



Speech By  
**Hon. Dr Steven Miles**


**MEMBER FOR MURRUMBA**

---

Record of Proceedings, 13 September 2023

**LOCAL GOVERNMENT (COUNCILLOR CONDUCT) AND OTHER LEGISLATION  
AMENDMENT BILL**

**Message from Governor**

 **Hon. SJ MILES** (Murrumba—ALP) (Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure) (11.16 am): I present a message from Her Excellency the Governor.

**Mr SPEAKER:** The message from Her Excellency the Governor recommends the Local Government (Councillor Conduct) and Other Legislation Amendment Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

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

*Constitution of Queensland 2001*, section 68

I, DR JEANNETTE ROSITA YOUNG AC PSM, Governor, recommend to the Legislative Assembly a Bill intitled—

A Bill for an Act to amend the City of Brisbane Act 2010, the City of Brisbane Regulation 2012, the Local Government Act 2009, the Local Government Regulation 2012, the Local Government Electoral Act 2011, the Queen's Wharf Brisbane Act 2016 and the legislation mentioned in schedule 1 for particular purposes

GOVERNOR

Date: 13 September 2023

*Tabled paper:* Message, dated 13 September 2023, from Her Excellency the Governor recommending the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 [1325](#).

**Introduction**

**Hon. SJ MILES** (Murrumba—ALP) (Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure) (11.16 am): I present a bill for an act to amend the City of Brisbane Act 2010, the City of Brisbane Regulation 2012, the Local Government Act 2009, the Local Government Regulation 2012, the Local Government Electoral Act 2011, the Queen's Wharf Brisbane Act 2016 and the legislation mentioned in schedule 1 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the State Development and Regional Industries Committee to consider the bill.

*Tabled paper:* Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 [1322](#).

*Tabled paper:* Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023, explanatory notes [1323](#).

*Tabled paper:* Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023, statement of compatibility with human rights [1324](#).

I am very pleased to introduce the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023. This bill is the culmination of an extensive consultation process with the local government sector—and the broader community—to address concerns about the operation of the councillor conduct complaints system. In addition to a wideranging parliamentary committee inquiry, engagement with the sector has included consultation with key stakeholders on a draft bill in recent weeks, including the Office of the Independent Assessor, the President of the Councillor Conduct Tribunal, the Local Government Association of Queensland and the Local Government Managers Association.

Some members will be aware that a framework for dealing with councillor conduct commenced in December 2018, applying to all local governments in Queensland other than Brisbane City Council. In March 2020, the framework was extended to Brisbane. A key component of the new system was the establishment of the position of the Independent Assessor and the Office of the Independent Assessor, whose role it is to investigate complaints and information about councillor conduct, before deciding how the conduct should be dealt with.

I would like to take a moment now to thank Kathleen Florian for her hard work as the inaugural Independent Assessor. I would like to also acknowledge June Anstee for her hard work as the Councillor Complaints Tribunal President.

In October 2021, I wrote to the Chair of the State Development and Regional Industries Committee to request that the committee review the Independent Assessor's functions and how effectively those functions are being performed. The committee resolved to conduct an inquiry and to report to the parliament on its findings. The inquiry's terms of reference included whether the Independent Assessor's performance of their functions was consistent with the intent of the local government complaints system, whether the powers and resources of the Independent Assessor were being applied in accordance with the public interest, and any amendments to the Local Government Act 2009 that would make the Independent Assessor more effective. The report into that inquiry was tabled on 14 October 2022. I would like to take this opportunity to acknowledge the comprehensive and professional work undertaken by the committee in conducting its inquiry. Fourteen hearings across nine towns and cities heard from 47 witnesses and received 59 submissions.

I would also like to take this opportunity to thank all those who participated in the inquiry. Your feedback will help ensure that the OIA and the CCT operate as intended and our local governments can focus on delivering for Queenslanders.

The committee report reaffirmed the need for an independent councillor conduct complaints system. The committee found that the current system is broadly sound, but that improvement is needed. Specifically, it was found that the system needs to more closely and efficiently align with the intent of the legislation and the public interest. The committee report made 40 recommendations for changes to the complaints system. In January this year, the government tabled its response, supporting, or supporting in principle, all 40 recommendations.

This bill seeks to recalibrate the councillor conduct framework to make it more effective and more efficient and to ensure that only matters of substance and in the public interest proceed to the CCT for determination. We owe it to Queenslanders to make sure all our processes are fair and reasonable, especially when it comes to elected officials.

The proposed amendments in this bill address 19 of the recommendations made by the committee which require legislative amendments to implement. It is the intention of the government that all 40 recommendations will be implemented before the local government elections in March.

