be prosecuted in a court.

These are:

- Use of information obtained as a councillor for financial advantage (personal or a close associate).
- Misuse of inside information for the financial benefit of the councillor or a close associate.
- Failure to lodge/maintain accurate register of interests.
- Failure to declare and resolve material personal interest in a transparent and accountable way.

The Panel considers that these also may be considered to be misconduct and at the discretion of the Independent Assessor, may be brought before the Tribunal and judged as misconduct where the Independent Assessor considers that the conduct is not at the most serious end of the range and the penalties provided for misconduct would be more appropriate than the penalties provided for the offence in the Act. The Independent Assessor would also consider the likelihood, or otherwise, of the Department bringing a prosecution.

At the other end of the scale, the Independent Assessor should also have the discretion to have a minor misconduct matter treated as inappropriate conduct, and send this back to the council for resolution in accordance with the procedures laid down.

TEMPORAL LIMITATIONS ON MISCONDUCT

Section 176A of the LG Act deals with the way complaints against former councillors should be managed. The section says, in part:

Application to former councillors

(1) This division applies to a complaint about the conduct of a person who is no longer a councillor if—
    a. the person was a councillor when the relevant conduct is alleged to have happened; and
    b. the complaint is made within 2 years after the person stopped being a councillor.
(2) However, an entity dealing with the complaint under this division may decide to take no further action in relation to the complaint, despite any contrary requirement of this division, if the entity considers the decision is in the public interest.

The Panel considered whether s. 176A serves any real purpose. Any criminal offence or any of the statutory offences in the LG Act relating to conduct that occurred before a person ceased to be a councillor would still be able to be pursued. In relation to misconduct matters any lengthy delay before proceedings are commenced would most likely see the complaint dismissed in the public interest.

On the other hand a member of an RCRP said in his submission:

> My view is that if an allegation of misconduct is made against a former councillor, then provided it is received

> within a reasonable time, it should be processed. … Whether or not the complaint should be made within two years after the person ceased to be a councillor is debatable. I believe a shorter period, namely 12 months, is appropriate. However, I do not believe that substantial misconduct should be ignored because the individual did not stand for re-election or was defeated. An individual (formerly a councillor) might seek election for a subsequent term and their prior conduct (including any finding of 'misconduct') should be available.

On balance, the Panel generally agrees with this submission but considers that the period during which a complaint can be made should be reduced from two years to six months.

DISCIPLINARY ORDERS FOR MISCONDUCT

Section 180 of the LG Act provides for two ranges of disciplinary orders where a councillor is found guilty of misconduct – a lesser range of orders that may be imposed by an RCRP and a somewhat higher range that may be imposed by the tribunal.

The penalties that can be imposed by the RCRPs include counselling of the councillor, requiring an apology, an order for mediation, a recommendation that the councillor's behaviour be monitored, an order for reimbursement, a recommendation for further investigation and an order that the councillor pay the local government up to 50 penalty units – almost $6,100.

If an RCRP considers a higher penalty is warranted it must report the matter to the tribunal for it to take disciplinary action.

The tribunal can make essentially the same orders as the RCRPs. Additionally it can order that the councillor forfeit an allowance, benefit, payment or privilege. Importantly, it can also recommend to the Minister that the councillor be suspended for a specified period, either wholly or from performing particular functions, or that the councillor be dismissed.

In its Discussion Paper, the Panel pointed out that in recent years most cases of misconduct have been referred to RCRPs, with comparatively few being referred to the tribunal. It said that disciplinary orders had been largely at the lower end of the range, and no recommendations had been made to the Minister for suspension or dismissal.

One submission received from a council in response to the Panel's Discussion Paper said:

> A system that delivers clearer offences or a more substantive nature that both can be, and will be, enforced is desirable. This does not necessarily mean more offences. In fact the argument could be made for fewer offences. It is more pertinent that serious offences can be identified and dealt with. Under the current system there has been concern that inadequate penalties have been applied. It is considered that serious offences that are upheld should have meaningful penalties attached.

The Panel agrees. In proposing additional specific misconduct offences its purpose is to identify the specific misconduct that needs to be targeted. In this part of the chapter it suggests penalties that are more 'meaningful' than many of those currently available.

The Panel proposes that the following disciplinary orders or recommendations, that include some of the orders that are currently available, should apply, specifically one or more of the following:

- Mandatory training or counselling.
- An order that the councillor reimburse the local government and/or pay up to 50 penalty units.

- An order that a councillor may not remain as or become deputy mayor or a committee chair for the remainder of the term.
- Councillor to be excluded for up to three meetings of the council.
- Councillor removed from any position representing the council for a period of up to three months.
- Councillor not to attend committees and/or other specified meetings for a period of up to three months.
- An order suspending the councillor (without pay) for a period of up to three months.
- A recommendation to the Minister that the councillor be suspended for more than three months and up to six months (without pay) or dismissed.
- A recommendation that the Department prosecute the councillor for an offence under the LG Act.

Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act.

The main effect of these proposals, if adopted, would be to give the Tribunal the additional powers:

(a) To suspend the councillor for a period up to three months (this would impose a significant penalty, given that councillors are paid as if they were engaged full-time on council work).

(b) To demote, or prevent the promotion of the councillor within the council hierarchy for the remainder of the council's term.

(c) To remove the councillor from any position representing the council.

(d) To recommend to the Department that the councillor be prosecuted for an offence under the Act. Suspension of the councillor for a period greater than three months (which would include dismissal) can also be recommended, but would require the approval of the Minister (as at present).

To assist with enforcement of the Tribunal's orders, a councillor should be suspended until such time as any order is complied with. The councillor's absence would trigger loss of office under s. 162(1)(e) of the LG Act if it extended over two months. The Panel also proposes that s.153 of the LG Act be amended to provide that a councillor who loses office in such circumstances following an order by the Tribunal in a misconduct matter, should be disqualified from standing for election to a council for seven years.

ADJUDICATOR FOR MISCONDUCT

The present system of having two bodies to adjudicate on complaints against councillors adds unnecessary complexity to the system. While the RCRPs can hand out only minor penalties, and the tribunal those penalties at the top of the range, there is in fact considerable overlap between the two jurisdictions. The tribunal has not made much use of the higher penalties, though of course this may be because the offences considered by it have not warranted them.

The RCRPs were originally intended to have members from many parts of the state, but this geographical spread has not been achieved. In fact, the term 'regional' is essentially misleading and a misnomer.

A disadvantage of the bifurcation of responsibility for determining and penalising misconduct is that the likelihood of a uniform application of the law is reduced. And this is done for no obvious reason.

The Panel considers that the functions of the RCRPs and the tribunal should be merged, as should the two entities, to become the Councillor Conduct Tribunal. The composition of this Tribunal and the qualifications of its members are discussed in Chapter 12.

PROSECUTION OF MISCONDUCT COMPLAINTS

The Panel received helpful submissions from senior members of the RCRPs, and from the tribunal about the way in which the two bodies receive and deal with complaints about misconduct. This is a summary of those submissions.

The RCRPs

The Department prepares the allegation and notifies the respondent councillor and the complainant when it refers the complaint to an RCRP. The panel assesses the documents provided by the Department and often 'redraws or modifies the terms of the allegation' notifying the Department so that the new allegation is included in the formal Notice of Hearing. The regional panels grant extra time to a councillor to provide any material they wish to a panel and adjourn for that to take place. The majority of hearings are conducted on the papers, mainly those provided by the Department, and sometimes provided by the councillor after being informed of the exact allegation being considered.

The tribunal

The tribunal receives matters from the Department, initiates further inquiries through the Department if necessary, and then proceeds to a hearing if it considers it appropriate. The process of making further inquiries requires consideration of the allegations and supporting evidence by the tribunal and the identification of areas where further investigation and clarification are required. There may be successive steps in that process, each dependent on the outcome of the last. The hearing does not involve evidence being adduced by a prosecutor, as there is no entity to take that role.

The tribunal's submission included this comment, which would appear to apply equally to the RCRPs:

> The Tribunal should not be placed in the role of de facto prosecutor/interrogator as well as then determining the outcome of the hearing. Councillors will almost inevitably be left with the impression that the Tribunal is not an independent body hearing the complaint impartially.

The second sentence may well explain why the tribunal and the RCRPs rejected the role of interrogator. However, as suggested earlier in this report, in acting in this way the tribunal and the regional panels have ignored and acted contrary to the intentions of the parliament as expressed in the LG Act.

Part 7, Chapter 1 of the LG Act is directed to the RCRPs and the tribunal. It tells them the 'Way to hold a hearing'. It provides them with investigative powers (describing the RCRPs and tribunal, for the purposes of the chapter, as 'the investigator'). What it does is to make the RCRPs and the tribunal inquisitorial bodies. Had they accepted this role there would have been no need for them to seek help from the Department in obtaining more information and there could have been fewer problems with councillors delaying responding to requests for information or documents, because the investigatory bodies could have required the rapid production of the information they sought.

Despite these powers, there is a strong argument that there should be a 'prosecutor' to assist the Tribunal in its consideration of allegations of misconduct and, if the hearings become 'live', (that is, go beyond a determination based on the papers provided by the prosecutor) to lead the questioning of any participants in a hearing. This role needs to be undertaken by the primary investigator, the Independent Assessor.

The Panel recommends:

The definition of misconduct in s. 176(3)(b) should encompass:

(i) The performance of the councillor's responsibilities, or the exercise of the

councillor's powers, in a way that is not honest or is not impartial.

(ii) A breach of the trust placed in the councillor.

(iii) A misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else.

(iv) Unauthorised use of council staff or resources for private purposes.

(v) Use of information obtained as a councillor to the financial detriment of the council or the public interest.

(vi) Failure to cooperate with the council, CAC or Tribunal member during inappropriate conduct proceedings or to comply fully with a penalty for inappropriate conduct.

(vii) Third or subsequent finding of inappropriate conduct during council term.

(viii) Bullying or harassment.

(ix) Failure to declare and resolve conflict of interest at a meeting in a transparent and accountable way.

(x) Seeking gifts or benefits of any kind.

(xi) Improper direction or attempted direction of staff.

(xii) Deliberate release of confidential information.

A further clause should be added to s. 176(3) to provide that an offence against ss. 171(1), 171A(2) and (3), 171B(2), 172(5) and 176C(8) may be dealt with as misconduct.

Section 176A (Application to former councillors) should be amended to provide that a complaint has to be made within six months of the person ceasing to be a councillor.

That s. 180 be amended to provide the following penalties for misconduct:

- Mandatory training or counselling.
- An order that the councillor reimburse the local government and/or pay up to 50 penalty units.
- An order that a councillor may not remain as or become deputy mayor or a committee chair for the remainder of the term.
- Councillor to be excluded for up to three meetings of the council.
- Councillor removed from any position representing the council for a period of up to three months.
- Councillor not to attend committees and/or other specified meetings for a period of up to three months.
- An order suspending the councillor (without pay) for a period of up to three months.
- A recommendation to the Minister that the councillor be suspended for more than three months and up to six months (without pay) or dismissed.
- A recommendation that the Department prosecute the councillor for an offence under the LG Act.

Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act.

That a councillor who is the subject of an order by the Tribunal in relation to a misconduct finding may not attend a council meeting until such time as the councillor has complied fully with the order. Section 162 of the LG Act (When a councillor's office becomes vacant) would apply in relation to such resulting non-attendance.

That s. 153 of the LG Act (Qualifications of councillors) be amended to disqualify for seven years a person who as a result of their failure to comply with an order of the Tribunal following a finding of misconduct has ceased to be a councillor as a result of the operation of s. 162(1)(e) of the LG Act.

CHAPTER 7
CORRUPT CONDUCT

Under the CC Act s. 38 and 40, and the LG Act s. 182, council CEOs are required to refer to the CCC all complaints that in the opinion of the CEO raise a reasonable suspicion of corruption. The Department's chief executive is also required to report allegations of corrupt conduct to the CCC. Corruption is defined in s. 15 of the CC Act and requires that the alleged conduct would, if proved, amount to a criminal offence, including simple offences under the LG Act. The corrupt conduct must relate directly to the performance of the official duties of a councillor. If a council CEO is uncertain whether the terms of a complaint justify a 'reasonable suspicion', they should in the first instance refer the matter to the Independent Assessor for preliminary assessment.

Most allegations about corrupt conduct by councillors are made directly to the CCC, rather than coming through CEOs or the Department chief executive.

During the 2014-15 financial year the CCC assessed only 70 allegations against councillors.

Of those, the CCC:

- Retained five matters (seven per cent) for investigation.
- Referred three matters (five per cent) to the Department, subject to close monitoring of follow-up action.
- Referred 19 matters (27%) to the department, requiring no further advice.
- Took no further action on 43 allegations (61%).

The Panel's terms of reference raised just one matter concerning the CCC and corrupt conduct. It was in these terms:

> Amendments to the legislation defining the role of the Crime and Corruption Commission, designed to narrow its operational focus to the investigation of the most serious cases of corrupt conduct and to reduce the number of trivial complaints handled by the commission has, and may continue to increase the demand on Departmental time and resources in dealing with complaints of misconduct and have an adverse impact on its ability to deal effectively and in a timely fashion with all complaints referred to it.

The Panel's proposal to create the position of an Independent Assessor will require that the LG Act be amended to provide that the assessor should be a holder of an appointment in a unit of public administration. The transfer of complaint investigations from the Department to the assessor will mean that the CCC will refer those investigations that would previously have been sent to the Department, go instead to the Independent Assessor, who will be better equipped with investigative powers to deal with them. It is also likely that complaints that the CCC would have sent back to councils will go instead to the Independent Assessor.

The Panel recommends:

That the LG Act be amended to deem the Independent Assessor to be the holder of an appointment in a unit of public administration for the purposes of the CC Act and that such complaints about corruption that the CCC would otherwise have directed back to the Department or to councils should be sent instead to the Independent Assessor.

That s. 182(2) of the LG Act be amended to substitute the Independent Assessor for the Department's chief executive as the public official dealing with corruption complaints.

CHAPTER 8
ELECTION ISSUES

The Panel's Discussion Paper, when analysing CCC complaints data, noted that 'spikes in allegations appear to coincide with council elections'. The CCC and its predecessors have long been aware of the fact that elections (state as well as council) prompt corruption complaints, apparently for political purposes. They allow political opponents to get publicity for the fact that 'x is being investigated by the CCC', a statement that is thought to be politically damaging to 'x'. For a long time, the CCC and its predecessors have issued warnings and tried to persuade people not to this tactic during the election period as part of a political campaign. Their pleas have not been marked with great success.

One of the Callinan/Aroney review recommendations[34], which was enacted, was to require people lodging corruption complaints with the CCC to complete a statutory declaration. This requirement was removed by the subsequent Labor Government.

The LGAQ's Ethics and Integrity Advisor, suggested in her submission that signed statutory declarations should also be required of people complaining against councillors, 'to eliminate frivolous, vexatious and often political complaints before election campaigns'. She also proposed:

> … no such complaints should be able to be made and actioned during the actual election period itself when the council is in caretaker mode.

[34] 2013 Review of the *Crime and Misconduct Act 2001* (Qld)

> Because of the time taken for the relevant bodies to review these complaints there is often considerable negative press and outcomes for would be candidates who are subsequently found to be innocent of these actions or procedures, but whose political futures have been destroyed or their integrity and honesty portrayed in a negative light. In this manner justice is not done or seen to be done.

The LGAQ, in its submission, said:

> In order to combat the problem of increases in frivolous and vexatious complaints in the lead up to local government elections, there is merit in considering increasing the penalties for complaints found to be frivolous or vexatious in the six months preceding the elections. The LGAQ is also investigating the possibility of appointing an electoral monitor as an additional mechanism to discourage frivolous and vexatious complaints.

The LGAQ also supported the proposal for a requirement that complaints should be accompanied by a statutory declaration, saying, 'This is a matter of natural justice: no one should be subjected to an anonymous complaint'.

In Chapter 4, the Panel considered suggestions there be a requirement for statutory declarations, but did not agree. It accepted there were circumstances where anonymous complaints should be accepted. However it did recommend that penalties should be introduced for frivolous and vexatious complaints, such matters to be determined by the Tribunal. This issue is discussed further in Chapter 10.

In Chapter 4 the Panel noted the provision in the CC Act that makes it an offence for 'stating anything to the commission the person knows is false or misleading in a

material particular' or giving a document to the commission the person knows is false or misleading in a material particular.[35] The LG Act contains a similar provision in s. 234 – false or misleading information. It begins:

(1) A person commits an offence if the person gives information for this Act (either orally or in a document), that the person knows is false or misleading in a material particular, to any of the following persons –

The maximum penalty is 100 penalty units. The persons listed include an RCRP and the tribunal. This provision should be amended to include the Independent Assessor (replacing the RCRP).

This is another offence that could be brought within the jurisdiction of the Tribunal to adjudicate, with a lower penalty, along with those other offences mentioned in Chapter 4.

The fact that this provision exists, should provide a disincentive for some of the complaints that are made recklessly at election time. The nature of the offence should be included as a warning to complainants on the standardised form on which complaints must be made.

The Panel considered the suggestion that complaints should not be received during the election period, but does not consider that this would be helpful if it contributed to prohibiting valid complaints.

PUBLICISING ALLEGATIONS

As mentioned above, the CCC and its predecessors in title have recommended various ways in which this general problem might be overcome but none of their proposals has been accepted by government.

[35] s. 217.

In 2016, the CCC once again examined whether, on balance, it was in the public interest to make allegations of corrupt conduct public and, if not, what legislative and other options were available to prevent it.

The CCC's report was tabled in parliament on 12 December 2016. While the CCC's study was broadly based, and directed at state as well as local government elections, its data only allowed it to draw firm conclusions (and make recommendations) about the local government elections. It found that there were significant spikes of corrupt conduct complaints made during the period immediately before local government elections. But it also found that the overwhelming majority of those complaints were baseless.

The CCC said it received significantly more allegations per month against councillors or mayors during the 2008, 2012 and 2016 election periods (on average, 27 a month) than in the equivalent months in non-election years (on average, 12 a month). That is well over double the number of complaints each month that were received during the election period.

And of the complaints that were made, 69% did not contain sufficient evidence to allow the CCC to reasonably conclude that the conduct alleged might amount to a criminal offence or disciplinary breach.

The report said, 'It is open to conclude that a large number of allegations received by the CCC in the lead up to local government elections are baseless and merely designed to effect electoral damage on political opponents'.[36]

The CCC proposed the introduction of a new offence directed at people or organisations

[36] CCC report, *Publicising allegations of corrupt conduct: is it in the public interest?* para. 192.

that publicise one of the following without first notifying the CCC and allowing the CCC at least three months to determine whether the allegations have merit:

a) Allegations of corrupt conduct against a councillor or candidate during a local government election period.
b) The fact that a complaint (whether or not it involves corrupt conduct) has been, will be or may be made to the CCC against a councillor or candidate during a local government election period.

The penalties proposed would mirror those for complaints made to the CCC that are frivolous, or vexatious, or not made in good faith, or primarily for a mischievous purpose or reckless or malicious, namely 85 penalty units (about $100,000), or one year's imprisonment.

The CCC report pointed out that the problem was about publishing allegations of corrupt conduct, 'that is, unproven, untested allegations made against identified individuals'.[37] It pointed out that publicising such allegations could negatively affect the CCC's ability to detect and investigate allegations:

> Making public an allegation of corruption before the CCC has ascertained whether it has merit can result in the destruction of evidence, fabrication of a false explanation, interference with witnesses and absconding of subject officers.[38]

It also made the point that publicising baseless allegations of corruption risked damaging a person's reputation:

> This risk is amplified in contemporary society where mass communication methods mean that allegations are instantaneously and widely transmitted, and stay on the public record in perpetuity.[39]

Further, damage could also be done to the public's trust in their institutions of government.[40]

The CCC's approach to the problem is controversial in that it concentrates on the act of publicising. The mainstream media regard this as an attack on it.

The CCC's proposal may be contrasted with the law in Western Australia. Its *Local Government Act 1995* provides in s. 5.123 – 'Confidentiality':

(1) A person who –
   (a) makes a complaint during a campaign period; or
   (b) performs a function under this Act in respect of a complaint made during a campaign period; or
   (c) as a result of anything done under this Division, becomes aware of any detail of a complaint made during a campaign period knowing it to be relevant to the complaint, and during the campaign period discloses information that the complaint has been made, or discloses any detail of the complaint, commits an offence.

This law targets the leaker, and particularly the person who made the initial complaint. It is not directed at the publisher of the information, which these days is as likely to be social media as newspapers, radio or television.

The Panel believes the CCC correctly identifies the very real problem that arises from the publicising of corruption and other complaints against councillors or candidates during election periods. However it considers

[37] Para 175.
[38] Para. 179.
[39] Para. 182.
[40] Para 186.

that the response by the WA legislature is more likely to be effective.

The Panel considers that the LG Act should be amended to include a new offence for a person who has made a complaint alleging inappropriate conduct, misconduct or corrupt conduct of a councillor or candidate for election during a campaign period, or an associate of the complainant, to disclose information that the complaint has been made, or discloses any detail of the complaint. That offence should be one where the proposed new Tribunal should also have jurisdiction, though any fine that the Tribunal could impose should be set at a lower level than that which a court could order.

In Chapter 10, the Panel considers publication of complaints made to the Independent Assessor.

DONATIONS AND CAMPAIGN FUNDS

Over the years the CCC has conducted several investigations into allegations of corruption related to local government elections. In response to the CCC report in December 2015 on 'Transparency and accountability in local government' the government announced in July 2016 that it would introduce into parliament a series of measures designed to improve transparency and accountability in local government electoral disclosure requirements. Some of these were directed at specific issues raised by a CCC investigation into allegations concerning the way electoral campaign funds are handled.

Significantly, the amending legislation will require that, as with state government elections, all donations over $500 must be declared and that an online, real-time system will be adopted for the disclosure of donations. This should allow interested parties to discover the origin of financial support provided to all candidates.

The legislation was introduced on 1 December 2016 and will be considered by a parliamentary committee which is due to report back to the Legislative Assembly in March 2017.

The Panel recommends:

That the LG Act be amended to provide that during the local government caretaker period before an election, it is an offence for a person who has made a complaint alleging inappropriate conduct, misconduct or corrupt conduct of a councillor or candidate for election, or an associate of the complainant, to disclose information that the complaint has been made, or disclose any detail of the complaint. The Tribunal has jurisdiction to hear a complaint under this section and may impose a penalty of up to 50 penalty units.

Section 234 (1)(f) (False or misleading information) be amended to substitute 'Independent Assessor' for 'a Regional Conduct Review Panel'. The Tribunal has jurisdiction to hear a complaint under this section and may impose a penalty of up to 50 penalty units.

CHAPTER 9
OFFENCES IN THE ACT

The LG Act details four misconduct offences that can lead to a councillor facing substantial fines and even imprisonment. These are set out in s. 171(1) (Use of information by councillors), 171A(2) and (3) (Prohibited conduct by councillor in possession of inside information), 171B(2) (Obligation of councillor to correct register of interests) and 172(5) (Councillor's material personal interest at a meeting). Additionally there is an offence directed at complainants in s. 176C(8) (a person must not make a complaint about the conduct of a councillor if the complaint is substantially the same as a complaint the person has already made and the person has been warned not to repeat it).[41]

The Department has prosecuted only once since 2009, for a breach of maintaining an accurate register of interests. Between 2006 and 2009 there were four prosecutions – one relating to the register of interests, one concerning the election gift register and two about material personal interests.

The Panel's terms of reference suggest that there has been a low incidence of prosecutions for serious offences, 'partly due to investigations either taking too long or not yielding sufficient evidence'.

The Panel considers that its proposals to have investigations carried out by the Independent Assessor, if clothed with sufficient powers, will overcome both problems.

However the decision to undertake a prosecution is generally one for the Department to make, unless the CCC has conducted an investigation and decides that it will press charges.

The Panel has reviewed the offences in the LG Act to assess whether they are necessary, whether new offences should be created and whether any changes should be made to them.

