

Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023

Submission No: 4
Submitted by: OSCAR - Organisation Sunshine Coast Association of Residents Inc
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Recognising and upholding excellence in local government

Mail: PO Box 105
Coolum Beach QLD 4573

Email: mail@oscar.org.au

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Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
Brisbane Qld 4000

Email: sdric@parliament.qld.gov.au
(lodged via SDRIC submission portal)

Dear Secretary

**Subject: *Inquiry into the Local Government (Councillor Conduct) and Other Legislation
Amendment Bill 2023***

OSCAR (Organisation of Sunshine Coast Association of Residents) is the peak body representing resident and community organisations on the Sunshine Coast. We are a non-partisan and not-for-profit incorporated association.

OSCAR acknowledges and commends the good work undertaken by the Queensland Government through the State Development and Regional Industries Committee (SDRIC) of the Parliament on Local Government governance issues and trust the Committee and Government will maintain their resolve to make Queensland's local government regime an exemplar of integrity and transparency.

We are generally supportive of the amendments proposed for the Bill but have some concerns with specific issues.

Note: We have based this submission on the Explanatory Notes accompanying the Bill.

Please find our responses to these amendments on the following pages.

OSCAR wishes the committee well in its deliberations.

Yours sincerely

A solid black rectangular box redacting the signature of Melva Hobson.

Melva Hobson PSM
President

Email mail@oscar.org.au (NB this is our preferred form of communication)

Background

The purpose of the Bill is to implement the Queensland Government's policy in relation to certain recommendations of the State Development and Regional Industries Committee.

OSCAR wishes to comment on the following aspects of the Bill:

- make further changes to the councillor conduct complaints system, including limiting the system's application in relation to former councillors to those persons suspected of corrupt conduct
- further clarify and enhance the councillor conflict of interest requirements
- provide a discretion to the Electoral Commission of Queensland in relation to the recovery of local government election costs
- provide appropriate transitional arrangements for commencement of the improved councillor conduct complaints system

OSCAR response on Achievement of policy objectives

Note: OSCAR's comments reflect the headings provided in the Explanatory Notes accompanying the Bill.

Preliminary assessment process and time limitation for accepting complaints, notices and information about councillor conduct

OSCAR supports **Councillor Conduct Report Recommendation 1** amendments.

We believe these timeframes are appropriate but it is essential that the Office of the Independent Assessor (OIA) and the Councillor Conduct Tribunal (CCT) are adequately resourced in terms of staffing and/or funding to engage sessional staff to achieve these target timeframes.

CCT – Appointment of deputy president and functions of the president

OSCAR supports **Councillor Conduct Report Recommendation 4** amendments but would appreciate more clarity on what is meant by the statement "*This will be managed administratively rather than legislatively*". How will this be achieved?

Again, we make the point that adequate (and additional if necessary) resources must be made available to achieve this objective.

CCT – Constitution

We believe **Councillor Conduct Report Recommendation 8** amendments seem sensible, especially in matters that are uncontested or expedited.

CCT – Publication of decisions

We support **Councillor Conduct Report Recommendation 10** amendments and agree with the items the "publication notice" will not be permitted to include.

Our support for this recommendation is consistent with OSCAR's belief that governance issues relating to councillor conduct must be as open as possible and we support the assertion that this will assist councillors in better understanding the councillor conduct complaints framework. Suitably redacted versions of CCT decisions would serve as useful "case studies" in councillor training activities.

Withdrawal of applications made to the CCT

We support the part of **Councillor Conduct Report Recommendation 12** amendments relating to the Independent Assessor (IA) as it is consistent with the OIA's view on this matter but agree that the Bill should not provide the CCT with the power to discontinue hearing a matter and agree this capacity must rest with the IA.

Provision of CCT hearing details to subject councillor

We support **Councillor Conduct Report Recommendation 13** amendments as we accept the OIA's advice that the current legislation (LGA s 150AK) has resulted in procedural duplication.

Removal of CCT function of investigating suspected inappropriate conduct

OSCAR is uncertain about its position on **Councillor Conduct Report Recommendation 14** amendments and would appreciate more information on why the SDRIC does not believe that investigating inappropriate conduct matters is a proper use of the CCT's resources.

OSCAR's concern is based on the potential for Natural Justice not to be applied where the LG is divided along party or "interest clique" lines and the councillor against whom the complaint is made is not a member of the party or "interest" group. OSCAR would support the condition that the LG is required to have an independent investigation for inappropriate/conduct breaches, with the investigator selected from a State pre-approved panel of investigators.

