



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

Report No. 48, 57th Parliament

State Development and Regional Industries Committee

October 2023

State Development and Regional Industries Committee

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Chair's foreword

This report presents a summary of the committee's examination of the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023.

Councillors play a fundamental role in their communities and Queenslanders expect high standards of conduct from their elected community leaders. An effective, independent councillor conduct and complaints framework is vital to maintaining public confidence in local government, building capacity across the sector, and providing positive outcomes for communities across the state.

The Bill implements 19 of the 40 recommendations made by this committee in its report into the Independent Assessor and councillor complaints system. The committee, as well as many inquiry participants, welcome the amendments proposed by the Bill which seek to recalibrate the councillor conduct framework to make it more effective, efficient and ensure that only matters of substance and in the public interest proceed for determination.

On behalf of the committee, I want to acknowledge the extensive work that has been conducted by officials from the Department of State Development, Infrastructure, Local Government and Planning, and the input provided by the inaugural Independent Assessor, President of the Councillor Conduct Tribunal, and the Local Government Association of Queensland. I also want to thank representatives from the local government sector and the Indigenous Leaders Forum who provided their thoughtful insights on the Bill.

It is clear that tangible improvements to the system have been observed by those within the sector and the committee is keen to see continued improvement within the system. We have recommended that the state government take steps to ensure the system is fit for purpose for Queensland's Indigenous Councils; that the Councillor Conduct Tribunal has an increased and broadened list of members in terms of their experiences and expertise; and that a further review of the system is undertaken during the next Parliamentary term to ensure the transition to a recalibrated system has been effective.

In closing, I want to acknowledge and thank my fellow committee members for their collaborative approach in conducting this inquiry. I also thank the committee's secretariat and other Parliamentary Service staff for their professional support.

I commend this report to the House.



Chris Whiting MP

Chair

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1 Introduction and overview

1.1 Policy objectives

The primary objective of the Local Government (Councillor Conduct) and Other Legislation Amendment Bill (the Bill) is to recalibrate the councillor conduct framework to make it more effective, more efficient and to ensure that only matters of substance and in the public interest proceed to the Councillor Conduct Tribunal (CCT) for determination.¹

The Bill does this by implementing the government's policy in relation to 19 recommendations of the State Development and Regional Industries Committee's Report No. 28 of the 57th Parliament 'Inquiry into the Independent Assessor and councillor conduct complaints system' (Councillor Conduct Report). The Bill:

- introduces a preliminary assessment process that the IA [Independent Assessor] must undertake to determine how best to deal with a complaint about councillor conduct, including a time limitation for accepting the complaint
- provides for the appointment of a deputy president of the CCT and the functions of the CCT president
- provides that the CCT may be constituted by not more than three members for a hearing and only one member to deal with administrative/procedural matters for a hearing
- requires CCT decisions about councillor conduct (including reasons) to be published in full, subject to appropriate redactions
- permits the IA to withdraw an application made to the CCT, in whole or in part
- removes the CCT's function of investigating suspected inappropriate conduct on behalf of local governments
- places additional annual reporting requirements on the IA and local governments and requires local governments to inform the IA about particular decisions
- updates natural justice requirements in relation to suspected conduct breaches
- requires the publication of suspected conduct breach investigation reports and summaries (with appropriate redactions); and clarifies related meeting requirements
- requires the IA to give notice of potential disciplinary orders to councillors
- redefines a breach of a local government's acceptable requests guidelines as a 'conduct breach' and makes other changes to the conduct definitions
- establishes compulsory training requirements for councillors
- introduces an administrative process to declare a person a vexatious complainant
- removes requirements for certain details to be published in a local government's councillor conduct register
- removes the provision of 'training' from the functions of the OIA [Office of the Independent Assessor]
- recognises the provision of official departmental advice to councillors.²

The Bill also makes further changes to the councillor conduct complaints system. This includes:

- limiting the system's application in relation to former councillors
- further clarifying and enhancing the councillor conflict of interest requirements

¹ Explanatory notes, p 3.

² Explanatory notes, p 5.

- providing appropriate transitional arrangements for commencement of the improved councillor conduct complaints system
- modernising local government advertising requirements
- providing a discretion to the Electoral Commission of Queensland in relation to the recovery of local government election costs
- making consequential amendments resulting from the change of classification for Moreton Bay Regional Council
- making a minor amendment to the *Queen's Wharf Brisbane Act 2016*.³

1.2 Policy background

1.2.1 Councillor conduct framework

The framework for dealing with councillor conduct under chapter 5A of the *Local Government Act 2009* (LGA) commenced in December 2018 and applied to all local governments in Queensland and later to Brisbane City Council (BCC) in 2020.

A key component of the new system was the establishment of the position of Independent Assessor (IA) and the Office of the Independent Assessor (OIA) to investigate all complaints and information about councillor conduct before deciding how it should be dealt with.⁴ Where appropriate, the OIA prepares applications for hearing by the independent CCT which ultimately determines misconduct matters.

In October 2022, the State Development and Regional Industries Committee (the committee) tabled its Councillor Conduct Report, making 40 recommendations. The government's response to the Councillor Conduct Report supported or supported in-principle all 40 recommendations.⁵

Accordingly, a primary policy driver of the Bill is to implement the government's responses that require legislative amendment. The Bill also makes a number of additional legislative amendments which follow consultation with the local government sector and include limiting the application of the complaints system to former councillors, except in cases of suspected corrupt conduct; and amending conflict of interest provisions to address a number of unintended consequences relating to the conduct of council meetings.⁶

1.2.2 Modernisation of local government advertising requirements

The Bill also seeks to modernise local government advertising requirements by replacing requirements relating to print newspaper to other media, including on-line publications. The amendment reflects declining readership of print newspapers, increasing costs associated with print advertising and the termination of many regional newspapers.⁷

1.2.3 Local government election costs

Under the *Local Government Electoral Act 2011* (LGEA), a local government is required to pay the costs incurred by the Electoral Commission of Queensland (ECQ) for conducting an election in its local government area. There is no ability for the ECQ to absorb any direct local government elections costs

³ Explanatory notes, p 1.

⁴ Explanatory notes, pp 1-2.

⁵ Government response to State Development and Regional Industries Committee Report No. 28, 57th Parliament – *Inquiry into the Independent Assessor and Councillor Conduct Complaints System*, 12 January 2023.

⁶ Explanatory notes, p 3.

⁷ Explanatory notes, p 4.

and the ECQ is required to invoice a local government for the full amount.⁸ The Bill amends the LGEA to provide the ECQ with discretion to determine which election costs are passed onto a local government, i.e. all or part of the ECQ's costs.⁹

1.2.4 Moreton Bay Regional Council reclassification

In July 2023, the Local Government (Moreton Bay City Council) and Other Legislation Amendment Regulation 2023 amended the Local Government Regulation 2012 (LGR) to change the classification of 'Moreton Bay Regional Council' (MBRC) to 'Moreton Bay City Council' as well as other subordinate legislation to update references to MBRC. The Bill makes consequential amendments to various Acts to replace references to MBRC accordingly.¹⁰

1.2.5 Amendments to *Queen's Wharf Brisbane Act 2016*

Lastly, the Bill amends the *Queen's Wharf Brisbane Act 2016* (QWBA) to enable the state to grant the necessary tenure to meet its obligations under the various development agreements for Queen's Wharf Brisbane.¹¹

The delivery of Queen's Wharf Brisbane is dependent on complex tenure arrangements agreed between the state and the relevant developers. Tenure arrangements include declarations under the QWBA, the revocation and creation of new reserves, multiple easements and the granting of long-term leases. The amendments provide a new process for creating freehold lots within the Queen's Wharf Brisbane precinct, which identifies all specific parcels of land and continuing interests and dealings.¹²

The Deputy Premier stated that the 'amendments are machinery in nature and address technical anomalies within the act' and 'do not give any additional rights or benefits to any of the developers of Queen's Wharf Brisbane, including the casino operator'.¹³ The committee did not receive any submissions relating to this amendment.

1.3 Consultation

The explanatory notes indicate that a comprehensive consultation process occurred. The Local Government Association of Queensland (LGAQ), Local Government Managers Australia (Queensland), Crime and Corruption Commission (CCC), Queensland Law Society, IA and CCT were provided with a consultation draft of the Bill and approved policy proposals in advance, with some refinement being made as a result.¹⁴

In conducting its inquiry, the committee called for public submissions, and spoke with key stakeholders at hearings conducted in Brisbane and Gladstone. This included a closed private hearing with the Indigenous Leaders Forum at the LGAQ Annual Conference. See Appendices A, B and C.

The explanatory notes confirm that the ECQ was consulted in relation to amendments relating to local government election costs and that limited feedback was received in relation to the proposed amendments to the QWBA.¹⁵

⁸ Explanatory notes, p 4.

⁹ Explanatory notes, p 4.

¹⁰ Explanatory notes, p 4.

¹¹ DSDILGP, correspondence, 22 September 2023, pp 11-12.

¹² DSDILGP, correspondence, 22 September 2023, pp 11-12.

¹³ Queensland Parliament, Record of Proceedings, Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning, and Minister assisting the Premier with Olympic Infrastructure, 13 September 2023, p 2615.

¹⁴ Explanatory notes, p 54.

¹⁵ Explanatory notes, p 54.

The explanatory notes also state that there was general support for the Bill which is largely consistent with feedback received by the committee through its inquiry process.¹⁶

It is also important to note that consultation on the Bill is in addition to the consultation undertaken by the committee to inform its Councillor Conduct Report which included consideration of 59 written submissions, 8 regional public hearings with local government authorities and multiple public sessions in Brisbane with key stakeholders.¹⁷

Committee comment

The committee is satisfied that the consultation process on the Bill has been comprehensive.

1.4 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.4.1 Legislative Standards Act 1992

The committee's assessment of the Bill's compliance with the LSA included consideration of several fundamental legislative principle issues. This included consideration of penalties, administrative power and natural justice in relation to mandatory councillor training; and the proportion and relevance of consequences of the legislation, appropriateness of review, and retrospectivity in relation to the declaration of vexatious complainants.

The committee was satisfied in all cases that any potential breaches of fundamental legislative principle were reasonable and sufficiently justified in the circumstances.

1.4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.4.3 Human Rights Act 2019

The committee also considered the Bill's compatibility with the HRA and found that it was compatible. A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA and contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

The committee agreed with analysis outlined in the statement of compatibility and also considered relevant jurisprudence that had not been directly referenced or addressed in the statement. The committee was satisfied that any potential limits to human rights were reasonable and demonstrably justified in the circumstances.

¹⁶ Explanatory notes, p 54.

