

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

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

Local Government Overview

Section/Topic	Proposed change	Impact / Governance Comments
<u>Changes to jurisdiction</u>	<p>The Bill proposes the following changes to the types of complaints that the Independent Assessor (IA) may investigate:</p> <ul style="list-style-type: none"> • Complaints about the conduct of former Councillors cannot progress (Clause 37; Clause 45, s150SD(2)(c); Clause 46, s150T(2); Clause 52, new s150AEA(2); Clause 60, subsection (2)) • Allegations about private conduct of Councillors cannot progress (Clause 45, s150SD(2)(b)(ii)) • A breach of a council's acceptable request guidelines will no longer be misconduct but will instead be inappropriate conduct (Clause 42) • The conduct of a chairperson in a meeting that is not otherwise misconduct will be dealt with by the council in the meeting as unsuitable meeting conduct (Clauses 35, 38-41 and 78-79) • A mayor that gives a direction to a CEO contrary to 170(2) of the <i>Local Government Act 2009</i> (Act) (i.e. inconsistent with resolution or policy, about employee appointments or disciplinary 	<p>Investigations limited to sitting Councillors and ceased upon office being vacant. Possible loophole as Councillor can resign following a reported matter and subsequently run for office when he/she could have been barred from holding public office had the matter progressed to conclusion.</p> <p>Distinction between private and official conduct could be difficult for public figures.</p> <p>Support</p> <p>Support as it falls under the Code of Conduct.</p> <p>Offers better clarification of breach</p>

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	<p>action, would be illegal for CEO to comply with) will be misconduct (Clauses 8, 42 and 93)</p> <ul style="list-style-type: none"> • The term ‘inappropriate conduct’ will be known as ‘conduct breach’ (Numerous Clauses, including 35, 41, 50, 51 and 109) 	<p>Support</p>
<p><u>Assessment process (Clauses 35 and 45)</u></p>	<p>The Bill proposes to establish an identifiable statutory assessment process for complaints about the conduct of Councillors. Some of the elements of the assessment process include:</p> <ul style="list-style-type: none"> • IA must decide whether it is in the public interest to proceed with dealing with a complaint • Consideration to be given to alternative ways of dealing with complaints including warnings, training or outright dismissal of the allegation • Complaints/notices/information must be submitted to the IA within: <ul style="list-style-type: none"> ○ for suspected inappropriate conduct – within 6 months after the conduct occurred; ○ for potential misconduct – within 12 months after the conduct occurred, or within 6 months after the conduct comes to the 	<p>We need to see examples of matters falling into this category with specific reference to public interest. Otherwise, it’s too broad and subjective.</p> <p>Support</p> <p>Support</p>

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	<p>complainant's knowledge but within 2 years after the conduct occurred.</p> <ul style="list-style-type: none">• The IA may dismiss the complaint/notice/information if it is frivolous or vexatious, there is insufficient information to determine whether the conduct is inappropriate conduct or misconduct, or dealing with the complaint/notice/information would be an unjustifiable use of public resources.• If a Councillor has complied with advice from the department in good faith, then the allegation will be dismissed <p>The Bill proposes that the IA will no longer have to provide subject Councillors with natural justice under section 150AA of the Act before referring inappropriate conduct matters to the local government to deal with. Councils will instead be required to apply natural justice principles during the investigation of the complaint. (Clauses 49 and 51)</p> <p>The Bill will include transitional provisions that requires the IA to assess any existing allegations or notifications under the amended processes unless the IA has already applied to the CCT about the</p>	<p>Support</p> <p>Support</p> <p>Councils should be able to refer back where they cannot reasonably apply natural justice principles (conflicts, skills etc.)</p>
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	matter or referred it to a local government for action.	Support
<u>Vexatious complaints</u>	<p>There will be no change to the existing offence under section 150AV of the Act for making vexatious complaints.</p> <p>The Bill proposes to establish a new process for the IA to declare a complainant to be a vexatious complainant where the person has repeatedly submitted complaints to the OIA vexatiously or otherwise than in good faith under 150AWA. A vexatious complainant will not be able to make complaints about Councillor conduct without the permission of the IA. The IA must give a complainant written notice of their intention to declare them a vexatious complainant and consider any submission made in response to the notice. The complainant will be able to request a review of the IA's vexatious complainant declaration in QCAT. (Clauses 64 and 66)</p>	Support
<u>Inappropriate conduct process</u>	The Bill proposes a process where councils can 'withdraw' an inappropriate	Support

