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

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Committee Secretary
State Development and Regional Industries Committee
Parliament House
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By email: SDRIC@parliament.qld.gov.au

Dear Secretary,

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

Thank you for the opportunity to make a submission on the *Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023* (the Bill) which proposes significant changes to multiple Acts of Parliament and subordinate legislation including most significantly to the *Local Government Act 2009* (the Act) and the *Local Government Regulation 2012* (the Regulation).

I note that this Bill, at least in respect of the Councillor conduct elements which make up most of the proposed changes, has been almost two years in the making since the Inquiry into the functions of the Independent Assessor first commenced in late 2021. We are now approaching five years since this new approach to Councillor complaints commenced on 3 December 2018 and the experience to date has been extremely frustrating for Councillors and terribly costly for ratepayers and taxpayers.

With the annual expense of the Office of the Independent Assessor (OIA) and the Councillor Conduct Tribunal (CCT) combined with the significant costs borne by local government in administering investigations, funding the legal costs of Councillors and substantial administrative overheads, there is no doubt in my mind that the Councillor complaints regime in Queensland has cost $10 million plus to date and the meter continues to tick.

The consistent reason that is given for the regime is that Queenslanders need to have confidence in the system of local government. Of course, the reality is that 95% of Queenslanders would not be able to tell you anything about the Councillor complaints process or who administers it. The vast majority of citizens judge their elected local representatives on their performance in delivering for their community. Confidence in their local Council comes from rates being maintained at affordable levels, delivery of an effective planning process, maintaining parks, pools and libraries to high standards and so on.

Therefore, at a time when people are struggling to put petrol in the car, food on the table and pay the electricity bill, I strongly suspect most Queenslanders would prefer to see their rates and taxes go towards things that support their day to day needs rather than towards costly investigations into often relatively minor matters. I see the potential for that aspiration to be achieved in the Bill, at least to some extent.

Although the explanatory notes that supported the original changes through the *Local Government (Councillor Complaints) Other Legislation Amendment Bill 2018* promised a simpler, more streamlined system we have of course seen the precise opposite. We currently have a system where relatively minor matters that could have been dealt with in a cost effective, expeditious way have been bogged down in investigations and legal arguments lasting years. This needs to stop immediately.

As to the proposed changes in the Bill, I am very supportive of the mechanisms that have been provided to the OIA to streamline the complaints process and potentially remove some of the time and costs from the current complaints system. I am also supportive of the sensible proposed changes to the definition of "ordinary business matters". These positive proposed amendments are addressed individually below:

1. The proposed one year "statute of limitations" in Section 150SB is strongly supported. I have recently had to defend allegations that are over five years old, and this is highly unfair in terms of one's ability to recollect events, locate documents and emails to defend allegations etc. The transitional provisions should go even further and give the Assessor more authority to refuse to investigate current complaints that have not yet been decided unless they involve potential corrupt conduct.

2. The additional flexibility provided to the OIA in Section 150SD, particularly subsection 4, paragraph c, is strongly supported. I note it accords closely with the proposal I made in my submission to this Committee on 15 December 2021. If used wisely these provisions will remove a significant number of relatively minor complaints from the system whilst still providing the OIA the opportunity to correct potential breaches on the minor end of the scale that may have occurred inadvertently. Of course, if future complaints about similar alleged breaches occur it may be appropriate for the OIA to investigate further.

3. The potential to declare a complainant vexatious for up to four years in Section 150AWA is strongly supported. The OIA do not understand, nor are they expected to understand, the political landscape in every local government in the State. It is a fact however, that many complainants have "jammed the system" over the past 5 years with politically motivated complaints. The costs and time consumed by these complaints are significant. Whilst a political or personal opponent cannot be prevented from making a complaint, where such complaints have no justification or foundation, there must be consequences for the complainant.

4. The additional definition and flexibility around "ordinary business matters" in Section 150EF is strongly supported. Confirming that budget preparations are considered ordinary business will save significant time and concern for Councillors and not increase risk around a Councillor's real or perceived personal interests. Further clarification around donations, attendance at events and upgraded travel or accommodation are most welcome and will allow Councillors across the State to make a greater contribution to their community at no risk to community interests.

Summary – I commend the Government on the positive changes described above but note that they are only effective if interpreted and implemented judiciously by the OIA. I note that there have always been provisions around not investigating for public interest reasons, yet the OIA have not used those provisions as often as they should have. This has come at great cost to ratepayers and taxpayers, and I would argue to the community as potential local representatives are discouraged from standing for office. Similarly, there have always been provisions around vexatious complainants that have rarely been used.

It is essential therefore that the OIA use these sensible proposed amendments wisely and I would hope to see reporting on these matters included in the OIA's annual report to the Queensland Parliament.