¹⁷ State Development and Regional Industries Committee Report No. 28, 57th Parliament – Inquiry into the Independent Assessor and Councillor Conduct Complaints System, 12 January 2023, p 2.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues canvassed during the committee's examination of the Bill. It does not address all minor, technical or consequential amendments.

2.1 Broad support for the Bill

There was broad support for the Bill in relation to the councillor conduct complaints system, particularly around mechanisms that would streamline the system and remove some of the time delays and costs.¹⁸

2.2 Preliminary assessment process

Clause 46 of the Bill implements the government's response to Recommendation 1 of the committee's Councillor Conduct Report by introducing a preliminary assessment process that must be undertaken by the IA before progressing conduct matters; and time limitations for the receipt of complaints, notices and information about councillor conduct.

The new process aims to increase the overall efficiency of the system and allow the IA to focus on substantive conduct matters and improve the timeliness of complaint resolution, which was a key concern raised by the local government sector.¹⁹

The Bill provides:

- the IA must dismiss a complaint or take no further action for a notice or information about councillor conduct in certain circumstances, for example:
 - it was not in the public interest to proceed
 - it was received outside of the prescribed period
 - it relates solely to a councillor's personal conduct
 - the office of the councillor is vacated, or
 - the conduct was engaged in by the councillor to comply honestly and without negligence with a guideline made by the Director-General.²⁰
- the IA may dismiss a complaint or take no further action for a notice or information about councillor conduct in certain circumstances if:
 - the conduct is or may be dealt with by another entity
 - the complaint is frivolous or vexatious
 - the complaint was made other than in good faith (for example, it was made for mischievous or malicious purposes)
 - it would be an unjustifiable use of resources, or
 - there is insufficient information to properly assess the complaint.²¹

If the matter is not dismissed following the preliminary assessment, the IA must decide to:

- refer the conduct to a local government to deal with (for a suspected conduct breach)

¹⁸ See for example: LGAQ, submission 8; Cr Tom Tate, submission, 9; Logan City Council, submission 11 and OSCAR, submission 4.

¹⁹ Department of State Development, Infrastructure, Local Government and Planning (DSDILGP), correspondence, 22 September 2023, p 2.

²⁰ Bill, Cl 46, s150SD(2).

²¹ Bill, Cl 46, s150SD(3).

- investigate the conduct (for suspected misconduct), or
- take ‘alternative action’ (for example, make any recommendation the IA considers appropriate such as, that the councillor attend training, counselling or mediation).²²

The Department of State Development, Infrastructure, Local Government and Planning (department) advised that permitting the IA to take ‘alternative action’ after a preliminary assessment is proposed to enhance the operation of the system by allowing the IA to address minor and technical conduct issues quickly and efficiently.²³ The Bill also amends the LGA to enable the IA to take ‘alternative action’ after investigating a complaint.²⁴

In addition, the Bill provides a list of ‘public interest’ matters the IA may consider in making a preliminary assessment. This includes any reasons for, or factors relevant to, the conduct such as training relating to the conduct completed by the councillor, the financial and non-financial consequences resulting from the conduct and the Aboriginal traditions or Island customs of the councillor.²⁵

2.2.1 Strong support for the preliminary assessment process

There was strong support expressed by inquiry participants for the introduction of the preliminary assessment process.

The LGAQ stated that this addresses a key concern of its members in relation to the time taken for matters to be dealt with and the need to put a clear public interest test up front as part of an initial triaging process.²⁶

Similarly, Cr Tate supported the additional flexibility provided to the IA, particularly in relation to allowing the IA to make a recommendation to a councillor the subject of a conduct matter, rather than investigating or referring the matter.²⁷

2.2.2 Indigenous councillors

As noted above, the Bill provides that the IA *may* have regard to the Aboriginal traditions or Island customs of the councillor when conducting the preliminary assessment.

The LGAQ while acknowledging this recognition, recommended that the amendment be strengthened to provide that the IA *must* consider the relevant culture and custom of Aboriginal and Torres Strait Islander councillors when conducting a preliminary assessment of a conduct matter.²⁸

The committee conducted a closed private hearing with the Indigenous Leaders Forum at the LGAQ Annual Conference in Gladstone on 16 October 2023 to better understand the issues being experienced by Indigenous Councils. The committee heard from leaders of several Indigenous Councils who spoke of experiencing distress as a result of the current conduct framework and the outcomes of those complaints.²⁹

The committee heard about the challenges faced by Indigenous councillors in applying certain conflict of interest provisions, particularly around declaring family and kin relationships.³⁰

²² Bill, cl 46, s 150SD(4)

²³ DSDILGP, correspondence, 22 September 2023, p 2.

²⁴ DSDILGP, correspondence, 22 September 2023, p 2.

²⁵ Bill, cl 46, s 150SD(5)

²⁶ LGAQ, submission 3, p 6.

²⁷ Cr Tom Tate, submission 9, p 1.

²⁸ LGAQ, submission 3, p 10.

²⁹ Indigenous Leaders Forum, 16 October 2023, Gladstone.

³⁰ Audio Recording, Private Closed Hearing, Indigenous Leaders Forum, 16 October 2023, Gladstone.

Others spoke of the resulting stress and the impact on already stretched resources of complying with information requests from the IA in response to complaints, which was further exacerbated by individuals often being required to respond in their second languages and skill sets being diverse. In short, the committee heard that the complaints system was not working in all cases as it should for the Indigenous Councils and their communities and is even discouraging good people from participating in local government.³¹

Committee comment

The committee thanks the Indigenous Leaders Forum for sharing their experiences with the committee. We acknowledge the recommendation proposed by the LGAQ that the IA *must* consider Aboriginal traditions and Island customs during the preliminary assessment process and we encourage the government to consider amending section 150SD(5) of the Bill accordingly.

However, we do have reservations as to whether this amendment will be sufficient to address some of the issues described by the Indigenous Councils. While we only had a short time with the Forum we are concerned that the system may not be operating as intended in some circumstances, and that further consideration is needed by the department to ensure the framework is being applied to Indigenous Councils as intended. The need for this was most visible in relation to the declaration of matters around family and kin relationships.

Accordingly, we have recommended that the department take further steps to ensure that the councillor conduct complaints system is operating as intended for Queensland's Indigenous Councils.

The committee will maintain a watching brief on this issue and intends to conduct further consultation on this matter with Indigenous Councils as part of its ongoing oversight responsibilities.

Recommendation 2

That the Department of State Development, Infrastructure, Local Government and Planning take further steps to ensure that the councillor conduct framework is operating as intended and fit for purpose for Queensland's Indigenous Councils.

2.2.3 Personal conduct of councillors

The Bill introduces a requirement for the IA to dismiss a complaint or take no further action about councillor conduct on preliminary assessment, if satisfied the conduct relates solely to behaviour engaged in by a councillor in a personal capacity unless the conduct is suspected corrupt conduct).³²

The department advised that this change has been proposed to enable the IA to focus on conduct directly relevant to a councillor's official duties as it is not intended the system capture the private behaviour of councillors which is more appropriately a matter for electors to determine at the ballot box.³³

The department also advised that complaints about conduct undertaken in a private capacity can be more appropriately dealt with by the police and the courts.³⁴

There was a mix of views expressed on this amendment.

³¹ Audio Recording, Private Closed Hearing, Indigenous Leaders Forum, 16 October 2023, Gladstone.

³² DSDILGP, correspondence, 22 September 2023, p 2.

³³ DSDILGP, correspondence, 22 September 2023, p 2.

³⁴ DSDILGP, correspondence, October 2023, issues raised in submissions, p 6

The LGAQ welcomed the change and recommended that clear definitions of public and private conduct be included in the Bill. The LGAQ also welcomed the clarification that the councillor conduct system does not apply to councillors in their capacity as candidates.³⁵

On the other hand, the OIA expressed reservations:

Councillors are civic leaders and should be held to high standards of conduct. This should include taking disciplinary action, in appropriate circumstances, where a councillor's personal conduct, or criminal convictions arising out of personal conduct, is conduct that is not befitting of a councillor and or does not provide high quality leadership to the councillor's community.³⁶

The OIA recommended that 'if it is not considered that local government Mayors and councillors should be required to provide high level leadership to council employees or to their communities, then this should be removed or amended in the Responsibilities of a Councillor in section 12 of the LGA.'³⁷

The OIA also recommended clearer guidance in the Bill about what is and what is not personal conduct and sought the ability to investigate, in appropriate circumstances, a matter to determine whether it is personal conduct or not.³⁸

Other councils including Isaac Regional Council and Logan City Council also sought further clarification of the distinction between personal and private conduct with Logan City Council noting the potential for confusion from references to 'personal interests' in the conflict of interest provisions.³⁹

The department advised that it will prepare and update training and guidance materials to assist councillors to understand and comply with relevant standards of conduct.⁴⁰

The department confirmed that whether a councillor's conduct is considered public or private conduct will be determined by the IA on a case-by-case basis, informed by the full context and circumstances of each matter.⁴¹

Committee comment

The committee is satisfied that the amendment to limit the IA's jurisdiction to consider personal/private conduct is reasonable and appropriate.

The committee recommends that the department, in consultation with the Tripartite Forum, prepare and update training materials to assist stakeholders interpret the distinctions between private and public conduct.

Recommendation 3

That the Department of State Development, Infrastructure, Local Government and Planning, in consultation with the Tripartite Forum, prepare and update training materials to assist stakeholders interpret the distinction between private and public conduct.

2.2.4 Time limitation period

The committee's Councillor Conduct Report recommended that a time limitation period for the acceptance of complaints, unless they involve matters to be referred to the CCC, be introduced.

³⁵ LGAQ, submission 3, p 8.

³⁶ OIA, submission, 8, p 15.

³⁷ OIA, submission 8, p 15.

³⁸ OIA, submission, 8, p 15.

³⁹ Isaac Regional Council, Logan City Council, submission 6.

⁴⁰ DSDILGP, correspondence, October 2023, p 6.

⁴¹ DSDILGP, correspondence, October 2023, p 6.

Clause 46 of the Bill introduces a period for making complaints or giving notices or information about councillor conduct. It provides that a complaint must be made or given to the IA:

- within one year of when the conduct occurred, or
- within 6 months after the conduct comes to the knowledge of the complainant but within 2 years after the conduct occurred.⁴²

The Bill provides that the IA is not required to dismiss a complaint or take no further action for a notice or information that is not received within the prescribed period if the conduct is suspected corrupt conduct or there are exceptional circumstances.⁴³

There was broad support for the introduction of time limits but views were mixed on whether the limits should apply to complaints about misconduct and whether the timeframes prescribed in the Bill were appropriate.