It considers that even though the offences are seldom prosecuted, it is important that they remain in the LG Act so that if the serious breaches of councillor conduct that they detail occur, severe penalties can be imposed. Merely treating such breaches as misconduct would not provide a sufficient deterrent. However at the lower end of offending, prosecution under the Act may not be justified, in which case they should be able to be treated as misconduct and dealt with by the Tribunal.

An allegation that a councillor had breached one of these provisions would normally be dealt with at first instance by the Independent Assessor who, after investigation, would decide whether it should be dealt with by the Tribunal. If the alleged breach was sufficiently serious, the Tribunal, rather than making a misconduct finding, could instead recommend to the Department that the councillor be prosecuted.

The Independent Assessor, rather than referring the matter to the Tribunal, could instead decide to recommend to the Department that a prosecution should be launched. Whether the recommendation for prosecution came from the Independent Assessor or the Tribunal, the Department would obtain and act on Crown Law advice about whether to prosecute. In the event that it decided against prosecution it would return the matter to the Independent Assessor or the Tribunal (whichever had recommended prosecution) to be dealt with as misconduct.

One of the factors affecting prosecution is that the Tribunal determines misconduct offences

[41] The sections are collated in Appendix 8—Legislation.

on the balance of probabilities but a prosecution will require a court to determine guilt beyond reasonable doubt. Hence the nature and quality of the evidence will be a factor in deciding whether the matter is treated as an offence under the LG Act or alternatively as misconduct.

The Panel proposes several minor amendments to the current offences.

Section 171 concerns use of information by councillors, ss. (1) is in these terms:

> A person who is, or has been, a councillor must not use information that was acquired as a councillor to—
> (a) gain, directly or indirectly, a financial advantage for the person or someone else; or
> (b) cause detriment to the local government.
>
> Maximum penalty—100 penalty units or 2 years imprisonment.

The Panel considers the offence covered by (b), 'cause detriment to the local government', too vague. It should be amended to 'cause financial detriment to the local government' and be treated as misconduct.[42]

In Chapter 4, the Panel recommended:

> That the offence in s. 176C(8) – a person must not make a complaint about the conduct of a councillor if the complaint is substantially the same as a complaint the person has already made and the person has been warned not to repeat it – be deleted.

And that in its place the LG Act be amended to include a section making it an offence for a person to:

(a) Make repeated complaints about a councillor —
    (i) Vexatiously.
    (ii) Not in good faith.
    (iii) Primarily for a mischievous purpose.
    (iv) Recklessly or maliciously.
(b) Counsel or procure another person to make a complaint about a councillor as mentioned in point (a).

And further, that the Tribunal be given jurisdiction in relation to this offence and that the maximum penalty the Tribunal can impose be 50 penalty units. An order can also be made for reimbursement of costs of the Independent Assessor and the Tribunal.

In Chapter 8, dealing with the offence in s. 234 – false or misleading information – the Panel recommended:

> That s. 234 (1)(f) be amended to substitute 'Independent Assessor' for 'a Regional Conduct Review Panel'.

Also in Chapter 8, the Panel recommended:

> That the LG Act be amended to provide that during the local government caretaker period before an election, it is an offence for a person who has made a complaint alleging inappropriate conduct, misconduct or corrupt conduct of a councillor or candidate for election, or an associate of the complainant, to disclose information that the complaint has been made, or disclose any detail of the complaint.

And that in both these cases, the Tribunal should be given jurisdiction and be able to impose a penalty of up to 50 penalty units.

The Panel recommends:

That both the Independent Assessor and the Tribunal have the power to make recommendations to the Department that a

[42] The Panel notes this may also be corrupt conduct under the CC Act.

councillor or former councillor be prosecuted for an offence under the LG Act.

That s. 171(1) be amended to read:

> **A person who is, or has been, a councillor must not use information that was acquired as a councillor to gain, directly or indirectly, a financial advantage for the person or someone else.**
>
> **Maximum penalty—100 penalty units or two years imprisonment.**

That the definition of misconduct in s. 176(3)(b) of the LG Act be amended to include:

> **Cause financial detriment to the local government.**

CHAPTER 10 NATURAL JUSTICE, PROCEDURAL FAIRNESS AND CONFIDENTIALITY

The Panel's terms of reference raise a number of concerns about natural justice and procedural fairness in dealing with complaints about councillor conduct. These include:

- Inconsistent hearing processes used by different RCRPs.
- Inconsistent hearing processes used by RCRPs and the tribunal.
- A trend of hearings to allow legal representation for accused councillors, but for complainants not to be required to attend and/or to have no legal representation.
- Where legal representation is granted, a tendency for the hearing to become more adversarial and formal, rather than inquisitorial and informal.

Other issues raised in submissions received by the Panel include:

- The absence of appeal rights.
- The absence of a right to attend RCRP or tribunal hearings for either the accused councillor or the complainant.
- The standard of proof at hearings is the balance of probabilities rather than beyond reasonable doubt.
- The possibility of reprisals against complainants.

HEARINGS

The LG Act contains two provisions governing the hearings conducted by RCRPs and the tribunal. Section 179 gives the RCRPs and the tribunal authority to conduct all or part of a hearing on the documents before them, and without the parties or witnesses appearing if the RCRP or tribunal 'considers it appropriate in all the circumstances' or if the parties agree.[43] In fact the RCRP or the tribunal makes the decision in the absence of the parties. According to an RCRP member, most hearings are held without the appearance of parties or witnesses.

The other provision concerning hearings is in Chapter 7, Part 1 of the LG Act. This has been referred to in earlier chapters in relation to the powers it gives the RCRPs and the tribunal to hold inquisitorial hearings.

Section 179(3) says the hearings must be conducted in the way set out in that chapter, while s. 214, which deals with witnesses at hearings, says only that the RCRP and tribunal may use its inquisitorial powers.

What the RCRPs and tribunal must do is[44]:

(a) Observe natural justice but
(b) Act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing.

The section then goes on to give examples of what procedures the RCRP or tribunal may adopt[45]:

(a) Act in the absence of a person who has been given reasonable notice of the hearing.
(b) Receive evidence by statutory declaration.
(c) Refuse to allow a person to be represented by a legal practitioner.
(d) Disregard the rules of evidence.
(e) Disregard any defect, error, omission or insufficiency in a document.
(f) Allow a document to be amended.
(g) Adjourn a hearing.

Sub-section 3 requires the RCRP or tribunal to comply with any procedural rules

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[43] s. 179(4).
[44] s. 213(1).
[45] s. 213(2).

prescribed under a regulation. However no such regulation has been made.

Given the variety of complaints that can come before a hearing, and the requirements for the RCRPs and the tribunal to act quickly and informally, it is hardly surprising that there should be the inconsistencies of approach mentioned in the terms of reference.

Moreover, a member from an RCRP said he had:

> ... difficulty in accepting that a Regulation could be effectively used to standardise tribunal and panel hearings.
>
> There is presently a fairly standard procedure which involves perusing the documents received, ascertaining if additional material is required, having a preliminary meeting to consider required statutory issues, drafting and forwarding a Notice of Hearing to the department to issue, receiving and considering any documentation from the councillor and conducting the hearing.
>
> If a Regulation were to be used for this purpose, it would need to be sufficiently flexible for particular circumstances in particular cases.
>
> The question of adequate training is, in my view, vital.

The Panel has previously recommended that the RCRPs and the tribunal should in effect be amalgamated into a new Tribunal. The Panel considers that this new arrangement would reduce the inconsistencies in the way the adjudicative system operates. The use of a regulation to further standardise procedures should remain an option, and should be further considered by the Tribunal's president after the proposed new system has been in operation for at least a year.

LEGAL REPRESENTATION

Section 213(2)(c) gives RCRPs and the tribunal power to 'refuse to allow a person to be represented by a legal practitioner'. An RCRP member said in his submission:

> I have permitted legal representation in three cases since the (RCRP) Panel was introduced. It is explained to the councillor that any legal representative is present to act as a support person only, he has no right to cross examine any witness called and he cannot make any statement to the (RCRP) Panel, unless asked. He is there solely as a support person and can provide advice to the councillor and, if required, the (RCRP) Panel will adjourn for that purpose.
>
> ... I have not noticed any increase in the adversarial nature of those three hearings nor have I perceived those hearings were more adversarial in nature. I can imagine a Hearing could become more adversarial and formal but I have not experienced that scenario.

Similarly, another member of an RCRP said he was in favour of restricting lawyer's involvement 'to that of support person rather than a legal representative'. The reasons he gave included:

- Legal representation generally adds costs and time to complaints.
- It risks moving the perspective of the RCRPs towards a more formal legal process rather than how they should operate – quickly and informally.
- In his experience, often the legal representation could not be regarded as value-for-money and added nothing to the proceedings.

The explanatory notes provided to parliament when the 2009 amendments to the LG Act were introduced included the following comment:

> The investigator[46] may refuse a person to have legal representation. However, rights to natural justice must be maintained. Due to the practical rather than technical nature of the tribunals, panels, commissions and committees, the desire to reduce costs for all involved and the need for decisions to be made quickly, the usual practice is to hold the hearing without legal representation.

The way the sub-section is currently worded suggests rather that the norm is that legal representation is permitted. It says the RCRP or tribunal may 'refuse to allow a person to be represented by a legal practitioner'. The parliament's policy would be more clearly expressed if the sub-section said the RCRP or tribunal may, 'where it considers it desirable to do so in the interests of justice, allow a person to be represented by a legal practitioner'. That would change the emphasis and, in the Panel's view, make it clear that only in exceptional cases could a person be represented by a legal practitioner. Indeed, if the practice should be as both the RCRP members described it, the word 'represented' should be replaced by 'attended' – which better describes the role allowed by the RCRPs on which they sat. The sub-section would then read, 'when it considers it desirable in the interests of justice, allow a person to be attended by a legal practitioner'.

STANDARD OF PROOF

Section 179(5) establishes the standard of proof required in misconduct hearings. It says, 'the standard of proof in the hearing is the balance of probabilities'.

There were few comments on this provision. One defended it on the grounds that the criminal test of 'beyond reasonable doubt' should not apply to those who hold offices of public trust, particularly for what might seem to be minor breaches.

However a submission by BCC's Leader of the Opposition argued that:

> If fines are going to be imposed, the standard of proof should be 'beyond reasonable doubt' as the current standard of proof is not appropriate where fines of up to $6000 are allowed without any right of appeal.

The Panel considers that it is appropriate that misconduct matters should be determined on the balance of probabilities. The introduction of the higher test would make it more difficult for a tribunal 'to act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing' as the Act requires. Introducing limited appeal rights meets the objection raised by the BCC Leader of the Opposition.

REASONS

Section 179(6) provides:

> The regional conduct RCRP or tribunal must keep a written record of the hearing, in which it records—
> (a) the statements of the councillor and all witnesses; and
> (b) any reports relating to the councillor that are tendered at the hearing.

What it does not do is require the RCRP or tribunal to publish the reasons for its decision. Because it is not a court, it is under no legal obligation to provide reasons unless legislation specifically requires it to do so.[47]

[46] That is, the RCRP or the tribunal.

[47] *Public Service Board v Osmond* (1986) 159 CLR 656

The Department's website points out that the tribunal and the RCRPs must observe natural justice in conducting the hearing:[48]

> Natural justice generally rests on three principles—that the councillor is sufficiently informed about the allegations made against them; that they are given a reasonable opportunity to respond to the allegations (e.g. by written submission or in person); and that tribunal or RCRP members have no personal interest in the outcome of the hearing (i.e. no conflict of interest or bias).

The Panel recognises that there is a further aspect of the natural justice concept: that as a matter of fairness, there should be a duty to provide reasons for decisions so people affected can decide whether the decision has been lawfully made and why they have not succeeded; whether there are grounds for review or appeal; and to assess the strength of the case against them should they seek review or appeal. Without reasons, the review functions of courts and other review bodies would also be frustrated.

The Panel understands that the RCRPs and the tribunal have, as a matter of practice, included their reasons when making decisions.

However it considers that the requirement for reasons to be given should be written into the LG Act.

APPEALS

Section 176(9) says:

> A decision under this part by any of the following persons is not subject to appeal—
> (a) a regional conduct review panel;
> (b) the tribunal;
> (c) the chief executive officer;
> (d) a mayor;
> (e) a deputy mayor;
> (f) the chairperson of a meeting;
> (g) the department's chief executive.

Section 244 says about decisions not subject to appeal:

> (1) If a provision of this Act declares a decision to be not subject to appeal, that means the decision—
> (a) can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way (including under the Judicial Review Act, for example); and
> (b) is not subject to any writ or order of a court on any ground.
>
> Examples:
> - A person may not bring any proceedings for an injunction to stop conduct that is authorised by the decision.
> - A person may not bring any proceedings for a declaration about the validity of conduct that is authorised by the decision.
>
> (2) A decision includes—
> (a) conduct related to making the decision; and
> (b) a failure to make a decision.
>
> (3) A ***court*** includes a tribunal or another similar entity.

While these provisions appear definitive, recent decisions of the High Court have determined that legislation cannot prevent a state Supreme Court from reviewing decisions where jurisdictional error can be demonstrated.[49] In 2014, Supreme Court Justice Alan Wilson, relying on a High Court

[48] (s. 213(1)

[49] In particular, *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531.

decision, granted an application by a Brisbane City councillor to declare void and set aside orders that had been made by the Brisbane City Council CCRP, notwithstanding the existence in the CoBA of provisions identical to ss. 176(9) and 244 in the LG Act.

Jurisdictional error is a fairly narrow ground of appeal. Several submissions received by the Panel suggested appeals should be available more generally, against decisions of the RCRPs and tribunal.

An RCRP member said:

> It is correct that no right of appeal exists against a determination by a Panel. This should be modified so there is an appeal solely on a question of law, to QCAT or the District Court. The Supreme Court has an inherent right to consider if there has been a jurisdictional error.

The Queensland Ombudsman said:

> … in my view, the absence of a right of appeal in the current schemes is a significant flaw. The provision of rights of appeal would contribute to the development of good procedures, the fair treatment of individuals and to the quality of panel decision making.

The tribunal said it generally supported the ‘idea of spelling out the appeal rights (via judicial review or elsewhere) of a party dissatisfied with the decision of the body ultimately responsible for deciding the complaint’.

The Panel considers that there should be a limited right of appeal in misconduct matters that have been determined by the proposed new Tribunal. It considers such appeals should be limited to questions of law only, and that the appeal should lie to the District Court. It considers the District Court should also be given jurisdiction to determine appeals where jurisdictional error is raised, rather than these being taken to the Supreme Court. The Panel’s preference for the District Court is dictated in part by cost issues – the Johnston case referred to above cost the BCC $100,000, after it was ordered to pay two-thirds of Cr. Johnston’s costs.

NATURAL JUSTICE FOR COMPLAINANTS

Several submissions argued that complainants, as well as accused councillors, were entitled to natural justice. They considered that those who brought complaints should be entitled to be informed of the way their complaints were being progressed, and were perhaps entitled to be present (and perhaps to participate) in disciplinary hearings.

The natural justice principles set out above deal only with the rights of the person accused. This is not surprising. The investigation and prosecution of an allegation is removed from the accuser who may be contacted to provide evidence to support their claim. Even so, the current system does provide that the complainant must be notified in writing of any hearing that is being conducted into the complaint and must be informed of the decision reached by the RCRP or tribunal.

However if the person lodging the complaint is also a councillor, the LG Act says the RCRP or the tribunal ‘must require the complainant to appear before the panel or tribunal to confirm the complaint’.[50] The Panel is unaware of whether this has ever occurred. It serves little purpose. It is a provision that might encourage a councillor complainant to make their complaint anonymously.

The Panel is recommending several changes that make this provision redundant and

[50] s. 177A(4)(5)(6).

therefore proposes that ss. (4), (5) and (6) of s. 177A be removed.

PROTECTION AGAINST REPRISALS

The Discussion Paper said there was concern that complainants – particularly council staff – are not adequately protected against harassment or other forms of reprisal by a councillor whilst a complaint is being processed.

It pointed out that where a CEO identifies that a complaint involves a public interest disclosure (PID) as defined by the *Public Interest Disclosure Act 2010* (PID Act), the council must ensure the complainant is protected from reprisals and maintain the confidentiality of the complainant, unless authorised to disclose information under the Act. A person who suffers reprisal may report the matter to the police and may bring proceedings for damages. The maximum fine for taking reprisal is 167 penalty units (about $20,000) or two years imprisonment.

In relation to complaints against councillors, protection under the PID Act is, however, only available to council employees and councillors. They can make complaints about the following conduct and receive the same protections (ss. 13, 18):

- Maladministration.
- Misuse of public resources.
- Danger to public health or safety .
- Danger to the environment.

However anybody, whether a public officer or not, can make a disclosure about the following and receive the protections under the PID Act (s. 12):

- Danger to the health or safety of a person with a disability.
- Danger to the environment.
- A reprisal.

PID complaints about:

- Maladministration can be made either to the council CEO or to the Queensland Ombudsman.
- Misuse of public resources can be made to the CEO or to the Queensland Audit Office.
- Danger to public health and safety to the CEO or the Health Quality and Complaints Commission.
- Danger to the environment to the CEO or the Department of Environment and Resource Management.

However complaints that cannot be classified as PIDs, are not protected under the PID Act nor the LG Act.

A number of submissions from former councillors and community members expressed concern about either the possibility of reprisals or reprisals they believed had occurred, and advocated greater protection for complainants. Obtaining evidence of misconduct from council staff was difficult where staff feared reprisals. Concern was also expressed about the CEO being possibly conflicted through his supervision of PID complaints.

An RCRP member commented briefly:

> There should exist protection for a person making a complaint against a councillor, subject to a penalty (through the Magistrates Court) for making a false or frivolous complaint. The concern would be that some persons with a genuine complaint might be dissuaded from making a complaint in those circumstances. The independence of the arbiter, being a court, should be of assistance in that regard.

If the harasser is a councillor, the recourse is to make a complaint to the Independent Assessor.

CONFIDENTIALITY AND PUBLICITY

The Panel's terms of reference refer to the absence of a requirement for confidentiality about the making of complaints. They also refer to 'emerging environmental issues including the use of social and digital media and the way in which the use of digital media (smartphones, tablets, recording capacity) has impacted the way in which councillors conduct the business of council'.

Clearly the technology referred to in the second matter has impacted on the first.

There are two aspects to confidentiality that are relevant here. First, there is the question of the identity of the complainant. Second, there is the complaint itself, which would normally identify the councillor who is the subject of the complaint.

In Chapter 4, the Panel examined the issue of anonymous complaints and concluded that while there were considerable advantages in requiring complainants to identify themselves, there could be occasions when a complaint by someone who wished to remain anonymous could result in misconduct by a councillor being revealed, leading to that person being dealt with, as appropriate, by the Tribunal.

It proposed that anonymous complaints that provide enough information to action a complaint against a councillor, should be dealt with under the complaints process. Where the complaint cannot be actioned without further information from the complainant, it should be dismissed.

Under the current complaints system, where the complainant is prepared to put his or her name to the complaint, the likelihood of being able to have their name remain confidential will depend on where the complaint is lodged. The CCC keeps the names of complainants confidential. The Department normally does so, though the Panel received one submission which claimed that the Department had notified councillors of the identity of complainants, and another which said the Department had sent correspondence to complainants to the council address where it could be opened and entered into the council system.

The system proposed by the Panel should give informants more confidence that their names will not become public, at least in the initial stages (when the complaint may be dismissed without ever having been referred to the accused councillor). This will be so in particular if the complaint is made directly to the Independent Assessor. It is expected that this would become the norm as the system becomes known. This is because the Independent Assessor would have an interactive website where complaints could be lodged on the standard form, and other recipients of complaints such as council CEOs and the Department, would refer complainants to that site.

The complainant's name will be known to the Independent Assessor, however. This knowledge will enable the Independent Assessor to assist in deciding whether a particular complaint is vexatious, mischievous, not made in good faith etc. and whether the complainant has previously made such complaints.

Keeping confidential the complaint itself, and the name of the accused councillor, will be less easily achieved. As discussed in Chapter 8, a complaint is sometimes made at election time for the very purpose of revealing that 'councillor x' is under investigation. The complaint may be little more than a mud-throwing exercise.

Most (though not all) of the submissions received by the Panel on this issue wanted confidentiality to be maintained.

A major problem, as many submissions acknowledged, is that the complainant is not bound by privacy laws, though in an extreme

case complainants could be caught by the laws of defamation. While the Independent Assessor may decide that a complaint is vexatious, frivolous etc. and dispose of it quickly, if there is any substance to the complaint it will have to be investigated whether the complainant respects a request that it should remain confidential or not. And of course it can be made public by the complainant or an associate without the identity of the complainant being revealed, and spread widely using social media, even if ignored by the mainstream media.

It must be acknowledged that almost any complaints system can be misused for political (in the broadest sense of that term) purposes.

The confidentiality issue is discussed again in Chapter 12, which includes recommendations about the publication (and the withholding of publication before council elections) of details of complaints and decisions about them.

The Panel recommends:

Procedural rules:
That s. 213(3) of the LG Act, requiring RCRPs and the tribunal to comply with any procedural rules prescribed under a regulation, be retained. One year after the proposed Tribunal commences, its president should consider whether to recommend to the Minister the adoption of a regulation prescribing procedural rules for the Tribunal.

Legal representation:
That s. 213(2)(c) of the LG Act, giving the RCRPs and tribunal power to refuse to allow a person to be represented by a legal practitioner be amended to read:

> **Where it considers it desirable to do so in the interests of justice, may allow a person to be attended by a legal practitioner.**

Standard of proof:
That s. 179(5) of the LG Act, which establishes that the standard of proof in misconduct hearing is the balance of probabilities, be retained.

Reasons:
That s. 179(6) of the LG Act, that requires the panel or tribunal to keep a written record of the hearing, be amended to add:

> **(c) The reasons for its decision.**

Appeals:
That the provisions of the LG Act limiting appeals, be amended to permit appeals to the District Court from decisions of the proposed Tribunal on misconduct matters on questions of law only, and for jurisdictional error.

That ss. 177A(4)(5) and (6), which require a complainant who is also a councillor to appear before the panel or tribunal to confirm the complaint, be deleted as several other recommendations of the Panel will make it redundant.

CHAPTER 11
ROLE OF THE MINISTER AND THE DEPARTMENT

At present, the Department plays a central role in the councillor complaints system. It is responsible for investigation and, where appropriate, preparing materials to allow RCRPs or the tribunal to adjudicate on complaints. It provides administrative support to the RCRPs and the tribunal. In addition, where it directly receives complaints, it has an initial role in assessing those complaints where inappropriate conduct or corrupt conduct may be involved. It is also responsible for investigating corruption complaints referred to it by the CCC.

The Panel's terms of reference under the heading 'Efficiency concerns', say:

- Despite the legislative intent to deliver a simple, timely, cost effective and independent system of investigating and hearing complaints and disciplining councillors found to have engaged in misconduct, the current system is cumbersome and complex to administer.
- Significant Departmental resources are used to deal with complaints, with a disproportionate amount applied to allegations of inappropriate conduct.

The Panel considers that the proposals it has outlined in this report would, if implemented, satisfactorily address both these concerns.

The Panel's recommendations would impose several new responsibilities on the Department, while removing others. The Department would be responsible for the process leading to the appointment of the Independent Assessor and of the president of the new Tribunal. It would also have to engage in a pre-selection process for choosing the other part-time members of the Tribunal. The CCA (Councillor Conduct Authority), the umbrella organisation proposed to hold and service the Independent Assessor and the Tribunal, would need Departmental administrative support, as do the tribunal and RCRPs at present.[51]

Chapter 9 detailed the offence provisions in the LG Act and explained the Department's responsibility for determining whether any prosecutions should be commenced. This role would continue.

