

## **Queensland Government response to**

### **State Development and Regional Industries Committee *Report No. 28, 57th Parliament – Inquiry into the Independent Assessor and Councillor Conduct Complaints System***

#### **INTRODUCTION**

On 14 October 2022, the State Development and Regional Industries Committee tabled *Report No. 28, 57th Parliament – Inquiry into the Independent Assessor and Councillor Conduct Complaints System*.

The Queensland Government's response to the Report's recommendations is provided below.

#### **RESPONSE TO RECOMMENDATIONS**

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

***Queensland Government Response: Supported in-principle.***

The Queensland Government supports in-principle the introduction of timeframes to the complaints framework, subject to further consideration and stakeholder consultation, particularly in relation to the length of the timeframes.

The Queensland Government also supports in-principle the adoption of a statute of limitation to accept complaints, subject to further consideration and consultation with the tripartite forum, as recommended by the Committee, and with other stakeholders.

##### **Recommendation 2**

That the Office of the Independent Assessor publish its performance measured against the target timeframes in its annual report, and the Department of State Development, Infrastructure, Local Government and Planning publish the Councillor Conduct Tribunal's performance measured against the target timeframes in its annual report.

***Queensland Government Response: Supported in-principle.***

The Queensland Government supports the recommendation in-principle, noting that the target timeframes will be determined following further consideration and stakeholder consultation as part of the response to Recommendation 1.

### **Recommendation 3**

That the Queensland Government commit to allocating levels of funding provided in the 2022-23 Budget to the Office of the Independent Assessor on an ongoing basis so as to support the appointment of permanent positions and longer-term contracts for employees of the Office of the Independent Assessor.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to an appropriate funding source being identified.

### **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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle.

### **Recommendation 5**

That remuneration for Councillor Conduct Tribunal members be increased to Level 2 of the Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies.

*Queensland Government Response: Supported.*

The Queensland Government supports the 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.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation and notes that local government sector experience is already a factor considered as part of the appointment of Councillor Conduct Tribunal members, as required by the *Local Government Act 2009*.

### **Recommendation 7**

That a dedicated registry office be provided where Councillor Conduct Tribunal members can work, collaborate and conduct hearings.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation noting that work areas for tribunal members are currently available upon request to the Tribunal Registry.

**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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation.

**Recommendation 9**

That the Councillor Conduct Tribunal resolve more matters quickly and efficiently, and on the papers, if the matters are not contested or involve an admission of fault.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation, noting this is a matter for the Councillor Conduct Tribunal and that the *Local Government Act 2009* already permits hearings to be conducted based on the documents brought before the Tribunal, without parties or witnesses appearing.

**Recommendation 10**

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

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation.

**Recommendation 11**

That the President of the Councillor Conduct Tribunal develop and issue practice directions, in consultation with relevant stakeholders, to initiate change in practice and promote efficiency in determining matters.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation, noting this is a matter for the President of the Councillor Conduct Tribunal and that the *Local Government Act 2009* currently permits the President to issue practice directions for conducting a hearing.

**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.

***Queensland Government Response: Supported in-principle.***

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation.

**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.

***Queensland Government Response: Supported.***

The Queensland Government supports the recommendation.

**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.

***Queensland Government Response: Supported.***

The Queensland Government supports the recommendation.

**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.

***Queensland Government Response: Supported in-principle.***

The Queensland Government supports the recommendation in principle, subject to further consideration and stakeholder consultation in conjunction with Recommendation 16.

**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.

***Queensland Government Response: Supported in-principle.***

The Queensland Government supports the recommendation in principle, subject to further consideration and stakeholder consultation in conjunction with Recommendation 15.

**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.

***Queensland Government Response: Supported in-principle.***

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation.

**Recommendation 18**

That the Department of State Development, Infrastructure, Local Government and Planning review its model inappropriate conduct investigations policy to ensure alignment with the recommendations accepted in this report, and that all local governments review their inappropriate conduct investigations policy and processes to ensure matters are resolved expeditiously.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation.

**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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation.

**Recommendation 20**

That the Department of State Development, Infrastructure, Local Government and Planning identify councils that are struggling to meet their obligations in relation to inappropriate conduct complaints and provide targeted training.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation, noting that the Department of State Development, Infrastructure, Local Government and Planning currently provides support and training to local governments. The Department will continue to provide such support and work with councils where necessary, consistent with this recommendation.

**Recommendation 21**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make it clear that dismissal of councillors for misconduct should and will only be considered in the most serious of circumstances or repeated breaches of expected standards of behaviour.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation.

## **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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation.

## **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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation.

## **Recommendation 24**

That the Department of State Development, Infrastructure, Local Government and Planning deliver extended training and a range of educative materials on the interpretation and use of the Code of Conduct for Councillors in Queensland as part of its training program.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation, noting that the Department of State Development, Infrastructure, Local Government and Planning currently provides training to councillors on their responsibilities as a councillor, including with respect to the Code of Conduct for Councillors, and will continue to do so.

## **Recommendation 25**

That the Department of State Development, Infrastructure, Local Government and Planning review the working of the standards of behaviour set out within the Code of Conduct to create a clearer and unambiguous interpretation for all stakeholders.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation.