Regrettably, there are other proposed changes in the Bill that will be counter-productive for local government and for Queensland as outlined below:

1. The requirement to make a summary of the investigation report publicly available before the meeting at which the decision is made, as set out in Section 150AFA and further particularised in Section 239C of the Regulation, has the clear potential for negative and unintended consequences. It has been Gold Coast City Council's (Council) practice to list matters for decision around inappropriate conduct on its agenda but not provide the report, or any summary report, prior to the meeting. In this way, the public and the media are aware the matter is upcoming, but they cannot view the details of the matter before it is debated and determined in Council.

   It is normal practice for Council agendas to be out five business days before a meeting so under the proposed changes, the summary report would be publicly available four days before being considered by Council. It is inevitable that these summary reports will be picked up by the media and, at least in some cases, sensationalised before Council considers the matter. This is unfair to the accused Councillor; it is unfair to the balance of the Council who must determine the matter and it is arguably unfair to the complainant.

   I have no concern with the full investigation report being made publicly available after the Council decision as proposed in Section 150AGA. If the full report is made available after the meeting, and the matter is debated in open session of Council, I would ask what additional benefits are gained by publishing a summary report before the matter is determined by Council that would outweigh the obvious disbenefits?

2. The proposed changes to the contents of the Councillor Conduct Register in Sections 150DX and 150DZ are not supported. I find this proposal at odds with the premise that the Councillor Complaints system in Queensland is founded on the need for public confidence in local government. Shouldn't the public also be able to scrutinise the performance of the system as a whole to have confidence that the State Government's legislation is effective? The removal from the register of complaints that are dismissed, or where no further action is required, denies the public the opportunity to see, on a Council-by-Council basis across Queensland, the volume and percentage of complaints that are dismissed.

   I am aware that some Councils in Queensland, where there is significant antipathy between individuals on the Council, are "leading the way" in the making of complaints against their own colleagues. Why should the public be denied the opportunity to see these statistics and consider whether the people they have elected are behaving in a petty fashion that is not in the best interests of the community?

If these provisions are enacted into the Act, I seek clarification as to whether the OIA will continue to advise individual Councils of all dismissed complaints so they can retain the option of listing the complaint on their register should they choose to do so.

There are two other matters relating to the Bill that I would like to bring to the Committee's attention for consideration.

Firstly, I note with some exasperation the proposed amendments to Section 150AL requiring the Tribunal to give 14 days' notice to all parties of a conduct hearing. I suggest that this amendment is superfluous to needs since the Tribunal rarely, if ever, seems to conduct formal hearings and prefers to make decisions in camera based only on the documents provided. This practice is unfair given the reputational and politically existential risk to the accused, noting the Minister's powers to suspend or dismiss for misconduct, and the Tribunal's overt flirtations with making such recommendations.

I would question how a Councillor elected by his or her community can have their position threatened by an impersonal panel of faceless people, particularly when the Councillor has specifically asked for a hearing so that evidence may be challenged, full contextual explanations provided, and witnesses cross examined. In one recent case the Tribunal went to some lengths to avoid a hearing for, amongst other reasons, the reputation of one of the potential witnesses. I find this an extraordinary position that a witness, accused of nothing, is worthy of protection but an accused Councillor is not worthy of the opportunity to have a misconduct matter tested in a hearing.

I note that there are several changes in the Bill proposing additional transparency around local government in terms of what it must report in its Annual Report, additional *Investigation Policy* steps including, but not limited to, summary reports and full investigation reports published pre and post Council decision. I would simply ask that the other parties in the complaints process (the Assessor and the Tribunal) not be able to avoid full transparency regarding their performance. Therefore, I propose that where one party to a misconduct matter (OIA or accused Councillor) requests a formal hearing at the Tribunal, there should be no capacity for the Tribunal to deny such request. If they are to retain that power, they should be required to publish their reasons and report annually on the number of times they refuse to hold hearings and the proposed public interest reasons for such decisions. Surely such decisions are not being made for the convenience of the Tribunal given the recent increase in resources provided by the government?

Secondly, I bring to the Committee's attention that the change proposed in Section 150AR, enabling the Tribunal to make particular orders or recommendations about the way in which a public apology is made, would also seem to be superfluous. The Tribunal has already made particular orders and recommendations about the way in which public apologies must be made. Given this proposed amendment, it would seem those orders / recommendations may have been ultra vires and I will separately seek the Department of Local Government's view on the validity of such previous orders.

Once again, I thank to Committee for its consideration of this submission and look forward to seeing significant enhancements to the Councillor complaints process for the benefit of all participants and in the best interests of Queensland.

Yours sincerely

TOM TATE
MAYOR

City of Gold Coast