Strong support for the amendment proposed in the Bill was submitted by the LGAQ, Cr Tom Tate and Isaac Regional Council.⁴⁴

2.2.4.1 Application to misconduct complaints and appropriateness of time limits

The OIA expressed support for time limits involving inappropriate conduct/conduct breaches. However, the OIA recommended that no time limits be set for complaints about misconduct against sitting councillors, or that the timeframe be extended to include the entirety of the local government term.⁴⁵

The OIA submitted that time limits could result in arbitrary outcomes for sitting councillors as it will be difficult to deal with multiple allegations where some of the conduct is outside the time limits, but other conduct is within the limits. The OIA asked for clarity on how such complaints should be dealt with and recommended that powers be given to the IA to investigate matters during preliminary assessment to determine whether any alleged misconduct occurred within the time limits.⁴⁶

The OIA also expressed concerns that the proposed time limits could discourage people from making complaints about suspected corrupt conduct because the matter is out of time and recommended that the Bill be amended to clarify that people are still required to refer suspected corrupt conduct to the CCC; that the CCC can still refer suspected corrupt conduct to the OIA; and that the complainant and notifiers can still refer out of time matters to the OIA in extraordinary circumstances.⁴⁷

In response, the department advised that the preliminary assessment process is intended to be a quick triage of matters to identify those allegations of substance that should proceed to investigation. The Bill provides the IA with the power to seek additional information from a local government during preliminary assessment to decide whether an investigation is warranted.⁴⁸

The department also confirmed that the Bill does not remove a public official's duty to refer suspected corrupt conduct to the CCC. The department, CCC and IA will continue to provide advice to local governments about the requirements of the councillor complaints system.⁴⁹

⁴² DSDILGP, correspondence, 22 September 2023, p 2. Explanatory notes pp 66-67.

⁴³ DSDILGP, correspondence, 22 September 2023, p 3. New section 150SD(2)(b).

⁴⁴ LGAQ, submission 3, p 8; Cr Tom Tate, submission 9, p 2.

⁴⁵ OIA, submission 8, pp 20-21.

⁴⁶ OIA, submission 8, pp 20-21.

⁴⁷ OIA, submission 8, 21.

⁴⁸ DSDILGP, correspondence, 22 September 2023, p 4.

⁴⁹ DSDILGP, correspondence, 22 September 2023, p 4.

The department also reiterated that the Bill is intended to focus the IA on contemporaneous matters of substance, and where an out of time complaint contains alleged suspected corrupt conduct, the IA should focus its resources on the serious corrupt conduct rather than other matters.⁵⁰

2.2.4.2 Exemptions

The OIA submitted that the current exemption that allows it to continue to investigate suspected corrupt conduct is too narrow.⁵¹

The OIA explained that complaints involving suspected corrupt conduct are often factually and legally complex and that being required to limit an investigation to only particular conduct within a complaint could be prejudicial to how matters involving suspected corrupt conduct are investigated and dealt with. The OIA therefore recommended that the suspected corrupt conduct exemption for looking at matters that are out of time should apply to everything contained in the complaint that has been assessed to contain corrupt conduct.⁵²

Conversely, the LGAQ submitted that the exception to the statutory time limits in *exceptional circumstances* is too broad, and should include additional definitions to ensure the provision is a narrow exception.⁵³

The department advised that following consultation with the IA, the draft Bill was amended to include an exemption of the time limits in certain circumstances.⁵⁴

2.2.4.3 Potential loophole for councillors to 'shed' complaints

The OIA submitted that the Bill creates a potential loophole for councillors with current disciplinary matters afoot who vacate the office of councillor, and then re-nominate at the next election, to effectively shed unresolved disciplinary matters.⁵⁵

The department advised that to close this potential loophole, the Bill provides that if a councillor vacates their office and then within 12 months they are re-elected or appointed as a councillor, the IA can reinstate unresolved disciplinary matters that may have been withdrawn or dismissed when the councillor vacated office.⁵⁶

The OIA suggested that the 12-month timeframe for complaints was insufficient and this timeframe should be increased, submitting that it is not unusual for councillors to vacate office for a number of reasons including resignation, dismissal or failure at an election, only to return to office at a by-election or next election.⁵⁷

In response, the department advised that the 12-month period was chosen for consistency with the time limits for making complaints about misconduct and the statute of limitations for summary offences under the LGA.⁵⁸

2.2.4.4 OIA ability to initiate preliminary assessments without having received a complaint

The LGAQ stated that it does not support providing the IA with power to initiate preliminary assessments of conduct matters without having received a complaint or referral, adding that if the

⁵⁰ DSDILGP, correspondence, 22 September 2023, p 4.

⁵¹ OIA, submission 8, p 17.

⁵² OIA, submission 8, p 17.

⁵³ LGAQ, submission 3, p12.

⁵⁴ DSDILGP, correspondence, 6 October 2023, p 4.

⁵⁵ OIA, submission 8, p 18.

⁵⁶ DSDILGP, correspondence, 22 September 2023, p 7.

⁵⁷ OIA, submission 8, p 18.

⁵⁸ DSDILGP, correspondence, 6 October 2023, p 13.

power is not removed, significant restrictions apply to its exercise so that it is only used in exceptional circumstances.⁵⁹

In response, the department advised that it is important for the overall integrity of Queensland's local government system that the IA retains a power to commence a proceeding about a councillor conduct matter on its own initiative, given that there may be instances where it is in the public interest for the IA to assess and/or investigate a matter despite a complaint not having been made or referred to them.⁶⁰

2.2.4.5 *Conduct undertaken honestly and without negligence*

The LGAQ strongly supported the intent of requiring the IA to dismiss a conduct matter because the councillor's conduct complied honestly and without negligence with a departmental guideline however, suggested that it is too narrow.

The LGAQ suggested that it should be broadened to include that a matter be dismissed if the relevant conduct complies with advice from the LGAQ, Local Government Managers Australia, or with private legal advice. The LGAQ suggested that this could be achieved by expanding the grounds on which the IA has discretion to dismiss conduct matters.⁶¹

The LGAQ also submitted that requiring a councillor's conduct to have conformed with a guideline honestly and without *negligence* may invite unnecessary legal argument, and that councillors should instead be required to comply with a guideline honestly and without *recklessness* to warrant dismissal of the matter by the IA.⁶²

The department advised that amendment seeks to ensure that proceedings about councillors who have tried to understand and comply with their obligations do not progress. To support the overall integrity of the councillor conduct complaints system, this exemption must apply consistently and transparently to all councillors.⁶³

Furthermore, the department advised that it is necessary to restrict the circumstances where a matter must be dismissed by the IA to where a councillor's conduct complied with the publicly available guidelines that provide a single point of truth for all councillors across the local government sector.⁶⁴

The department confirmed that the use of the term 'honestly and without negligence' expresses the government's policy intent for this provision.⁶⁵

Isaac Regional Council supported matters being dismissed if a councillor has complied with departmental advice in good faith.⁶⁶

Committee comment

All inquiry participants agree that the timeliness of complaint resolution is of utmost importance to ensure that the system is operating as intended. We welcome the introduction of a preliminary assessment process as an initiative that will help the OIA achieve the aim of timeliness, by ensuring that only the upper echelon of conduct complaints are moving forward for determination.

⁵⁹ LGAQ, submission 3, p 12.

⁶⁰ DSDILGP, correspondence, 6 October 2023, p 8.

⁶¹ LGAQ, submission 3, p 12.

⁶² LGAQ, submission 3, p 12.

⁶³ DSDILGP, correspondence, 6 October 2023.

⁶⁴ DSDILGP, correspondence, 6 October 2023.

⁶⁵ DSDILGP, correspondence, 6 October 2023.

⁶⁶ DSDILGP, correspondence, 6 October 2023.

2.3 Councillor Conduct Tribunal

2.3.1 Appointment of President and Deputy President of Councillor Conduct Tribunal

Recommendation 4 of the Committee's Councillor Conduct Report was that the President of the CCT 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.⁶⁷ Clauses 76 and 78 of the Bill implement part of this recommendation by amending the LGA to provide that the Deputy President is a member of the CCT and that the Governor in Council may appoint a person to be the Deputy President of the CCT.⁶⁸

The Bill also inserts the functions of the President into the LGA, including managing the business of the CCT to ensure it operates efficiently and ensuring members of the CCT are adequately and appropriately trained to enable the CCT to perform its functions effectively and efficiently.⁶⁹

The department confirmed that it is still the intention to appoint the President on a full-time basis but that this will be addressed through the Governor in Council process rather than amendments to the LGA.⁷⁰ At the time of writing a recruitment process for the appointment of a full-time president had been undertaken and the necessary government approvals for the appointment were underway. The appointment of 10 casual members is also being sought.⁷¹

2.3.2 Casual members of Tribunal

The President of the CCT, Ms Anstee agreed that the appointment of a full-time President would assist in improving the performance of the CCT in terms of appointing tribunals for relevant matters.⁷² However, advised that the tribunal needs a minimum pool of 10 to 12 casual sessional members, preferably 15, who are available for up to 2 days per month.⁷³

Over the past 18 months the tribunal has been operating with only 6 members with half of those members available on average for no more than 4 to 8 hours a month.⁷⁴

Ms Anstee advised that the simplest misconduct matters require at least 40 hours of time by the Chair and 20 hours for each member. A complex disputed matter with 10 to 20 allegations and multiple witnesses can extend the time further to a collective time of in excess of 200 hours.⁷⁵ Ms Anstee also explained that applications from the OIA may contain up to 2,000 pages of evidence.⁷⁶

Committee comment

The committee remains of the view that structural amendments to the CCT resourcing model are necessary for the Tribunal to operate effectively, and set a strong framework in place to support the determination of misconduct allegations in the future. We consider the amendment proposed by the Bill to be an important step to achieving this outcome and welcome advice that recruitment processes are underway.

⁶⁷ State Development and Regional Industries Committee, Report 28, 57th Parliament, *Inquiry into the Independent Assessor and councillor conduct complaints system*, p v.

⁶⁸ DSDILGP, correspondence, 22 September 2023, written briefing, p 3.

⁶⁹ DSDILGP, correspondence, 22 September 2023, written briefing, p 3.

⁷⁰ DSDILGP, correspondence, 6 October 2023, response to issues raised in submissions, p 29.

⁷¹ DSDILGP, correspondence, 20 October 2023, p 1.

⁷² Public hearing transcript, Brisbane, 9 October 2023, p 17.

⁷³ Public hearing transcript, Brisbane, 9 October 2023, p 17.

⁷⁴ Public hearing transcript, Brisbane, 9 October 2023, p 17.

⁷⁵ Public hearing transcript, Brisbane, 9 October 2023, p 17.

⁷⁶ Public hearing transcript, Brisbane, 9 October 2023, p 18.

