




Speech By
Hon. Dr Steven Miles

MEMBER FOR MURRUMBA

Record of Proceedings, 15 November 2023

LOCAL GOVERNMENT (COUNCILLOR CONDUCT) AND OTHER LEGISLATION AMENDMENT BILL

 **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) (3.53 pm), in reply: I thank members for their contribution to the debate on the Local Government (Councillor Conduct) and Other Legislation Amendment Bill. In my opening remarks I emphasised that the bill will recalibrate the councillor conduct framework to make it more effective and more efficient and in line with the public interest. The bill comprehensively addresses recommendations from a wideranging parliamentary committee review and has been thoroughly examined through the committee process. I again highlight the broad support for the bill from stakeholders. The committee particularly emphasised stakeholder support for streamlining the system and removing some of the time delays and costs.

As outlined in the government's response to the committee's report on the bill, the department is continuing a range of measures to complement and strengthen implementation of these reforms. These include tailored support for Indigenous councils and the development of resources to assist in the interpretation of public and private conduct and recruitment processes for the Councillor Conduct Tribunal.

Amendments to the Local Government Regulation 2012 will also be progressed to approve an updated code of conduct for councillors and to prescribe the mandatory training for councillors. Ongoing oversight and review by the relevant parliamentary committee will be an important foundation to continue the improvements that we have already seen.

I would like to address some of the specific matters raised by members during the debate. The member for Warrego requested further information regarding the issues identified with the current Queen's Wharf Brisbane Act 2016. When the further freehold declarations were being developed to enable the opening of Queen's Wharf and to create freehold titles for the Treasury Precinct, Crown Law identified issues with the existing drafting. The existing drafting did not contemplate freehold declaration in respect of previous leasehold declarations. As amendments were necessary, Crown Law proposed a modified process for the nine parcels which had been identified for freeholding in order to meet the state's contractual obligations. The member for Warrego stated that the committee's 40 recommendations showed that the councillor conduct complaints system was broken. In fact, the committee found that the system was—

... broadly sound and working well, but improvement is needed. Specifically, the councillor complaints system needs to more closely and efficiently align with public interest and the intent of the legislation.

In relation to the Independent Assessor's preliminary assessment process, the member for Warrego referred to concerns in submissions that there is no definition of 'public interest' in the bill. What constitutes public interest in the context of the councillor conduct complaints system will be determined by the Independent Assessor on a case-by-case basis, informed by the circumstances of each matter. The bill does provide the following guidance to the Independent Assessor on the sorts of

factors that may help the Independent Assessor in their consideration of the public interest. They are any reasons for or factors relevant to the conduct; for example, whether or not any training related to the conduct has been completed by the councillor or any Aboriginal traditions or island customs of the councillor, any steps taken by the councillor to mitigate or remedy the effects of the conduct, and the consequences, both financial and non-financial, resulting from the conduct.

The member for Warrego also raised concerns about councils publishing summaries of investigation reports prior to meetings where those reports are considered. Requiring local governments to publish summaries of investigation reports about councillor conduct matters before the local government meeting where the matter is adjudicated enables complainants and other interested parties to know when a conduct matter is being considered. The councillor accused of a conduct breach is required to declare a conflict of interest at the meeting where the conduct matter is decided by the local government and, consequently, is not able to remain anonymous, even if the local government decides they did not engage in a conduct breach. For this reason it is considered that the increased transparency of local government deliberations from publishing summaries of investigation reports prior to local government meetings where the matter is decided outweighs any short-term impacts to the privacy of a councillor who is the subject of a report.

The member for Warrego also raised concerns that allowing the submission of anonymous complaints to the Independent Assessor could bypass the bill's vexatious complainant process. It is important to note that the Independent Assessor may decide to dismiss a complaint during preliminary assessment if the complaint is frivolous, vexatious or made other than in good faith, independently of the bill's vexatious complainant declaration process. On preliminary assessment, the Independent Assessor must also dismiss a complaint or take no further action for a notice or information about councillor conduct if satisfied dealing with the matter would not be in the public interest.

The Independent Assessor may also dismiss a matter if satisfied that dealing with it would be an unjustifiable use of resources. This would be the case if an anonymous complaint did not include sufficient information for the Independent Assessor to properly assess the complaint. The government acknowledges that people have different motivations for making anonymous complaints and does not want to rule out anonymous complaints for fear of excluding genuine and very important information.

