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

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[redacted]

SUBMISSION RE THE LOCAL GOVERNMENT (COUNCILLOR CONDUCT) AND OTHER LEGISLATION AMENDMENT BILL 2023

I make the following submission and recommendations:

1. The legislation should ensure that any Mayor or Councillor making a "complaint" about another Councillor to the OIA (whether or not it purports to be under Section **150R of the Local Government Act 2009 (the Act)** – ***Local Government official must notify assessor about particular conduct)*** - be excluded from voting on the matter if and when it comes before Council as an Inappropriate Conduct complaint. There are differing views on whether or not such referral triggers any duty on the referring Councillor to disclose their referral if the matter is forwarded back to Council to be dealt with as an Inappropriate Conduct complaint and/or to declare a potential conflict of interest. It is far too easy for such Councillor to hide behind the veil of their "statutory duty" to report the matter – and then still vote on the matter before Council in which they may have a personal, political or other vested interest.

2. **Section 150AG of the Act – Decision about inappropriate conduct** - should be amended to provide that the Mayor/Chairperson of a Council Meeting does not have a second or casting vote in deciding whether or not another Councillor has engaged in Inappropriate Conduct. The Councillor against whom a complaint is being considered cannot vote on the matter, which leaves many Councils with an even number of voting Councillors and the possibility of a tied vote. Although the Act normally and reasonably allows the Chair to exercise a casting vote in the event of a tie, it is unconscionable and contrary to any notion of justice or fair play for a Councillor to have two (2) votes on such matter where severe penalties (financial and otherwise) may apply to the accused Councillor.

3. There should be a right of appeal or independent review of any decision of Council **under Section 150AG** of the Act and any penalty imposed under **Section 150AH of the Act,** if Council finds a Councillor has committed Inappropriate Conduct. This would accord with any notion of natural justice and would ensure a right of review where significant financial "penalties" may be imposed – running into thousands of dollars – under Section 150AH(1)(vii) of the Act.

   In any event, there should at least be a statutory cap on the amount which may be imposed for Council's cost recovery, for example, $500. Alternatively, Section 150(1)(vii) should be repealed to ensure that Councils are prudent in their approach to ensure unnecessary investigations do not take place which might lead to excessive financial penalties for an individual Councillor.

Section 150AH(2) should also be amended by including paragraph (vii) to ensure that a financial investigative "penalty" cannot be imposed by a Council on a person who is no longer a Councillor.

4. The proposed **Section 150SD of the Act – Decision on preliminary assessment** - should be amended to include the following provision in 150SD(3)(b) to enable appropriate, wider grounds for dismissal of a complaint or a decision not to take any further action.

   Section 150SD(3)(b)(iv) – *"relates to a matter which was inadvertent or of a minor or technical nature or otherwise relates to conduct generally considered to be reasonable in a local government environment".*

5. The proposed **Section 150AKA of the Act - Withdrawing an application** - is a sensible provision but in the first line of sub-section (1) the words "or during" should be added after the word "before". This would reinforce a natural justice outcome should issues arise during a Tribunal hearing which might reasonably justify a withdrawal.

6. The whole basis of Inappropriate Conduct complaints being determined by Council begs the question whether or not it is an appropriate and independent mechanism to deal with such matters. Politics (not necessarily party politics) plays a role in every one of the state's 77 Councils in one way or another. Given the personal interactions of Councillors and their associated relationships (or otherwise), it is not possible to say that justice will always be dispensed in such matters. The former Independent Regional Conduct Review Panels were a better alternative but not perfect. The following are three ways in which an alternative mechanism might be more appropriate:

   A. Inappropriate Conduct matters to be determined by the OIA itself, with an independent right of review; or
   B. A separate independent Panel be established to consider such matters with an independent right of review; or
   C. Inappropriate Conduct to be dealt with by the OIA (or Independent Panel) regarding the imposition of a penalty only if there are 3 or more proven cases by the same Councillor within a period of 1 year. This would be the same approach in Section 150K of the Act whereby 3 occasions of Unsuitable Meeting Conduct within a period of 1 year escalate to Inappropriate Conduct. Limited determinations, not relating to 3 such matters, could still be made such as additional training/counselling for the Councillor but not involving a pecuniary or other significant penalty.

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