## **Recommendation 26**

That the Department of State Development, Infrastructure, Local Government and Planning investigate the merits or otherwise of the use of local government monitors for capacity building purposes and to proactively encourage positive practices in councils.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation. It is noted that the Department of State

Development, Infrastructure, Local Government and Planning currently supports local governments in understanding their governance and legislative responsibilities, through both training and hands on support. The *Local Government Act 2009* also provides the Chief Executive of the Department with the ability to appoint an advisor to a council in circumstances where the council is not performing its responsibilities properly, not complying with the laws applying to the council or it is otherwise in the public interest to do so. An advisor is responsible for helping a council build its capacity and performing other duties as directed by the Department.

**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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation.

**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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation. The Queensland Government supports continued reporting by the Office of the Independent Assessor in relation to vexatious and frivolous complaints.

**Recommendation 29**

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

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and consultation with stakeholders. It is noted that Recommendation 4.6 of the 2017 Independent Councillor Complaints Review Panel Report has been addressed, although a more stringent regime was implemented as a ‘vexatious’ complaint does not need to be repeated before it constitutes an offence.

In relation to vexatious complaints, the legislation addressing Recommendation 4.6 created an offence provision for vexatious complaints under section 150AV of the *Local Government Act 2009*. However, this section provides that a complaint which is vexatious or other than in good

faith (a complaint made for a mischievous purpose, recklessly or maliciously) does not need to be repeated before it constitutes an offence.

In relation to frivolous complaints, section 150AU of the *Local Government Act 2009* provides that the complaint must be repeated before it constitutes an offence. The person making the complaint must be given a notice that advises if the person makes the same or substantially the same complaint to the assessor again, the person commits an offence.

Both of these offence provisions align with the offence provisions in the *Crime and Corruption Act 2001*, including the amount of the maximum fine.

### **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.

*Queensland Government Response: Supported in-principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and stakeholder consultation, in conjunction with Recommendation 12 which proposes that the Councillor Conduct Tribunal can discontinue a hearing in the public interest. Currently, legislation does not allow the Tribunal to dismiss matters or deem them to require no further action.

### **Recommendation 31**

That the Office of the Independent Assessor continue to publish the number of complaints dismissed or deemed to require no further action in its annual report.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation, noting this is already a requirement under the *Local Government Act 2009*.

### **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.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation, noting this is an operational matter for the Office of the Independent Assessor.

### **Recommendation 33**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make clear that moderating a social media account, including blocking certain individuals, is not a breach of the Code of Conduct. However, engaging in defamatory or offensive comments could breach the Code of Conduct and have wider ramifications.

*Queensland Government Response: Supported.*



The Queensland Government supports the recommendation.

**Recommendation 34**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make clear that the Code of Conduct does not usually impinge on implied freedom of political expression. However, it is possible that some statements made by councillors could enliven Code of Conduct complaints and considerations.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation.

**Recommendation 35**

That the Department of State Development, Infrastructure, Local Government and Planning reaffirm and strengthen its lead role in training and capability building activities to build local government integrity and deliver these activities in conjunction with stakeholders such as the Local Government Association of Queensland.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation.

**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.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation.

**Recommendation 37**

That the Department of State Development, Infrastructure, Local Government and Planning be reaffirmed as the local government policy lead, steward of the councillor conduct framework, and ‘point of truth’ on how the legislation should operate, and that a memorandum of understanding between the department, the Office of the Independent Assessor and the Councillor Conduct Tribunal be created to clearly define roles and responsibilities and how the entities will interact.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation and notes that mechanisms are already in place to achieve this recommendation, such as the establishment of the tripartite forum between the Department of State Development, Infrastructure, Local Government and Planning, the Office of the Independent Assessor and the Councillor Conduct Tribunal. Establishment of the tripartite forum has resulted in a clearer understanding of each agency’s respective roles. It is noted that existing terms of reference for the tripartite forum will be updated and formalised as per Recommendation 38. In light of this, the need for a further

memorandum of understanding between all parties will be considered in consultation with members from the tripartite forum.

**Recommendation 38**

That the recently established tripartite forum, chaired by the Department of State Development, Infrastructure, Local Government and Planning and with representation from the Office of the Independent Assessor and the Councillor Conduct Tribunal, continue to meet on a regular basis and develop a formalised terms of reference and publish directions as appropriate.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation, noting that terms of reference are already in effect for the tripartite forum and will be updated and formalised as necessary. It is noted that issuing directions is not a role of the tripartite forum. This role is undertaken by the Department of State Development, Infrastructure, Local Government and Planning and includes provision of bulletins and other guidance materials to local governments as required.

**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.

*Queensland Government Response: Supported in principle.*

The Queensland Government supports the recommendation in-principle, subject to further consideration and consultation with stakeholders. It is noted that the Department of State Development, Infrastructure, Local Government and Planning already provides general guidance, training and advice to councillors on integrity and conduct matters.

**Recommendation 40**

That the relevant portfolio committee provide an annual report to the Legislative Assembly on the performance of the functions of the Independent Assessor and the Councillor Conduct Tribunal.

*Queensland Government Response: Supported.*

The Queensland Government supports the recommendation noting it is a matter for the relevant portfolio committee.