Annual reporting requirements – IA and local governments

OSCAR strongly supports **Councillor Conduct Report Recommendations 15 and 16** amendments as we are committed to ensuring local communities are as aware as possible of how their councils are dealing with inappropriate conduct matters. We will be interested in the outcome of further consideration and stakeholder consultation on this matter

We support the additional reporting requirements for both local government annual reporting and the OIA's annual report.

Updated natural justice requirements

OSCAR's support for **Councillor Conduct Report Recommendation 17** amendments is qualified. We support the need for natural justice as part of this process and also agree that unnecessary duplication should be avoided but we do not support that the responsibility for natural justice deliberations should transfer from the OIA to local governments.

We will be interested in the further consideration, and stakeholder consultation, that the SDRIC has indicated will occur on this recommendation.

Publication of investigation reports

OSCAR supports **Councillor Conduct Report Recommendation 19** amendments.

OSCAR supports the following section from the section "*Consideration of investigation reports in local government meetings*" (p 19 of Explanatory Notes), where it states: "*if a decision is made at a local government meeting about a conduct breach under the LGA section 150AG that is inconsistent with a recommendation made by the entity who conducted the investigation into the conduct, the CEO must ensure the minutes of the meeting include a statement of the reasons for not adopting the recommendation (clauses 26 and 108 amend the CBR section 242H and the LGR section 254H respectively).*"

Notice of potential disciplinary orders to councillors

OSCAR supports **Councillor Conduct Report Recommendation 22** amendment. We agree that councillors need timely advice about what actions or penalties they may face for inappropriate conduct or misconduct.

Changes to definitions 'conduct breach' and 'misconduct'

Misconduct

OSCAR accepts the OIA position that a breach of a local government's acceptable requests guidelines should not be a category of misconduct but may be potentially inappropriate conduct.

Therefore we support **Councillor Conduct Report Recommendation 23** amendments. Again, we will be interested in the further consideration, and stakeholder consultation, that the SDRIC has indicated will occur on this recommendation.

We believe that the local government's "acceptable request guidelines" should be reviewed at least every 4 years, and in the interests of transparency be easily accessible on the local government's website.

The use of this process/breach must not be used as a means of silencing a councillor or preventing a whistle-blower from accessing information. OSCAR is concerned that any information should be kept from a Councillor. OSCAR suggests that the breach should only be applied against a councillor who uses information that is "confidential" and is released to the public prematurely from an LG's normal release of confidential information outcomes.

Conduct breaches

OSCAR supports Clause 42 of the Bill which amends the definition of "conduct breach" in section 150K to provide that the conduct of a councillor, including the chairperson, at local government meetings is a conduct breach if it is part of a course of conduct leading to orders for unsuitable meeting conduct being made against the councillor on three occasions within one year.

Compulsory councillor training

OSCAR does not accept that councillors should be struggling to identify a conflict of interest. Queensland councillors are well paid for the most part and should have the intellectual capacity to understand the rules around conflict of interest, particularly given the information and guidelines already provided, for example, by the LGAQ (Conflict of Interest app: <https://coiapp.lgaq.asn.au/>) and the Department (LG Central: <https://lgcentral.statedevelopment.qld.gov.au/login>).

We note, with some concern, that we can no longer find the excellent Managing Conflicts of Interest – Quick Reference Guide that was previously available on the old DLGRMA website. **We would be keen to know what has happened to this resource.**

We accept however the Councillor Conduct Report (p 61) indicates that training on this issue has been haphazard, irregular or not given appropriate importance but **question why this is the case.**

Therefore, it should come as no surprise that OSCAR strongly supports **Councillor Conduct Report Recommendation 27** which would make professional development on councillor conduct, including conflict of interest, **compulsory.**

We also support the sanctions suggested for non-compliance.

Vexatious complainants

OSCAR agrees that concerns about vexatious complaints are legitimate but in our view, the problem may be exaggerated. OIA Annual Report statistics indicate a low number of such complaints in the

last two financial years – 22 such complaints (2.5% of all complaints) in 2021-22 and 25 complaints (2.8% of all complaints) in 2022-23.

OSCAR supports **Councillor Conduct Report Recommendation 28** on the need for a consistent definition of vexatious complaints/complainants and the continued reporting by the OIA on these.

We require more information before we are in a position to support **Councillor Conduct Report Recommendation 29** amendments.

Councillor conduct register requirements

OSCAR accepts the position of the OIA that the present process was unduly onerous and its removal would create significant efficiencies. Accordingly, we support **Councillor Conduct Report Recommendation 30** amendments.

We also endorse Government support for **Councillor Conduct Report Recommendation 31** which requires the OIA to continue to publish the number of complaints dismissed or deemed to require no further action in its annual report.