MONITORING PERFORMANCE

The Department's involvement with the proper conduct of councils and councillors will not then cease, however. Chapter 5 of the LG Act is headed 'Monitoring and enforcing the Local Government Acts', and Part 1 deals with 'Local governments'. Its purpose is to allow the Minister, on behalf of the state:

(a) To gather information to monitor and evaluate whether a local government or a councillor:
    (i) is performing their responsibilities properly; or
    (ii) is complying with the Local Government Acts; and

(b) if the information shows that the local government or councillor is not performing their responsibilities properly, or is not complying with the Local Government Acts—to take remedial action.[52]

The Department's role is to gather information to monitor a local government's or councillor's performance and compliance[53], to give information to the Minister if the local government or councillor is not performing their responsibilities properly or not complying with the Acts and make any recommendations to the Minister about what remedial action to take.[54] The Department's chief executive can

[51] The proposed arrangements are detailed in Chapter 12: Reconstituting the complaints authorities.
[52] s. 113(1).
[53] s. 115.
[54] s. 116.

appoint an advisor to a local government[55] or a financial controller.[56]

The Minister, with the approval of the Governor in Council, may suspend or dismiss a councillor and dissolve a local government, appointing an interim administrator in its place.[57] The power to suspend or dismiss arises in one of three ways.[58] If:

1. The tribunal recommends under section 180 that a councillor be suspended or dismissed.
2. The Minister reasonably believes that a councillor has seriously or continuously breached the local government principles.
3. The Minister reasonably believes that a councillor is incapable of performing their responsibilities.

Only the first of these flows from the disciplinary procedures set down in the Act, culminating in a recommendation from the tribunal. The other two are for the Minister to determine, no doubt on the advice of the Department. The Minister's decision cannot be appealed, but it has to be given effect by means of a regulation which would be subject to parliamentary scrutiny and possible disallowance.

The Panel notes that the Minister's powers to suspend or dismiss an individual councillor in ss. 122(1)(b) and (c) are in addition to the power that arises from a recommendation of the tribunal. There are no preconditions for the exercise of the power in the circumstances of (b) and (c) other than those stated in the section. There is no requirement for any kind of hearing to determine whether the councillor has committed an offence deserving of suspension or dismissal.

[55] s. 117.
[56] s. 118.
[57] ss. 122-3.
[58] s. 122(1).

The Panel's Discussion Paper noted that the Department's investigative powers in s. 115:

> … are not clearly defined and potentially limit its capacity to investigate matters thoroughly. There is no clear authority to require persons to produce documents, give assistance or answer questions, nor any penalty for non-compliance with an investigation.

The Panel has proposed that the Independent Assessor should have enhanced powers, based on the powers given to the RCRPs and tribunal. It is not necessary for the Panel to make a recommendation about whether the powers in s. 115 should also be enhanced as this issue now falls outside its terms of reference, the Department having been removed as an investigator of councillor complaints (if, that is, the Panel's recommendations are adopted – otherwise it would recommend that the powers be significantly increased).

ADVICE AND EDUCATION

A number of submissions sought better education and guidance for councillors on these matters, and improved training for councillors and mayors concerning their duties generally.

For example, some of those who made submissions to the Panel expressed concern that registers of interest were complex documents and it was not always clear to a councillor that a particular interest was required to be registered. Similarly, while the LG Act defines the concepts that are involved in 'material personal interest', it is not always apparent to councillors whether they need to declare a particular interest.

However the LGAQ Ethics and Integrity Advisor said there was no real excuse for elected representatives or CEOs not to be well informed. She said:

> The LGAQ runs very comprehensive workshops called elected member updates which are offered for all councils after an election. These are also repeated during the council term. Any changes to the Local Government Act are discussed, and for all newly elected councillors and mayors the Act and its requirements are discussed in detail. These workshops are also run for indigenous councils who often have conflicting problems with adhering to some of the tenants under the Act with regard to cultural differences and the fact that they are endeavouring to sometimes accommodate to demanding requirements for open and transparent financial outcomes to which they are not accustomed.
>
> As the LGAQ Ethics and Integrity Advisor I have attended and contributed to many of these meetings. Any changes to the Act or understanding of the requirements of conflicts of interest (COI), declarations of material personal interest (MPI), registers of assets or gifts, inappropriate conduct, misconduct or fraud are discussed and appropriate actions that need to be taken in order to comply are debated ….
>
> In addition the LGAQ has this year appointed three mayoral mentors and had knowledgeable staff available to advise on more operational matters.

The LGMA, discussing proposed changes to the complaints system, said in its submission:

> … success of the changes to the system will be enhanced if they are accompanied by comprehensive training of councillors and officers, and include a requirement for assessing persons and bodies to include an educative element. This would be in the form of case notes or articles outlining the consideration given to matters and the reason for determination. In this way we provide greater clarity to all parties and also enhance the deterrent value of the process.

The Panel is conscious of the contribution of the LGAQ and LGMA in advancing the knowledge and skills of their respective members. However it considers that under the LG Act, the primary responsibility for enhancing the quality of local government lies with the Department.

The Department is well aware of its responsibilities in this regard and seeks to meet them. In conjunction with the last local government elections in March 2016 it held pre-election public information sessions in 89 locations for over 780 participants, at a cost of over $130,000. After the elections it conducted a councillor induction program involving 67 councils, for over 590 participants, costing over $150,000. The need for induction programs appears to be increasing with about half of all councillors at the past two elections being first-time councillors, compared to less than one in three in 2008 and one in eight in 2004.

The Department’s general responsibility for administering the Acts is reinforced and made explicit in the sections referred to above requiring it to monitor and evaluate the performance of councils and councillors and giving the Department and its Minister powers to take remedial and corrective action, including dismissing individual councillors or even whole councils, as well as prosecuting offences in the Acts.

The Panel considers the Department will be better able to undertake this role if it is relieved of its present role(s) in the councillor complaints system, as proposed in this report. At present the Department is often seen in the role of prosecutor, preparing the briefs of evidence based on which RCRPs and the tribunal make their decisions about misconduct by councillors. Absent of that role, the Department would be in a better position

to be regarded as an independent, neutral expert, and provide advice in that capacity.

There are a number of particular matters on which its advice would be appreciated, essentially involving its understanding of the meaning of provisions in local government legislation. In particular, there would appear to be a demand for information about completing declarations of interest forms. In the Queensland Parliament, which requires MPs to file very similar documents, MPs obtain advice from the Clerk of the Parliament. For local government, advice should be provided centrally, rather than through 77 CEOs, whose grasp of the intricacies of what is required may not be uniform. The Department is in a better position to provide advice on many of the problem areas and perhaps could do so through telephone hotlines and through interactive computer programs, as well as guides available in print and on the internet. Other issues on which generic advice should be made available include COIs and declarations of MPIs. As suggested by the LGMA, some of this could be done through case notes or articles.

LOCAL GOVERNMENT LIAISON GROUP

Other bodies should and would also play a role, and some are required to.
For example, the CCC has produced several guides relevant to local government as part of its corruption prevention activities, including *The Councillor Conduct Guide* and *Managing Conflicts of Interest in the Public Sector (Toolkit)*. The Callinan/Aroney review resulted in this corruption prevention responsibility being dropped from the CC Act, however the present government has now restored it. The Ombudsman also produces some documents relevant to local government. It is also likely that the Audit Office will conduct educational campaigns to allow for the proper implementation of the new mandatory accounting standard for local government.

As will be discussed in Chapter 12, the Tribunal should also contribute through the publication on its website of decisions and reasons from the Tribunal on misconduct matters, and decisions by councils on inappropriate conduct complaints.

Given the Department's overall responsibilities under the Local Government Acts, it should provide the leadership in promoting greater knowledge among councillors of their duties and responsibilities. It should establish a coordinating group, the LGLG, which would include the CCC, the Ombudsman, the Auditor-General and the Independent Assessor, together with the LGAQ and the LGMA.

An early task for the LGLG should be to consider the ramifications of the new audit requirements mentioned in Chapter 2. This could include changes to the LG Act and regulations to expand the role of audit committees to include monitoring performance and the quality of governance.

However the first task of the LGLG should be to draft and recommend to the Minister a uniform, mandatory Code of Conduct for councillors.

The Panel recommends:

That the Department establish the LGLG to coordinate the provision of advice for local government councillors on the interpretation of relevant legislative provisions, and to provide assistance and training in areas such as declarations of interests, declarations of MPIs and COIs. The group should provide advice to the Minister, through the Department, on governance issues such as the proposed Code of Conduct. And it should include the CCC, the Ombudsman, the Auditor-General and the Independent Assessor, together with the LGAQ and the LGMA.

CHAPTER 12 RECONSTITUTING THE COMPLAINTS AUTHORITIES

The Panel is recommending fundamental changes to the way in which complaints against councillors are received, considered, investigated, prosecuted and determined, together with new systems designed to make it easier for councillors to understand their obligations under the Local Government Acts and to avoid offending conduct.

Central to the changes to the disciplinary system is the creation of an office of the Independent Assessor, to take responsibility for assessing complaints from council CEOs and the Department and then, if necessary, for investigating them. Inappropriate conduct complaints would then be sent to councils to be dealt with. Misconduct complaints would be investigated by the Independent Assessor and then referred to the new Tribunal that would be an amalgam of the present tribunal and the RCRPs.

The existing statutory authority (the tribunal) would be reconstituted and have two elements: the Independent Assessor and the Tribunal. The statutory authority should be renamed the CCA (Councillor Conduct Authority), a title that reflects its functions of conduct complaints handling and adjudication.

Both the Independent Assessor and the president of the Tribunal should be statutory appointments with fixed terms of up to five years. The Independent Assessor would be the chief executive of the authority.

Refer to Figure 3 for the proposed structure of CCA.

The present tribunal has several non-disciplinary functions and the Panel believes these should be transferred to other, more appropriate, bodies. These other functions include establishing categories of local governments, deciding to which category each local government belongs and deciding the remuneration that is payable to the mayors, deputy mayors and councillors in each of those categories. The Panel believes the task of putting councils into categories should be taken over by the Department, while the Queensland Independent Remuneration Tribunal, which sets the salaries, allowances and entitlements of current and former Queensland MPs should also set the salaries of elected local government members.

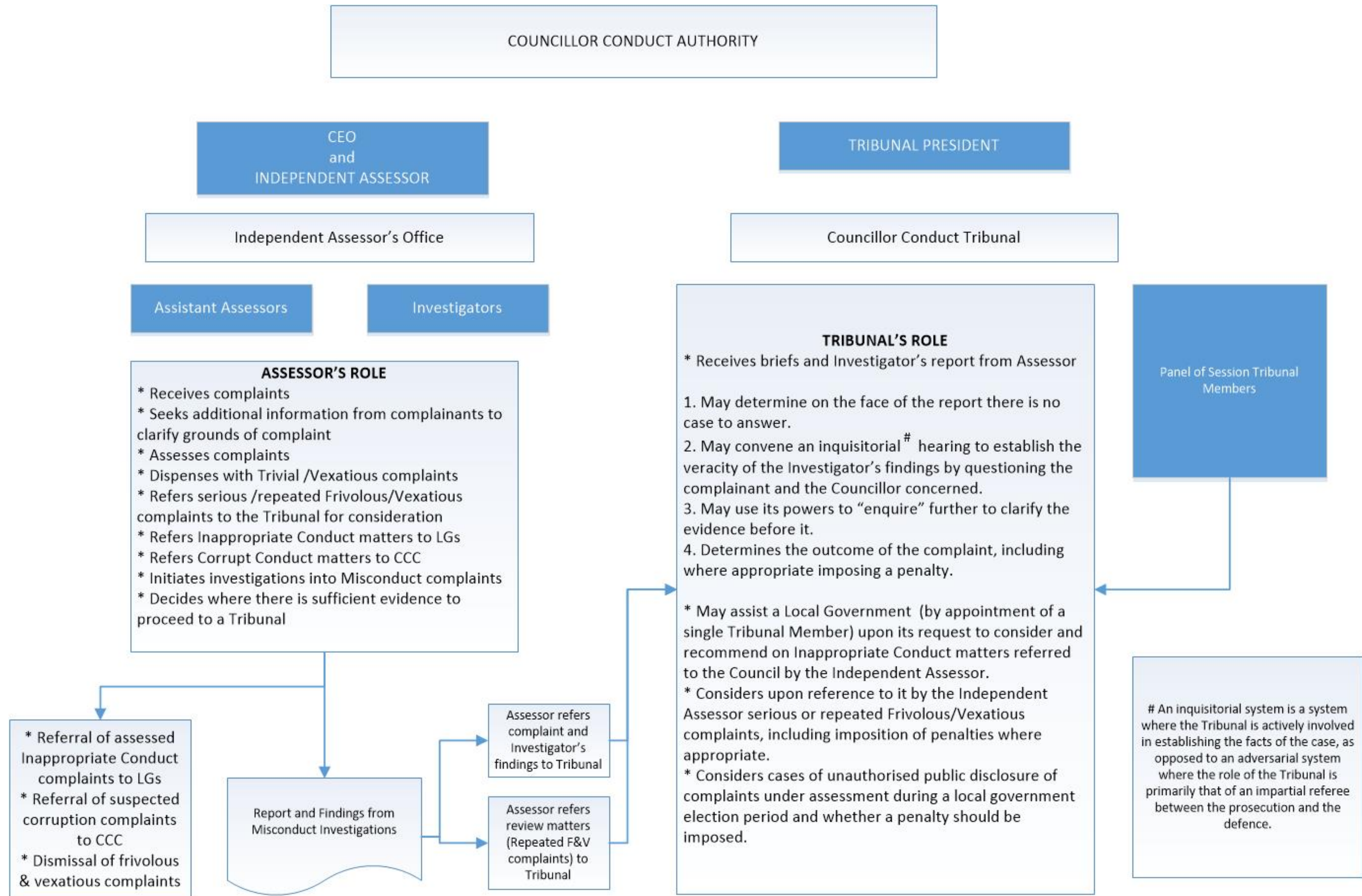
The LG Act also allows the Minister to direct the tribunal to undertake other functions[59], though this power has not been used.

COMPOSITION OF THE TRIBUNAL

The proposed composition of the Tribunal was discussed in Chapter 6. It should be headed by a president; a statutory appointment. It is expected this role would be part-time, probably less than half time. Additionally there would be a number of other part-time, sessional members appointed by the Minister on the recommendation of the president, to sit on the Tribunal as determined by the president. A hearing panel of the Tribunal would be constituted by three members - a chair (the president, if part of the panel) and two members. All would be assigned by the president.

[59] s. 183(2)(d).

Figure 3 - Proposed structure of Councillor Conduct Authority



Chapter 6, Part 3 of the LG Act is currently concerned with the establishment of the tribunal and Part 4 with the RCRPs. The tribunal is currently made up of three qualified people appointed by the Governor in Council[60] while each RCRP is constituted by at least three members that the Department's chief executive chooses from a pool of 22 members, who have been appointed by the chief executive[61]. The qualifications for selection for the tribunal and RCRPs are almost identical. A person must have extensive knowledge of and experience in, one or more of the following:

- local government, community affairs
- investigations
- law
- public administration
- public sector ethics or
- public finance.

Additionally, a person appointed to the tribunal could be qualified by virtue of having knowledge and experience of industrial relations. There is an additional escape clause allowing for the appointment of anyone with 'other knowledge and experience' that the Governor in Council or chief executive considers appropriate.[62] There are a large number of disqualifying factors including holding various public sector positions, being a member of a political party and being a contractor or consultant to a local government.

The Panel considers most of these factors of qualification or disqualification should also apply to the proposed amalgamated Tribunal, though it does not consider it necessary to include the catch all provision of 'knowledge and experience' that is considered 'appropriate'. Either specific qualifications are desirable or the Minister/chief executive should be able to choose anyone they think appropriate. The Panel's strong preference is that the areas of knowledge and experience should be spelt out, as it is vital that the complaints system be administered by people with demonstrable qualifications for the role.

The new Tribunal is intended to be very different from its two predecessors, the tribunal and the RCRPs. This should be reflected in the qualifications that its members must have. In the Panel's view it is no longer appropriate, for the reasons expressed in the preceding paragraph, that it be sufficient that a member have 'extensive knowledge and experience in' either (a) community affairs or (b) industrial relations. The qualifications required of members should be relevant to what they are required to do as Tribunal members.

In relation to the new Tribunal, the Panel considers it essential that its president should have legal qualifications, though it should not be necessary that they hold a current practicing certificate. The Panel believes the president should be a statutory appointment, though the position would be only part-time. The president should be appointed to hold office for up to five years. The other members of the Tribunal should be appointed by the Minister, on the recommendation of the president after consultation with the LGLG. They would be sessional appointments, and take part in Tribunal hearings as required by the president. There are currently 22 members of the RCRPs. It should not be necessary to appoint as many members of the Tribunal. Members should be appointed for three year (renewable) terms.

A Tribunal misconduct hearing would normally be constituted by three members. The president would chair the hearing if they were a member.

The Tribunal would continue to have the powers set out in Chapter 7, Part 1 of the LG Act ('Way to hold a hearing'). The powers

[60] s. 184(1)
[61] s. 189(1) and (2).
[62] s. 184(2) and s. 189(3)

specified for conducting investigations by the Tribunal should be exercised if at any time during the hearing the Tribunal considers it needs more information than has been provided to it by the Independent Assessor.

One of the first tasks of the president should be to draw up a set of rules that would govern the way Tribunal hearings would be conducted. The general parameters are set in the legislation, but as the complaints about inconsistent hearing processes used by the RCRPs and tribunal demonstrate, they are not sufficient. The Panel in Chapter 10 recommended that for at least a year, procedural rules for the Tribunal should not be set using the regulation-making power in s. 213(3) of the LG Act, because rules made in that way would be too difficult to amend. Nevertheless it is concerned that general rules should be set down. The rules should be published, not least so that those who become involved in Tribunal matters will know what to expect.

THE OFFICE OF THE INDEPENDENT ASSESSOR

The Independent Assessor would also be a statutory appointment, and would be the chief executive of the CCA. The office of the Independent Assessor would be responsible for assessing all complaints lodged in relation to councillor conduct and where necessary investigating and prosecuting misconduct complaints against councillors. It would also provide registry facilities for the Tribunal, which in all other respects would operate completely independently of the Independent Assessor.

Staffing of the Independent Assessor's office would probably be about that currently engaged in the Department in complaints assessment and investigation – about eight full-time equivalents (FTEs). The Department would continue to provide that authority's funding and administrative support. Despite this link back to the Department, the authority's independence would be guaranteed through the appointment of the Independent Assessor and the president of the Tribunal by the Governor in Council.

The Panel has been provided by the Department with information about its investigations in the 2015-16 financial year (see Table 3).

It will be seen that departmental costs of $820,100 are based on the equivalent of 7.5 FTEs and that a further $108,000 was spent on contractors carrying out investigations. Only $72,900 was recovered from councils in 2015-16, although that figure has been much higher in some recent years.

Provided it has proper investigative powers, the office of the Independent Assessor should be able to deal with the present level of complaints with the same or a slightly reduced staffing level, even allowing for the additional preliminary assessments that it would undertake (presently done by council CEOs). It should also have less resort to outside contractors to carry out expensive investigations.

On the other hand, recreation of the Tribunal as the authority will not be cost neutral as there will be some additional charges such as corporate support and accommodation. Nevertheless the Panel considers that these additional costs will be outweighed by the savings that will result from a reduction in the number of complaints and the introduction of more efficient and effective ways of investigating and processing them.

Table 3 – Department councillor conduct complaints costings for the 2015-16 financial year

Aspect	Stage	Amount ($)
FTE costs • Strategic oversight - 0.25 x FTE • Assessment and overall coordination of complaints process - 2 x FTE	Before referral to panel/tribunal & overall process	820 100
• Investigation of complaints - 3 x FTE	Pre- and post-referral to panel/tribunal	
• Complaints referral and secretariat (panels/tribunal) - 2 x FTE • Administrative support - 0.25 x FTE	Referral and post-referral	
Contractors (investigations)	Pre- and post-referral to panel/tribunal	108 000
Sitting fees (tribunal and panel members)*	Post-referral to panel/tribunal	57 000
Annual licence (complaints management database - Resolve Express)	Overall process	35 000
Other expenses (e.g. travel, venue hire, postage)#	Overall process	17 400
Total expended		**1 037 500**
(Less) costs recovered from councils		*- 72 900*
Net expenses^		**964,600**

*Tribunal costs incorporate time spent on both its remuneration and discipline functions.

Does not include costs for departmental phones, computers, stationery

^Net expenses reflects the actual level of resourcing at present, not necessarily the optimum level.

At least initially, the Panel considers that the Independent Assessor's office should be staffed by employees seconded from the Department. This has the advantage of allowing for the continued investigation of complaints being handled within the Department's system at the time of the establishment of the Independent Assessor.

In the medium term, staff would be employed directly by the office.

PUBLICATION OF TRIBUNAL AND COUNCIL DISCIPLINARY DECISIONS

Two submissions received by the Panel claimed that the writers have had difficulty accessing reports of disciplinary matters from some councils. This is despite the fact that the LG Act specifies that decisions of the RCRPs and the tribunal concerning complaints of misconduct by councillors must be communicated to the CEO of the local government concerned; that the CEO must keep a record of all complaints received as well as their outcome; and that this record must be available for inspection at the local government's public office or on the local government's website.[63]

The section at present gives the CEO a choice between making the record available at the council office or putting it on the website. There is no reason why the record should not be available in both places. The Panel recommends that the word 'or' in s. 181A(2)(a) should be replaced by the word 'and'.

[63] s. 181A.

The section at present deals only with complaints received by the CEO. It should be amended to include complaints received by the Independent Assessor that are referred to the council to be dealt with as inappropriate conduct and relevant misconduct decisions by the proposed Tribunal.

The decisions of the Tribunal should be made available not just to those directly affected (that is, the complainant and the accused councillor), as well as to the relevant council, but more generally.

The Panel considers that the CCA should have a website where all the decisions of the Tribunal, and the reasons for them, are published so that they are available to anyone with an interest in them and to the world at large. The Independent Assessor's decisions would also be published there. Decisions of councils concerning inappropriate conduct should also be published on this website as well as on the council's website and in its public records.

The Independent Assessor should not publish information about a complaint until such time as it has determined whether it is to be treated as a misconduct or inappropriate conduct matter, or that no further action is to be taken on the complaint because it is vexatious etc. or relates to another matter. Complaints that are sent to the CCC as involving corruption should not be published but dealt with under normal CCC procedures.

The name of the complainant would not be disclosed publicly. The public interest is in the publication of the fact of the complaint and that it was either dismissed for lack of substance of there appear to be grounds for it being made.

However, it would help prevent politically motivated complaints not to publish information about complaints, and in particular the identity of the councillor whose conduct is being questioned, during the caretaker period immediately before council elections. Publication of complaints by the Independent Assessor on the CCA website and by the council on its website should therefore be suspended during this period.

TIMELINES

One of the most worrying statistics reported in the Panel's Discussion Paper was in Departmental data about the time it took for the Department to process allegations that it received. During the past two financial years it took on average 61 days to assess and investigate a matter and refer it to another body if required, and 117 days to finalise a matter. Yet of the 396 allegations, only 30 were ultimately upheld leading to penalties being applied.

As the Discussion Paper pointed out, there were no time limits on the various stages of the process, particularly the preliminary assessment stage that determines whether there is a case to answer. It commented that the handling of significant complaints may be delayed due to processing of others that lack substance, or reflect personal disputes or are made for purely political purposes and that extended delays can occur while investigations and hearings are carried out, or because matters are referred from one pathway and organisation to another.

One of the options canvassed in the Discussion Paper was to 'set timelines for processing complaints, with scope for extensions to be approved if warranted'.

Commenting on the complaint times set out above, the LGAQ said:

> Time is of the essence in resolving complaints. The average of 178 days (61 days to assess and investigate a matter and 117 days to finalise a matter) is far too long. Reducing the time it takes to resolve complaints may require more resources but may also be able to be

> achieved through the introduction of an effective triage system at the front end to filter out matters at an early stage, a tightening of criteria for lodging a complaint and other streamlining of the system. The length of time taken to resolve a complaint which is ultimately not upheld creates a perception of guilt or unjustified speculation, particularly from political opponents and/or the complainant, as to a potential outcome.

The Panel agrees with these remarks and considers that the system it is proposing will reduce the time taken for initial assessment of complaints, with a flow-on effect on the time needed for investigations and processing by councils (for inappropriate conduct) or the Tribunal (for misconduct).