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	<p>conduct allegation at the request or with the consent of the complainant or where the complainant refuses to cooperate with the investigation of their complaint. (Clause 52. See also Clauses 21, 24, 51, 57, 78, 79 and 96)</p> <p>The Bill proposes to establish minimum natural justice requirements for councils to comply with when investigating allegations of inappropriate conduct including:</p> <ul style="list-style-type: none"> • allowing the subject Councillor to provide evidence during the investigation process • allowing the subject Councillor to make a written submission about an investigator’s intended findings and/or recommendations for dealing with the Councilor’s conduct • requiring an investigator to consider the subject Councilor’s written submission before finalising the investigation report • requiring a Councilor’s written submission to form part of the final investigation report. (Clause 51) <p>The Bill proposes to remove the IA’s power to make recommendations about how a council must investigate an allegation of inappropriate conduct.</p>	<p>Agree as it will enable consistency and transparency in the process.</p> <p>The guidance from the IA can, in some instances, empower the Council to investigate the matter in a particular manner based on the IA’s objective</p>
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	<p>Councils will be required to follow their investigations policy when investigating alleged inappropriate conduct. (Clauses 50 and 53)</p> <p>The Bill provides that an ‘executive summary’ of the investigation report must be made publicly available with the agenda papers before the meeting where a council will decide an allegation of inappropriate conduct. (Clauses 25, 54, 100 and 101)</p> <p>The Bill also proposes that the Council meeting may be closed when council is considering an investigation report about alleged inappropriate conduct. However, unless the power to make the decision is delegated to the mayor, the resolution about the matter must be passed in open session. If council makes a decision inconsistent with the findings or recommendations of an investigation report, council must provide its reasons for the decision. (Clauses 26, 27, 102 and 103)</p> <p>The Bill proposes that a redacted version of the investigation report will be attached to the minutes of the meeting where an allegation of inappropriate conduct was decided. (Clauses 25, 51, 55, 100 and 101)</p>	<p>advice . Not all Councils have the capability or capacity to investigate Councillors.</p> <p>This assumes the investigation report is accurate and objective which is not always the case</p> <p>This is akin to a peer review and is subject to biases and therefore cannot be considered to be fair and transparent.</p> <p>There is the perception and reputation risk associated with Councillors disciplining “one of their own”, particularly in instances where the allegations are unsubstantiated.</p> <p>Some cases are still identifiable especially in small communities which may prejudice either or both of the parties involved. This proposal may be contrary</p>
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		to the proposed amended definition of Information Privacy.
<u>Conduct decisions</u>	<p>The Bill provides that the CCT or local government will specify the wording of any public apology that it orders a Councillor to make. (Clauses 56 and 109)</p> <p>The Bill proposes that the CCT must provide the department with the full copy of its decisions in addition to the summary of the decision. The department will publish a redacted version of the full decision on its website. (Clause 62)</p> <p>Appeals against CCT decisions will still be subject to merits review by QCAT. However, the Bill proposes to remove the CCT as a party to any appeal and to make the IA a party to the appeal. (Clause 63)</p> <p>The Bill does not propose to limit a Councillor's right to seek judicial review about council decisions on alleged inappropriate conduct.</p>	<p>Support</p> <p>Support</p> <p>Support</p> <p>This could result is a high number of appeals in instances where the Councillor disagrees with Council decision.</p>
<u>Matters before the CCT</u>	The Bill proposes amendments so the IA will be able to withdraw any application to the CCT if they consider it is in the public interest to do so. The IA will be	We need to see examples of matters with specific reference to public interest. I can understand matters before the court or under investigation/consideration by the

