

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

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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

Dear Committee Secretary

Brisbane Residents United submission to the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023

Thank you for the opportunity to make a submission to the State Development and Regional Industries Committee re this inquiry.

This submission is made on behalf of Brisbane Residents United (BRU), Brisbane's peak body for community resident actions groups. Whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice to Governments on matters pertaining to urban planning and development.
- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

BRU is a non-partisan and not-for-profit incorporated association that represent the interests of the broader community.

All systems benefit from regular review but a system is only as good as the support and resources it receives from its governing body. This is a relatively new system that has had

a huge workload from its inception. A governance and complaints system that is not adequately funded and staffed has been set up by the State Government to fail.

The Office of the Independent Assessor (OIA) and the Councillor Conduct Tribunal (CCT) have not been able to keep up with their workload. This is a reflection of their lack of resourcing not necessarily an inefficient work flow model.

The solution to this problem is not to narrow the criteria, restrict the time or resources allowed for proper assessment and action on legitimate complaints, it is to provide the necessary resources so those complaints can be acted on in a proper and timely manner.

In the main BRU supports the proposed changes to the legislation in relation to the recommendations of the State Development and Regional Industries Committee in its Report No. 28 of the 57th Parliament '*Inquiry into the Independent Assessor and councillor conduct complaints system*' (Councillor Conduct Report). We have listed the recommendations, relevant comments from the report, proposed legislation and our response as follows:

Recommendation 1

That the following target timeframes be applied to the complaints framework by the Office of the Independent Assessor and the Councillor Conduct Tribunal for all but the most complex or serious of cases:

- **initial assessment or 'triage' of complaint completed by Office of the Independent Assessor within 7 days of receipt**

The OIA has set a target to conduct this initial assessment within 21 days of a complaint being lodged. The OIA has provided evidence that a high percentage of complaints are assessed within this timeframe.⁴⁹ In 2021-22, 91 per cent of complaints received were assessed within 21 days.⁵⁰

We do not support this time frame for initial assessment and ask that this be guided by the OIA.

- **misconduct investigations including natural justice processes completed by Office of the Independent Assessor within 60 days of initial assessment**

We do not support this time frame for initial assessment and ask that this be guided by the OIA.

- **determination of conduct matters completed by Councillor Conduct Tribunal within 3 months of the date of referral, unless the subject councillor requests an extension under the Local Government Act 2009**

We do not support this time frame for initial assessment and ask that this be guided by the OIA.

- **adoption of a statute of limitation, to be determined by the Queensland Government with advice from the tripartite forum (Recommendation 38), to accept complaints unless they involve matters to be referred to the Crime and Corruption Commission.**

Clause 46 Insertion of new ch 5A, pt 3, divs 3A and 3B

New section 150SB (Period for making complaint or giving notice or information) provides that a complaint about the conduct of a councillor must be made or given to the assessor:

- **within one year after the conduct occurred; or**
- **within six months after the conduct comes to the knowledge of the complainant, but within two years after the conduct occurred.**

We think this should be “but within four years after the conduct occurred.” The FOI legislation in this state is slow, expensive and cumbersome. It can take some time for suspected poor behaviour to be confirmed.

Recommendation 4

That the President of the Councillor Conduct Tribunal be appointed on a full-time basis to drive the performance of the tribunal and that a Deputy President be appointed on a part-time basis to support this work.

Supported

Recommendation 8

That the Local Government Act 2009 be amended to allow one Councillor Conduct Tribunal member to hear and determine matters such as uncontested or expedited matters, and that a panel of 3 tribunal members continue to hear and determine complex, serious or contested misconduct matters.

Supported

Recommendation 10

That the Local Government Act 2009 be amended to require publication of Councillor Conduct Tribunal decisions in full, subject to appropriate redactions.

Supported

Recommendation 12

That the Local Government Act 2009 be amended to provide that the Independent Assessor can withdraw a referral to the Councillor Conduct Tribunal, and that the Councillor Conduct Tribunal can decide to discontinue hearing a matter in the public interest.