The member for Bundaberg highlighted some important points and statistics about anonymous complaints that arose in the committee's recent public hearing with the Independent Assessor. The government acknowledges that some complainants may seek to circumvent a vexatious complainant declaration by making anonymous complaints to the Independent Assessor. However, this potential gap is justified by the ongoing need for the councillor conduct complaints system to allow complainants to remain anonymous to prevent reprisals, particularly where a local government employee is the complainant. Preventing the submission of anonymous complaints may require the introduction of a whistleblower protection scheme under the Local Government Act 2009, which would be complex, costly and not necessarily effective in protecting complainants.

The member for Warrego noted that the bill does not provide for an independent integrity and advisory service. To implement the government's policy in relation to recommendation 39 of the committee's 2022 report, the bill provides that the Independent Assessor must dismiss a complaint or take no further action for a notice or information if satisfied the conduct was engaged in by the councillor to comply with, honestly and without negligence, a guideline made by the department's chief executive. The amendment recognises that the department will provide advice to local governments and councillors on any number of topics, as required.

The member for Warrego stated that the bill amends legislation that could enable the use of QCAT for the re-prosecuting of cases rather than reviewing the conduct of the Councillor Conduct Tribunal and the Office of the Independent Assessor processes. The bill does not alter how QCAT reviews decisions of the Councillor Conduct Tribunal except to clarify that the proper parties to QCAT's reviews are the subject councillor and the Independent Assessor rather than the subject councillor and the Councillor Conduct Tribunal. Because the Independent Assessor has acted as the investigator and prosecutor for conduct matters, it is appropriate that they can respond to any submissions or new evidence raised during QCAT proceedings.

Finally, the member for Warrego suggested that the bill's process for dealing with the unsuitable meeting conduct of a chairperson could be used improperly by councillors for political purposes. The LGAQ raised this concern with my department during consultation on the bill. The potential misuse of the provision was acknowledged and it was amended so that councillors could resolve to order that a chairperson be reprimanded for unsuitable meeting conduct but they could not order the chairperson to leave and stay away from the meeting. Any councillor, including a chairperson, who engages in

unsuitable meeting conduct three times in one year engages in a conduct breach. This revised approach appropriately balances the need to provide councillors with an adequate power to promptly address a chairperson's unsuitable meeting conduct while preventing misuse of the power.

I note that, in his contribution to the debate, the member for Surfers Paradise suggested that there had not been consultation with traditional owners about the Queen's Wharf development. Given there were no native title issues associated with the proposed legislative amendments, consultation with the traditional owners did not occur. Engagement with the Yagara and Turrbal peoples has occurred consistently on other aspects of the development, particularly the public realm, and on other development and design matters.

I also note the member for Surfers Paradise has raised concerns about the cost to ratepayers of complying with the councillor conduct complaints system. It should be noted that the bill will introduce a number of efficiencies that are expected to reduce the resource implications for local governments and, consequently, for their communities. Local governments will not be required to continue investigating matters if a councillor vacates office and will be liable for less costs in cases where the Independent Assessor withdraws an application made to the Councillor Conduct Tribunal. Also, local governments will be no longer required to investigate allegations relating to the private conduct of councillors and will be able to start or discontinue investigations where the complainant consents or where the complainant fails to comply with a request for further information.

The member for Surfers Paradise raised concerns with the bill granting the Electoral Commission of Queensland a discretion regarding the costs it recovers from local governments for local government elections. Currently, the commission is unable to absorb any direct local government election costs and is required to invoice local governments for the full amount. While the amendments in the bill reinforce that a local government is liable to pay all costs incurred by the commission for conducting an election in its local government area, it provides the commission a discretion to recover only parts of the costs from the local government.

As I mentioned earlier, the government will be moving amendments to the bill to make two minor corrections. A clarifying amendment to a transitional provision will also be proposed in relation to the circumstances in which the Independent Assessor must withdraw from the Councillor Conduct Tribunal an undecided matter alleging a breach of the local government's acceptable requests guidelines. Only conduct that relates solely to an alleged contravention of the guidelines must be withdrawn on commencement.

Finally, amendments in relation to the election campaign accounts will also be proposed. The Local Government Electoral Act 2011 will be amended to address an unintended consequence of provisions in the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023. The amendments allow gifts and loans deposited into a candidate's or a group's dedicated account to be used to pay for non-electoral expenditure campaign expenses. Related amendments provide that candidates and groups must not use a credit card to pay non-electoral expenditure campaign expenses. The amendments are supported by the Local Government Association of Queensland and the Electoral Commission of Queensland.

In closing, once again I acknowledge the work of the State Development and Regional Industries Committee and thank stakeholders for their engagement with these reforms. I particularly thank the LGAQ and Queensland's mayors and councillors for working with us to deliver the reforms. I know our mayors and councillors work hard every day to deliver for their communities. I commend the bill to the House.