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	<p>responsible for notifying the relevant parties to the allegation of the withdrawal. (Clause 59)</p> <p>The Bill proposes that the IA will no longer be responsible for notifying parties of the time, date and place of hearings. The CCT will instead be responsible for providing notice of the hearing to the parties at least 14 days before the hearing date. (Clause 60)</p> <p>Transitional provisions are proposed to withdraw all of the allegations relating to the change in the IA's jurisdiction out of the system unless the CCT has commenced the hearing into the allegations, in which case the hearing may continue until it is completed. The IA will be responsible for notifying the relevant complainant, subject Councillor and council that the matter has been withdrawn.</p> <p>The Bill proposes to omit the ability for councils to request a CCT member investigate an allegation of inappropriate conduct on their behalf. (Clauses 51 and 70)</p>	<p>agency, other regulatory bodies etc. but this could be a subjective decision by the IA.</p> <p>Acceptable</p> <p>Suggest open cases be finalised under the current regime. This looks like a data cleansing exercise and matters are not being referred elsewhere – just removed.</p> <p>This currently offers a level of transparency and independence and in some instances, specialist investigative and subject matter expertise. Its removal is not recommended.</p>
<p><u>Conflicts of interests</u> (Clauses 9, 10, 12, 22, 82, 83, 85 and 97)</p>	<p>It is proposed to amend the definition of ordinary business to clarify existing</p>	<p>Support</p>

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	<p>exemptions and to introduce new exemptions for Councillor conflicts of interests, including:</p> <ul style="list-style-type: none">• if the matter is solely, or relates solely to, the preparation, adoption or amendment of a local government's budget• if the matter is solely, or relates solely to, the preparation, adoption or amendment of documents prescribed by regulation. It is proposed that a regulation would be made to prescribe strategic documents such as the operational plan, revenue policy and investigations policy.• If the matter is solely, or relates solely to a person that makes a donation to a non-profit, charitable or religious organisation where there is no personal financial gain or loss to a Councillor, close associate or related party of the Councillor• if the matter is solely, or relates solely to, a Councillor representing the local government in an official capacity at a function or event hosted or held by a government agency or entity wholly-owned by the local government, as decided by the local government	
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	<p>Councillors to complete within a defined period. A Councillor unable to complete the training within the specified time may request an extension of time in extraordinary circumstances. A Councillor that does not complete the training within the prescribed time may be issued a show cause notice about why they should not be suspended until such time that they complete the training.</p> <p>A Councillor who fails to complete mandatory training within 12 months of its required completion date may be issued a show cause notice about why their office should not become vacant.</p>	<p>Support as it is good practice and will ensure all are aware and comply with current legislation.</p>
<p><u>Publication of notices</u></p>	<p>The Bill proposes to remove the requirements in the Act for councils to publish notices in newspapers circulating generally in their areas. Notices may instead be published online or in other ways a council considers appropriate. (Clauses 3 – 6, 20, 29 – 32, 34, 95, 106 and 107)</p>	<p>Support</p>
<p><u>Election costs</u></p>	<p>The Bill proposes amendments to the <i>Local Government Electoral Act 2011</i> to provide the Electoral Commissioner with a discretion whether to recover all or part</p>	<p>Not sure if this changes the current status whereby charges are the same whether Councils provide assistance or not as</p>

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	of the costs of an election from the relevant local government. (Clause 108)	cost recovery is not specified and is at the Electoral Commission's discretion.
<u>Moreton Bay City Council</u>	The Bill proposed amendments to various Acts to change the name of Moreton Bay Regional Council to Moreton Bay City Council. (Clause 109)	Standard procedure following change of classification from Regional Council to City Council