The Panel considers that it is not practical to set timelines for the various processes of complaint handling. Some complaints will be resolved quickly and easily, while others may require forensic examination. Nevertheless the Panel considers that the first decision that has to be made by the Independent Assessor, namely, whether a complaint is about a frivolous matter or made vexatiously, is lacking in substance or about another matter, can be determined quickly and on the papers (aided by the use of the complaints forms the Panel has proposed should be introduced). Depending on the volume of complaints, this initial decision should be made within a fortnight of receipt of the complaint (the Department has taken steps to reduce the former timeline and currently aims for ten working days).

However it won't be until the Independent Assessor has been operating for some time that realistic targets can be set. The Independent Assessor's first annual report should include an analysis of its activities including the time taken to assess complaints, and targets it proposes to match in the future.[64]

BRISBANE CITY COUNCIL'S COMPLAINTS SYSTEM

Currently special arrangements apply under the CoBA. In 2012 the powers of the tribunal to determine disciplinary matters were transferred to the BCC's own CCRP. The CCRP is appointed by the council. The CEO determines whether complaints should be heard by the CCRP.[65]

The Queensland Ombudsman in a submission said that a positive aspect of the CCRP was:

> … that it does not involve the extent of the fragmentation of decision-making points between CEOs, the director-general of the department, RCRPs, the tribunal and mayors, which is a feature of the scheme for other councils. It is likely that the current division of decision-making responsibilities in the non-BCC scheme adds unnecessary complexity to the system and inefficiencies in time and cost.

However this Panel has recommended changes to the system that would remove the fragmentation that concerned the Ombudsman. It would introduce two changes that make the system applying to every other council in Queensland superior to that applying to the BCC.

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[64] The Queensland Ombudsman and the Information Commissioner set their own targets for handling inquiries and report annually on how well they meet them.

[65] The processes of the BCC's disciplinary system were detailed in the Panel's Discussion Paper, and the relevant section is reproduced as in the appendices (Appendix 5). The same appendix contains a submission from the council's CEO explaining and outlining the benefits of the system, followed by extracts from a submission by the council's leader of the opposition.

The first is to remove from the council CEO the responsibility of assessing complaints that are made against councillors and determining whether they are frivolous, vexatious or otherwise lacking in substance, or another matter, and deciding whether they should be dealt with as inappropriate conduct or misconduct. Almost universally, those submissions to this Panel that dealt with this issue were concerned with the conflicted position of the CEO in dealing with complaints against councillors who are, literally, his employers. The second is to amalgamate the functions of the RCRPs and the tribunal.

The Panel's recommendations are intended to deliver an independent, fair and effective system for dealing with complaints against councillors throughout the state, and it would be anomalous for the largest local government to retain a separate system that does not meet these criteria and appears designed to do otherwise. The Panel notes that under the system we are proposing the BCC could establish its own CAC to make recommendations to the council concerning inappropriate conduct, and would retain its local law for meeting practice. However decisions categorising or dismissing complaints and determining whether they involved inappropriate conduct, misconduct or corrupt conduct would be transferred to the Independent Assessor who would also take responsibility (away from the CEO) for determining whether a particular complaint should be dealt with by the council itself as inappropriate conduct, or by the Tribunal, as misconduct.

COST EFFECTIVENESS

The major recommendations of this report will improve the efficiency, efficacy and effectiveness of the councillor complaints system. They should also result in a process that is more cost effective than the existing system.

The creation of the office of the Independent Assessor will have a profound effect on the working of the system. Removing the initial assessment responsibility from council CEOs will free many of them from a burden that is conflicted and time consuming. Making the Independent Assessor responsible for investigating as well as assessing complaints will remove what the Department has acknowledged is for it a major problem, particularly in relation to inappropriate conduct allegations.

The Department was ill-equipped, in not having the necessary powers, for its role in the complaints system. Replacing the assessment and investigatory roles by an Independent Assessor that does have the appropriate powers will mean that complaints will be able to be assessed more quickly and effectively than has been possible to date. The Department has regularly had to employ (expensive) outside contractors to conduct investigations, but those contractors have also been handicapped because they lacked adequate powers to obtain vital information.

The Independent Assessor should be able to do most of its investigations in-house, though it may require specialist assistance in some instances (for example, tracking financial dealings). But its powers should allow it to do more with fewer investigators, and more quickly, as it will be able to require witnesses to respond to its enquiries. That is a formula for lower costs.

Redefining the disciplinary offences, as proposed by the Panel, will mean that the Independent Assessor will be able to frame accusations of inappropriate conduct or misconduct more accurately, avoiding the waste of resources that has occurred under the present system when complaints have not always been well-targeted. Combining the tribunal and the RCRPs will also result in efficiencies as well as reducing inconsistencies in the hearings that are conducted. Significantly, the new Tribunal

should use the powers it is given in the LG Act to conduct its own inquiries if it discovers that the material provided to it by the Independent Assessor is insufficient to determine the matter before it. This should result in a saving of time and resources.

The report contains many recommendations aimed at improving governance and making councillors more aware of their duties and responsibilities. Success here would reduce resort to the disciplinary system and its costs.

The Panel recommends:

That the functions of the tribunal and the RCRPs be transferred to the proposed Tribunal.

That the tribunal be reconstituted as the CCA with the Tribunal as one of its two constituent parts, the other being the Independent Assessor.

That the Independent Assessor be the chief executive officer of the CCA.

That the former tribunal's responsibilities for establishing categories of local governments and deciding to which category each local government belongs, be transferred to the Department, and its responsibility for deciding the remuneration that is payable to the mayors, deputy mayors and councillors be transferred to the Queensland Independent Remuneration Tribunal.

That the Independent Assessor and the president of the new Tribunal be statutory appointments, and that both should be appointed for fixed terms of up to five years. That other sessional members of the Tribunal be appointed for three year terms by the Minister, on the recommendation of the president of the Tribunal.

That a person who is to be appointed to the Tribunal must have extensive knowledge of and experience in, one or more of the following:

- **Local government.**
- **Investigations.**
- **Law.**
- **Public administration.**
- **Public sector ethics.**
- **Public finance.**

That the president should draw up and publish on the website the rules governing the way Tribunal hearings are conducted.

That s. 181A of the LG Act – 'Records about complaints' - be amended to provide in ss. (1) that the section also concerns complaints received by the Independent Assessor that are referred to the council to be dealt with as inappropriate conduct and relevant misconduct decisions by the proposed Tribunal.

That s. 181A(2)(a) of the LG Act (Records about complaints) be amended by substituting 'and' for 'or'.

That the CCA establish a website where all the Tribunal's decisions and the reasons for them are published and where decisions of councils concerning inappropriate conduct are also published. Decisions by the Independent Assessor dismissing complaints that are trivial, vexatious etc. should also be published in summary form.

That the publication of information about new councillor complaints should be suspended during the caretaker period before a council election.

That the disciplinary system provided for in the CoBA be aligned with that proposed for the LG Act.

APPENDIX 1—RECOMMENDATIONS

CHAPTER 4: ASSESSMENT, INVESTIGATION AND HEARING OF COMPLAINTS

Preliminary assessments

4.1 The LG Act be amended to provide that the 'preliminary assessment' of any complaint against a councillor should be made by an Independent Assessor, and not by a council CEO, or the Department's chief executive (ss. 148H(2), 176B, 176C, 177 and 177A).

The Ombudsman

4.2 The Panel does not recommend any additional involvement of the Ombudsman in the complaints handling process. However it notes that the Ombudsman may review complaints about the administrative actions of a council dealing with inappropriate conduct matters.

The way a complaint is made

4.3 Complaints against councillor conduct should be made on a standardised form that requests the complainant to provide details of any supporting evidence, and/or witnesses and such other material as the Independent Assessor specifies. It should also explain the purpose and scope of the complaints system and explain the appropriate ways in which complaints about matters other than councillor conduct may be made.

The standard form should contain a declaration that the complainant is acting in good faith and has provided information that is correct and true to the best of their knowledge. It should contain a warning that it is an offence to provide any information to the Independent Assessor that the complainant knows is false or misleading in a material particular.

4.4 The LG Act should be amended to allow the form to be prescribed by the Independent Assessor.

Anonymous complaints

4.5 Only those anonymous complaints that provide enough information to action a complaint against a councillor for possible inappropriate conduct or misconduct should be dealt with under the complaints process. Where the complaint cannot be actioned without further information, it should be dismissed.

Frivolous or vexatious complaints

4.6 The offence in s. 176C(8) – a person must not make a complaint about the conduct of a councillor if the complaint is substantially the same as a complaint the person has already made and the person has been warned not to repeat it – be deleted.

In its place the Act be amended to include a section making it an offence for a person to:

(a) make repeated complaints about a councillor —
- (i) vexatiously; or
- (ii) not in good faith; or
- (iii) primarily for a mischievous purpose; or
- (iv) recklessly or maliciously; or

(b) counsel or procure another person to make a complaint about a councillor as mentioned in point (a).

4.7 The Councillor Conduct Tribunal (the Tribunal) also be given jurisdiction in relation to this offence. That the maximum penalty that the Tribunal can impose be 50 penalty units. An order can also be made for reimbursement of costs of the Independent Assessor and the Tribunal.

Council must be informed of complaint

4.8 On assessing a complaint about a councillor, the Independent Assessor should notify the relevant council about the complaint.

Investigative powers of the Independent Assessor

4.9 The Independent Assessor be given the same powers as an investigator is given in s. 214 of the Act, subject to the same requirements of s. 213 to provide natural justice.

Independent Assessor may initiate investigations

4.10 The Independent Assessor may initiate own-motion investigations of councillor conduct if sufficient cause arises during the course of another investigation, or if the Independent Assessor considers it in the public interest to do so.

4.11 The Tribunal may provide the Independent Assessor with information about a councillor's conduct that the Tribunal considers should be brought to the attention of the Independent Assessor for possible investigation by the Independent Assessor.

Functions of the Independent Assessor

4.12 The Independent Assessor be given a statutory guarantee of independence in relation to decision-making and:

- Be responsible for assessing whether complaints against councillors are trivial, vexatious or frivolous, or for another reason, should be dismissed.
- Refer corruption complaints to the CCC, and investigate such complaints that are referred back by the CCC.
- Investigate allegations of inappropriate conduct and misconduct, being armed with appropriate powers to do so.
- Be able to initiate investigations into possible misconduct.
- Have an appropriate complaints management system, including provision for internal review of decisions.
- Refer allegations of inappropriate conduct to councils.
- Prosecute allegations of misconduct.

CHAPTER 5: INAPPROPRIATE CONDUCT

Codes of conduct and meeting procedure

5.1 There should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting procedure.

5.2 A Code of Conduct should be developed by the Local Government Liaison Group (LGLG) and approved by the Minister.

5.3 Regulation 254 of the LG Reg, the declaration of office that s. 169 of the LG Act requires councillors to make before assuming office, be amended to include a statement that the councillor will abide by the Code of Conduct.

5.4 The Department, LGAQ and LGMA should develop the model code of meeting procedure.

5.5 Councils be required to adopt meeting standing orders, based on the model code of meeting procedure.

Breaches of codes in a meeting are not inappropriate conduct

5.6 Breaches of a meeting code or code of conduct in a meeting should not be classified as inappropriate conduct. Such conduct breaches should be dealt with immediately by the chair of the meeting (council or committee) who, as appropriate, should be able to require a withdrawal (of words said), an apology (for what had been said or done) or to remove the offending councillor from the remainder of the council or committee meeting.

Repeated contrary conduct in meetings

5.7 A council may determine that a councillor's serious or repeated contrary conduct in meetings or committee meetings should be treated as inappropriate conduct and dealt with as such.

Definition of inappropriate conduct extended

5.8 The definition of 'inappropriate conduct' in s. 176(4) of the LG Act be amended as follows. The two examples (a) and (b) be deleted and in their place be inserted:

(a) Serious or repeated conduct contrary to the code of conduct or meeting practice in formal council or committee meetings.
(b) A failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting.
(c) Failure to comply with the council's other policies, codes or resolutions.
(d) Offensive or disorderly behaviour as a councillor that happens outside formal council meetings.
(e) Failure to work respectfully and constructively with other councillors or staff.
(f) Exerting or attempting to exert inappropriate influence over staff.
(g) Repeated unreasonable requests for information (contrary to council guidelines).
(h) Exercising, or purporting to exercise, an unauthorised power, duty or function.

Council to determine inappropriate conduct and may obtain advice

5.9 Section 181 of the LG Act be deleted and in its place the new s. 181 should recognise:

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

Possible disciplinary orders for inappropriate conduct

5.10 That the council, if it decides to take disciplinary action against the councillor, may make one or more of the following orders that it considers appropriate in the circumstances:

- Censure of the councillor.

- Formal reprimand.
- Requirement for an apology.
- Mandatory training or counselling.
- Councillor to be excluded for up to two meetings of the council.
- Councillor removed from any position representing the council, and not to chair or attend committees or other specified meetings for up to two months.
- Payment of costs attributed to the actions of the councillor.
- An order that any repeat of the inappropriate conduct be referred to the Tribunal as misconduct.

Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act.

Non-compliance with orders

5.11 That councillors against whom a complaint of inappropriate conduct has been upheld may not participate in council or committee meetings until any disciplinary order imposed has been paid or otherwise discharged. Section 162 of the LG Act (When a councillor's office becomes vacant) would apply in relation to such resulting non-attendance.

5.12 Section 153 of the LG Act (Qualifications of councillors) be amended to disqualify for four years a person who as a result of their failure to comply with an order of the council following a finding of inappropriate conduct has ceased to be a councillor as a result of the operation of s. 162(1)(e) of the LG Act.

Councils to have process for dealing with inappropriate conduct complaints

5.12 Councils develop and include a process for dealing with inappropriate conduct in their complaints management system. This should be in accordance with the principles of natural justice.

Role of Independent Assessor referring inappropriate conduct complaints to council

5.13 The Independent Assessor, when referring a complaint about inappropriate conduct to the council, should indicate how serious the inappropriate conduct might be, whether any further information needed to be obtained before the complaint could be dealt with, whether mediation might be appropriate and by whom. The Independent Assessor should also recommend to the council whether it should deal with the matter itself, refer it for advice to its CAC, or refer it for advice (and possible further investigation) to a Tribunal member.

Costs of Tribunal member

5.14 Where councils elect to use a Tribunal member to investigate and make recommendations about a complaint of inappropriate conduct, the council should pay the member's costs.

Possible appeal system

5.15 Twelve months after the proposed system commences, the LGLG should review the way councils have been adjudicating inappropriate conduct matters with a view to determining whether it is necessary and desirable to introduce an appeal system such as that described in this report.

CHAPTER 6: MISCONDUCT

Extended definition of misconduct

6.1 The definition of misconduct (s. 176(3)(b) of the LG Act) should encompass:

(i) The performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial.

(ii) A breach of the trust placed in the councillor.

(iii) A misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else.

(iv) Unauthorised use of council staff or resources for private purposes.

(v) Use of information obtained as a councillor to the financial detriment of the council or the public interest.

(vi) Failure to cooperate with the council, CAC or Tribunal member during inappropriate conduct proceedings or to comply fully with a penalty for inappropriate conduct.

(vii) Third or subsequent finding of inappropriate conduct during council term.

(viii) Bullying or harassment.

(ix) Failure to declare and resolve conflict of interest at a meeting in a transparent and accountable way.

(x) Seeking gifts or benefits of any kind.

(xi) Improper direction or attempted direction of staff.

(xii) Deliberate release of confidential information.

LG Act offences are also misconduct

6.2 A further clause should be added to s. 176(3) of the LG Act to provide that an offence against ss. 171(1), 171A(2) and (3), 171B(2), 172(5) and 176C(8) may be dealt with as misconduct.

Complaints against former councillors

6.3 Section 176A of the LG Act (Application to former councillors) should be amended to provide that a complaint has to be made within 6 months of the person ceasing to be a councillor.

Penalties for misconduct

6.4 Section 180 of the LG Act be amended to provide the following penalties for misconduct. One or more of the following:

- Mandatory training or counselling.
- An order that the councillor reimburse the local government and/or pay up to 50 penalty units.
- An order that a councillor may not remain as or become deputy mayor or a committee chair for the remainder of the term.
- Councillor to be excluded for up to three meetings of the council.
- Councillor removed from any position representing the council for a period of up to three months.
- Councillor not to attend committees and/or other specified meetings for a period of up to three months.
- An order suspending the councillor (without pay) for a period of up to three months.
- A recommendation to the Minister that the councillor be suspended for more than three months and up to six months (without pay) or dismissed.

- A recommendation that the Department prosecute the councillor for an offence under the LG Act.

Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act.

Non-compliance with orders

6.5 A councillor who is the subject of an order by the Tribunal in relation to a misconduct finding may not attend a council meeting until such time as the councillor has complied fully with the order. Section 162 of the LG Act (When a councillor's office becomes vacant) would apply in relation to such resulting non-attendance.

6.6 Section 153 of the LG Act (Qualifications of councillors) be amended to disqualify for seven years a person who as a result of their failure to comply with an order of the Tribunal following a finding of misconduct has ceased to be a councillor as a result of the operation of s. 162(1)(e) of the LG Act.

CHAPTER 7: CORRUPT CONDUCT

Independent Assessor's role in corruption complaints

7.1 The LG Act be amended to deem the Independent Assessor to be the holder of an appointment in a unit of public administration for the purposes of the CC Act and that such complaints about corruption that the CCC would otherwise have directed back to the Department or to councils should be sent instead to the Independent Assessor.

7.2 Section 182(2) of the LG Act be amended to substitute the Independent Assessor for the Department's chief executive as the public official dealing with corruption complaints.

CHAPTER 8: ELECTION ISSUES

Complainant must not publicise complaint during election caretaker period

8.1 The LG Act be amended to provide that during the local government caretaker period before an election, it is an offence for a person who has made a complaint alleging inappropriate conduct, misconduct or corrupt conduct of a councillor or candidate for election, or an associate of the complainant, to disclose information that the complaint has been made, or disclose any detail of the complaint. The Tribunal has jurisdiction to hear a complaint under this section and may impose a penalty of up to 50 penalty units.

Offence to give false information to Independent assessor

8.2 Section 234 (1)(f) (False or misleading information) of the LG Act be amended to substitute 'Independent Assessor' for 'a regional conduct review panel'. The Tribunal has jurisdiction to hear a complaint under this section and may impose a penalty of up to 50 penalty units.

CHAPTER 9: OFFENCES IN THE ACT

Recommendations for prosecution of offences

9.1 Both the Independent Assessor and the Tribunal have the power to make recommendations to the Department that a councillor or former councillor be prosecuted for an offence under the Act.

Misuse of information offence

9.2 Section 171(1) of the LG Act be amended to read:

A person who is, or has been, a councillor must not use information that was acquired as a councillor to gain, directly or indirectly, a financial advantage for the person or someone else.

Maximum penalty—100 penalty units or two years imprisonment.

Additional misconduct offence

9.3 The definition of misconduct in s. 176(3)(b) of the LG Act be amended to include:

Cause financial detriment to the local government.

CHAPTER 10: NATURAL JUSTICE, PROCEDURAL FAIRNESS AND CONFIDENTIALITY

Procedural rules

10.1 Section 213(3) of the LG Act, requiring RCRPs and the tribunal to comply with any procedural rules prescribed under a regulation, be retained. One year after the proposed Tribunal commences, its president should consider whether to recommend to the Minister the adoption of a regulation prescribing procedural rules for the Tribunal.

Legal representation

10.2 Section 213(2)(c) of the LG Act, giving the RCRPs and tribunal power to refuse to allow a person to be represented by a legal practitioner be amended to read:

Where it considers it desirable to do so in the interests of justice, may allow a person to be attended by a legal practitioner.

Standard of proof

10.3 Section 179(5) of the LG Act, which establishes that the standard of proof in misconduct hearing is the balance of probabilities, be retained.

Reasons

10.4 Section 179(6) of the LG Act, that requires the panel or tribunal to keep a written record of the hearing, be amended to add:

(c) The reasons for its decision.

Appeals

10.5 The provisions of the LG Act limiting appeals, be amended to permit appeals to the District Court from decisions of the proposed Tribunal on misconduct matters on questions of law only, and for jurisdictional error.

Councillor as complainant

10.6 Subsections 177A(4)(5) and (6), which require a complainant who is also a councillor to appear before the panel or tribunal to confirm the complaint, be deleted as several other recommendations of the Panel will make it redundant.

CHAPTER 11: ROLE OF THE MINISTER AND THE DEPARTMENT

Local Government Liaison Group

11.1 The Department establish the LGLG to coordinate the provision of advice for local government councillors on the interpretation of relevant legislative provisions, and to provide assistance and training in areas such as declarations of interests, declarations of material interests and conflicts of interest. The group should provide advice to the Minister, through the Department, on governance issues such as the proposed Code of Conduct. And it should include the CCC, the Ombudsman, the Auditor-General and the Independent Assessor, together with the LGAQ and the LGMA.

CHAPTER 12: RECONSTITUTING THE COMPLAINTS AUTHORITIES

Local Government Conduct Tribunal

12.1 The functions of the tribunal and the RCRPs be transferred to the proposed Tribunal.

Councillor Conduct Authority

12.2 The tribunal be reconstituted as the Councillor Conduct Authority (CCA) with the Tribunal as one of its two constituent parts, the other being the Independent Assessor.

Authority's chief executive

12.3 The Independent Assessor be the chief executive officer of the CCA.

Transfer of tribunal's responsibilities

12.4 The former tribunal's responsibilities for establishing categories of local governments and deciding to which category each local government belongs, be transferred to the Department, and its responsibility for deciding the remuneration that is payable to the mayors, deputy mayors and councillors be transferred to the Queensland Independent Remuneration Tribunal.

Statutory appointment of Independent Assessor and Tribunal president

12.5 The Independent Assessor and the president of the new Tribunal be statutory appointments, and that both should be appointed for fixed terms of up to five years. Other sessional members of the Tribunal be appointed for three year terms by the Minister, on the recommendation of the president of the Tribunal.

Qualifications of Tribunal members

12.6 A person who is to be appointed to the Tribunal must have extensive knowledge of and experience in, one or more of the following:

- Local government.
- Investigations.
- Law.
- Public administration.
- Public sector ethics.
- Public finance.

Rules for Tribunal

12.7 The president should draw up and publish on the website the rules governing the way Tribunal hearings are conducted.

Independent Assessor’s decisions about councillors to be published

12.8 Section 181A of the LG Act (Records about complaints) be amended to provide in ss. (1) that the section also concerns complaints received by the Independent Assessor that are referred to the council to be dealt with as inappropriate conduct and relevant misconduct decisions by the proposed Tribunal.

CEOs must publish disciplinary decisions

12.9 Section 181A(2)(a) of the LG Act (Records about complaints) be amended by substituting ‘and’ for ‘or’.

Authority to publish complaints decisions on website

12.10 The CCA establish a website where all the Tribunal’s decisions and the reasons for them are published and where decisions of councils concerning inappropriate conduct are also published. Decisions by the Independent Assessor dismissing complaints that are trivial, vexatious etc. should also be published in summary form.

12.11 The publication of information about new councillor complaints should be suspended during the caretaker period before a council election.

Brisbane City Council

12.12 The disciplinary system provided for in the CoBA be aligned with that proposed for the LG Act.

APPENDIX 2—PANEL TERMS OF REFERENCE

The following is a copy of the Terms of Reference for the review.

The *Local Government Act 2009* (the LGA) and the *City of Brisbane Act 2010* (CoBA) is designed to foster a culture of personal integrity and accountability for elected officials and open and transparent decision-making in the public interest (LGA sections 4, 12, 169—173, 176; CoBA sections 4, 14, 169—175, 178).

Where the performance or conduct of local governments or councillors is in question, the Act provides for a range of graduated State responses comprising a continuum of educative, preventative, monitoring and enforcement strategies in addition to dismissal and dissolution. These latter are actions of 'last resort' when behaviour or performance standards cannot be improved through corrective measures (LGA sections 113-124; CoBA sections 110-113).

Available strategies include facilitation, capacity building, performance evaluation and reporting, remedial action and advice, and monitoring and enforcement (e.g. Chief Executive powers to monitor compliance with the Act to ensure the proper and efficient delivery of local government service, to appoint an adviser or financial controller and Ministerial powers to direct a Mayor to take action and to enforce compliance with the Act). The Minister also has the power to suspend a Mayor and/or a Councillor and to recommend to the Governor in Council to dismiss a Mayor and/or a Councillor.