The committee is supportive of the CCT's request for more members, but as reflected in the committee's Councillor Conduct Report of 2022, we are concerned over the length of time taken to hear and resolve matters. We are also of the view that there is opportunity for the CCT to be comprised of more individuals from regional or First Peoples communities to enhance understanding and expertise of regional local government environments and cultural considerations, where practicable.

Recommendation 4

That the Department of State Development, Infrastructure, Local Government and Planning take urgent steps to ensure the Councillor Conduct Tribunal is adequately resourced and that it has representatives from regional Queensland and First Peoples communities where practicable.

2.3.3 Constitution of Councillor Conduct Tribunal

Recommendation 8 of the committee's Councillor Conduct Report was that the LGA be amended to allow one CCT 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.⁷⁷

Clause 63 of the Bill amends the LGA to provide that the CCT is to be constituted by:

- not more than 3 members (chosen by the President) to hear and determine conduct matters
- one member (chosen by the President) for dealing with administrative or procedural matters related to a hearing.⁷⁸

Determining whether a misconduct matter is sufficiently complex, serious or contested is to be decided administratively by the President of the CCT.⁷⁹

The CCT submitted that it is the current practice for non-contested matters to be heard by 2 members, with up to 3 members for disputed matters. The President confirmed that 5 non-contested applications were filed between July 2022 and July 2023. In each case, the matter was heard and determined by 2 Tribunal members.⁸⁰

The CCT submitted that although it supports in-principle the constitution of a one member panel, this support extends to non-contested hearings only in circumstances where a second member is not available to participate.⁸¹ The CCT considered that a balanced and shared decision-making process by 2-3 tribunal members all having a variety of skills and professional experience promoted a fair and impartial process and outcome for both the councillor and the applicant.⁸²

The CCT recommended that the provision be redrafted to read:

150AM(a) 'for hearing a non-contested matter about the conduct of a councillor one or two members; and for hearing contested misconduct matters – at least 2 members, but not more than 3 members chosen by the President.'⁸³

⁷⁷ State Development and Regional Industries Committee, Report 28, 57th Parliament, *Inquiry into the Independent Assessor and councillor conduct complaints system*, p vi.

⁷⁸ DSDILGP, correspondence, 22 September 2023, p 3.

⁷⁹ DSDILGP, correspondence, 22 September 2023, p 3.

⁸⁰ CCT, submission 7, p 5.

⁸¹ CCT, submission 7, p 5.

⁸² CCT, submission 7, p 5.

⁸³ CCT, submission 7, p 6.

In response, the department confirmed that determining whether a misconduct matter is sufficiently complex, serious or contested is to be decided administratively by the President of the CCT.⁸⁴

Committee comment

The committee is satisfied that the amendment as drafted in the Bill in relation to the constitution of the Councillor Conduct Tribunal is appropriate.

2.3.4 Publication of Councillor Conduct Tribunal decisions

Recommendation 10 of the committee's Councillor Conduct Report was that the LGA be amended to require publication of CCT decisions in full, subject to appropriate redactions.⁸⁵ Clause 65 of the Bill requires the CCT to publish decisions and reasons for decision in full.⁸⁶

The amendment requires the CCT to provide full copies of their decisions and reasons for decision to the IA, the subject councillor, the relevant local government, the complainant and the department's chief executive. In addition, the CCT will be required to give publication notices regarding their decisions and reasons for decision (with appropriate redactions) to the department's chief executive for online publication.⁸⁷

A publication notice will not contain the name of the complainant or any other person, or information that could result in identifying such persons.⁸⁸ The name of the subject councillor must be included in a publication notice if the councillor agrees, or if the CCT determined that the councillor engaged in the conduct the subject of the complaint, notice or information.⁸⁹

Isaac Regional Council and OSCAR supported amendments.⁹⁰

2.3.5 Withdrawal of applications from Councillor Conduct Tribunal

Recommendation 12 of the committee's Councillor Conduct Report was that the LGA be amended to provide that the IA can withdraw a referral to the CCT, and that the CCT can decide to discontinue hearing a matter in the public interest.⁹¹

Clause 61 of the Bill provides that the IA may, at any time before an application is decided by the CCT, withdraw the application in whole or in part if satisfied the withdrawal is in the public interest. The section also provides that if the office of a councillor is vacated before an application is decided, the IA must withdraw the application.⁹²

2.3.5.1 Application process

The CCT submitted that considerable progress towards hearing and deciding a matter may have occurred before the IA decides to withdraw on public interest grounds and that in such circumstances, it would be appropriate and in the interests of transparency, accountability and the public interest for the IA, as a party to the CCT proceedings, to request by written application that the matter be withdrawn or dismissed by the CCT.⁹³

⁸⁴ DSDILGP, correspondence, 22 September 2023, p 29.

⁸⁵ State Development and Regional Industries Committee, Report 28, 57th Parliament, *Inquiry into the Independent Assessor and councillor conduct complaints system*, p vi.

⁸⁶ DSDILGP, correspondence, 22 September 2023, p 3.

⁸⁷ DSDILGP, correspondence, 22 September 2023, p 3. Explanatory notes pp 74-75.

⁸⁸ DSDILGP, correspondence, 22 September 2023, p 3.

⁸⁹ DSDILGP, correspondence, 22 September 2023, p 3.

⁹⁰ Isaac Regional Council, submission

⁹¹ State Development and Regional Industries Committee, Report 28, 57th Parliament, *Inquiry into the Independent Assessor and councillor conduct complaints system*, p vi.

⁹² DSDILGP, correspondence, 22 September 2023, p 3.

⁹³ CCT, submission 7, p 6.

The CCT recommended instead that a matter may be withdrawn or dismissed by the CCT in the public interest upon the receipt of an application with reasons filed by the IA.⁹⁴

The CCT also recommended that the provision in the Bill be amended to grant the CCT power to dismiss/withdraw a matter in the public interest.⁹⁵

In response the department advised, the Bill does not provide the CCT with a power to discontinue hearing a matter in the public interest as it is considered that the termination of a misconduct matter should rest solely with the IA as assessor and investigator of the complaint, notice or information.⁹⁶

The department also advised that to ensure there is no duplication in public interest checks, the Bill does not provide a power for the CCT to elect to withdraw/discontinue a matter and that the termination of a matter should rest solely with the IA as the assessor and investigator of the matter.⁹⁷

2.3.6 Investigation by Councillor Conduct Tribunal of suspected inappropriate conduct

Committee Recommendation 14 of the Councillor Conduct Report is implemented by clause 74 of the Bill which amends the LGA to remove the CCT's current function of investigating suspected inappropriate conduct on behalf of a local government.⁹⁸

BCC expressed concerns with this amendment noting that it will have resource implications arising from costs associated with the number of additional investigations that Council will need to undertake.⁹⁹ BCC recommended that its ability to ask the CCT to investigate an allegation of inappropriate conduct/conduct breach and make recommendations to council be reinstated in line with current practice.¹⁰⁰

Committee comment

We reiterate our view that the low-level behavioural matters that are referred to local councils for resolution, more often than not, result in an educative sanction or apology. We therefore believe that it would be more appropriate if the CCT did not undertake relatively minor councillor behaviour investigations given their workload, the issues of timeliness associated with processing cases, and the availability of external investigation services to local governments.

2.4 Local Government and Office of the Independent Assessor Annual Reports

2.4.1.1 Local Government

Clauses 24 and 105 of the Bill amend the City of Brisbane Regulation 2012 and the Local Government Regulation 2012 to require local government annual reports to include additional information about suspected conduct breaches, including the total number referred by the IA, the number of decisions made about whether or not councillors have engaged in conduct breaches, the number of undecided matters, and the average time taken to make a decision.¹⁰¹

Isaac Regional Council and OSCAR supported the amendments.¹⁰²

⁹⁴ CCT, submission 7, p 6.

⁹⁵ CCT, submission 7, p 6.

⁹⁶ DSDILGP, correspondence, 22 September 2023, p 4.

⁹⁷ DSDILGP, correspondence, 22 September 2023, p 3.

⁹⁸ DSDILGP, correspondence, 22 September 2023, p 4.

⁹⁹ Brisbane City Council, submission 15, p 2.

¹⁰⁰ Brisbane City Council, submission 15, p 2.

¹⁰¹ DSDILGP, correspondence, 22 September 2023, p 4.

¹⁰² DSDILGP, correspondence, 22 September 2023, p 4.

2.4.1.2 *OIA Annual Reports*

Clause 86 of the Bill amends the LGA to require the publication of additional information in the OIA's annual report, including a description of decisions to refer matters to local governments to deal with, suspected conduct breach matters decided by local governments and suspected conduct breach matters not yet decided by local governments.¹⁰³ To facilitate this the Bill requires local governments to give the IA a notice about particular local government decisions relating to councillor conduct.¹⁰⁴

The LGAQ requested that the OIA be required to report about anonymous complaints unless the LGAQ's alternative recommendation to require the IA to automatically dismiss anonymous complaints is accepted.¹⁰⁵

Asked about anonymous complaints, Ms Florian, Independent Assessor advised that the OIA has consistently received about 11 per cent of anonymous complaints every year and it is the case that very few anonymous complaints get through. Three matters have been directed to the CCT for determination in the last year. Ms Florian also advised that the highest percentage of anonymous complaints are from First Nations communities.¹⁰⁶

In response, the department advised that the Bill's expanded reporting requirements are to help provide insight and transparency about the operations and efficiency of the councillor conduct complaints system. 'Reporting on anonymous complaints does not help provide insight of this kind, as the circumstances that may give rise to anonymous complaints to the IA are not necessarily connected to the overall operations of the system'.¹⁰⁷

The department added 'where reporting about anonymous complaints is relevant to the OIA's exercise of its functions, they may elect to include reporting about those matters in their annual report without a legislative requirement to do so'.¹⁰⁸

2.5 Natural justice provisions when considering inappropriate conduct/conduct breach

Committee Recommendation 17 of the Councillor Conduct Report was that the LGA be amended to remove the requirement for the OIA to conduct a section 150AA natural justice deliberation for inappropriate conduct matters as this process is duplicated by the local government on referral.¹⁰⁹

Clause 51 of the Bill implements this recommendation so that section 150AA does not apply where the IA is considering referring a councillor's conduct to a local government to deal with.¹¹⁰

In addition, clause 53 of the Bill amends the LGA to ensure local governments undertake an appropriate natural justice process when investigating suspected conduct breaches by updating the local government investigation policy requirements.¹¹¹ In this regard, a local government's investigation policy must require the local government to:

- give a councillor information about the suspected conduct, including details about the evidence of the conduct
- give a councillor a notice if an investigation is not started or is discontinued

¹⁰³ DSDILGP, correspondence, 22 September 2023, p 4.

¹⁰⁴ DSDILGP, correspondence, 22 September 2023, p 4.

