

Date: 13 December 2021
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Ms Stephanie Galbraith
Committee Secretary
State Development and Regional Industries Committee
Email: sdric@parliament.qld.gov.au

Dear Ms Galbraith

Inquiry into the functions of the Independent Assessor and performance of those functions

I submit the City of Gold Coast (the City's) submission for the above inquiry, with a focus on recommending amendments to the *Local Government Act 2009*.

The City's recommendations are aimed at refining the legislative framework to deliver a more effective local government councillor conduct complaints framework and reduce administrative workload and cost.

Since the new councillor conduct complaints framework provided for under the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* came into operation on 3 December 2018, the City of Gold Coast has:

- received 156 decisions by the assessor to dismiss, refer to the local government or take no further action
- incurred \$52,073 in investigation costs
- incurred \$237,957 in costs to reimburse to Councillors for legal fees (City insurance claims)
- managed 9 suspected inappropriate conduct investigations referred from the Independent Assessor for the Council to deal with.
- recorded:
 - 0 findings of inappropriate conduct
 - 4 findings of misconduct
 - 0 findings of corrupt conduct

In addition to the financial costs outlined above, the new Councillor Conduct framework has impacted the City with the following additional workload:

- Creating and updating the required policies and procedures and associated training.
- Referring complaints to the OIA given S150P triggers a compulsory referral (even for suspected minor behavioural standard conduct breaches).
- Responding to information requests from the OIA to inform their investigations.

- Maintaining the City's conduct register.
- Supporting the nine suspected inappropriate conduct investigations that were referred to the Council to deal with.

It is clear from work and investigations undertaken over the past three years, that most of the City's costs and resources are being directed to inappropriate conduct complaints (or dismissed or no further action complaints). With no findings of inappropriate conduct since the legislation came into effect.

The City's submission and recommendations therefore focus on changes that could be considered to reduce the cost and resource burden of the above cohort of complaints (and therefore provide better community value to Gold Coast residents and ratepayers) while still providing a robust framework for dealing with Councillor conduct complaints in Queensland.

Inappropriate conduct

S150K of the Local Government Act 2009 defines inappropriate conduct as conduct which contravenes (et alia):

- a) A behavioural standard
- b) A policy, procedure, or resolution of local government

The behavioural standard is largely guided by the *Code of Conduct for Councillors / Queensland (August 2020)* which includes the Local Government principles and values and standards of behaviour.

The City's concern is that the principles, values and standards are very subjective with a number of examples supporting very general behavioural statements. For example, section 2.1 "*treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness*".

In application by way of example, the City has found wherever a customer mentions they were not treated with courtesy by the Councillor and can provide details of that interaction to demonstrate, it has to be referred to the assessor.

S150P of the Local Government Act 2009 states the government entity must-

- a) *Refer the complaint to the assessor*
- b) *Give the assessor all information held by the entity that relates to the complaint.*

This strict drafting of the legislation requires **all** complaints relating to the conduct of a Councillor to be referred even those meeting the very low behavioural standard thresholds.

The City believes this requirement, coupled with the subjective behavioural standards included in *Code of Conduct for Councillors in Queensland* have significantly contributed to the unnecessary work burden on the local government (and assumed for the assessor as well).

The City recommends:

- ***Increasing the threshold of inappropriate behaviour through definition or creating a more prescriptive Code of Conduct for Councillors in Queensland.***

- ***Relaxing the mandatory referral of the complaints to the assessor, particularly for inappropriate conduct and potentially allowing a level of assessment by the CEO (or delegate). The complainant always has an option for direct referral should they be dissatisfied with a non-referral assessment decision.***

Part (b) of S150K of the Local Government Act 2009 which defines inappropriate conduct as a contravention of a local government policy, procedure, or resolution has resulted in similar operational issues for local government.

Because there is no minimum threshold, any slight contravention of a policy, could potentially lead to a Councillor Conduct complaint being lodged. A City of Gold Coast policy may include a procedure, a standard or a guideline.

The concerns of potential breaches of policy has extended the drafting work in all Councillor-related City policies over the past three years. Word for word detail is often checked and changed due to this concern (or content kept to a minimum) and even though guidelines allow for some discretion, they are equally scrutinised due to them being attached to a 'policy' and concerns about potential consequences.

As an example, the City included required subject header wording in email requests as part of a guideline attached the City's draft Acceptable Requests Policy and Guidelines. It supports Councillors in requesting advice or information (s170A LGA). The Policy and Guideline has had to be reworded to ensure even the guideline clearly identifies content as recommendations only, so to not trigger potential breaches of policy for the Councillors.

Again, the City would consider such a breach (incorrect words in an email subject line as outlined in a policy guideline) as something that would not need to be referred, however the strict legislative drafting as it stands, indicate a possible breach of policy and required referral.

The City recommends:

- ***Including a threshold on a policy or procedure breach (or be more prescriptive for inappropriate conduct)***
- ***Relaxing the mandatory referral of the complaints to the assessor, particularly for inappropriate conduct and potentially allowing a level of assessment by the CEO (or delegate). The complainant always has an option for direct referral should they be dissatisfied with a non-referral assessment.***

Yours faithfully



Joe McCabe
Acting Chief Executive Officer
Council of the City of Gold Coast