The Act also prescribes the process for dealing with complaints about Councillor conduct, including the disciplinary process (LGA sections 176B—193, 212—215; CoBA 179-189, 205-208). It aims to have inappropriate conduct dealt with locally (except in certain circumstances) and serious and dismissible breaches dealt with by independent entities. The expectation is that inappropriate conduct will be dealt with quickly and cost effectively by local governments and that the system for disciplinary hearings for misconduct will be swift, simple and independent.

The State's overall objective is to maintain public confidence in transparent, accountable, well-governed, efficient and effective local government; to hold Councillors to high standards of ethical and legal behaviour which puts the public interest ahead of their own individual interests; and to deter Councillors from poor behaviour or abuse of their positions of trust.

A brief summary of the system established by the legislation for managing the Councillor conduct complaints and disciplinary process is **attached**.

The purpose of the review is to

1. Assess how well or otherwise, the current legislative and policy framework for dealing with complaints about Councillor conduct achieves these policy objectives; and
2. Recommend, if necessary, policy, legislative and operational changes to better achieve these objectives.

Review drivers

Timeliness:

- The current framework for dealing with Councillor conduct has been in operation for six years. The Act established the Local Government Remuneration and Discipline Tribunal and provided for the appointment of regional conduct review panels to hear complaints.

Legislative concerns:

- Legislative anomalies compromise or confuse processes

- Lack of clarity in definitions of inappropriate conduct and misconduct (including what constitutes repeat inappropriate conduct to be dealt with as misconduct)

Natural justice concerns:

- Inconsistent hearing processes used by different regional conduct review panels
- Inconsistent hearing processes used by panels and the Local Government Remuneration and Discipline Tribunal
- Trend of hearings to allow legal representation for accused councillors but where complainants are not required to attend and/or have no legal representation
- No appeals against or reviews of decisions made about complaints

Effectiveness concerns:

- Weak investigative powers — no clear authority for the Department to require persons to produce documents, give assistance or answer questions nor any penalty for non-compliance with an investigation into alleged inappropriate conduct, misconduct or corrupt conduct by a councillor
- High number of unsubstantiated complaints
- Non-imposition of serious penalties by the tribunal and RCRPs
- Low incidence of prosecutions for serious offences, partly due to investigations either taking too long or not yielding sufficient evidence

Efficiency concerns:

- Despite the legislative intent to deliver a simple, timely, cost effective and independent system of investigating and hearing complaints and disciplining councillors found to have engaged in misconduct, the current system is cumbersome and complex to administer
- Significant Departmental resources are used to deal with complaints, with a disproportionate amount applied to allegations of inappropriate conduct

Environmental factors:

- Amendments to the legislation defining the role of the Crime and Corruption Commission, designed to narrow its operational focus to the investigation of the most serious cases of corrupt conduct and to reduce the number of trivial complaints handled by the Commission has, and may continue to increase the demand on Departmental time and resources in dealing with complaints of misconduct and have an adverse impact on its ability to deal effectively and in a timely fashion with all complaints referred to it
- Chief Executive Officers (CEO) of local governments are placed in a conflicted role by the Act's provisions requiring them to undertake preliminary assessment of complaints about the conduct of Mayors and other Councillors (analogous to the Director-General of a Department being required to assess the ethical conduct of a Minister or Member of Parliament)

Complexity:

- The current process requires multiple steps and involves a range of alternative pathways dependent on who makes the complaint, who the complaint is about, and the nature of the alleged conduct. A flowchart of the current process is at **Attachment 2.**

Inconsistency e.g. reviewability of preliminary assessment of complaints:

- The Department's Chief Executive (DCE) can make a different decision about complaints referred as possible misconduct however the legislation makes no provision for the Mayor to make a different decision about complaints referred as possible inappropriate conduct and there is no provision for review of the DCE's preliminary assessment of a complaint, other than a hearing by the Tribunal / RCRP.
- The result is that a complaint about alleged misconduct by a councillor is considered either
  - twice (by the CEO and DCE) before, if relevant, being referred to a Tribunal / Panel hearing — if the complaint is made by someone other than the Mayor or CEO; or

- once (by the DCE only) before being heard, if required, by a Tribunal/Panel — if the complaint is made by the Mayor or CEO

- Similarly a complaint about alleged inappropriate conduct may be considered either:
  - twice (by the CEO and DCE) before disciplinary action, if any, is taken by the DCE — if the accused councillor is a Mayor or Deputy Mayor ; or
  - once (by the CEO only) before disciplinary action is taken by the mayor — if the accused Councillor is not a Mayor or Deputy Mayor.

Investigative process

- The Department's investigative powers in relation to complaints about Councillor conduct are not clearly defined and potentially limit its capacity to investigate as thoroughly as required
- Generally, the Department relies on section 115 of the Act to conduct its investigations using either Departmental officers or contracted external investigators
- Issues for consideration include the:
  - scope of investigative powers required to enable the Department to best undertake this role
  - resourcing and capacity advantages and disadvantages of a strengthened and dedicated in-house investigative function versus Departmental project management of contracted investigators.

Hearing and determination options

- The Tribunal or a Panel must observe natural justice but act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in a hearing where the standard of proof is the balance of probabilities. It may for example:
  - refuse representation by a legal practitioner or disregard rules of evidence
  - require witnesses to appear and give evidence or provide documents
- The Act requires the Department to provide the assistance that the Tribunal/Panel needs to effectively perform its responsibilities which has the potential to compromise the independence, actual or perceived, of the hearing and disciplinary process
- Where the Tribunal/Panel accedes to an accused Councillor's request for legal representation, an increasingly common scenario is that the conduct of the hearing tends to become more adversarial and formal rather than inquisitorial and informal
- The Tribunal/Panel may require all parties and other witnesses to appear before it. In some cases the Tribunal / Panel has heard from the accused Councillor and the Councillor's legal representative but has not asked the complainant to appear or has not afforded the complainant an opportunity to also be legally represented. This has the potential to compromise the observance of natural justice, actual or perceived, of the hearing and disciplinary process.

Role of Review Panel

The independent Review Panel is established to assess, in accordance with the Terms of Reference, how well or otherwise the current legislative and policy framework for dealing with complaints about Councillor conduct under the relevant provisions of the *Local Government Act 2009* (LG Act) and the *City of Brisbane Act 2010* (CoB Act) is working. The Review Panel will determine, in consultation with the Department, the detailed methodology for the review.

The Review Panel will prepare a report for consideration by the State government which will include recommendations, as determined, about policy, legislative and operational changes to improve the current process and framework.

The Review Panel will consider all aspects of the framework, including but not limited to:

- appropriate levels of responsibility and accountability for local governments in setting and dealing with breaches of standards for councillor conduct
- categories of Councillor conduct other than those that are under the jurisdiction of the justice system

- triggers or points at which the public interest demands or requires intervention by the State consistent with the State's position of minimum intervention in the operation of a democratically elected sphere of government.
- the most effective and efficient way to deliver fair and defensible outcomes that are in the public interest
- ensuring the provision of natural justice and procedural fairness for Councillors and complainants including legal representation for parties to a complaint
- emerging environmental issues including the use of social and digital media and the way in which use of digital media (smartphones, tablets, recording capacity) has impacted the way in which Councillors conduct the business of Council
- specific issues raised by stakeholders, including but not limited to:
  - appropriate levels of investigative powers for investigating agencies (local government or Department)
  - the role of Council Chief Executive Officers (CEOs) arising from the statutory complaints assessment process under the LGA Act provisions
  - the complexity of existing processes and the impact on timeliness for dealing with complaints
  - appeal mechanisms and rights of review
  - penalties where a complaint is substantiated or sustained
  - provisions in relation to disqualification from being a Councillor
- analysis of submissions received through a public consultation process and engagement with stakeholders
- provision of report with recommendations to the State government within agreed timeframes.

Methodology

1. Analysis of Departmental data about the complaints process
2. Analysis of any data collected or held by individual local governments about their dealings with complaints about Councillor conduct e.g. preliminary assessment
3. Comparative/desktop review and assessment of other jurisdictions' (Australia and overseas) approach to dealing with Councillor conduct complaints and discipline
4. A public submission process
5. Consultation with key stakeholders including:
   a. Local Government Remuneration and Discipline Tribunal
   b. Regional Conduct Review Panels
   c. Crime and Corruption Commission
   d. Local Government Association of Queensland
   e. Local Government Managers Australia (Queensland)
   f. Mayors and CEOs
   g. Senior Departmental staff.
6. Provide a final report on policy, legislative and operational options/recommendations.

ATTACHMENT 1 TO THE TERMS OF REFERENCE

Councillor Conduct Standards and Complaints Management — Summary of Policy Intent and Process

Councillor conduct standards

The primary accountability of a local government is to its community, and its decisions must be made with regard to the benefit of the entire local government area and the current and future interests of its residents.

The *Local Government Act 2009* (the Act) articulates the integrity, accountability and transparency requirements for local governments. One important area of focus is councillor conduct, setting high standards of ethical and legal behaviour and promoting open and honest decisions in the public interest ahead of the private interests of councillors.

The Act aims to foster a culture of personal integrity and accountability for elected officials consistent with community expectations about high standards of transparent decision-making and makes councillors and mayors responsible for achieving the purpose and principles of local government.

Councillors, by virtue of being elected and holding the office of councillor, are individually and collectively bound by:

- the purpose and principles of local government
- responsibilities and powers of local government
- financial sustainability criteria
- any other obligations under local government legislation.

There is no legislative requirement for local governments to develop or abide by local codes of conduct for councillors, though they may choose to do so.

Managing complaints about councillor conduct

The system for managing complaints about councillor conduct is based on a two-tier approach whereby complaints about less serious behaviour (inappropriate conduct) are dealt with locally and complaints about serious and dismissible breaches (misconduct or corrupt conduct) are dealt with by independent entities.

A complaint about councillor conduct must first be considered by the Chief Executive Officer (CEO) (preliminary assessment) who must assess whether the complaint is: about a frivolous matter or made vexatiously; about inappropriate conduct, misconduct, corrupt conduct or another matter (e.g. a general complaint); or lacking in substance. The CEO then refers complaints, other than those decided to be frivolous, vexatious or lacking in substance, to the appropriate entity to deal with as follows:

- complaints about inappropriate conduct to the mayor (unless the complaint is about the mayor, when it is then referred to the deputy mayor)
- complaints about misconduct to the Department's Chief Executive (DCE)
- complaints about corrupt conduct to the Crime and Corruption Commission (CCC) which may, and often does, refer such complaints to the DCE as the relevant 'public official' to deal with as appropriate.

Inappropriate conduct

The expectation is that local governments will deal with inappropriate conduct internally—a quicker and more cost effective response than referral to the Department.

Exceptions are:

- complaint made by the mayor or CEO—referred to DCE for preliminary assessment and any subsequent action

- inappropriate conduct by the mayor or deputy mayor—referred to DCE for disciplinary action; or the DCE may decide that the complaint is about misconduct rather than inappropriate conduct.

Misconduct
The DCE must consider complaints referred about misconduct and decide whether he/she:
- agrees the complaint is about misconduct
- the complaint is about inappropriate conduct rather than misconduct
- the complaint be dismissed on the basis that it is frivolous, vexatious or misconceived; lacking in substance; or otherwise an abuse of process
- no further action or some other action be taken in relation to the complaint.

If the DCE agrees the complaint is about misconduct, the DCE must determine the relative seriousness of the alleged conduct and refer the matter either to a regional conduct review panel (Panel) or the Local Government Remuneration and Discipline Tribunal (Tribunal).

These two entities have important functions including conducting hearings, investigations, deciding liability and penalty and making recommendations. The tribunal may make recommendations about suspension and dismissal of an individual councillor to the Minister.

Corrupt conduct
The DCE may decide to prosecute allegations of corrupt conduct, referred by the CCC, through the courts or refer the matter as a complaint about misconduct to a Panel or the Tribunal to hear and determine.

Misconduct disciplinary hearings (Panel or Tribunal)
The intent is that the system of disciplinary hearings be simple, swift and independent to maintain public confidence and minimise any disruption to council operations.

A councillor must be correctly notified about the hearing of a misconduct complaint concerning him/her. There is a common law principle that no person is to be condemned without a fair hearing and that the person is to be given enough time to prepare a response to allegations, and a forum in which to give the response.

A Panel or the Tribunal must hear a matter to ensure the accused councillor's right to natural justice is upheld. The standard of proof for proceedings is established as the balance of probabilities as this is the standard of proof for other civil matters.

Taking disciplinary action
A Panel is able to make orders for penalties such as for counselling, an apology or admission of error from the councillor or that the Department monitor the councillor.

The Tribunal may make any order that a Panel has the power to make. In addition, the Tribunal can order that a councillor reimburses money or forfeits payments or privileges. The Tribunal can also recommend to the Minister that the councillor be suspended or dismissed.

ATTACHMENT 2 TO THE TERMS OF REFERENCE

Refer to Figure 2 in Chapter 2.

APPENDIX 3—SUMMARY OF COMPLAINTS DATA

The Panel has reviewed available Departmental data on the operation of the complaints system. It has also received information from the CCC and undertaken a survey of complaints data from Queensland councils. Forty-three responses were received from councils.

DEPARTMENTAL DATA

The Panel has referenced complaints data compiled by the Department from 1 July 2014. Prior to this date, complaints data was not recorded in a sufficiently specific manner to enable comparison. During the period 1 July 2014 to 30 June 2016 the Department received a total of 210 complaints comprising 396 separate allegations (Table 4). The complaints referred to the department came from 44 of the state's 77 councils. More than half originated from only nine councils.

Grounds for complaints were wide-ranging, but there are two prominent themes:
1. Conflict of interest and failing to declare interests or maintain accurate registers.
2. Breach of trust and lack of honest and/or impartial performance of duties.

Table 4 - Types of Allegations from 1 July 2014 to 30 June 2016

Type of allegation	2014/2015	2015/2016	Total
Corrupt conduct			
Incorrect register of interests	5	10	15
Failure to declare material personal interest	13	9	22
Other	17	77	94
Subtotal	**35**	**96**	**131**
Misconduct			
Lack of honest and/or impartial performance	9	6	15
Breach of trust	24	5	29
Conflict of interest	19	9	28
Other	21	63	84
Subtotal	**73**	**83**	**156**
Inappropriate conduct			
Failure to comply with council procedures	6	11	17
Other	36	56	92
Subtotal	**42**	**67**	**109**
Total	**150**	**246**	**396**

Department data for the period (Table 5) also shows that only 30 complaints (12% of the total received) were ultimately upheld (by the Department's chief executive, a review panel (RCRP) or the tribunal), leading to penalties being applied. Furthermore, during those two years, it took on average 61 days to assess and investigate a matter and refer it to another body if required, and 117 days to finalise a matter. This included the time taken to conduct investigations (often involving the engagement of external investigators) and for a review panel (RCRP) or the tribunal to convene and conduct hearings.

Table 5 also indicates that the system for dealing with councillor conduct complaints is being burdened with many matters that should be filtered out at a very early stage – not necessarily because they are of no significance but because they are fundamentally requests for information or airing of grievances, or need to be addressed through other channels.

Table 5 - Complaint allegations finalised by the department from 1 July 2014 to 30 June 2016

Outcome	Number	Percentage of total
Complaints finalised under the CC Act		
Lacks credibility	1	<1%
Lacks substance	17	7%
No further action	8	3%
Unjustifiable resources	6	2%
Subtotal	**32**	**13%**
Complaints finalised under the LG Act		
Information was provided to an enquirer and no further action was required	31	13%
Matter referred to another agency	52	21%
No jurisdiction under LG Act or CC Act	11	5%
Dismissed or diverted after preliminary assessment	69	28%
Dismissed by a review panel (as misconceived)	7	3%
Otherwise not sustained	10	4%
Lapsed or withdrawn	3	1%
Subtotal unsustained or diverted	**183**	**75%**
Complaints sustained	**30**	**12%**
Total	**245**	**100%**

CRIME AND CORRUPTION COMMISSION DATA

Allegations of corrupt conduct in the local government sector since July 2014 comprised approximately eight per cent of all allegations made to the CCC[66]. Only about one per cent of all allegations received related to councillors. The CCC's statistics indicate that most allegations of corruption against councillors are made directly to the CCC rather than by way of complaints to either the council CEO or the department.

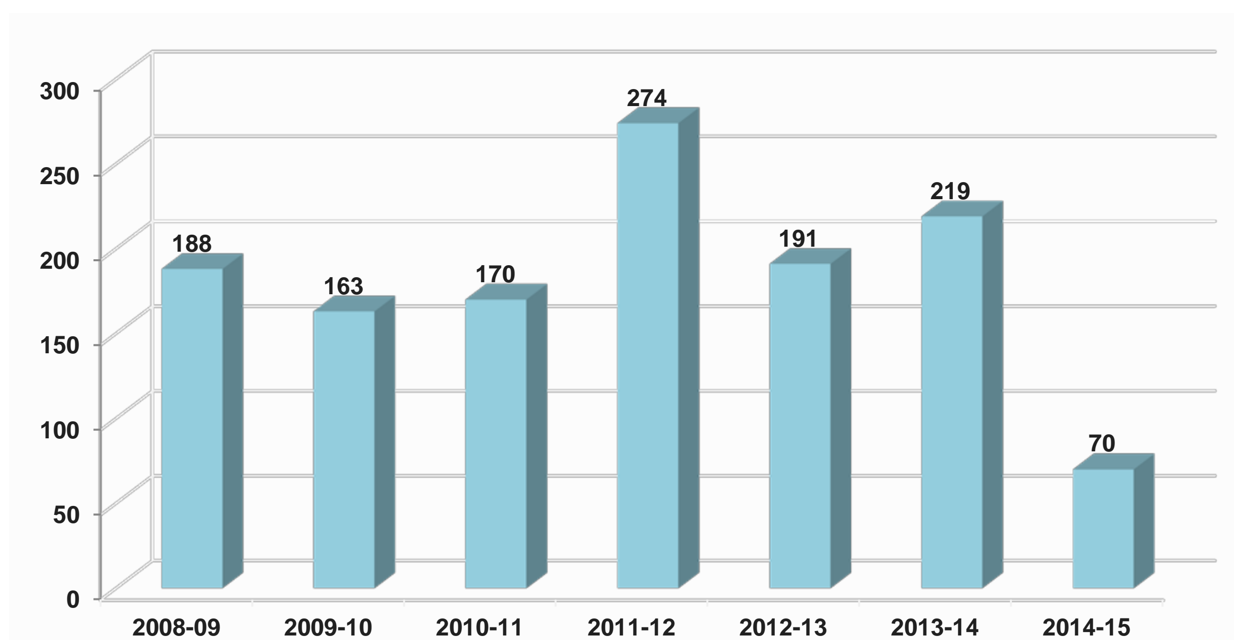
Error! Reference source not found. shows the number of allegations against councillors received by the CCC from 1 July 2008 to 30 June 2015. Spikes in allegations appear to coincide with council elections. However, it should be noted that in all years many more allegations of corruption were made to the CCC about council officers than councillors. For the period 2008–09 to 2014–15, the CCC received 1275 allegations about councillors, and 4784 about staff.

Of note is the steady decline in the number of allegations against councillors since 2012, which coincides with an overall reduction in the number of public sector complaints received by the CCC. This is likely due to amendments to the CC Act which commenced on 1 July 2014. In particular the

[66] One complaint may involve several or more specific allegations.

tighter definition of corrupt conduct; the raising of the threshold to notify the CCC of corrupt conduct by public officials; and the imposition of a statutory declaration to accompany a complaint. Perceptions about the nature of the CCC's role may also have changed due to amendments requiring the CCC to focus on more serious cases of corrupt conduct and systemic corrupt conduct.

Figure 4 - Allegations of corrupt conduct received by year against councillors



During the 2014-15 financial year the CCC assessed only 70 allegations against councillors.

Of those, the CCC:

- Retained five matters (seven per cent) for investigation
- Referred three matters (five per cent) to the department, subject to close monitoring of follow-up action.
- Referred 19 matters (27%) to the department, requiring no further advice.
- Took no further action on 43 allegations (61%).

COUNCIL SURVEY DATA

Councils were requested to provide data for councillor conduct complaints made to council from 1 July 2014 to 30 June 2016. The total number of councils invited to complete survey was 77 and the number of responses was 43. The response rate for the survey was 55%.

It is worth noting that during that period, 44 of the 77 councils had forwarded complaints to the Department.

Of the councils who completed the survey, the following figures were obtained for the period:

- 30 councils advised they have an active and current code of conduct.
- The total number of councillor conduct complaints received was 206.
- The total number of frivolous, vexatious and lacking in substance complaints was 87.
- 45 complaints were able to be dismissed on the face of the matter.
- 78 complaints were decided as being about inappropriate conduct, of these:

    - Three occurred in the context of an official council meeting or committee meeting.
    - 29 were dealt with by the mayor.
    - 11 were referred to the Department for preliminary assessment because they were about the conduct of the mayor or deputy mayor.
    - Eight were referred to the Department for preliminary assessment because they were made by the mayor or CEO.
- 36 complaints were decided as being misconduct at preliminary assessment by councils.
- The number of referrals to the CCC (on suspicion of corrupt conduct):
    - 2013-14 – zero.
    - 2014-15 – seven.
    - 2015-16 – eight.
- Resources expended by councils to manage complaints about councillor conduct:

    - Reported FTE positions required:

Answer Options	Response Percent	Response Count
0 - 0.1 of an FTE	61.8%	21
0.11 - 0.25 of an FTE	26.5%	9
0.26 - 0.5 of an FTE	5.9%	2
greater than 0.5 of an FTE	5.9%	2

    - Total reported financial costs (other than staff) to councils was $311,826

Breakdown of financial costs over zero	
$5,000	$109,000
$35,000	$7,200
$36,625	$50,000
$1	$1,000
$3,000	$10,000
$5,000	$50,000

APPENDIX 4—IDEAS AND LESSONS FROM OTHER STATES

To help identify options for change, the Panel explored arrangements for handling councillor conduct complaints in four other states: Victoria, South Australia, New South Wales and Western Australia. This was not a comprehensive study, but the research did identify a number of ideas and lessons that have been taken into account in preparing the Panel's report, and those findings are summarised below.

It should be noted at the outset that adjustments to current legislation and/or practice are ongoing in all four states. Also, in every case allegations of corrupt conduct are handled separately by an equivalent to Queensland's CCC.

SUMMARY OBSERVATIONS

- The need to address councillor conduct within a broader policy framework aimed at promoting good governance, including opportunities and requirements for councillors to improve their awareness and knowledge of sound practices.
- The vital importance of having a system to deal with conduct complaints that produces timely outcomes through cost-effective and transparent processes that are seen to be fair and reasonable, and that can be managed within available resources at both local and state levels.
- The need to handle councillor conduct complaints in a manner that reflects their status as democratically elected representatives, and that ensures natural justice, including reasonable appeal rights.
- The value of introducing a mandatory uniform or model code of councillor conduct, informed by a set of conduct principles, as a starting point for establishing desired patterns of behaviour, together with the processes necessary to handle unacceptable conduct.
- A trend to substantial devolution of responsibility to individual councils, with a range of options for them to handle unacceptable conduct and complaints, but also with mechanisms to ensure that councils obtain independent advice when necessary.
- The benefits of having independent, statutory offices at the state level to handle more serious misbehaviour and complaints; but equally the need to avoid creating multiple pathways that overlap and generate confusion of purpose.
- The importance of minimising legalistic procedures and maximising use of inquisitorial as opposed to adversarial hearings of complaints.
- At the same time, the need to define inappropriate conduct and misconduct in sufficient detail to enable all parties to understand what is intended and the standards against which conduct will be judged.
- The need for a broad range of sanctions and penalties at all levels in the hierarchy of improper conduct, so that effective action can be taken commensurate with the particular circumstances of each case.
- The desirability of having procedures or sanctions that discourage improper use of the complaints system during election campaigns.

VICTORIA

Victoria's arrangements place significant responsibilities on councils themselves, and enable them to impose quite substantial penalties for unacceptable conduct, but also include a centralised system for dealing with more serious matters. Key elements of the system are as follows:

- A detailed set of councillor conduct principles as outlined in the box below.