I would like to now outline some additional changes this legislation update seeks to make. The local government department has worked with councils and peak bodies to develop amendments which clarify and enhance the councillor conflict of interest framework. The local government legislation has also been reviewed with the aim of modernising all remaining print advertising requirements where appropriate. For example, local governments will no longer have to use print media to notify communities where newspapers no longer exist. They will be able to publish these notifications online or on social media. The bill reflects these changes, in addition to minor amendments to provisions about local government election costs.

This bill also includes consequential amendments to a range of acts to reflect the recent reclassification change of Moreton Bay council to officially become Moreton Bay City Council. Moreton Bay has grown up and it is time for us to take our place on the local government stage as a city in our own right. Finally, the bill also makes amendments to the Queen's Wharf Brisbane Act 2016 to address technical anomalies in relation to tenures. I will provide more details about these amendments shortly.

I return now to the detail of the committee's recommendations in relation to the councillor conduct complaints system. Recommendation 1 of the committee report included target time frames to be applied to the complaints framework by the Office of the Independent Assessor and the Councillor Conduct Tribunal. While this part of the recommendation has not been prescribed in legislation, the recommendation also includes adoption of a statute of limitation to accept complaints unless they involve matters to be referred to the Crime and Corruption Commission. The government supported this proposal in principle. The delay in assessing and investigating councillor conduct was a key concern raised by local governments and other stakeholders during the committee's inquiry. Stakeholders called for the Office of the Independent Assessor to use its powers more judiciously and dismiss trivial matters quickly in line with the public interest.

A key new initiative reflected in the bill is introduction of a preliminary assessment process, ahead of any investigation. This will be applied to complaints, notices and information about councillor conduct, including statutory time limitations for receipt of these. The new assessment process aims to increase the overall efficiency of the system and allow the Independent Assessor to focus on substantive conduct matters. As such, this bill will widen the scope for insubstantial conduct matters to be closed out as early as possible, and refining the jurisdiction of the system. The key features of the new process include that chapter 5A of the Local Government Act 2009, which sets out the councillor conduct requirements, will no longer apply to former councillors unless the person has engaged in conduct that is suspected to be corrupt. This will focus the councillor conduct framework on councillors still in office, except in the most serious of cases.

The bill also prescribes a number of circumstances where the Independent Assessor must dismiss a complaint or take no further action at the preliminary assessment stage. Simply put, the Independent Assessor must dismiss a complaint or decide not to take further action if the assessor is satisfied that dealing with it would not be in the public interest. The Independent Assessor must also dismiss a complaint or decide not to take any further action if the complaint was not made within certain time periods, unless the conduct is suspected corrupt conduct or there are other exceptional circumstances. Under the changes, complaints, notices or information about the conduct of a councillor must be made or given to the assessor either within one year after the conduct occurred or within six months after the conduct comes to the knowledge of the complainant. That must be within two years of the incident occurring. The Independent Assessor must dismiss a complaint or decide not to take any further action if satisfied that the councillor was complying with a guideline made by the department. The same obligation to dismiss a complaint applies if the conduct relates solely to behaviour engaged in by the councillor in a personal capacity unless the conduct is suspected corrupt conduct or misconduct.

Our intention is that councillors should be free to have the same rights as other members of the community in their personal lives, not have particular matters be the subject of complaints about their conduct as a councillor. A complaint must also be dismissed if the councillor's office becomes vacant, unless the conduct is suspected corrupt conduct.

Finally, the assessor must dismiss a complaint where the person making it has been declared a vexatious complainant. Recommendations 28 and 29 of the report addressed concerns from several stakeholders, particularly the Local Government Association of Queensland, that the complaints system has been used improperly by some complainants to inflict personal or political harm. The bill provides that the assessor may declare a person as a vexatious complainant for up to four years where they have repeatedly made complaints under chapter 5A of the Local Government Act 2009.

To meet the threshold, at least three of the complaints must have been dismissed by the assessor as having been frivolous or vexatious complaints or have been made in anything other than good faith. The assessor may publish a notice stating that the named person has been declared a vexatious complainant. While these powers are significant, they are considered necessary to address the increasing problems presented by persons making unnecessary complaints which use up the time and resources of the Independent Assessor that could be better applied in the public interest.

The bill also provides a discretion for the assessor to dismiss a complaint or to decide to not take further action in a number of other scenarios, including if the conduct is being dealt with by another entity, if investigation would involve an unjustifiable use of resources, or if there is insufficient information to properly investigate. In addition, the assessor may decide to take other action, such as giving a warning or recommending the councillor undertake training, counselling or mediation if it is considered more appropriate in the circumstances.

In relation to the conduct of councillors running again for office, I acknowledge the concerns of the Local Government Association of Queensland that there should be a level playing field for all election candidates, whether sitting councillors or new candidates, during election campaigns. The

government's view is that the conduct of a councillor wholly in their capacity as a candidate is personal conduct. This determination means complaints will be dismissed at the assessment stage, as I have just outlined. While some stakeholders have proposed a code of conduct for candidates, the government considers that the view of the electorate as expressed at the ballot box should be a sufficient deterrent for unacceptable conduct by all candidates. We trust Queenslanders to make good decisions when it comes to who represents them.