¹⁰⁵ LGAQ, submission 3.

¹⁰⁶ Public hearing transcript, 9 October 2023, p 10.

¹⁰⁷ DSDILGP, correspondence, 22 September 2023, p 4.

¹⁰⁸ DSDILGP, correspondence, 22 September 2023, p 4.

¹⁰⁹ State Development and Regional Industries Committee, Report 28, 57th Parliament, *Inquiry into the Independent Assessor and councillor conduct complaints system*, p vii.

¹¹⁰ DSDILGP, correspondence, 22 September 2023, p 4.

¹¹¹ DSDILGP, correspondence, 22 September 2023, p 4.

- give a complainant a notice if an investigation is not started or is discontinued
- give a councillor the preliminary findings of the investigation before preparing an investigation report about the investigation
- allow a councillor to give evidence or a written submission to the local government about the suspected conduct and preliminary findings
- consider any evidence and written submission given by the councillor in preparing the investigation report for the investigation
- include in the investigation report – a summary of any evidence given by the councillor and a full copy of any written submission given by the councillor.¹¹²

Some mixed views were presented on this amendment but reservations were generally in relation to the policy principle of referring low level complaints back to council for resolution.

By way of example, the LGAQ stated that it would like to reiterate a long-standing position of our members that is for inappropriate conduct complaints not to be referred to the council, as this was a significant departure from the previous regime which required the mayor (not the council) to deal with allegations of inappropriate conduct.¹¹³

Committee comment

The committee remains of the firm view that conduct breaches should be resolved locally and that the capacity of councils should be developed to enable them to do this. The committee welcomes the amendments relating to measures to ensure that councils undertake appropriate natural justice processes prior to consideration.

Related to this issue, the committee also welcomes the changes in terminology from *inappropriate conduct* to *conduct breach* to better reflect the fact that these are low level breaches and should not be considered in the same vein as matters of misconduct or corrupt conduct. This change was widely welcomed by representatives from the local government sector.

2.6 Publication of summary investigation reports

Clauses 56 and 57 provide for the publication of a summary of an investigation report before the local government meeting at which the report is to be considered and for the publication of a full investigation report once the matter is decided. Both the summary and full investigation reports will include appropriate redactions prior to publication.¹¹⁴

The Bill also provides that a local government may close all or part of a meeting to the public to discuss an investigation report, and where a local government makes a decision about a conduct matter at a local government meeting that is inconsistent with a recommendation made about that matter in an investigation report, a statement of the reasons for the inconsistency must be included in the minutes of the meeting.¹¹⁵

2.6.1 Name of councillor should only be published where conduct breach found

The LGAQ recommended that the name of a councillor should only be published in an investigation report and summary of an investigation report where a finding of a conduct breach has been made by a majority of members of the local government.¹¹⁶

¹¹² DSDILGP, correspondence, 3 October 2023, p 4.

¹¹³ LGAQ, submission 3, p 7.

¹¹⁴ 150AFA and 150AGA

¹¹⁵ DSDILGP, correspondence, 22 September 2023, p 5.

¹¹⁶ LGAQ, submission 3.

Cr Tate objected to the requirement that local governments publish summaries of investigation reports prior to the consideration of the reports, and cites the risk of negative and unintended consequences for local governments and councillors who are the subject of the reports. Cr Tate also questioned what additional public benefit there is in publishing summaries of reports when full investigation reports are also to be made publicly available after a matter is determined.¹¹⁷

OSCAR supported the amendments including the requirement for a statement of reasons to be included in the minutes of a local government meeting if a decision about a conduct breach at a meeting is inconsistent with the recommendation in the investigation report.¹¹⁸

In response the department advised that publishing summaries of investigation reports prior to their consideration at a local government meeting enables complainants and other interested parties to know when a conduct matter is being considered by a local government.¹¹⁹ Further, a councillor who is the subject of a conduct matter is required to declare a conflict of interest in the matter before it is considered at a local government meeting. Consequently, the councillor's name will be made publicly available when the conflict of interest is declared, regardless of the local government's ultimate decision about whether the councillor committed a conduct breach.¹²⁰

For this reason, it is considered appropriate that councillors' names are included in summaries of investigation reports and investigation reports in order to enhance the transparency of the local government system, and to provide appropriate notice to complainants and other interested parties about when conduct matters are being considered and determined.¹²¹

2.6.1.1 Confidentiality/redactions

Isaac Regional Council raised concerns that persons may still be identifiable, despite redactions, especially in small communities, noting that this may be contrary to definitions of *Information Privacy*.¹²²

In response, the department advised that government policy is to protect the privacy of persons to the greatest extent possible, while also enhancing the transparency of the councillor conduct complaints system.¹²³

While acknowledging the intent of the proposal, Torres Strait Council expressed concerns about how the requirement might work in practice and believed that the ability to keep aspects of the report confidential do not extend widely enough (including, for example, to material that may be commercial-in-confidence to Council).¹²⁴

The department noted this view, advising that amendments to the LGA provide that information a local government is entitled or required to keep confidential under a law must not be made publicly available, for example, documents subject to legal professional privilege or information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*.¹²⁵

¹¹⁷ Cr Tate, submission 9.

¹¹⁸ OSCAR submission 4.

¹¹⁹ DSDILGP, correspondence, 3 October 2023.

¹²⁰ DSDILGP, correspondence, 22 September 2023, p 4.

¹²¹ DSDILGP, correspondence, 3 October 2023.

¹²² Isaac Regional Council, submission 6.

¹²³ DSDILGP, correspondence, 3 October 2023.

¹²⁴ Torres Strait Council, submission 10.

¹²⁵ DSDILGP, correspondence, 3 October 2023.

2.7 Changes to definition of misconduct

The Bill amends section 150L(1)(b)(i) LGA by replacing ‘breach of the trust placed in the councillor, either knowingly or recklessly’ with ‘non-compliance with an Act by the councillor’.

The OIA expressed concern that the new section will be interpreted by the courts as only applying to acts other than the LGA or BCC. This would mean that breaches of the local government principles would not be captured under the new definition of misconduct. The OIA recommended that the section be amended to read, ‘non-compliance with this Act or another Act, by a councillor’.¹²⁶

The LGAQ supported the amendment to remove that misconduct includes a breach of trust placed in a councillor.¹²⁷ However, the LGAQ called for further amendment to the definition to include non-compliance with an Act by the councillor without also including that the non-compliance must be knowing or reckless, or without a reasonable excuse. The LGAQ believed that without this qualification there is strict liability for misconduct by breaching this requirement.¹²⁸

The CCT also expressed a view on this amendment, stating that the deletion of the concept of breach of the public trust from the misconduct definition appears to diminish the high standards of conduct expected by constituents from their elected local government representatives. The CCT submitted that the reasons for the amendment are not clear.¹²⁹

The CCT submitted that it is also not clear from the new provision whether the local government principles (section 4 of the LGA) remain enforceable.¹³⁰

The CCT submitted:

the amendments are to be understood by reference to the purpose of the LGA and the principles that underpin the LGA together with the principle of the public trust (interest) upon which representative government is based. A fundamental principle of the LGA section 4(2)(a) provides for transparent and effective processes and decision making in the public interest. The public interest underpins the LGA and is a concept fundamental to the system of democratic government and public administration. The term public interest and the concept of a breach of trust provides a discretion to decision makers when assessing conduct. Not every alleged contravention of the LGA will result in findings of misconduct and breach of the public trust.¹³¹

Accordingly, the CCT recommended:

- that the fundamental principle of upholding the public trust by elected officials remain in the definition of misconduct section 150L(1)(b)(i); or
- alternatively, that section 150L(1)(b)(i) be amended to read:

‘Non-compliance with this Act or another Act; and non-compliance with the local government principles in this Act by a councillor’.¹³²

Logan City Council suggested an amendment to read ‘non-compliance with an Act by the councillor, either knowingly or recklessly’.¹³³

¹²⁶ OIA, submission 8.

¹²⁷ LGAQ, submission 3.

¹²⁸ LGAQ, submission 3.

¹²⁹ CCT, submission 7.

¹³⁰ CCT, submission 7.

¹³¹ CCT, submission 7.

¹³² CCT, submission 7.

¹³³ Logan City Council, submission 11.

In response, the department advised that the Bill amends the definition of misconduct to clarify that misconduct is related to a councillor undertaking their official role and does not involve private conduct of councillors.¹³⁴

The department also advised that ‘the current drafting of the section 150(1)(b)(i) captures both the LGA, the *City of Brisbane Act 2010* (COBA), and other Acts that impose obligations on councillors. The LGA and COBA also make it an obligation for councillors to comply with the local government principles when carrying out their official roles’.¹³⁵

The department added that the requirements for the preliminary assessment process at new section 150SD of the LGA ensures the IA considers the context in which potential misconduct has occurred, which will prevent strict liability for breaches of section 150(1)(b)(i).¹³⁶

Committee comment

The committee acknowledges the various views presented by the OIA, CCT and department about the changes relating to the definition of misconduct. The committee is satisfied that the amendment is appropriate in the circumstances and the policy intent is sound. However, we suggest that this matter be one that is considered as part of any further review of the system (such as that recommended at Recommendation 5 of this report) to ensure that the amendment is operating as intended and there are no unintended consequences.

2.8 Compulsory councillor training

Recommendation 27 of the committee’s Councillor Conduct Report was that the department 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.¹³⁷

Clauses 7 and 97 of the Bill amends the COBA and the LGA to require councillors to complete ‘approved councillor training’ about their responsibilities under the COBA or the LGA. Councillors must complete training prescribed by regulation within the prescribed timeframe or an extended period approved by the department’s chief executive.¹³⁸

The committee has not seen a draft of this regulation.

Clauses 33 and 34 of the Bill establish the consequences for non-compliance. Councillors who do not complete compulsory training within the prescribed or extended time may be suspended from office. Councillors who do not complete compulsory training within 12 months after the required date for completion may be removed from office.¹³⁹

The department confirmed that is it the government’s intention that every councillor will be appropriately supported by the department to fulfil these compulsory training obligations.¹⁴⁰ The department also confirmed that to further protect the rights of councillors, the department’s chief executive will be required to publish compulsory training requirements on the department’s website and notify local governments and each councillor about the training obligations.¹⁴¹ A show cause

¹³⁴ DSDILGP, correspondence, 3 October 2023.

¹³⁵ DSDILGP, correspondence, 3 October 2023.

¹³⁶ DSDILGP, correspondence, 3 October 2023.

¹³⁷ State Development and Regional Industries Committee, Report 28, 57th Parliament, *Inquiry into the Independent Assessor and councillor conduct complaints system*, p viii.

¹³⁸ DSDILGP, correspondence, 22 September 2023, p 5.