Victoria's principles of councillor conduct

It is a primary principle of councillor conduct that, in performing the role of a councillor, a councillor must:

- Act with integrity.
- Impartially exercise his or her responsibilities in the interests of the local community.
- Not improperly seek to confer an advantage or disadvantage on any person.

In addition to acting in accordance with the primary principle of councillor conduct, a councillor must:

- Avoid conflicts between his or her public duties as a councillor and his or her personal interests and obligations.
- Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person.
- Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other councillors, council staff and other persons.
- Exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office.
- Endeavour to ensure that public resources are used prudently and solely in the public interest.
- Act lawfully and in accordance with the trust placed in him or her as an elected representative.
- Support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of councillor.

- Each council must have a councillor code of conduct that incorporates prescribed provisions, plus an internal disputes resolution procedure.
- All councillors must make a declaration that they will abide by the code of conduct.
- A threefold definition of 'misconduct', 'serious misconduct' and 'gross misconduct', matched to escalating penalties (see Table 6).
- A statutory position of principal council conduct registrar, who establishes conduct panels to consider allegations of 'misconduct' or 'serious misconduct' (but not if they consider the allegations to be frivolous, vexatious, misconceived or lacking in substance; or that there is insufficient evidence; or that the council concerned has already taken sufficient or appropriate steps to resolve the matter).
- A statutory position of chief municipal inspector, who heads an office that both investigates complaints and conducts governance audits, and who is responsible for initiating proceedings before a conduct panel or the Victorian Civil and Administrative Tribunal (VCAT) in cases of serious or gross misconduct.

The Victorian legislation and arrangements were updated a year ago. However, the current review of the Local Government Act is proposing a further amendment that would greatly simplify the definition of conflict of interest. This would simply state that a conflict of interest exists where:

- The councillor has, or could reasonably be taken to have, a conflict between their personal interests and the public interest that could result in a decision contrary to the public interest.
- The councillor or a person with whom they are closely associated stands to gain a benefit or suffer a loss depending on the outcome of the decision (a 'material conflict of interest').

A breach of conflict of interest would be subject to disciplinary action for serious misconduct

through a councillor conduct panel, at the discretion of the chief municipal inspector. The maximum penalty would be six months suspension with loss of the councillor allowance for that period. However, a 'material conflict-of-interest' could be prosecuted in a court as a criminal offence with a maximum fine of 120 penalty units and disqualification from being a councillor for eight years.

Table 6 - Victorian penalties for code and misconduct breaches

Type	Definition	Reviewed by	Available penalties
Breach of code of councillor conduct		Council (through its internal resolution process and conducted by an independent arbiter).	• Apology as ordered. • Councillor not to attend up to two meetings of the council. • Removal for up to two months from any position representing the council, chairing or attending committees or any other specified meeting.
Misconduct	• Failure to comply with the council's internal resolution procedure, or with a written direction given by the council. • Repeated contravention of any of the councillor conduct principles.	Conduct panel established by principal council conduct registrar (members selected from a list of persons approved by the Minister).	• Reprimand. • Apology as ordered. • 'Leave of absence' for up to two months (allowance still paid but no expenses or use of council equipment).
Serious misconduct	• Failure to attend a conduct panel hearing, to give a panel any requested information, to comply with a direction of a panel. • Continued or repeated misconduct after a finding has been made. • Bullying; improper direction of staff. • Unlawful release of confidential information.	Conduct panel established by the principal council conduct registrar (members selected from a list of persons approved by the Minister)	• As above, plus councillor may not become a mayor or committee chair for the remainder of the term. • Suspension for up to six months (no allowance, ceases to be a councillor). • Prosecution for specific offences under the Act.
Gross misconduct	• Behaviour that demonstrates that a councillor is not of good character or is otherwise not a fit and proper person to hold the office of councillor.	VCAT.	• As above, plus disqualification for up to eight years (two terms). • Prosecution for specific offences under the Act.

SOUTH AUSTRALIA

Arrangements in South Australia are considerably more decentralised and somewhat looser than those of the other three states. Ultimately, responsibility rests with councils themselves, except for corrupt conduct, which is handled by the Independent Commission Against Corruption (ICAC). Another distinctive feature is the extensive involvement of the Ombudsman, who not only investigates cases of alleged misconduct but also makes binding recommendations as to the action councils should take.

Principal elements of the South Australian system are as follows:

- A standard, mandatory code of conduct to be applied by all councils, which sets out conduct principles (see box below), defines 'behavioural' breaches and misconduct, and indicates the processes to be followed.

South Australia's principles of councillor conduct

- Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.
- Council members will work together constructively as a council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in local government.
- As representatives of open, responsive and accountable government, council members are committed to considering all relevant information and opinions, giving each due weight, in line with the council's community consultation obligations.
- In the performance of their role, council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the council.
- Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the *Local Government Act 1999*.
- Council members will comply with all legislative requirements of their role and abide by this code of conduct.

- A focus on the knowledge and skills expected of councillors, as well as behaviour, and the need to for councils to provide training and education opportunities – professional development for councillors is now mandatory in South Australia.
- Every council is expected to adopt procedures for dealing with alleged 'behavioural' breaches, such as failure to comply with all council policies, codes and resolutions; failure to act respectfully; failure to deal responsibly with information; and bullying or harassment.
- Complaints may be investigated and resolved in any manner that the council deems appropriate, including a mediator or conciliator, the Local Government Governance Panel (established by the Local Government Association), a regional governance panel or an independent investigator.
- A wide-ranging definition of misconduct that includes: failure to act honestly and with due care and diligence; divulging confidential information; improper direction of staff; being influenced by gifts and benefits; failure to maintain accurate registers of gifts and benefits, interests and campaign donations; conflict of interest; and misuse of council resources.
- Investigations into alleged misconduct are carried out by the Ombudsman, who makes a determination and recommends appropriate action.
- Councils must pass resolutions to give effect to any recommendations received from the Ombudsman.
- Councillors may be prosecuted if they fail to comply with the council's orders, and councils may be prosecuted for failing to give effect to the Ombudsman's recommendation.

NEW SOUTH WALES

The New South Wales arrangements are perhaps the most complex and legalistic. Investigation, decision-making and imposition of penalties in relation to more serious matters is largely centralised in the State Office of Local Government (OLG). Some key features are as follows:

- Every council must adopt a code of conduct and procedures for its administration that incorporate the provisions of the model code and model code procedures respectively – the code covers conduct by both councillors and staff.
- It is a breach of the code to make complaints for an improper purpose, or to take detrimental or reprisal action against a complainant or a person administering the code (see box below).
- Councils must also have a complaints coordinator, who cannot be the general manager (CEO), plus a panel of suitably qualified conduct reviewers who undertake preliminary assessment and in some cases further investigation of conduct complaints.
- Investigation of complaints may also be undertaken by a conduct review panel convened case-by-case as required.
- Very limited sanctions are available to councils for code breaches – essentially only publicity of the adverse conduct, an apology or formal censure, and/or a request to the OLG that the matter be taken further as 'misconduct'.
- There are separate but overlapping procedures under the Act for 'misconduct' – typically involving the most serious breaches of the code and/or repeated disruptive behaviour over an extended period – that are undertaken by the OLG and may be initiated by the OLG itself, by a request to the OLG from a council, or following a report by the Ombudsman or ICAC.
- The Act also dictates separate procedures for non-disclosure of pecuniary interests, which can lead ultimately to proceedings in the NSW Civil and Administrative Tribunal and suspension or disqualification, but with a right of appeal to the Supreme Court.
- An alternative channel for action by the Minister is to issue a performance improvement order, whereby failure to comply can result in suspension. These orders were originally intended to deal with the performance of councils as a whole, but can now be applied to individual councillors.
- Councillors may be suspended (by the Minister) or dismissed (by the Governor) for 'serious corrupt conduct' following initiation of criminal proceedings or a recommendation by the ICAC.
- There are extensive provisions for appeal or seeking a review of decisions at all levels, which can and do lead to uncertainty of outcomes, as well as protracted delays in finalising matters and administering sanctions.

Recent research by the Local Government Association (NSW) has raised a number of concerns regarding the code of conduct. Underlying issues were firstly, the large number of councillor-to-councillor complaints and to a lesser extent complaints between councillors and general managers; secondly, the excessive involvement of a small minority of councillors; and thirdly the potential for high levels of reputational damage to both councils and individuals.

Specific concerns focused on:

- The undue breadth and generality of the general conduct standards in the model code.
- Too many phrases and concepts in the model code that are open to intentional or unintentional misinterpretation.
- Insufficient independence of the complaint assessment and investigation process.
- An inappropriate role for the mayor in matters of complaint management.
- The varying quality of conduct reviewers.

- The role of OLG, especially its inadequate response capability (due to limited resources – relatively little use is made of contractors) and hence lengthy delays in finalising matters.
- An inadequate range of sanctions incommensurately applied.

Extract from the NSW code of conduct

Complaints made for an improper purpose

8.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.

8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- (a) to intimidate or harass another council official
- (b) to damage another council official's reputation
- (c) to obtain a political advantage
- (d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
- (e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- (f) to avoid disciplinary action under this code
- (g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code
- (h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code
- (i) to prevent or disrupt the effective administration of this code.

Detrimental action

8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.

8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for any function they have exercised under this code except as may be otherwise specifically permitted under this code.

8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:

- (a) injury, damage or loss
- (b) intimidation or harassment
- (c) discrimination, disadvantage or adverse treatment in relation to employment
- (d) dismissal from, or prejudice in, employment
- (e) disciplinary proceedings.

WESTERN AUSTRALIA

Like other states, Western Australia has a multi-tiered system for handling unacceptable behaviour by councillors. It distinguishes between:

- Disputes, disciplinary matters and code of conduct contraventions that are resolved by councils themselves.
- Breaches of the Local Government (Rules of Conduct) Regulations that are referred to a state-wide standards panel for determination.
- Offences under the Local Government Act or other laws that are adjudicated by the Department of Local Government and Communities or the State Administrative Tribunal.
- Corrupt and criminal conduct that falls within the ambit of the WA Corruption and Crime Commission.

The standards panel comprises three members: an officer of the Department of Local Government and Communities who is the presiding member; a person who has experience as a member of a council; and a person with relevant legal knowledge. The panel does not have investigative powers: findings and decisions are made on the basis of the information it receives.

Breaches of the Rules of Conduct are broadly similar to what the LG Act (Queensland) defines as inappropriate conduct. However, the rules are set out in significantly more detail in order to enable breaches to be identified with little or no investigation – the aim being swift and predictable decision-making by the standards panel.

This approach has broad support across local government, but concerns about some aspects of its operation and effectiveness recently led to a substantial review. A consultation paper, including proposals for change and other issues for comment was released in November 2015. Following consideration of submissions and further discussions, amendments to the Regulations are now being prepared.

The consultation paper highlighted the vital importance of situating the rules of conduct within a clear policy framework. It set out a number of key principles (see box below).

The consultation paper went on to propose four key directions for change:

1. Amending the regulations to improve clarity and alignment with policy intent (including finding alternative ways to handle trivial or inconsequential breaches of the rules).
2. Improving guidance material and complaint documentation.
3. Encouraging mediation and conciliation as an alternative to complaints about interpersonal disputes.
4. Codifying standards panel procedures and practice and simplifying reporting.

Suggested policy principles for improving Western Australia's arrangements

- The minor breach system should be driven by the policy objective: early intervention to address inappropriate behaviour by individual council members which may otherwise impair local government integrity and performance, bring local government into disrepute, or escalate to serious council dysfunction.
- To the extent possible, the Rules of Conduct should capture significant dysfunctional, disruptive or deceptive conduct (unless dealt with in other legislation) which poses an organisational risk to local government.
- A formal finding of a minor breach may be an over-reaction to trivial and inconsequential misbehaviour that is better dealt with in other ways.
- Council members and prospective complainants should have access to guidance about types of behaviour that do or do not constitute a minor breach for each regulation, clear requirements for a complaint of minor breach, and information about the way in which the standards panel conducts its business.
- Alternatives to the use of the complaints system need to be encouraged.
- Where regulatory prohibition of specific types of dysfunctional conduct is not feasible, training, coaching, enforcement of local codes of conduct and peer feedback will be necessary to bring about attitudinal change.

The consultation paper also canvassed a number of other possible improvements, including:

- Greater devolution of responsibility from the state-wide panel to individual councils.
- An automated online system for making and registering complaints.
- Reducing the allowable period between the event giving rise to a complaint and the lodgement of the complaint.
- Requiring complainants to indicate what action, if any, they have taken to address their concern other than lodging a complaint.
- Mandatory recording of council and committee meetings.
- Stronger sanctions where the councillor's behaviour has significant adverse consequences for the local government.
- Extending the application of behavioural rules to election candidates, with complaints being progressed if the candidate concerned is elected.

The last point appears to be aimed in part at reducing the spike in complaints during election campaigns that has raised concerns in several jurisdictions – specifically that complaints against sitting councillors are being used as a political weapon by their opponents. In this regard, s. 5.123(1) of the WA Local Government Act already makes it an offence to disclose the existence of, or any detail about, a complaint made during a campaign period. It is understood that as yet no such offences have been recorded, but the local government association is keen to maximise requirements to keep complaints confidential.

APPENDIX 5—BRISBANE CITY COUNCIL DISCIPLINARY SYSTEM

PART 1 – EXTRACT OF DISCUSSION PAPER: APPENDIX C TO THE DISCUSSION PAPER

The process for handling councillor conduct complaints under the CoBA is broadly the same as that under the LG Act, but with some important variations.

First, a complaint about the conduct of councillors at a meeting of the council or its committees has no effect. Instead, the BCC *Meetings Local Law 2001* sets out rules of procedure at meetings.

Under s186A of CoBA the chair of a meeting may deal with disorderly conduct that contravenes those rules by making:

- an order that the councillor's conduct be noted in the minutes of the meeting
- an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting
- if the councillor fails to comply with an order under paragraph (b) to leave a place—an order that the councillor be removed from the place.

A failure to comply with the order of the chair to leave the meeting can be referred to a councillor conduct review panel as potential misconduct.

In addition, the *Meetings Local Law 2001* allows the Council Chamber by resolution to suspend a councillor from the chamber and all council meeting places for eight days.

Second, all preliminary assessments of complaints are carried out by BCC's CEO, unless the CEO is the complainant, in which case the assessment is made by the department.

Third, the council has its own councillor conduct review panel, members of which are appointed by the council itself on such conditions (including remuneration and allowances) as it considers appropriate. The term of appointment is up to four years, but may be extended.

Essentially anyone may be appointed to the conduct review panel, provided they are not:

- a councillor of a local government, or a nominee for election as a councillor
- an employee or contractor of the council, or a consultant engaged by the council
- a member of an Australian Parliament or a nominee for election as a member of an Australian Parliament
- a member of a political party
- someone with a conviction for an indictable offence that is not an expired conviction
- an insolvent under administration (within the meaning of the *Corporations Act 2001*, s9)
- a type of person prescribed under a regulation.

The councillor conduct review panel investigates complaints and conducts hearings. A complainant must appear before the panel to confirm his or her complaint, but failure to do so by a councillor is not deemed to constitute inappropriate conduct or misconduct.

Preliminary assessments that conclude a complaint has substance and relates to inappropriate conduct or misconduct must be referred to the conduct review panel.

It may alter the preliminary assessment, whether made by either the council CEO or the department, without conducting a hearing, and also order that the complaint, or a part of the complaint, be dismissed or struck out if it considers the complaint or part is:

- frivolous, vexatious or misconceived
- lacking in substance, or
- otherwise an abuse of process.[67]

However, if the conduct review panel dismisses or strikes out the complaint or part of the complaint in this way, it must give written notice of that decision to the council's CEO or the department's chief executive, the accused councillor and the complainant.

The council's conduct review panel has the same authority as that given to both the regional conduct review panels and the tribunal under the LG Act. It may make any one or more of the following orders or recommendations that it considers appropriate in view of the circumstances relating to the misconduct or inappropriate conduct:

- an order that the councillor be counselled about the misconduct or inappropriate conduct, and how not to repeat the misconduct or inappropriate conduct
- an order that the councillor make an admission of error or an apology
- an order that the councillor participate in mediation with another person
- a recommendation to the department's chief executive to monitor the councillor or the council for compliance with the local government related laws
- an order that the councillor reimburse the council
- a recommendation to the Minister that the councillor be suspended for a stated period
- a recommendation to the CCC or the police commissioner that the councillor's conduct be further investigated
- an order that the councillor pay to the council an amount of not more than the monetary value of 50 penalty units (about $6100).

Fourth, the council itself is the responsible Unit of Public Administration to follow-up matters referred by the CCC.

Investigations and prosecutions

For matters referred by the CCC for investigation, depending upon the nature of the matter the following areas of council conduct the investigation:

- human resource matters usually go to the Chief Human Resources Officer
- most other matters go to the council's Ethical Standards Unit (which has trained investigators on staff).

External investigators may also be appointed under the direction of one of the above. Otherwise, the council's conduct review panel will conduct an investigation. It can seek support from council through its secretariat to access staff, experts and relevant documents.

[67] An abuse of process usually refers to the situation where the complainant is essentially repeating the same complaint that has already been dealt with by some other lawful process.

If an offence is committed in respect of a local law or a statute within the jurisdiction of the council, then prosecutions are authorised by the Manager, Compliance and Regulatory Services with advice from the Brisbane City Legal Practice, under delegation from the council chamber.

PART 2 – SUBMISSION FROM BRISBANE CITY COUNCIL'S CEO

Dedicated to a better Brisbane

Brisbane City Council ABN 72 002 765 795

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21 September 2016

Dr David Solomon AM
Chair, Councillor Complaints Review Panel
c/- The Project Manager
PO Box 15000
CITY EAST QLD 4002

Email: complaintsreviewpanel@dilgp.qld.gov.au

Dear Dr Solomon

Thank you for your letter of 17 August 2016 and for the opportunity to comment on the discussion paper entitled *Issues and options for Queensland's councillor conduct complaints policy, legislation and operations* (the paper).

Council's view is that the current system for processing Councillor conduct complaints under the combination of *Council's Meetings Local Law 2001* and the *City of Brisbane Act 2010* (CBA 2010), as set out in Attachment C of the paper, works efficiently. Apart from the need to strengthen enforcement provisions, from Council's perspective there is nothing that currently requires alteration.

In particular, Council believes that it is critical that conduct of Councillors at a meeting of Council or its committees under rules which relate specifically to the conduct of those meetings, such as the *Meetings Local Law 2001*, should remain outside the Councillor conduct complaint system. The disciplinary process under that local law is timely, responsive, and streamlined.

For conduct which occurs outside of meetings, the CBA 2010 provisions are, in almost all cases, effective and appropriate.

The preliminary assessment by me as Council's Chief Executive Officer (CEO) has and continues to work very well, and closely aligns with my responsibility to report possible corrupt conduct and manage public interest disclosures. Such synergies would not be available if the assessment were undertaken by an external body as proposed.

Council also believes that its own independent conduct review panel is also working well and should continue to assess conduct complaints referred by me as CEO and remain empowered to make a broad range of orders or recommendations, ranging from counselling or the provision of an apology, to more rigorous orders for reimbursement or payment to Council.

.../2

The effectiveness of Council's present system is evidenced by our own statistics. In 2010, when the system was introduced and included the ability to complain about Councillor behaviour, including that in meetings and committees, a high volume of complaints was received. Of those 122 complaints were assessed as being either frivolous or vexatious; and 40 complaints were referred to a BCC Councillor Conduct Review panel as either possible inappropriate conduct or misconduct. The majority of those complaints were from one complainant.

Since the exclusion of conduct during meetings and committees in 2012, for the period July 2013 to June 2016, 15 complaints have been assessed as being either frivolous, vexatious or without substance and 10 complaints were referred to a BCC Councillor Conduct Review Panel as either possible inappropriate conduct or misconduct.

This drop in complaints is directly linked to Councillors no longer being able to submit complaints about other Councillors at meetings through this process and reflects a better understanding by Councillors of their role outside council and committee meetings.

The only drawback identified to date, relates the enforcement of one of the Councillor Conduct Review Panel Orders namely the order that a payment of up to 50 penalty units be paid by the offending Councillor under section 183(2) CBA 2010. These orders can be difficult to enforce if the Councillor fails to voluntarily make payment as it is not clear whether any failure to pay such an ordered amount can result in debt recovery action being undertaken, or whether Council is obliged to only deal with that failure to pay by a further complaint of misconduct (which will undoubtedly result in another order to pay).

The paper poses many questions dealing with matters which are already accommodated in Council's existing system, such as the fact that Council has chosen to have a Code of Conduct, adopted a local law on the topic of meetings, and undertakes a preliminary assessment of complaints through its CEO.

Accordingly, Council will not respond to your three suggested approaches, instead Council reiterates that the current system applicable to Brisbane City Council works well, and that no amendment is necessary or desirable at this time except as outlined above.

Council thanks the Panel for the opportunity to make this comment.

Yours sincerely

Colin Jensen
CHIEF EXECUTIVE OFFICER

Ref: CO20354-2016

PART 3 – EXTRACT FROM SUBMISSION FROM THE LEADER OF THE OPPOSITION IN BRISBANE CITY COUNCIL

Scrap the whole system

Firstly we would like to point out that State and Federal members of Parliament are not subject to such complaints' procedures. We question whether it is necessary.

State Members have been involved in far more fraud than Councillors. We mention the jailing of Don Lane, Brian Austin and Leisha Harvey after the Fitzgerald inquiry, as well as Gordon Nuttall in recent times. There were others recommended for prosecution who were never tried because of ill health – Russ Hinze at State level and Mal Colston at Federal level.

We are not aware of any Brisbane City Council equivalents.

So the first submission we make is that the whole system should be scrapped and councillors should be given the respect that State and Federal members receive and not treated as inherently untrustworthy people who are a lower grade of elected officials.

On the assumption that the Government is not about to scrap the Councillor Complaints system, we make further submissions.

Political bias

The problem we see is that the Brisbane City Council is a political council and we believe this leads to bias in dealing with complaints. The Annual Reports of the Brisbane City Council show 100 % of the orders made about Councillors' conduct during Council or committee meetings were made against the ex LNP Independent Councillor Johnston or ALP Councillors. We also believe that inquiry would reveal that all complaints against LNP councillors have been dismissed and the only orders made under section 183 of the CoBA were against Labor or independent councillors.

Attachment A is the references to Councillors conduct in the Brisbane City Council Annual reports since 2007-08.

We therefore do not support the Council appointing the tribunal to handle complaints against Brisbane City Councillors. We believe that those appointed would be more likely to favour the LNP Councillors and not the Opposition. Therefore we favour either an independent body being formed by the State government or the local government department.

Likewise the Brisbane City Council CEO should not be involved in assessing complaints at any stage. This should be the role of an independent body.

Penalties should NOT be able to be varied by Council.

In addition, the penalties imposed by the panel or the new independent body should not be able to be varied by Council. The tribunal are the independent body who make these decisions and the politically dominated Brisbane City Council should not have the right to vary the penalties.

