

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

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Dedicated to a better Brisbane

16 October 2023

Committee Secretary
State Development and Regional Industries Committee
GPO Box 15009
BRISBANE QLD 4002
SDRIC@parliament.qld.gov.au

Dear Sir/Madam

Brisbane City Council (Council) is pleased to provide a submission on the *Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023* (the Bill).

The Department of State Development, Infrastructure, Local Government and Planning has sought feedback on the amendments made in response to 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' (the Report).

Council's submission is limited to the matters that relate directly to Council. The attached document reflects Council's position on those matters.

As the largest local government in Australia, Council acknowledges the importance of the Bill and appreciates the opportunity to take part in the response to the Report.

Should you require any further information about Council's submission, please contact Ms Amanda Peet, Senior Legal Counsel, Corporate Governance and Commercial, City Legal, City Administration and Governance on [REDACTED] or via email at [REDACTED].

Yours sincerely

Colin Jensen
CHIEF EXECUTIVE OFFICER

Att: Brisbane City Council Submission on Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023



Brisbane City Council Submission on *Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 (Bill)*

Introduction

Brisbane City Council (**Council**) appreciates the opportunity to review the consultation draft of the *Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 (the Bill)* provided to Council on 2 August 2023.

Council offers the following submissions for the consideration of the Department of State Development, Infrastructure, Local Government and Planning (**the Department**).

Decisions on preliminary assessment

1. Council understands that the inclusion of section 150SD(1) provides the Assessor with an ability to refer a suspected conduct breach complaint to Council for investigation. Council further understands that this referral may only occur if the Assessor is reasonably satisfied that the subject of the complaint, notice or information is a conduct breach.
2. If Council's understanding is correct, this section requires the Assessor to undertake an initial assessment in relation to the complaint to verify that all of the matters listed in subsection (2) and (3) have been considered, found not to be satisfied so that an investigation of the complaint will be in the public interest and the complaint itself is neither vexatious or frivolous and was made in good faith.
3. Council agrees that this power should be exercised by the Assessor, as opposed to Council, but it is important to note that a failure to conclude any of the above matters on a complaint would cause unnecessary cost and expense to Council in relation to carrying out the investigation. It is therefore necessary for the preliminary assessment to be undertaken with sufficient rigor including the provision of natural justice to Councillors which is address below.

Notice and opportunity of natural justice afforded to Councillors

4. The Bill proposes that the Assessor will no longer be required to provide Councillors, the subject of a complaint, with natural justice under section 150AA before referring conduct to the local government to investigate.
5. As noted above, Council's concerns are that complaints (only showing one side of an issue) without an opportunity for the subject Councillor to provide an alternative view may not be able to be objectively evaluated. This potentially could result in more matters being considered by the Assessor as conduct that should be referred to Council for investigation at the initial assessment stage.
6. Accordingly, Council submits that the Assessor should afford a subject Councillor natural justice (via the opportunity to provide the Assessor with evidence or a submission) before making any decision to refer conduct to Council for investigation.

Provision of natural justice

7. Further to the above matters relating to natural justice, the Bill proposes to establish natural justice requirements for Council including:
 - (a) Allowing the subject Councillor to give evidence or a written submission about the alleged conduct breach.
 - (b) Allowing the subject Councillor to give evidence or a written submission about the preliminary findings.
 - (c) Following consideration of any evidence or submission made, requiring a Councillor's written submission to form part of the final investigation report.
8. Of particular concern to Council is the fact that the proposed drafting does not include any limits on the number of times that a Councillor may, as part of the natural justice requirement, lodge evidence or submissions to Council during the investigation nor any timeframes by which such evidence or submissions must be provided. This may result in an increase in the timeframes for concluding investigations, additional costs to Council and additional resourcing to undertake such investigations.
9. Noting that the intentions of the Report included the timely resolution of Councillor conduct matters, these amendments, respectfully, are unlikely to achieve that end.

Ability to refer matters to Conduct Tribunal

10. Section 150AE(3) removes the ability for Council to ask the Conduct Tribunal to investigate an allegation of inappropriate conduct on its behalf and to make recommendations to Council. The additional responsibilities that will be imposed upon Council by this amendment including the need to review and likely revise Council's internal policies and procedures to address the additional requirements in section 150AE(3), will have significant resource implications arising from costs associated with the number of additional investigations that Council will need to undertake.
11. Further, this approach takes Council back to the days of the Councillor Conduct Review Panel. This Panel was subject to dissatisfaction of Councillors and seen as a tool of the organisation and administration of the day. The proposed changes will effectively create the same situation, where the organisation (and by virtue the administration of the day) is responsible for determining the investigator. The model of having a fully independent (no responsibility for appointment by council) has been successful over the recent years.
12. Given the success of this function Council requests the ability to ask the Conduct Tribunal to investigate an allegation of inappropriate conduct/conduct breach on its behalf and to make recommendations to Council is reinstated. Of course, Council is happy to continue to pay for this service as per current practice.