¹³⁹ DSDILGP, correspondence, 22 September 2023, p 5.

¹⁴⁰ DSDILGP, correspondence, 22 September 2023, p 5.

¹⁴¹ DSDILGP, correspondence, 22 September 2023, p 5.

process will be observed before any recommendations to suspend or remove councillors are made to the Governor in Council.¹⁴²

There were mixed views submitted on this amendment.

The LGAQ requested ongoing consultation regarding the development of mandatory training, noting concerns about the ability of some councillors to attend mandatory training, and consequently being suspended or dismissed, although was comforted by the show cause process.¹⁴³ Logan City Council suggested that suspending a councillor, without remuneration, for failing to undertake compulsory training seemed excessive.¹⁴⁴

Isaac Regional Council and OSCAR supported the compulsory training provisions.¹⁴⁵ OSCAR also supported the sanctions suggested for non-compliance.¹⁴⁶

In response, the department advised that suspension and dismissal from office are existing penalties in the LGA for councillors who do not comply with their legislative obligations and that it is considered appropriate that councillors who are suspended for failing to fulfil their training obligations do not receive remuneration for the period where they are not undertaking their roles.¹⁴⁷

Isaac Regional Council and OSCAR supported the compulsory training provisions.¹⁴⁸ OSCAR also supported the sanctions suggested for non-compliance.¹⁴⁹

2.8.1 Rights and liberties of individuals – penalties, administrative power and natural justice

The committee considered this amendment from a fundamental legislative principle perspective particularly with respect to the penalties that would be imposed, administrative power and natural justice.

2.8.1.1 General rights and liberties of individuals – penalties

To have sufficient regard to rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.¹⁵⁰

The explanatory notes consider the amendments relating to training are justified because they address the significant issues considered by the committee and are intended ‘to reduce the number of complaints entering the councillor conduct complaints system by enhancing the capacity and understanding of councillor obligations’.¹⁵¹

2.8.1.2 Administrative power and natural justice

It appears that the Bill would ensure that all councillors would be made aware that they have to undertake the mandatory training as the Bill requires notice of the approved councillor training to be published on the department’s website and given to each local government and councillor within the specified periods.¹⁵²

¹⁴² DSDILGP, correspondence, 22 September 2023, p 5.

¹⁴³ LGAQ, submission 3, pp 14-15.

¹⁴⁴ Logan City Council, submission 11, p 1.

¹⁴⁵ Isaac Regional Council, submission 6, pp 12-13.

¹⁴⁶ OSCAR, submission 4, p 4.

¹⁴⁷ DSDILGP, correspondence, 6 October 2023, issues raised in submissions, p 28.

¹⁴⁸ Isaac Regional Council, submission 6, pp 12-13.

¹⁴⁹ OSCAR, submission 4, p 4.

¹⁵⁰ OQPC, Notebook, p 120. See also LSA, s 4(2)(a).

¹⁵¹ Explanatory notes, p 43.

¹⁵² Bill, cls 7, 97 (insert COBA, new s 169A; LGA, new s 169A); explanatory notes, p 21.

However, some matters relevant to the mandatory training are to be prescribed in regulation, including the period within which the training must be completed, the format of the training and requirements about how the training may be successfully completed.¹⁵³ This makes it more difficult to determine if the process relating to non-compliance has sufficient regard to the rights and liberties of individuals.

Before making a recommendation to the Governor in Council about whether to suspend or dismiss the councillor for failing to comply with the mandatory training requirements, the Minister must follow a show cause process (having regard to any submissions made by the councillor) and wait the requisite period.¹⁵⁴ This is consistent with the principles of natural justice because it gives councillors an opportunity to be heard in relation to the Minister's proposed decision.

The Minister's decision to suspend or dismiss is not subject to appeal.¹⁵⁵

The prohibition on a councillor seeking review of the Minister's decision to recommend their suspension or dismissal is justified in the explanatory notes on the grounds that it is consistent with the existing limitation on review of certain other decisions of the Minister. That is, the Minister's decisions with respect to: suspending or dismissing councillors on other grounds; suspending or dissolving a local government; and removing unsound decisions. The explanatory notes add that 'sufficient safeguards' apply which are set out within the explanatory notes.¹⁵⁶

The Governor in Council may give effect to the Minister's recommendation under a regulation.¹⁵⁷ A regulation would have to be tabled in the Legislative Assembly, and may be subject to a disallowance motion. Therefore the decision to suspend or dismiss a councillor would be subject to the scrutiny of the Parliament.¹⁵⁸

Committee comment

We remain of the view that an enhanced training regime in conflict of interest provisions, amongst other elements of the councillor conduct disciplinary system, is vitally important. We also believe the department needs to further its work in training and building capacity in the sector to help councillors in these matters

The nature of the training is yet to be identified and consultation with the local government sector and the Tripartite Forum will be important in determining the content of the regulation.

We acknowledge that the penalty for non-compliance in this instance is substantial but we are also of the view that the impact of councillors failing to understand requirements around conflicts of interest for example, are also substantial. We also acknowledge that this penalty already exists within the system for non-compliance with responsibilities set out within the Local Government Act. We are encouraged to hear the department's intention to ensure that councillors are enabled to undertake the required training.

We are satisfied that the amendments relating to councillor training have sufficient regard to the rights and liberties of individuals in respect of penalties, administrative power and natural justice.

¹⁵³ See also Bill, cls 7, 97 (insert COBA, new s 169A(7); LGA, new s 169A(7)).

¹⁵⁴ See Bill, cls 33, 34 (amend LGA, ss 120, 122); explanatory notes, pp 21-22.

¹⁵⁵ LGA, ss 114, 244. Any decision of the Minister under part 1 (Local governments) of chapter 5 (Monitoring and enforcing the Local Government Acts) of the LGA is not subject to appeal.

¹⁵⁶ Explanatory notes, p 46.

¹⁵⁷ LGA, s 122.

¹⁵⁸ Explanatory notes, p 43.

2.9 Vexatious complainants

Clause 67 of the Bill inserts new chapter 5A, part 3, division 8 into the LGA to establish an administrative process whereby the IA may declare, in certain circumstances, that a person is a vexatious complainant for the period, of not more than 4 years, stated in the declaration.¹⁵⁹

In doing so, the IA must be satisfied a person has repeatedly made complaints and at least 3 of the complaints have been dismissed by the IA as being frivolous or vexatious, or have been made other than in good faith. The provisions also provide that:

- a person must be given a reasonable opportunity to make a submission about a proposed declaration and the IA must consider any submission made by the person before making the declaration
- the IA may publish a notice, in the way the IA considers appropriate, that states the name of the person, the reasons for the declaration and the day the declaration ends
- a declaration may be revoked or the period of the declaration shortened, either by the IA or following an application by the person the subject of the declaration
- a person the subject of a declaration may apply to the IA for permission to make a complaint.⁶

In addition, the Bill inserts new chapter 5A, part 4A to provide a person affected by a decision of the IA under the above new vexatious complainant provisions with internal review rights to the IA and external review rights to the Queensland Civil and Administrative Tribunal (QCAT).⁶

The department advised that the proposed regime is similar to the regimes under the *Right to Information Act 2009* and the *Information Privacy Act 2009* which empower the Information Commissioner to declare a person a vexatious applicant.¹⁶⁰

2.10 Broad support from local government sector

Broad support for this amendment was outlined by several local government representatives at the public hearing in Gladstone as well as submitted by the LGAQ, Cr Tate, Isaac Regional Council. The LGAQ submitted that it appreciated the changes, noting that this would 'ensure that the councillor conduct system doesn't become a political weapon against individuals which is critical in maintaining the confidence of the sector and the integrity of the role of the OIA and CCT'.¹⁶¹

2.10.1 Complexity of process

The OIA expressed concerns that the process has the capacity to redirect OIA resources from core functions. In addition, multiple QCAT review points will also further burden an already over-loaded QCAT, where reviews on misconduct findings are currently taking more than 3 years to determine.¹⁶²

The OIA advised that due to the complexity of the process, it is unlikely that a person making vexatious complaints during an election campaign could be declared vexatious during the election period. The OIA recommended the introduction of an offence for a person who engaged in a course of vexatious complaint conduct rather than the vexatious complainant process.¹⁶³

The OIA also recommended that there should be a limit on QCAT reviews to only the decision to declare the person a vexatious complainant.¹⁶⁴

The department advised that it was a matter of government policy not to include the offence in the Bill and that it was a matter of government policy to address concerns from industry stakeholders

¹⁵⁹ DSDILGP, correspondence, 22 September 2023, p 5.

¹⁶⁰ DSDILGP, correspondence, 22 September 2023, p 5.

¹⁶¹ Public hearing transcript, 16 October 2023, Gladstone. LGAQ, submission 3, p 9.

¹⁶² OIA, submission 8.

¹⁶³ OIA, submission 8.

¹⁶⁴ DSDILGP, correspondence, 3 October 2022.

about vexatious complainants both to have a process for dealing with vexatious complainants and to discourage people from making vexatious complaints.¹⁶⁵

2.10.2 Application to councillors

The OIA also suggested that the current vexatious complainant process is limited to complaints made by members of the public and not to sitting councillors and that in the OIA's experience has shown that the system is most misused by councillors.¹⁶⁶

Accordingly, the OIA recommended that the vexatious complainant system be extended to cover local government officials.¹⁶⁷

In response the department advised the LGA has a process for dealing with vexatious complaints, referrals, and notifications made by councillors. The vexatious complainant process in the Bill does not relate to referrals and notifications made by councillors because councillors have a statutory duty to make those referrals and notifications under the LGA.¹⁶⁸

Committee comment

The committee welcomes amendments relating to the introduction of a vexatious complainant declaration process. However, we are of the view that the vexatious complainant process should be extended in some way to include sitting councillors.

While more work is required to fully understand the practicalities of this view, we have considered evidence that shows a disproportionate number of complaints are coming from a small number of council areas. There is also evidence to suggest that some councillors are clearly referring complaints in response to other complaints and arguably in a vexatious manner.

2.10.3 Fundamental legislative principle issue – vexatious complainant declarations

The explanatory notes acknowledge that provisions relating to the declaration of a person as a vexatious complainant raises multiple issues relating to whether the legislation has sufficient regard to the rights and liberties of individuals, including:

- whether there is sufficient justification for the abrogation of established statute law rights and liberties
- the proportion and relevance of the consequences of the legislation
- if rights and liberties or obligations are dependent on administrative power, whether that power is subject to appropriate review
- the retrospective element of the amendments.¹⁶⁹

Consistency with the principles of natural justice is also relevant.

2.10.3.1 Abrogation of established statute law rights and liberties

To have sufficient regard to the rights and liberties of individuals, a legislative amendment that adversely affects established statutory rights and liberties must be justified.¹⁷⁰

¹⁶⁵ OIA, submission 8.