APPENDIX 6—PROPOSED COUNCILLOR COMPLAINTS PROCESS

Figure 5 - Administrative process for complaints received by local governments

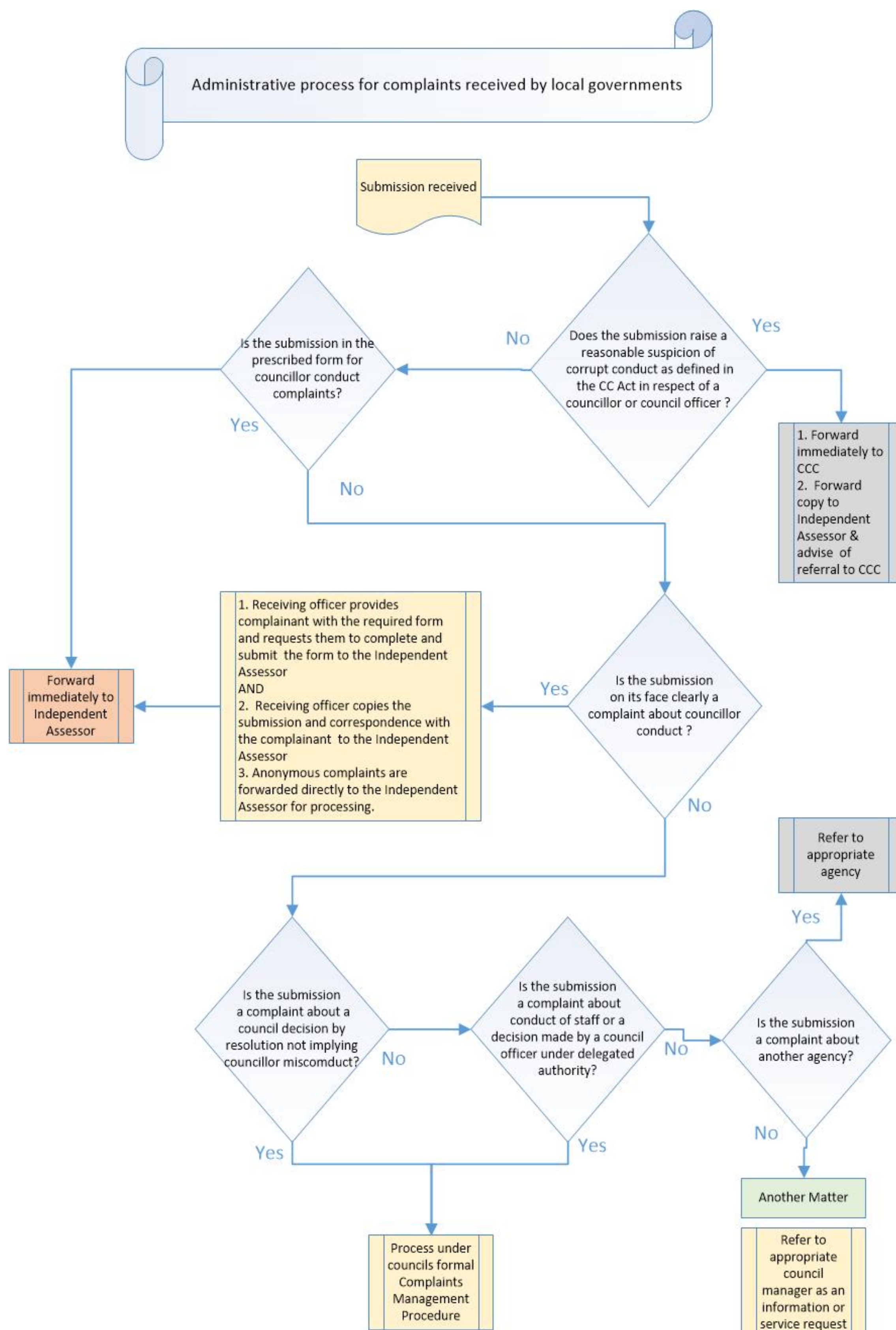
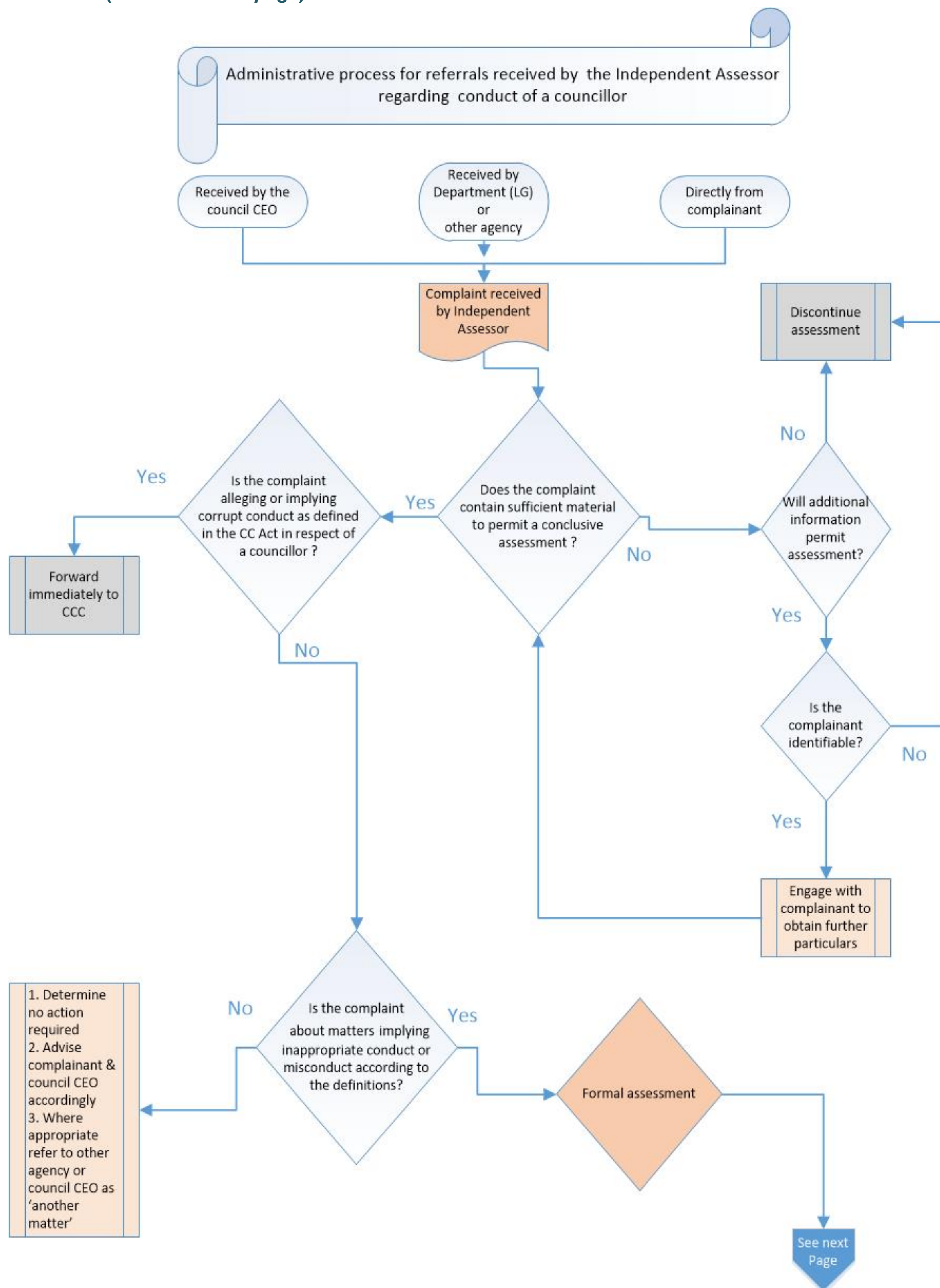
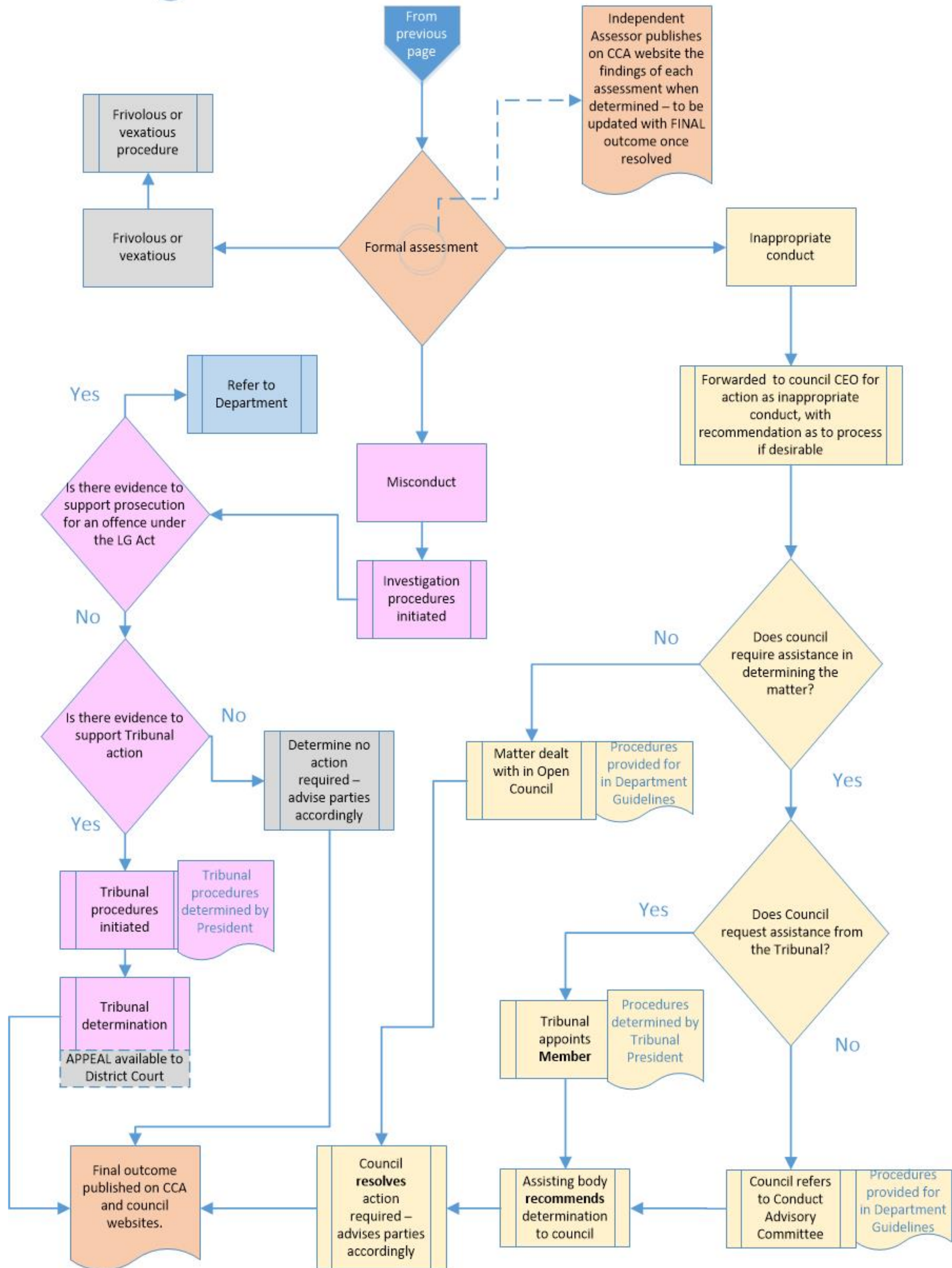


Figure 6 - Administrative process for referrals received by the Independent assessor regarding conduct of a councillor (*continued over page*)




Administrative process for complaints received by the Independent Assessor regarding conduct of a councillor
From previous page
Independent Assessor publishes on CCA website the findings of each assessment when determined – to be updated with FINAL outcome once resolved
Frivolous or vexatious procedure
Frivolous or vexatious
Formal assessment
Inappropriate conduct
Refer to Department
Yes
Is there evidence to support prosecution for an offence under the LG Act
No
Misconduct
Investigation procedures initiated
Forwarded to council CEO for action as inappropriate conduct, with recommendation as to process if desirable
No
Does council require assistance in determining the matter?
Is there evidence to support Tribunal action
No
Determine no action required – advise parties accordingly
Matter dealt with in Open Council
Procedures provided for in Department Guidelines
Yes
Yes
Tribunal procedures initiated
Tribunal procedures determined by President
Yes
Does Council request assistance from the Tribunal?
Tribunal determination
APPEAL available to District Court
Tribunal appoints Member
Procedures determined by Tribunal President
No
Final outcome published on CCA and council websites.
Council resolves action required – advises parties accordingly
Assisting body recommends determination to council
Council refers to Conduct Advisory Committee
Procedures provided for in Department Guidelines

APPENDIX 7—DRAFT CODE OF CONDUCT

In Chapter 5 the Panel recommended that there should be a uniform, mandatory code of conduct for local government councillors in Queensland and a model code of meeting procedure. This is a draft drawn from submissions to the Panel and experiences in other states. It should be reviewed and properly drafted by the LGLG before it is submitted to the Minister for approval.

PURPOSE

This Code of Conduct (the Code) sets out:

- Principles and standards of behaviour expected of councillors, including mayors and deputy mayors, in carrying out their functions as public officials.
- Procedures that councils must put in place, consistent with the provisions of the *Local Government Act 2009*, (as amended), to promote compliance with this code and to handle breaches of its provisions.

It is the responsibility of councillors and councils to ensure that they are familiar with, and apply, the principles, standards and procedures set out in this Code at all times. Councils are expected to cooperate with the Department and the Local Government Liaison Group (LGLG) to offer opportunities for professional development that will assist councillors to understand and meet their responsibilities.

Councillors must make a written commitment to abide by those principles, standards and procedures at the time they take office.

PART 1—CONDUCT PRINCIPLES AND STANDARDS

- Councillors must observe the following conduct principles and the required standards of behaviour set out in Parts 2, 3 and 4.
- The conduct principles are to be taken into account when councils or other agencies consider alleged breaches of this Code.

Councillors will at all times:

- Act lawfully and in accordance with the trust placed in them as an elected representative.
- Exercise their responsibilities impartially, conscientiously and to the best of their ability in the best interests of the community they represent and the wider public interest.
- Work together constructively as a council and uphold the values of mutual respect, honesty, integrity, accountability and transparency.
- Take all necessary steps to avoid conflicts between their public duties as a councillor and their personal interests and obligations.
- Ensure that public resources are used prudently and solely in the public interest.
- Never use their position to confer an improper advantage or disadvantage on any person, especially themselves or their close associates.
- Deal responsibly with information received in their capacity as councillors.
- Provide accurate information to the council and to the public.
- Seek to avoid making statements (whether oral or in writing) or actions that will or are likely to mislead or deceive other people, or that fail to show respect for others.

- Treat all persons with respect and in a non-discriminatory manner, with due regard to their diverse opinions, beliefs, rights and responsibilities.
- Exercise due care and diligence and submit themselves to the lawful scrutiny that is appropriate to their office.
- Make every effort to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position.
- Advance these principles by leadership and example, and act in a way that secures public confidence in the office of councillor and the role of elected local government.

PART 2—CONDUCT IN COUNCIL OR COMMITTEE MEETINGS

2.1 Required standards

- Councillors will act to ensure that individually and collectively they meet reasonable community expectations concerning their behaviour during formal council or committee meetings.
- Councillors will at all times comply with any local law, code, rules or policies adopted by their council relating to the conduct of meetings.
- Discussion and debate between councillors and with staff and other persons participating in meetings will be conducted in a polite and respectful manner, with the intention of making wise decisions in the public interest.
- Councillors will respect and act promptly in accordance with any ruling or order made by the chair of the meeting, or by a vote of the council.
- Robust debate during meetings that is conducted with respect and honesty is not a breach of this Code.

2.2 Responding to breaches

- It is the responsibility of councils to adopt an appropriate local law, code or procedures to set and moderate standards of behaviour in formal meetings, consistent with this Code and relevant provisions of the Act and/or Regulation.
- The local law, code or procedures must ensure that the chair of meetings has the necessary authority to control meetings, and that processes are in place to take appropriate action when councillors fail to meet the standards of behaviour established under this part.
- Serious or repeated failure by a councillor to meet the standards of behaviour expected under this part shall be treated as inappropriate conduct.

PART 3—INAPPROPRIATE CONDUCT

- Councillors must not engage in inappropriate conduct as defined under the Act.
- Councils must adopt and apply a complaints management process for identifying instances of inappropriate conduct and handling allegations and complaints received that meets the requirements of the Act and/or Regulation.
- As part of that process, councils should consider establishing a Conduct Advisory Committee (CAC) under section 257 of the Act, including an independent chair and other members with relevant expertise.
- Subject to the Act, a council may:
    - Deal with an alleged breach or complaint in a meeting of all councillors (except the subject of the allegation or complaint) in accordance with its complaints management process or
    - Refer an alleged breach or complaint to its CAC for investigation and advice as to any disciplinary action that may be required or

    - Request the Councillor Conduct Tribunal (the Tribunal) to appoint a member to undertake or oversee an investigation into an alleged breach or complaint and recommend the action council should take.
- Before taking action on a complaint, a council must give due consideration to any advice received from the Independent Assessor regarding the process to be followed, and that advice must be tabled at a public meeting of the council.
- As an initial step, the council, committee or Tribunal member may seek to mediate the complaint, either directly or by engaging an independent mediator.
- The council is responsible for all costs involved in the work of the committee or Tribunal member, and must provide any information or assistance that the committee or Tribunal member may reasonably require.
- Within four weeks of receiving the findings and recommendation of the committee or Tribunal member, the chief executive officer must table a detailed report on the matter at a public meeting of the council.
- If the council decides not to implement part or all of the recommendation, it must make public, including on its website, the reasons for its decision, and also forward a copy of its decision and that explanation to the committee or Tribunal.
- If the council concludes that a councillor has engaged in inappropriate conduct, it must impose a disciplinary order in accordance with the Act.

PART 4—MISCONDUCT

- Councillors must not engage in misconduct as defined under the Act.
- Allegations of misconduct will be reviewed by the Independent Assessor and, if appropriate, referred to the Tribunal in accordance with the Act.
- Council must provide any information or assistance that the Independent Assessor or the Tribunal may reasonably require to investigate the complaint and/or conduct a hearing.
- In the event that the Independent Assessor or the Tribunal determines that a complaint should be investigated as inappropriate conduct rather than misconduct, the council is responsible for handling the matter in accordance with Part 3 of this Code.
- Councillors found to have engaged in misconduct will be liable for one or more of the penalties set out in the Act.

PART 5—OFFENCES UNDER THE ACT

- Certain forms of unacceptable conduct by councillors constitute specific offences under the Act; these may be prosecuted in a court of law and attract heavy financial penalties and/or imprisonment.
- However, in some instances the Independent Assessor may decide that these offences are relatively minor and should be treated as misconduct, in which case they would be prosecuted before the Tribunal and lesser penalties will apply.
- Two other offences may be prosecuted before the Tribunal:
    - Knowingly providing false or misleading information (fine only).
    - Making repeated trivial or vexatious complaints (fine only).

APPENDIX 8—LEGISLATION

PART 1 – EXTRACTS OF RELEVANT LEGISLATION

4 Local government principles underpin this Act

(1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—

(a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and

(b) any action that is taken under this Act to be taken in a way that—

(i) is consistent with the local government principles; and

(ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.

(2) The ***local government principles*** are—

(a) transparent and effective processes, and decision-making in the public interest; and

(b) sustainable development and management of assets and infrastructure, and delivery of effective services; and

(c) democratic representation, social inclusion and meaningful community engagement; and

(d) good governance of, and by, local government; and

(e) ethical and legal behaviour of councillors and local government employees.

12 Responsibilities of councillors

(1) A councillor must represent the current and future interests of the residents of the local government area.

(2) All councillors of a local government have the same responsibilities, but the mayor has some extra responsibilities.

(3) All councillors have the following responsibilities—

(a) ensuring the local government—

(i) discharges its responsibilities under this Act; and

(ii) achieves its corporate plan; and

(iii) complies with all laws that apply to local governments;

(b) providing high quality leadership to the local government and the community;

(c) participating in council meetings, policy development, and decision-making, for the benefit of the local government area;

(d) being accountable to the community for the local government's performance.

(4) The mayor has the following extra responsibilities—

(a) leading and managing meetings of the local government at which the mayor is the chairperson, including managing the conduct of the participants at the meetings;

(b) preparing a budget to present to the local government;

(c) leading, managing, and providing strategic direction to, the chief executive officer in order to achieve the high quality administration of the local government;

(d) directing the chief executive officer and senior executive employees, in accordance with the local government's policies;

(e) conducting a performance appraisal of the chief executive officer, at least annually, in the way that is decided by the local government (including as a member of a committee, for example);

(f) ensuring that the local government promptly provides the Minister with the information about the local government area, or the local government, that is requested by the Minister;

(g) being a member of each standing committee of the local government;

(h) representing the local government at ceremonial or civic functions.

(5) A councillor who is not the mayor may perform the mayor's extra responsibilities only if the mayor delegates the responsibility to the councillor.

(6) When performing a responsibility, a councillor must serve the overall public interest of the whole local government area.

Division 6 Conduct and performance of councillors

176 What this division is about

(1) This division is about dealing with complaints about the conduct and performance of councillors, to ensure that—

(a) appropriate standards of conduct and performance are maintained; and

(b) a councillor who engages in misconduct or inappropriate conduct is disciplined.

(2) In summary—

(a) misconduct is dealt with by the regional conduct review panel or tribunal; and

(b) inappropriate conduct is dealt with by the mayor or the department's chief executive.

(3) ***Misconduct*** is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—

(a) that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor's responsibilities or exercise of the councillor's powers; or

(b) that is or involves—

(i) the performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial; or

(ii) a breach of the trust placed in the councillor; or

(iii) a misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse isfor the benefit of the councillor or someone else; or

(iv) a failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting; or

(v) a refusal by the councillor to comply with a direction or order of the regional conduct review panel or tribunal about the councillor; or

(c) that is a repeat of inappropriate conduct that the mayor or the department's chief executive has ordered to be referred to the regional conduct review panel under section 181(2); or

(d) that contravenes section 171(3) or 173(4).

(4) ***Inappropriate conduct*** is conduct that is not appropriate conduct for a representative of a local government, but is not misconduct, including for example—

(a) a councillor failing to comply with the local government's procedures; or

(b) a councillor behaving in an offensive or disorderly way in a meeting of the local government or any of its committees.

(5) It is irrelevant whether the conduct that constitutes misconduct was engaged in—

(a) within Queensland or elsewhere; or

(b) when the councillor was not exercising the responsibilities of a councillor.

(6) A ***regional conduct review panel*** is a body, created under this Act, that is responsible for hearing and deciding a complaint of misconduct by a councillor.

(7) The ***tribunal*** is a body, created under this Act, that is responsible (amongst other things) for hearing and deciding the most serious complaints of misconduct by a councillor.

(8) To remove any doubt, a councillor may be dealt with for an act or omission that constitutes misconduct under this Act, and also dealt with for the same act or omission—

(a) as the commission of an offence; or

(b) under the Crime and Corruption Act.

(9) A decision under this part by any of the following persons is not subject to appeal—

(a) a regional conduct review panel;

(b) the tribunal;

(c) the chief executive officer;

(d) a mayor;

(e) a deputy mayor;

(f) the chairperson of a meeting;

(g) the department's chief executive.

176A Application to former councillors

(1) This division applies to a complaint about the conduct of a person who is no longer a councillor if—

(a) the person was a councillor when the relevant conduct is alleged to have happened; and

(b) the complaint is made within 2 years after the person stopped being a councillor.

(2) However, an entity dealing with the complaint under this division may decide to take no further action in relation to the complaint, despite any contrary requirement of this division, if the entity considers the decision is in the public interest.

(3) An entity that makes a decision under subsection (2) must give the entity that made the complaint, and the accused person, a written notice that states—

(a) no further action will be taken in relation to the complaint; and

(b) the reasons for the decision.

(4) For applying this division to a complaint about a person who is no longer a councillor, a reference to a councillor is taken to be a reference to the person.

176B Preliminary assessments of complaints

(1) This section applies if any of the following make or receive a complaint about the conduct or performance of a councillor of a local government—

(a) the local government;

(b) the department's chief executive;

(c) the mayor;

(d) the chief executive officer of the local government.

(2) If the mayor or the chief executive officer makes the complaint—

(a) the person who receives the complaint must refer the complaint to the department's chief executive; and

(b) the department's chief executive must conduct a preliminary assessment of the complaint.

(3) If any other entity makes the complaint—

(a) the person who receives the complaint must refer the complaint to the chief executive officer; and

(b) the chief executive officer must conduct a preliminary assessment of the complaint.

(4) A ***preliminary assessment*** is an assessment of a complaint about the conduct or performance of a councillor to decide whether the complaint—

(a) is about a frivolous matter or was made vexatiously; or

(b) is about inappropriate conduct, misconduct, corrupt conduct under the Crime and Corruption Act or another matter (including a general complaint against the local government, for example); or

(c) is lacking in substance.