Removal of ‘training’ from OIA’s functions

OSCAR supports the **Councillor Conduct Report Recommendation 36** amendment as we agree that the Department is best placed to provide training to local government, freeing the OIA to focus on its core functions.

Of course, the Department must be adequately resourced to perform this role.

Provision of official departmental advice to councillors

OSCAR support **Councillor Conduct Report Recommendation 39** to “investigate the appointment of an independent local government integrity and conduct advisory service” and the consequent amendment.

Anecdotally we hear from some councillors in jurisdictions outside the Sunshine Coast and Noosa LGA's that the advice from the OIA has been valuable. Should this process be taken “in house” to the Department of Local Government it would require a specialist trained team to be established to achieve the desired outcome.

Further changes to the councillor conduct complaints system

OSCAR supports the proposed amendments to the Bill concerning:

- Former councillors
OSCAR endorses that, section 150M has been replaced with a new provision that deals with the conduct of a councillor who vacates office and is subsequently elected or appointed as a councillor for a new term of office within 12 months after the office is vacated. (p 27 Explanatory Notes)
- ‘Inappropriate conduct’ to be termed a ‘conduct breach’
- Unsuitable meeting conduct of chairpersons
- Parties to QCAT review proceedings – CCT decisions
- Vacancy of office – IA and CCT members
- Unlawful direction of a mayor is ‘misconduct’
- Disciplinary orders – replacing ‘public admission’ with ‘public apology’

OSCAR offers qualified support for the following amendments:

- Power for local governments not to start, or to discontinue, investigations into suspected conduct breaches

OSCAR notes and supports the following: *The decision can only be made in limited circumstances, including if the complainant withdraws the complaint or consents to the investigation not being started or being discontinued. (p 26 Explanatory notes)*

However, OSCAR is concerned that *“the power not to start, or discontinue, an investigation under section 150AEA can only be delegated by BCC to the mayor, the Establishment and Coordination Committee or a standing committee and to the mayor or a standing committee for all other local governments (refer to clauses 21 and 101 respectively).*

OSCAR does support the following: *To complement new section 150AEA, clause 53 amends section 150AE (Local government must adopt investigation policy) to require a local government to include a procedure in their investigation policy about when the local government may decide not to start, or to discontinue, an investigation under section 150AEA.*

OSCAR also recommends that in the interests of transparency, the policy must be accessible on the LG’s website.

- Allow IA to take no further action in the public interest following an investigation

Clause 50 of the Bill amends section 150Y of the LGA (Decision to take no further action) to enable the IA to take no further action about the conduct of a councillor, following an investigation, if the IA is satisfied taking further action would not be in the public interest.

OSCAR supports this amendment if there is a clear definition of “in the public interest” which **excludes** any political implications and influence.

Councillor conflict of interest requirements

OSCAR supports the clarification and enhancement measures as listed.

Ordinary business matters

Clause 9 and clause 87 of the Bill amend section 177C and section 150EF respectively to insert additional ordinary business matters. Accordingly, the amendments provide that the conflict of interest provisions do not apply to councillors if the relevant matter:

OSCAR is concerned about two of the matters suggested as “ordinary business matters”. These are:

- *is solely, or relates solely to, the making of a donation to a religious, charitable or nonprofit institution or organisation, unless a councillor or close associate or related party of a councillor, receives a benefit because of the donation that is more than merely a benefit relating to reputation*
- *is solely, or relates solely to, employment-related or upgraded travel or accommodation undertaken or used by a councillor or close associate or related party of a councillor. (p 31 Explanatory Notes)*

OSCAR sees no reason why this should be included in Ordinary business. In the interests of transparency, a Councillor should declare a potential conflict of interest but still be allowed to vote. Donations should not be made to any organisation without an officer recommendation and a vote at an Ordinary meeting.

OSCAR does support the clause related to travel and accommodation on the condition that it relates only to LG funded travel and not industry or business funded travel.

OSCAR questions why Councillors should have their travel or accommodation upgraded at any time, unless there are medical reasons.

Councillors not to participate in matters unless permitted – declarable conflicts of interests

OSCAR supports the proposed amendment.

Additional interests that are not declarable conflicts of interests and when matters must be decided

OSCAR supports the proposed amendment.

Local government election costs

OSCAR sees no problem with the amendment to provide the ECQ with discretion regarding the recovery of election costs from local governments which reinforces that a local government is liable to pay all costs incurred by the ECQ for conducting an election in its local government area but provides that the ECQ may decide to recover all or part of the costs from the local government.