¹⁶⁶ OIA, submission 8.

¹⁶⁷ OIA, submission 8.

¹⁶⁸ DSDILGP, correspondence, 3 October 2022.

¹⁶⁹ Explanatory notes, pp 41- 48.

¹⁷⁰ OQPC, Notebook, p 106. See also LSA, s 4(2)(a).

The current arrangements for dealing with persons who repeatedly submit vexatious complaints about councillor conduct have been described as inadequate.¹⁷¹ The Bill would mandate the process that must be followed before a declaration may be made, and the review options.¹⁷²

It is likely that the new provisions would result in some complaints being dismissed where they would not have been under the existing legislation.

2.10.3.2 Consequences of legislation

To have sufficient regard to the rights and liberties of individuals, the consequences imposed by legislation should be relevant and proportionate.¹⁷³

If a person is declared to be a vexatious complainant, the IA may publish a notice that states the person has been declared a vexatious complainant, the reasons for the declaration, and the day the declaration ends. During the time the declaration is in force, if the vexatious complainant makes a complaint without the permission of the IA, the complaint will be dismissed.¹⁷⁴

The ramifications of a declaration on a person could be considered significant (impacts on their right to privacy and reputation and any complaint they make will be dismissed¹⁷⁵). Nevertheless, to be declared a vexatious complainant, the person must have repeatedly made complaints about councillor conduct, and at least 3 of the complaints must have been dismissed by the IA as frivolous or vexatious or been made other than in good faith.¹⁷⁶ In addition, it is possible for the person to apply to have the declaration shortened or revoked, and to appeal against the declaration decision.

2.10.3.3 Administrative power and natural justice

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.¹⁷⁷

The Bill provides the criteria on which the IA may make the decision about whether to declare a person a vexatious complainant.¹⁷⁸ The declaration must not be for more than 4 years,¹⁷⁹ and the person may apply to shorten or revoke it.¹⁸⁰ In addition, there are avenues of appeal (being both internal and external reviews).¹⁸¹

As regards natural justice, the new provisions for dealing with repeated vexatious complaints require the complainant to be given a reasonable opportunity to make a submission about the proposed declaration and that submission must be considered by the IA.¹⁸²

In addition, QCAT may conduct an external review of the review decision.¹⁸³

¹⁷¹ Explanatory notes, p 22.

¹⁷² The Bill would replace the existing internal and external review provisions. Bill, cls 68, 69 (inserts LGA, new ch 5A, pt 4A to replace ch 5A, pt 4, div 7).

¹⁷³ OQPC, Notebook, p 120. See also LSA, s 4(2)(a).

¹⁷⁴ Bill, cls 46, 67 (inserts LGA, new ss 150SD(2)(e), 150AWC).

¹⁷⁵ Except in specified circumstances.

¹⁷⁶ Bill, cl 67 (inserts LGA, new 150AWA(2)).

¹⁷⁷ LSA, s 4(3)(a).

¹⁷⁸ Bill, cl 67 (inserts LGA, new s 150AWA(2), (6)).

¹⁷⁹ Bill, cl 67 (inserts LGA, new s 150AWA(1)).

¹⁸⁰ Bill, cl 67 (inserts LGA, new s 150AWB).

¹⁸¹ Bill, cl 69 (inserts LGA, new ch 5A, pt 4A).

¹⁸² Bill, cl 67 (inserts LGA, new 150AWA(3)); LSA, s 4(3)(b).

¹⁸³ Bill, cl 69 (inserts LGA, new s 150CR).

2.10.3.4 *Retrospectivity*

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.¹⁸⁴ Strong justification is necessary if a Bill proposes to adversely impact rights and liberties retrospectively.¹⁸⁵

The Bill proposes to give the IA discretion to consider complaints made before the commencement of the proposed Local Government (Councillor Conduct) and Other Legislation Amendment Act (proposed Act) when making a declaration that a person is a vexatious complainant.¹⁸⁶ This could adversely affect a person's right to make a complaint about a councillor's conduct if they had previously made complaints about a councillor that had been dismissed as frivolous or vexatious, or not made in good faith. It could also result in the publication of a declaration that may negatively impact their reputation.¹⁸⁷

The Bill would, however, ensure that a declaration cannot be made solely on the basis of complaints made before the commencement of the proposed Act.¹⁸⁸

The explanatory notes contend that the retrospective application is justified:

... as the restriction only applies to a person's ability to make further vexatious complaints after the commencement of the provision. It does not impact on the person's right to make a complaint in good faith about a councillor. Further, a declaration cannot be made solely in relation to complaints made by the person before the commencement. In addition, whilst a person will not have been aware of the new proposed consequence of making vexatious complaints, they would have been aware that they were considered to be making frivolous or vexatious complaints. This is because the IA is required, under section 150Z of the LGA, to notify a person if their complaint has been dismissed because it is frivolous and advise them that the making of the same complaint is an offence.¹⁸⁹

In addition, as noted above, safeguards included in the Bill include a show cause process (that is, the IA must consider a submission made by the person before making their decision about the proposed declaration) and the person has internal and external rights of review of the IA's decision.¹⁹⁰ However, QCAT (the external reviewer) may not stay the operation of the review decision or grant an injunction in the proceeding for the review.¹⁹¹

Committee comment

Based on the evidence before it, the committee is satisfied that amendments relating to the declaration of vexatious complainants are sufficiently compelling to satisfy the committee that the provisions have sufficient regard to the rights and liberties of individuals.

¹⁸⁴ LSA, s 4(3)(g).

¹⁸⁵ OQPC, Notebook, pp 55, 56.

¹⁸⁶ Bill, cl 102 (inserts LGA, new s 353).

¹⁸⁷ The statement of compatibility (p 21) advises that the 'reputational impacts for complainants that would result from making public that those persons have been declared vexatious complainants would simultaneously disincentivise those persons from continuing to submit vexatious or insubstantial complaints after the declaration expires, and act as a system-wide general deterrent to the submission of vexatious complaints from other persons'.

¹⁸⁸ See Bill, cl 102 (inserts LGA, new s 353(2)).

¹⁸⁹ Explanatory notes, p 48. Underlining in original.

¹⁹⁰ See explanatory notes, p 48.

¹⁹¹ Bill, cl 69 (inserts LGA, new s 150CS).

2.11 Councillor conduct registers

The Bill removes the requirement for local governments to include information about decisions of the IA to dismiss complaints or take no further action in relation to councillor conduct in their councillor conduct registers.

The LGAQ strongly supported the change. However, approval was not unanimous amongst councillors. Cr Tate did not support the proposal and requested clarification about whether the IA will continue to notify councils about dismissed matters so that the council can determine whether to include the matter in their councillor conduct register.¹⁹²

The department confirmed that councillors who are the subject of a complaint that is dismissed by the IA will be provided a notice that the matter has been dismissed.¹⁹³

OSCAR supported the change acknowledging that the current process is unduly onerous, and its removal would create significant efficiencies.¹⁹⁴

Committee comment

The committee is of view that amendment is appropriate. The committee also notes that there is nothing in the legislation that would prevent a council adding complaints dismissed to the register should the councillor concerned wish to do so.

2.12 Acting on advice of departmental guideline

The Bill does not provide for the appointment of an independent local government integrity and conduct advisory service as per Recommendation 39 of the committee's Councillor Conduct Report.¹⁹⁵ Rather it provides that the IA must dismiss a complaint or take no further action for a notice or information about councillor conduct on preliminary assessment, 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.¹⁹⁶

The amendment recognises that the department will provide 'official' departmental advice to local governments and councillors on any number of topics as required.¹⁹⁷

2.13 Other changes to councillor conduct complaints system

The Bill proposes further amendments to improve the effectiveness and efficiency of the councillor conduct complaints system, including:

- limiting the system's application in relation to former councillors
- providing for conduct matters to be restarted in certain circumstances
- empowering local governments, in certain circumstances, not to start or discontinue investigations into suspected conduct breach matters referred by the IA
- establishing a process for how the unsuitable meeting conduct of a chairperson in a local government meeting is to be managed
- clarifying the parties to QCAT review proceedings about decisions of the CCT
- defining an unlawful direction of a mayor as 'misconduct'
- allowing the IA to take no further action in the public interest following an investigation.¹⁹⁸

¹⁹² LGAQ, submission 3; Cr Tate, submission 9.

¹⁹³ DSDILGP, correspondence, 3 October 2023.

¹⁹⁴ OSCAR, submission 4.

¹⁹⁵ DSDILGP, correspondence, 22 September 2023, p 6.

¹⁹⁶ DSDILGP, correspondence, 22 September 2023, p 6.

¹⁹⁷ DSDILGP, correspondence, 22 September 2023, p 6.

¹⁹⁸ DSDILGP, correspondence, 22 September 2023, pp 6-7.

2.13.1 Former councillors

Clause 38 of the Bill provides that chapter 5A of the LGA does not apply in relation to a person who was, but is no longer, a councillor unless the person has engaged in conduct that is suspected corrupt conduct.¹⁹⁹

Limiting the application of the councillor conduct complaints system in relation to former councillors will allow the resources of the OIA to concentrate on substantive conduct matters in the public interest.²⁰⁰

The LGAQ was strongly supportive of the changes relating to how the IA may respond to complaints about former councillors.²⁰¹

The OIA was generally supportive of stopping inappropriate conduct/conduct breaches against former councillors and misconduct matters except in relation to suspected corrupt conduct and where a councillor is re-elected or reappointed to office. As discussed earlier in the chapter, the OIA was of the view that a loophole exists that would allow a councillor to resign to effectively shed disciplinary proceedings and then re-stand for office within 12 months.²⁰²

The CCC also submitted that the proposed 12-month timeframe should be extended to 2 years. The CCC submitted that an increased timeframe, or no timeframe at all, would better align with the provisions of the Integrity and Other Legislation Amendment Bill 2023 and provide the CCT with a greater opportunity to finalise conduct matters.²⁰³

In response to this matter, the department confirmed that the 12-month period was chosen for consistency with the time limits for making complaints about misconduct and the statute of limitations for summary offences under the LGA. The department also reiterated that the setting of a timeframe will ensure that only contemporaneous matters are dealt with by the IA, OIA and local governments.²⁰⁴

2.14 Managing the unsuitable meeting conduct of chairpersons

Clause 40 of the Bill inserts new section 150IA into the LGA to manage the unsuitable meeting conduct of chairpersons.