(5) This section does not apply to a complaint about corrupt conduct referred to the department's chief executive by the CCC.

176C Action after preliminary assessments

(1) This section applies if the chief executive officer or the department's chief executive (each a ***complaints assessor***) conducts a preliminary assessment of a complaint about the conduct or performance of a councillor.

(2) The complaints assessor may decide no further action need be taken in relation to the complaint if the preliminary assessment is—

(a) that the complaint is about a frivolous matter or was made vexatiously; or

(b) that the complaint is lacking in substance.

(3) If the preliminary assessment is that the complaint is about inappropriate conduct, the complaints assessor must—

(a) if the complaints assessor is the chief executive officer—

(i) for a complaint about conduct of the mayor or deputy mayor—refer the complaint to the department's chief executive; or

(ii) for a complaint about conduct of a councillor (other than the mayor or deputy mayor)—refer the complaint to the mayor for the mayor to take disciplinary action under section 181; or

(b) if the complaints assessor is the department's chief executive—

(i) for a complaint about the conduct or performance of a councillor (other than the mayor or deputy mayor) made by any person other than the mayor—refer the complaint to the mayor; or

(ii) otherwise—take disciplinary action under section 181.

(4) If the preliminary assessment is that the complaint is about misconduct, the complaints assessor must refer the complaint to—

(a) if the complaints assessor is the chief executive officer—the department's chief executive; or

(b) if the complaints assessor is the department's chief executive—the regional conduct review panel or the tribunal.

(5) If the preliminary assessment is that the complaint is about corrupt conduct under the Crime and Corruption Act, the complaints assessor must deal with the complaint in compliance with that Act.

(6) If the preliminary assessment is that the complaint is about another matter, the complaints assessor must deal with the complaint in an appropriate way.

(7) After acting under subsection (2) to (6), the complaints assessor must give the entity that made the complaint, and the accused councillor, a written notice that states—

(a) the type of complaint that the assessor has assessed the complaint as; and

(b) the action (if any) that is proposed to be taken in relation to the complaint; and

(c) if the complaint was about a frivolous matter, was made vexatiously or was lacking in substance—that it is an offence under subsection (8) for a person to make a complaint that is substantially the same as a complaint that the person has previously made.

(8) A person must not make a complaint about the conduct or performance of a councillor if—

(a) the complaint is substantially the same as a complaint that the person has previously made; and

(b) the complaints assessor has given the person a notice that complies with subsection (7).

Maximum penalty for subsection (8)—10 penalty units.

177 Complaints referred to the department's chief executive

(1) This section applies if the chief executive officer refers a complaint to the department's chief executive under section176C.

(2) Despite the preliminary assessment of the chief executive officer, the department's chief executive may decide that—

(a) the complaint be dismissed if the department's chief executive considers the complaint or part is—

(i) frivolous, vexatious or misconceived; or

(ii) lacking in substance; or

(iii) otherwise an abuse of process; or

(b) the complaint is about inappropriate conduct rather than misconduct or about misconduct rather than inappropriate conduct; or

(c) no further action be taken in relation to the complaint; or

(d) some other action be taken in relation to the complaint.

(3) If the department's chief executive agrees or decides the complaint is about misconduct, the department's chief executive may refer the complaint to the regional conduct review panel or tribunal.

(4) If the department's chief executive agrees or decides the complaint is about inappropriate conduct, the department's chief executive must take disciplinary action under section 181.

(5) If the department's chief executive acts under subsection (2)or (3), the department's chief executive must give written notice of the decision to the chief executive officer, the accused councillor and the entity that made the complaint.

177A Preliminary dealings with complaints before hearing

(1) This section applies if the department's chief executive refers a complaint of misconduct to a regional conduct review panel or the tribunal.

(2) The regional conduct review panel or the tribunal may, without conducting a hearing of the complaint, order the complaint, or a part of the complaint, be dismissed or struck out if the panel or tribunal considers the complaint or part is—

(a) frivolous, vexatious or misconceived; or

(b) lacking in substance; or

(c) otherwise an abuse of process.

(3) If the regional conduct review panel or the tribunal acts under subsection (2), the panel or tribunal must give written notice of the order to all the following—

(a) the chief executive officer (if any) who originally assessed the complaint;

(b) the department's chief executive;

(c) the accused councillor;

(d) the entity that made the complaint.

(4) Subsection (5) applies if the complainant is also a councillor.

(5) Before conducting a hearing of the complaint—

(a) the regional conduct review panel or the tribunal must require the complainant to appear before the panel or tribunal to confirm the complaint; and

(b) the complainant must comply with the requirement made under paragraph (a).

(6) Despite section 176(3) and (4), a failure of a councillor to comply with a requirement under subsection (5)(a) is not misconduct or inappropriate conduct.

178 Notifying councillor of the hearing of a complaint of misconduct

(1) At least 7 days before the hearing of a complaint of misconduct by a regional conduct review panel or the tribunal, the department's chief executive must give the accused councillor a written notice about the hearing.

(2) The notice must state—

(a) the misconduct that is alleged to have been engaged in by the councillor; and

(b) the time and date when the hearing is to begin; and

(c) the place where the complaint is to be heard.

(2) If all reasonable attempts to give the notice to the councillor have failed, the department's chief executive may—

(a) publish the notice, at least 7 days before the hearing is to begin—

(i) in a newspaper that is circulating in the local government area; and

(ii) on the department's website; or

(b) direct the local government to publish the notice on the local government's website at least 7 days before the hearing is to begin.

179 Hearing and deciding complaints

(1) This section is about the hearing of a complaint of misconduct by a regional conduct review panel or the tribunal.

(2) A regional conduct review panel or the tribunal may hear complaints of misconduct by a number of councillors in the same hearing, unless the defence of any of the councillors may be prejudiced.

(3) The hearing must be conducted in the way set out in chapter 7, part 1.

(4) The regional conduct review panel or tribunal may decide all or part of the hearing from the documents brought before the regional conduct review panel or tribunal, without the parties or the witnesses appearing, if—

(a) the regional conduct review panel or tribunal considers it appropriate in all the circumstances; or

(b) the parties agree.

(5) The standard of proof in the hearing is the balance of probabilities.

(5) The regional conduct review panel or tribunal must keep a written record of the hearing, in which it records—

(a) the statements of the councillor and all witnesses; and

(b) any reports relating to the councillor that are tendered at the hearing.

180 Taking disciplinary action

(1) This section applies if, after hearing a complaint of misconduct, the regional conduct review panel or tribunal decides that the councillor engaged in misconduct.

(2) The regional conduct review panel may make any 1 or more of the following orders or recommendations that it considers appropriate in view of the circumstances relating to the misconduct—

(a) an order that the councillor be counselled about the misconduct, and how not to repeat the misconduct;

(b) an order that the councillor make an admission of error or an apology;

(c) an order that the councillor participate in mediation with another person;

(d) a recommendation to the department's chief executive to monitor the councillor or the local government for compliance with the Local Government Acts;

(e) an order that the councillor reimburse the local government;

(f) a recommendation to the CCC or the police commissioner that the councillor's conduct be further investigated;

(g) an order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units.

(3) However, if the regional conduct review panel considers that more serious disciplinary action should be taken, the regional conduct review panel must report the matter to the tribunal for the tribunal to take disciplinary action.

(4) The tribunal may make any order or recommendation that it considers appropriate in view of the circumstances relating to the misconduct.

(5) For example, the tribunal may make any 1 or more of the following orders or recommendations—

(a) an order that the councillor be counselled about the misconduct, and how not to repeat the misconduct;

(b) an order that the councillor make an admission of error or an apology;

(c) an order that the councillor participate in mediation with another person;

(d) a recommendation to the department's chief executive to monitor the councillor or the local government for compliance with the Local Government Acts;

(e) an order that the councillor forfeit an allowance, benefit, payment or privilege;

(f) an order that the councillor reimburse the local government;

(g) a recommendation to the Minister that the councillor be suspended for a specified period, either wholly or from performing particular functions;
Examples of particular functions—
• attending council meetings or offices
• representing the council at public functions

(h) a recommendation to the Minister that the councillor be dismissed;

(i) a recommendation to the CCC or the police commissioner that the councillor's conduct be further investigated;

(j) an order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units.

(6) A recommendation mentioned in subsection (5)(g) may include a recommendation about the details of the suspension.

(7) When deciding what disciplinary action is appropriate in view of the circumstances relating to the misconduct, the regional conduct review panel or tribunal may consider—

(a) any misconduct of the councillor in the past; and

(b) any allegation made in the hearing that was admitted, or was not challenged.

(8) However, the regional conduct review panel or tribunal may consider an allegation that was not admitted, or was challenged, only if the regional conduct review panel or tribunal is satisfied that the allegation is true.

(9) The degree to which the regional conduct review panel or tribunal must be satisfied depends on the consequences, that are adverse to the councillor, of finding the allegation to be true.

181 Inappropriate conduct

(1) Subsections (2) and (3) apply if, under section 176C(3) or 177(4), a complaint is referred to the mayor or the department's chief executive to take disciplinary action against a councillor for inappropriate conduct.

(2) The mayor or department's chief executive may make either or both of the following orders that the mayor or department's chief executive considers appropriate in the circumstances—

(a) an order reprimanding the councillor for the inappropriate conduct;

(c) an order that any repeat of the inappropriate conduct be referred to the regional conduct review panel as misconduct.

(3) If the mayor or the department's chief executive makes 3 orders under subsection (2) about the same councillor within the 1 year, the mayor or the department's chief executive must refer the repeated inappropriate conduct by the councillor to a regional conduct review panel or the tribunal.

(4) If the mayor or the department's chief executive refers repeated inappropriate conduct by the councillor to a regional conduct review panel or the tribunal under subsection (3)—

(a) the matter is taken to be a complaint about misconduct; and

(b) the panel or tribunal must conduct a hearing of the complaint; and

(c) sections 178 to 180 apply for the hearing of the complaint; and

(d) the repeated inappropriate conduct by the councillor is taken to be misconduct.

(5) If inappropriate conduct happens in a meeting of the local government or its committees, the chairperson of the meeting may make any 1 or more of the following orders that the chairperson considers appropriate in the circumstances—

(a) an order that the councillor's inappropriate conduct be noted in the minutes of the meeting;

(b) an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting;

(c) if the councillor fails to comply with an order made under paragraph (b) to leave a place—an order that the councillor be removed from the place.

181A Records about complaints

(1) The chief executive officer must keep a record of—

(a) all complaints received by the chief executive officer under this part; and

(b) the outcome of each complaint, including any disciplinary action or other action that was taken in relation to the complaint.

(2) The chief executive officer must ensure that the public may inspect the part of the record that relates to outcomes of complaints—

(a) at the local government's public office; or

(b) on the local government's website.

(3) However, subsection (2) does not apply to the record of a complaint that—

(a) the chief executive officer or the department's chief executive has assessed as being about a frivolous matter, having been made vexatiously or lacking in substance;
or

(b) is a public interest disclosure within the meaning of the *Public Interest Disclosure Act 2010.*

182 Department's chief executive is public official for Crime and Corruption Act

(1) A local government is a unit of public administration for the Crime and Misconduct Act.

(2) For any complaint of, or information or matter involving, corrupt conduct under the Crime and Corruption Act by a councillor, a reference to a public official in the Crime and Corruption Act, section 46(2), is taken to be a reference to the department's chief executive.

Part 3 The tribunal

183 Establishing the tribunal

(1) The Local Government Remuneration and Discipline Tribunal (the ***tribunal***) is established.

(2) As well as the responsibilities mentioned in section 176, the tribunal is responsible for—

(a) establishing the categories of local governments; and

(b) deciding which category each local government belongs to; and

(c) deciding the maximum amount of remuneration that is payable to the councillors in each of the categories; and

(d) any other functions that the Minister directs the tribunal to perform.

184 Members of tribunal

(1) The tribunal is made up of 3 qualified persons who are appointed by the Governor in Council.

(2) A person is qualified to be a member only if the person—

(a) has extensive knowledge of, and experience in, 1 or more of the following—

(i) local government;

(ii) community affairs;

(iii) industrial relations;

(iv) investigations;

(v) law;

(vi) public administration;

(vii) public sector ethics;

(viii)public finance; or

(b) has other knowledge and experience that the Governor in Council considers appropriate.

(3) However, a person is not qualified to be a member of the tribunal if the person—

(a) is a councillor of a local government; or

(b) is a nominee for election as a councillor; or

(c) accepts an appointment as a councillor; or

(d) is an employee of a local government; or

(e) is a contractor of a local government; or

(f) is a consultant engaged by a local government; or

(g) is a member of an Australian Parliament; or

(h) is a nominee for election as a member of an Australian Parliament; or

(i) is a member of a political party; or

(j) has a conviction for an indictable offence that is not an expired conviction; or

(k) is an insolvent under administration (within the meaning of the Corporations Act, section 9); or

(l) is a type of person prescribed under a regulation.

(4) The Governor in Council must appoint 1 of the members to be the chairperson of the tribunal.

(5) A member may be appointed for a term of not longer than 4 years.

(6) However, a member may be reappointed.

(7) A person stops being a member if the person—

(a) completes a term of office but is not reappointed; or

(b) resigns by signed notice of resignation given to the Minister; or

(c) is removed as a member by the Governor in Council for misbehaviour or physical or mental incapacity; or

(d) is not qualified to be a member under subsection (3).

185 Remuneration and appointment conditions of members

(1) A member of the tribunal is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) A member of the tribunal holds office on the other conditions that the Governor in Council decides.

(3) If a commissioner, other than the president, under the Industrial Relations Act is appointed as a member, the person is not entitled to any remuneration or allowances in addition to the person's salary or allowances as a commissioner.

(4) However, the person is entitled to be paid any expenses reasonably incurred by the person in performing the responsibilities of a member.

186 Costs of tribunal to be met by local government

The local government must pay the costs of the tribunal in relation to a complaint of misconduct of a councillor, including the remuneration, allowances and expenses paid to members of the tribunal.

187 Conflict of interests

(1) This section applies if a member of the tribunal has any interest that may conflict with a fair and impartial hearing of a complaint made against an accused councillor.

(2) The member must not take part, or take further part, in any consideration of the matter. Maximum penalty—35 penalty units.

(3) As soon as practicable after the member becomes aware that this section applies to the member, the member must inform the department's chief executive.

Maximum penalty—35 penalty units.

188 Assistance from departmental staff

The department's chief executive must make available to the tribunal the staff assistance that the tribunal needs to effectively perform its responsibilities.

Part 4 Regional conduct review panels

189 Appointing members of regional conduct review panels

(1) A regional conduct review panel is constituted by at least 3 members that the department's chief executive chooses from a pool of members.

(2) The department’s chief executive must appoint a pool of members for a regional conduct review panel for the different regions of the State decided by the department’s chief executive.

(3) A person is qualified to be a member of the pool of members only if the person—

(a) has extensive knowledge of, and experience in, 1 or more of the following—

(i) local government;

(ii) community affairs;

(iii) investigations;

(iv) law;

(v) public administration;

(vi) public sector ethics;

(vii) public finance; or

(b) has the other qualifications and experience that the department’s chief executive considers appropriate.

(4) However, a person is not qualified to be a member of the pool of members if the person—

(a) is a councillor of a local government; or

(b) is a nominee for election as a councillor; or

(c) accepts an appointment as a councillor; or

(d) is an employee of a local government; or

(e) is a contractor of a local government; or

(f) is a consultant engaged by a local government; or

(g) is a member of an Australian Parliament; or

(h) is a nominee for election as a member of an Australian Parliament; or

(i) is a member of a political party; or

(j) has a conviction for an indictable offence that is not an expired conviction; or

(k) is an insolvent under administration (within the meaning of the Corporations Act, section 9); or

(l) is a type of person prescribed under a regulation.

(5) A member may be appointed for a term of not longer than 4 years.

(4) However, a member may be reappointed.

(5) A person stops being a member if the person—

(a) completes a term of office but is not reappointed; or

(b) resigns by signed notice of resignation given to the department’s chief executive; or

(c) is removed as a member by the department’s chief executive for misbehaviour or physical or mental incapacity; or

(d) is not qualified to be a member under subsection (4).

190 Remuneration and appointment conditions of members

(1) A member of a regional conduct review panel is entitled to be paid the remuneration and allowances decided by the department's chief executive.

(2) A member of a regional conduct review panel holds office on the other conditions that the department's chief executive decides.

191 Costs of regional conduct review panels to be met by local government

The local government must pay the costs of a regional conduct review panel in relation to a complaint of misconduct of a councillor, including the remuneration, allowances and expenses paid to members of the regional conduct review panel.

192 Conflict of interests

(1) This section applies if a member of a regional conduct review panel has any interest that may conflict with a fair and impartial hearing of a complaint made against an accused councillor.

(2) The member must not take part, or take further part, in any consideration of the matter.

Maximum penalty—35 penalty units.

(3) As soon as practicable after the member becomes aware that this section applies to the member, the member must inform the department's chief executive.

Maximum penalty for subsection (3)—35 penalty units.

193 Assistance from departmental staff

The department's chief executive must make available to the regional conduct review panel the staff assistance that the regional conduct review panel needs to effectively perform its responsibilities.

Chapter 7 Other provisions

Part 1 Way to hold a hearing

212 What this part is about

(1) This part sets out the way to hold a hearing under this Act.

(2) The person or other entity that is conducting the hearing is called the investigator in this part.

213 Procedures at hearing

(1) When conducting a hearing, the investigator must—

(a) observe natural justice; but

(b) act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing.

(2) For example, the investigator may—

(a) act in the absence of a person who has been given reasonable notice of the hearing; or

(b) receive evidence by statutory declaration; or

(c) refuse to allow a person to be represented by a legal practitioner; or

(d) disregard the rules of evidence; or

(e) disregard any defect, error, omission or insufficiency in a document; or

(f) allow a document to be amended; or

(g) adjourn a hearing.

(3) However, the investigator must comply with any procedural rules prescribed under a regulation.

(4) A hearing is not affected by a change of the members of an entity that is the investigator.

214 Witnesses at hearings

(1) The investigator may require a person, by giving them a written notice, to attend a hearing as a witness in order to—

(a) give evidence; or

(b) produce specified documents.

(2) The person must—

(a) attend at the time and place specified in the notice; and

(b) continue to attend until excused by the investigator; and

(c) take an oath or make an affirmation if required by the investigator; and

(d) answer a question that the person is required to answer by the investigator, unless the person has a reasonable excuse; and

(e) produce a document that the person is required to produce by the investigator, unless the person has a reasonable excuse.

Maximum penalty—35 penalty units.

(3) A person has a reasonable excuse for failing to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

(4) A person who attends as a witness is entitled to—

(a) the witness fees that are prescribed under a regulation; or

(b) if no witness fees are prescribed, the reasonable witness fees decided by the investigator.

215 Contempt at hearing

A person must not—

(a) insult the investigator in a hearing; or

(b) deliberately interrupt a hearing; or

(c) take part in a disturbance in or near a place where the investigator is conducting a hearing; or

(d) do anything that would be a contempt of court if the investigator were a court.

Maximum penalty—50 penalty units.

266 Approved forms

The department's chief executive may approve forms for use under this Act.

268 Process for administrative action complaints

(1) A local government must adopt a process for resolving administrative action complaints.

(2) An ***administrative action complaint*** is a complaint that—

(a) is about an administrative action of a local government, including the following, for example—

(i) a decision, or a failure to make a decision, including a failure to provide a written statement of reasons for a decision;
(ii) an act, or a failure to do an act;
(iii) the formulation of a proposal or intention;
(iv) the making of a recommendation; and

(b) is made by an affected person.

(3) An ***affected person*** is a person who is apparently directly affected by an administrative action of a local government.

(4) A regulation may provide for the process for resolving complaints about administrative actions of the local government by affected persons.

PART 2 – SUMMARY TABLE OF CURRENT OFFENCES

Topic	Description of offence	Penalty
Use of Information by councillors LG Act: s171(1) CoBA: s173	A person who is, or has been, a councillor must not use information that was acquired as a councillor to— gain, directly or indirectly, a financial advantage for the person or someone else; or cause detriment to local government.	Maximum penalty – 100 penalty units or 2 years imprisonment. NOTE: A person automatically ceases to be a councillor when convicted of an offence under s.171 of LG Act or s173 of CoBA that is an 'integrity offence'.
Prohibited conduct by councillor in possession of inside information LG Act: s171A(2) & (3) CoBA: s173A(1)(2)(3)	(1) This section applies to a person (the insider) who is, or has been, a councillor if the insider— acquired inside information as a councillor; and knows, or ought reasonably to know, that the inside information is not generally available to the public. (2) The insider must not cause the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset. (3) The insider must not cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.	Maximum penalty – 1000 penalty units or 2 years imprisonment.
Obligation of councillor to correct register of interests LG Act: s171B(2) CoBA: s173B(2)	The councillor must, in the approved form, inform the chief executive officer of the particulars of the interest or the change to the interest within 30 days after the interest arises or the change happens.	If the councillor fails to comply with subsection (2) intentionally – 100 penalty units Otherwise – 85 penalty units

(4) The Governor in Council must appoint 1 of the members to be the chairperson of the tribunal.

(5) A member may be appointed for a term of not longer than 4 years.

(6) However, a member may be reappointed.

(7) A person stops being a member if the person—

(a) completes a term of office but is not reappointed; or

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(iii) the formulation of a proposal or intention;
(iv) the making of a recommendation; and

(b) is made by an affected person.

(3) An ***affected person*** is a person who is apparently directly affected by an administrative action of a local government.

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Prohibited conduct by councillor in possession of inside information LG Act: s171A(2) & (3) CoBA: s173A(1)(2)(3)	(1) This section applies to a person (the insider) who is, or has been, a councillor if the insider— acquired inside information as a councillor; and knows, or ought reasonably to know, that the inside information is not generally available to the public. (2) The insider must not cause the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset. (3) The insider must not cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.	Maximum penalty – 1000 penalty units or 2 years imprisonment.
Obligation of councillor to correct register of interests LG Act: s171B(2) CoBA: s173B(2)	The councillor must, in the approved form, inform the chief executive officer of the particulars of the interest or the change to the interest within 30 days after the interest arises or the change happens.	If the councillor fails to comply with subsection (2) intentionally – 100 penalty units Otherwise – 85 penalty units

Topic	Description of offence	Penalty
Councillor's material personal interest at a meeting LG Act: s172(5) CoBA s174(5)	The councillor must – inform the meeting of the councillor's material personal interest in the matter; and leave the meeting room (including any area set aside for the public), and stay out of the meeting room while the matter is being discussed and voted on.	If a councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or someone else – 200 penalty units or 2 years imprisonment Otherwise – 85 penalty units.
Action after preliminary assessments LG Act: s176C(8) CoBA: s180(7)	A person must not make a complaint about the conduct or performance of a councillor if – the complaint is substantially the same as a complaint that the person has previously made; and the complaints assessor has given the person the required notice	Maximum penalty – 10 penalty units.
Note: A person cannot be a councillor for 4 years if convicted of an 'integrity offence'. This includes offences against s171, s171A(2) or (3) and s172(5) of the LG Act, or their equivalents under CoBA; and against s171B(2) of the LG Act, or its equivalent under CoBA, if paragraph (a) of the penalty applies.		
Witnesses at hearings LG Act: s214(2) CoBA: s180(7)	A person must: – Attend at the time and place specified in the notice – Continue to attend until excused by the investigator – Take an oath and make an affirmation if required by the investigator – Answer a question a question that the person is required to answer (unless the person has a reasonable excuse) – Produce a document that the person is required to produce (unless the person has a reasonable excuse).	Maximum penalty – 35 penalty units.
Contempt at hearing LG Act: s215	A person must not: – Insult the investigator in a hearing – Deliberately interrupt a hearing – Take part in a disturbance in or near a place where the investigator is conducting a hearing – Do anything that would be a contempt of court if the investigator were a court.	Maximum penalty – 50 penalty units
False or misleading information LG Act: s234(1)	A person must not give information that the person knows is false or misleading to any of the following: – The Minister – The department's chief executive – The chief executive officer – An authorised person – The change commission – A regional conduct review panel – The tribunal – The grants commission.	Maximum penalty – 100 penalty units