I also acknowledge the issues raised by the Local Government Association of Queensland about the challenges faced by First Nations Aboriginal or Torres Strait Islander elected representatives who have traditional family and cultural obligations and the impact of these obligations in connection with the conflict of interest requirements.

The bill provides that the assessor may have regard to a range of matters in making a preliminary assessment. This includes taking into account the steps taken by the councillor to mitigate or remedy the effects of the conduct and the consequences, whether financial or non-financial, resulting from the conduct; and, for Indigenous councillors, any relevant Aboriginal traditions or island customs of the councillor or a person affected by the conduct. The government's view is that the Independent Assessor may, therefore, consider the additional complexities of conflict-of-interest issues for First Nations councillors as part of the preliminary assessment.

Other key elements of the new assessment process include a preliminary assessment based on the assessor's own initiative and re-enlivening complaints where a councillor has vacated office but is elected or appointed again within 12 months. This is intended to deal with the rare but not impossible scenario where a councillor who is subject to an investigation stands down, resulting in an investigation into their conduct being discontinued, only to stand and be re-elected within a 12-month period.

In its recommendations, the committee also noted concerns from councillors about potentially being dismissed from office for relatively minor matters. I can confirm that the suspension or dismissal of councillors is only intended to be used in the most serious cases of misconduct or where a councillor has repeatedly engaged in misconduct.

As I have mentioned, the committee broadened the scope of the inquiry to consider issues about the operation of the Councillor Conduct Tribunal. The committee noted that the tribunal's current resourcing and work structure do not reflect the increased number of complaints being referred for determination and, as a result, a backlog has developed. The committee commented that structural amendments to the tribunal's resourcing model are required for it to operate effectively and set a strong framework in place to support the determination of misconduct allegations in the future.

Recommendation 4 of the report is that the president of the tribunal be appointed on a full-time basis to drive performance. Additionally, it was recommended that a deputy president be appointed on a part-time basis to support this work. The government supported the recommendation and, as such, the bill provides for these changes. The basis on which the president or deputy president is to be appointed, full-time or part-time, will be considered by the Governor in Council.

In relation to structural changes, recommendation 8 of the report was to allow one tribunal member to hear and determine matters such as uncontested or expedited matters. For more serious or complex cases, a panel of three members will be present at the hearing. The government supported the recommendation in principle and the bill provides for this. Determining whether a matter is complex, serious or contested will be dealt with administratively by the president of the tribunal.

Recommendation 10 by the committee also supported proposals for the publication of full tribunal decisions rather than summaries. This is in the interests of transparency and capacity building for councillors but also to provide additional insight into how the legislation is being interpreted and whether further adjustments to the framework are necessary or justified. The bill reflects the government's support for that recommendation.

Further improvements to the tribunal processes implement the government's policy in relation to recommendations 12, 13 and 14. These permit the Independent Assessor to withdraw an application to the tribunal if it is in the public interest, provide for notification of tribunal hearing details by the tribunal and not also by the Office of the Independent Assessor, and remove the ability for the tribunal to undertake investigation services for councillors for conduct breaches matters. Other amendments in the bill will streamline current council processes including changes to the requirements for councillor conduct registers.

Councils must keep an up-to-date register about certain councillor conduct matters and publish the register on their websites. Recommendation 30 included removing the requirement to record matters that have been dismissed or deemed to require no further action by the Office of the Independent Assessor. The bill reflects the government's support for this recommendation.

I turn now to inappropriate conduct, which the bill has renamed a 'conduct breach' under the complaints system. The renaming is to reflect stakeholder concern that breaches of the code of conduct being referred to as inappropriate conduct was being misinterpreted as more serious. While a number of issues were canvassed about this, the committee believed the framework is sound although not well utilised by the local government sector and that such 'conduct breach' complaints should remain with councils to resolve. The committee commented that steps should be taken to increase the transparency of the process including by ensuring local communities are aware of how their councils are processing inappropriate conduct matters. The committee made several recommendations in this regard.

Recommendation 15 of the report is for amendments 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. The bill makes a range of amendments to the Local Government Regulation 2012 and the City of Brisbane Regulation 2012 to implement the government's in-principle support for this recommendation. The bill also provides councils with a discretion to discontinue or not start an investigation about councillor conduct in certain circumstances, for example, if the matter is withdrawn by the complainant or the complainant refuses to comply with a request for further information.