Supported

Recommendation 13

That the Local Government Act 2009 be amended to require the Councillor Conduct Tribunal to provide a subject councillor with hearing details at least 14 days in advance of the hearing.

Supported

Recommendation 14

That the Local Government Act 2009 be amended to remove the ability for the Councillor Conduct Tribunal to provide investigation services for inappropriate conduct matters for councils.

Supported

Recommendation 15

That the Local Government Act 2009 be amended to require local governments to publish in their annual reports the number of inappropriate conduct matters referred by the Office of the Independent Assessor, the number of referrals that have been addressed and the average time taken to resolve the matter.

Supported but we would like to see a more detailed report in that each case should be listed with the details of the inappropriate conduct matter referred, how the matter was resolved and time taken to resolve the matter. The number of referrals addressed and the average time taken to resolve a matter really does not give the community useful information by which to judge whether the Council is fulfilling its obligations in this area or not.

Recommendation 16

That the Independent Assessor publish information on the number of matters referred to local government for resolution, the number reported back to the Independent Assessor by the local government as being resolved by local

governments, and the number of matters that are currently unresolved or not reported.

Supported but we would like to see this report provided by Local Government Area.

Recommendation 17

That the Local Government Act 2009 be amended to remove the requirement for the Office of the Independent Assessor to conduct the section 150AA natural justice deliberation for inappropriate conduct matters as this process is duplicated by the local government on referral.

In doing this we offer strong guidance to local councils to undertake a natural justice process as a first step, in considering inappropriate conduct matters.

We also recommend that all local governments review their inappropriate conduct investigations policy and processes to ensure that matters are resolved expeditiously.

The committee is also of the view that steps should be taken to increase the transparency of the inappropriate conduct process.

It may be the case that the Local Government Act needs to be amended to enable the OIA to 'follow up' any unresolved inappropriate conduct issues with councils.

In short, the capacity of councils to deal with inappropriate conduct needs to be developed.

Clause 52 Amendment of s 150AC (Referral of suspected inappropriate conduct)

Clause 52 amends section 150AC to remove the Independent Assessor's power to recommend how a local government may investigate or deal with the conduct that has been referred.

We support the removal of the requirement for the Office of the Independent Assessor to conduct the section 150AA natural justice deliberation for inappropriate conduct matters as this process is duplicated by the local government on referral. However we think the Independent Assessor's should retain the power to recommend and oversee how a local government may investigate or deal with the conduct that has been referred. It has been noted that several Councils have failed in their duty to act on many of these referrals and it is therefore imperative that there is independent oversight on their subsequent actions.

Recommendation 19

That reports of external investigators appointed by local governments to consider substantiated inappropriate conduct matters be published by the local government with appropriate redactions.

This includes publishing reports of external investigators (as appropriate) and ensuring that local communities are aware of how their councils are processing inappropriate conduct matters.

Supported

Recommendation 22

That the Office of the Independent Assessor, Councillor Conduct Tribunal and other parties inform relevant councillors of the potential penalties of a finding of misconduct as early as possible in the process.

Supported

Recommendation 23

That the Local Government Act 2009 be amended so that a breach of a council's acceptable request guidelines is not a category of misconduct except in serious circumstances.

However, it is envisaged that examples of serious breaches of acceptable request guidelines could include requests regarding the assessment or approval of development applications, or the awarding or management of council contract arrangements.

Recommendation 27

That the Department of State Development, Infrastructure, Local Government and Planning make training and professional development on the councillor conduct system, including conflicts of interest, compulsory for all local government councillors, mayors and senior council managers.

Supported

Recommendation 28

That all stakeholders involved in the councillor conduct process use a consistent definition of vexatious and frivolous complaints and complainants, and the Office of the Independent Assessor continue to report annually on actions taken on these complainants.

Supported

Recommendation 29

That the Queensland Government consider adopting Recommendation 4.6 in the 2017 Independent Councillor Complaints Review Panel report regarding repeatedly vexatious complainants.

Vexatious and frivolous complaints

There is concern in the sector that the complaints system is being used improperly for politically motivated purposes. The committee finds that the OIA are doing an effective job in dealing with such complaints but that there is merit in considering regulatory change regarding vexatious complainants.