The new section provides that if during a local government meeting a councillor reasonably believes the conduct of the chairperson is unsuitable meeting conduct, the councillors at the meeting (other than the chairperson) may, by resolution, decide whether the conduct is unsuitable meeting conduct and, if so, make an order reprimanding the chairperson for the conduct. If minutes are not required for the meeting, details of the order must be recorded in another way prescribed by regulation.²⁰⁵

The department advised that the amendment addresses concerns raised by stakeholders that the existing local government framework does not adequately address this issue. Concerns included that there are currently no consequences for breaching the behavioural standards in the councillor code of conduct and that conduct is not being dealt with quickly due to delays in dealing with misconduct complaints by the IA and the CCT.²⁰⁶

The LGAQ objected to providing councillors power to order a meeting chairperson to leave and stay away from a meeting for engaging in unsuitable meeting conduct and suggested that unsuitable

¹⁹⁹ DSDILGP, correspondence, 22 September 2023, p 7.

²⁰⁰ DSDILGP, correspondence, 22 September 2023, p 7.

²⁰¹ LGAQ, submission 3.

²⁰² OIA, submission 8.

²⁰³ Crime and Corruption Commission, submission 2.

²⁰⁴ DSDILGP, correspondence, 22 September 2023, p 7.

²⁰⁵ DSDILGP, correspondence, 22 September 2023, p 7.

²⁰⁶ DSDILGP, correspondence, 22 September 2023, p 7.

chairperson meeting conduct continue to be referred to the IA.²⁰⁷ Conversely, OSCAR supported the amendments.²⁰⁸

In response, the department confirmed that it is a policy decision of the government that unsuitable meeting conduct issues are to be dealt with by the local government at the meeting where the conduct occurs.²⁰⁹

The department also advised that the Bill was amended to address the LGAQ's concern that meeting chairpersons could be improperly excluded from local government meetings. The Bill now provides that where councillors have decided by resolution that a chairperson has engaged in unsuitable meeting conduct, the councillors may order by resolution to reprimand the chairperson for the conduct.²¹⁰

2.15 Transitional arrangements in the Bill

Clause 102 of the Bill contains transitional arrangements in relation to the councillor conduct complaints system.

Among other things, it provides that any conduct engaged in by a councillor before the commencement must be assessed, investigated or decided using the current definitions of 'inappropriate conduct' and 'misconduct'.

The Bill also requires the IA to make a preliminary assessment under new chapter 5A, part 3, division 3A of any conduct matters not decided by the IA immediately before the commencement.

While it is acknowledged that the IA may have already commenced investigating a matter, undertaking a preliminary assessment will enable the IA to reconsider the matter under the new assessment criteria. If the IA then decides to investigate the matter, any evidence already collected can continue to be used in the investigation.²¹¹

The Bill provides that a local government can continue investigating allegations of inappropriate conduct not decided immediately before the commencement.²¹²

If a local government has adopted a new investigation policy to comply with the requirements of new section 150AE, then the local government must comply with the requirements of its new investigation policy from the day the policy is adopted.²¹³

Section 348 relates to existing investigations of inappropriate conduct by the CCT on behalf of local governments and provides that the CCT can continue any investigations under the current provisions. If during such an investigation the CCT is reasonably satisfied the conduct is misconduct, the CCT must refer the conduct to the IA for a preliminary assessment.

The Bill requires the IA to review all applications made to the CCT before the commencement that have not been decided by the CCT immediately before the commencement, to determine whether the application must be withdrawn. The IA is required to withdraw an application, or part of an application, that relates to:

- a former councillor
- a councillor that has vacated office

²⁰⁷ LGAQ, submission 3.

²⁰⁸ OSCAR, submission 11.

²⁰⁹ DSDILGP, correspondence, 3 October 2023.

²¹⁰ DSDILGP, correspondence, 3 October 2023.

²¹¹ DSDILGP, correspondence, 22 September 2023, p 9.

²¹² DSDILGP, correspondence, 22 September 2023, p 9.

²¹³ DSDILGP, correspondence, 22 September 2023, p 9.

- conduct that relates solely to behaviour engaged in by a councillor in a personal capacity, unless the conduct is suspected corrupt conduct
- a breach of the acceptable requests guidelines
- a conflict of interest matter which would, on the commencement, no longer be ‘misconduct’, including applications about the conduct of meeting chairpersons.²¹⁴

The OIA and CCC raised several concerns with transitional arrangements. The OIA was concerned that it must withdraw applications to the CCT about former councillors even if the conduct is suspected corrupt conduct.²¹⁵

The CCC raised concerns about the withdrawal of matters before the CCT about former councillors. The CCC noted this may lead to corrupt conduct findings not being made and former councillors being denied the opportunity to have allegations against them resolved. CCC submitted that referring alleged corrupt conduct matters back to the CCC would not be a satisfactory option, as it would add further disruption and likely increase timeframes for resolution of complaints.²¹⁶

The department advised that given the CCT has no powers to take appropriate action against former councillors who have been found to have engaged in misconduct, the government’s policy position is that such matters should be withdrawn.²¹⁷

The department noted the CCC’s concerns about potential disruption and delays. However, considered that the CCC is best placed to consider, and take any necessary action, in relation to corrupt conduct allegations against former councillors. Furthermore, as suspected corrupt conduct by a councillor, or former councillor, will involve a criminal offence, it will also be open to the OIA or CCC to consider whether it was in the public interest to commence prosecution proceedings.²¹⁸

Committee comment

The committee is satisfied that the transitional arrangements are appropriate.

2.16 Human rights

The HRA protects fundamental human rights drawn from international human rights law.²¹⁹

Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

2.17 Human rights issues

The measures to be implemented by the Bill that potentially raise human rights issues are:

- establishment of a preliminary assessment process, and time limits for complaints, notices and information made, referred or given, to the Independent Assessor (clause 46)
- changes to the constitution of the Councillor Conduct Tribunal (clause 63)
- publication of investigation reports and summaries of investigation reports (clauses 56 and 57)

²¹⁴ DSDILGP, correspondence, 22 September 2023, p 9.

²¹⁵ OIA submission, CCC submission.

²¹⁶ CCC submission.

²¹⁷ OIA submission.

²¹⁸ DSDILGP, correspondence, 3 October 2023.

²¹⁹ The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

- mandatory councillor training (clauses 7, 33, 34 and 97)
- establishment of an administrative process to declare persons vexatious complainants (clauses 46 and 67)
- regulation of information in councillor conduct registers (clauses 83-85)
- review processes of conduct of chairpersons in local government meetings (clause 40)
- requirement that all decisions/reasons of the Councillor Conduct Tribunal be published in full (clause 65)
- establishment of a discretion to require public apologies in cases of conduct breaches or misconduct by councillors (clauses 58 and 64)
- regulation of participation by a councillor in a matter where the councillor has a declarable conflict of interest (clauses 14, 19, 92 and 99)
- power to deny public access to certain local government meetings (clauses 27 and 109)
- rules regarding removal from office of Independent Assessors and Councillor Conduct Tribunal members (clauses 72 and 79).

The committee also considered relevant jurisprudence that further supported the conclusions reached in the Statement of Compatibility that the Bill is compatible with human rights.

Committee comment

The committee is satisfied that the limitations imposed by the Bill on the enjoyment of human rights are reasonable and can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

2.18 Closing remarks

Committee comment

As noted at the outset councillors play a fundamental role in their communities and Queenslanders expect high standards of conduct from their elected community leaders. An effective, independent councillor conduct and complaints framework is vital to maintaining public confidence in local government, building capacity across the sector, and providing positive outcomes for communities across the state.

The committee, along with many inquiry participants, welcome the amendments proposed by the Bill which seek to recalibrate the councillor conduct framework to make it more effective, efficient and ensure that only matters of substance and in the public interest proceed for determination.

Since the committee started its initial inquiry in 2021, there has been a noticeable improvement to the manner in which the councillor conduct complaints system has been operating, and we heard multiple inquiry participants attest that this was the case.

It is important that we continue to build on this momentum. We have therefore recommended that the relevant Parliamentary Committee, in addition to its ongoing oversight responsibilities, conduct a review of the councillor conduct system in the next Parliamentary term to ensure that the system is operating as intended.

For completeness, the committee also notes that it is satisfied that the amendments relating to the Electoral Commission's ability to recover costs, and amendments relating to the reclassification of Moreton Bay Regional Council and the Queen's Wharf Brisbane Act are reasonable.

Recommendation 5

That the relevant Parliamentary Committee conduct a review of the councillor conduct complaints system in the next Parliamentary term to ensure any amendments introduced by this Bill are operating as intended and without unintended consequence.

Appendix A – Submitters

Sub #	Submitter
1	Confidential
2	Crime and Corruption Commission
3	Local Government Association of Queensland
4	OSCAR (Organisation Sunshine Coast Association of Residents Inc)
5	Cr Paul Tully
6	Isaac Regional Council
7	Councillor Conduct Tribunal
8	Office of the Independent Assessor
9	Cr Tom Tate
10	Torres Shire Council
11	Logan City Council
12	Brisbane Residents United
13	Barry Cotterell
14	Queensland Law Society
15	Brisbane City Council

Appendix B – Officials at public departmental briefing

Department of State Development, Infrastructure, Local Government and Planning

- Ms Catherine Barthet, Acting Director, Policy and Legislation, Local Government Division
- Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division
- Ms Natasha Chee, Director—Development, Queen’s Wharf Brisbane, Infrastructure and Regional Strategy
- Mr Paul Krautz, Project Executive Director, Queen’s Wharf Brisbane, Infrastructure and Regional Strategy

Appendix C – Witnesses at public hearing

9 October 2023 - Brisbane

Local Government Association of Queensland

- Ms Alison Smith, Chief Executive Officer
- Mr Nathan Rühle, Manager, Intergovernmental Relations

Office of the Independent Assessor

- Ms Kathleen Florian, Independent Assessor
- Ms Jane Hodgkinson, Director, Media and Engagement
- Mr Charles Kohn, Deputy Independent Assessor

Councillor Conduct Tribunal

- Ms June Anstee, President

16 October 2023 - Gladstone

- Cr David Clifton, Councillor, Tablelands Regional Council
- Cr Paul Tully, Councillor, Ipswich City Council
- Cr Amanda Hay, Councillor, Scenic Rim Regional Council
- Cr Peter Flannery, Mayor, City of Moreton Bay
- Cr Andy Ireland, Mayor, Livingstone Shire Council
- Cr Vic Pennisi, Mayor, Southern Downs Regional Council
- Cr Jodie Shipway, Deputy Mayor, Moreton Bay Regional Council
- Cr Denis Chapman, Deputy Mayor, Fraser Coast Regional Council
- Cr Brooke Patterson, Councillor, City of Gold Coast

Appendix D – Extract of Government Response to Councillor Conduct Report

Appendix D sets out the committee’s recommendations and government response to the committee’s Councillor Conduct Report which are relevant to the Bill.

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 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 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 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 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 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 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 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 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 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.