To increase the transparency of the inappropriate conduct or conduct breach process, recommendation 16 of the report is that the Independent Assessor also publish information on the number of matters referred to local governments for resolution, the number reported back to the assessor by the council as being resolved and the number of matters currently unresolved or not reported. The government supported this recommendation in principle. To implement the government's policy in relation to recommendation 16, the bill requires the assessor's annual report to include the number of matters referred to councils for resolution. It also requires a council to inform the assessor about the status of conduct breach matters, previously referred back to the local government for investigation, and for the Office of the Independent Assessor to report this information in its annual report.

The current system requires the assessor to undertake a natural justice process before deciding whether to refer suspected inappropriate conduct to a local government. Under the current legislation, once conduct has been referred to a local government, it must undertake additional natural justice processes during its investigation. While the committee strongly supported natural justice processes occurring, it expressed that it was unnecessary to conduct this process twice for what is essentially a lower level conduct matter. To implement the government's in-principle support for recommendation 17, the bill removes the requirement for the assessor to undertake a natural justice process prior to referring a councillor's suspected inappropriate conduct to a council to deal with. In parallel, the bill strengthens the natural justice requirements on councils when investigating suspected inappropriate conduct matters.

To increase the transparency of the inappropriate conduct process, the bill implements the government's in-principle support for recommendation 19. The update will mean that reports of external investigators appointed by councils to consider inappropriate conduct matters must be published by the local government, obviously with appropriate redactions. The bill requires publication of a summary of an investigation report prior to the council's consideration of the matter and publication of the full investigation report, with appropriate redactions, after the council has reached a decision. The bill also allows for local government meetings to be closed to consider an investigation report.

I turn now to matters of misconduct. The legislation currently provides that a councillor may ask a local government employee to provide advice or information to assist the councillor to carry out their official responsibilities, provided the request complies with the relevant local government's acceptable requests guidelines. A request from a councillor that breaches the guidelines is currently included in the definition of misconduct. Recommendation 23 of the committee report supported the assessor's suggestion that a breach of the council's guidelines should no longer be a category of misconduct except in serious circumstances. The bill reflects the government's in-principle support for this recommendation by amending the definition of misconduct. Other changes to the definition of misconduct include an unlawful direction by a mayor to the council CEO and certain conduct in relation to declarable conflicts of interest.

I turn now to the ongoing issue of councillor training. The committee emphasised that an enhanced training regime is vitally important. The legislation currently provides that a function of the assessor includes providing training. In a similar vein, recommendation 27 was for the department to 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. The government supported this recommendation in principle.

The bill establishes a mandatory training scheme for councillors with a regulation to prescribe the period for completion. Consequences for noncompliance include suspension without remuneration or dismissal, at the discretion of the minister. The committee considered the department to be best placed to assume a central role in the provision of training and that the Office of the Independent Assessor should concentrate on its core functions of assessment, investigation and prosecution of complaints. The bill reflects the government's support for recommendation 36, that responsibility for the delivery of training be removed from the functions of the Independent Assessor to enable the reallocation of resources to core activities.

Finally, the bill amends the Queen's Wharf Brisbane Act 2016 to enable the state to grant the necessary tenure to meet its obligations under the various development agreements for Queen's Wharf Brisbane so that the state can continue to facilitate delivery of this transformative project. Despite many events impacting construction over the last several years, progress on Queen's Wharf Brisbane is well advanced, with many elements of the development nearing completion. The delivery and opening of Queen's Wharf Brisbane are dependent on many complex tenure matters agreed between the state and the relevant developers. These include declarations under the Queen's Wharf Brisbane Act, the revocation and creation of new reserves, multiple easements and the granting of long-term leases. The amendments to the Queen's Wharf Brisbane Act provide a new, transparent process for creating freehold lots within the Queen's Wharf Brisbane precinct, which identifies all specific parcels of land and continuing interests and dealings.

The amendments will also ensure the state can comply with its obligations under the Integrated Resort Development Agreement and the Treasury Casino hotel agreement and provide tenure within the original contractual time frames. The amendments are machinery in nature and address technical anomalies within the act. The amendments do not give any additional rights or benefits to any of the developers of Queen's Wharf Brisbane, including the casino operator.

As I emphasised earlier, this bill delivers significant reforms to further improve our councillor complaints system and delivers the government's response to the comprehensive inquiry by the parliamentary committee. The bill will commence on assent. Again, I thank stakeholders for their valuable contributions to these reforms, in particular the Local Government Association of Queensland, the Local Government Managers Australia Queensland, the Office of the Independent Assessor, the president of the Councillor Conduct Tribunal, the Crime and Corruption Commission and the Queensland Law Society. I again place on record my thanks to the parliamentary committee and its chair, the member for Bancroft. I commend the bill to the House.

### **First Reading**

**Hon. SJ MILES** (Murrumba—ALP) (Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure) (11.45 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to State Development and Regional Industries Committee**

**Madam DEPUTY SPEAKER** (Ms Bush): In accordance with standing order 131, the bill is now referred to the State Development and Regional Industries Committee.