However, in our third point, the committee believes there may be merit in implementing recommendation 4.6 of the 2017 Independent Councillor Complaints Review Panel report that recommended creating an offence for a person who makes repeated vexatious complaints.

We support the identification and subsequent punishment for repeated offences of those individuals that use these processes to make vexatious and frivolous complaints. We would also like to see a process where a group of councillors can be identified and punished in a similar vein for pursuing similar actions against minority councillors.

In our opinion we have seen more than a few instances of this type behaviour in the local council and we believe it has lead to vexatious and frivolous complaints. We have been told this is not the only council where this is happening. Party or group politics should not be an excuse for poor or bullying behaviour and this process should not be used as part of that ongoing poor behaviour.

Recommendation 30

That the Local Government Act 2009 be amended to remove the requirement to record in councillor conduct registers matters that have been dismissed or deemed to require no further action by the Office of the Independent Assessor or Councillor Conduct Tribunal.

We strongly support the continued listing of dismissed or unsubstantiated complaints on the councillor conduct register that councils are required to maintain (s150DX). Keep in mind, in these situations, the name of the Councillor against whom the complaint was made remains confidential as it should. These registers serve as a useful guide to the community in general, and potential complainants, about the nature of complaints that are dismissed. Provided councils provide sufficient detail about the nature of each complaint, this serves as a very useful resource for the community and over time will potentially reduce the number of complaints made by members of the public.²⁵⁷

We maintain our strong support for the continued listing of dismissed or unsubstantiated complaints on the councillor conduct register that councils are required to maintain.

Recommendation 36

That responsibility for the delivery of training to councillors be removed from the Office of the Independent Assessor to enable the re-allocation of resources to core activities.

Supported

Recommendation 39

That the Department for State Development, Infrastructure, Local Government and Planning investigate the appointment of an independent local government integrity and conduct advisory service that can issue authoritative advice under the Integrity Act 2009 to a councillor on integrity and conduct matters.

It is clear to the committee that the role of the Integrity Commissioner, and advice provided, was greatly appreciated by all stakeholders in the councillor complaint system. We and all stakeholders understand the resourcing impacts entailed by the addition of an integrity service for local government within the Office of the Integrity Commissioner, but feel it was a highly valued service and remains an option worth investigating.

We acknowledge that Recommendation 6 and 32 are not included in the proposed legislation but would make the following recommendation

Recommendation 6

That future recruitment for the Councillor Conduct Tribunal members also focus on candidates with high levels of experience in the local government management sector.

Recommendation 32

That the Office of the Independent Assessor consider recruitment of experienced former local government managers to provide a broader range of skills and outlook in the councillor complaint assessment process.

We do not agree with these proposals. This would lead to the perception of the Local Government sector judging its own. It is not appropriate and we have seen the massive issues caused by this type of insider influence in the past. It is important that the Office of the Independent Assessor remains precisely that - Independent.

In the main BRU supports the other proposed changes to the legislation with a few reservations. They are as follows

Clause 44 Replacement of s 150M (Application to former councillors)

Clause 44 inserts a new section 150M to deal with particular conduct of a former councillor if they are elected or appointed after vacating office.

New section 150M applies to a person whose office as councillor is vacated, before a preliminary assessment, investigation or an application to the Councillor Conduct Tribunal in relation to a complaint against them is decided, but who is elected or appointed as a councillor for a new term of office within 12 months.

We think this should be “who is elected or appointed as a councillor for a new term of office at the next election.”

BRU supports measures and actions that improve the effectiveness of the OIA and the CCT. We consider that an effective councillor complaints process is an important component of various measures to ensure that local government operates in the public interest. The OIA needs to be utilised in the most effective manner to bring maximum benefit to the community as a whole. We are happy for our submission to be made public and would welcome the opportunity to appear at one of the Committee’s public hearings. Should you require any further information I can be contacted on [REDACTED].

Yours sincerely

Elizabeth Handley

President.

The Brisbane Residents United Inc Steering Group