

# Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018

## Explanatory Notes

### FOR

## Amendments To Be Moved During Consideration In Detail By The Honourable Stirling Hinchliffe, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs

### Title of the Bill

Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018.

### Objectives of the Amendments

The objectives of the amendments to the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (the Bill) are:

1. to implement recommendation 2 of the Economics and Governance Committee Report No. 5, 56<sup>th</sup> Parliament on the Bill<sup>1</sup> (the Report). Recommendation 2 of the Report is:  
*'The Bill be amended to provide that:*
  - *the Councillor Conduct Tribunal must be constituted by at least two members for the purpose of conducting a hearing about whether a councillor has engaged in misconduct*
  - *the Local Government Remuneration Commission must be constituted by at least two commissioners for the purpose of making decisions establishing the categories of councils, determining which category each council belongs to and the maximum amount of remuneration payable to councillors in each category.'*<sup>2</sup>
2. to implement the Government's support of the Report's suggestions and certain comments to clarify the Bill.
3. to make minor consequential amendments to ensure consistency with the amendments to the *Local Government Act 2009* (LGA) in the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Belcarra Act).

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<sup>1</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament* is available at <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T465.pdf>

<sup>2</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament*, page 14.

## Achievement of the Objectives

*Constitution of the Councillor Conduct Tribunal and the Local Government Remuneration Commission* (recommendation 2 of the Report)

The objective will be achieved by providing:

- that the Councillor Conduct Tribunal (CCT) is to be constituted by:
  - for hearing a matter about the conduct of a Councillor at least 2, but not more than 3, members of the CCT chosen by the president; or
  - for dealing with an administrative or procedural matter related to hearing a matter about the conduct of a councillor—
    - (i) the president; or
    - (ii) not more than 3 members of the CCT chosen by the president.
- that the Local Government Remuneration Commission (LGRC) is to be constituted by:
  - for performing a function of the LGRC, at least 2, but not more than 3, commissioners of the LGRC chosen by the chairperson; or
  - for dealing with an administrative or procedural matter related to performing a function of the LGRC—
    - (i) the chairperson; or
    - (ii) not more than 3 commissioners of the LGRC chosen by the chairperson.

*Minor amendments to clarify the Bill*

The objective will be achieved by:

- clarifying that the *City of Brisbane Act 2010* continues to provide for the management of the conduct of Councillors in meetings of the Brisbane City Council or its committees
- correcting an anomaly in the definition of ***misconduct***
- clarifying that a local government decides to take action under section 150AG
- clarifying that the obligation to give a notice to a complainant applies if the Independent Assessor (IA) or the CCT has the contact details of the person who made the complaint
- omitting the reference to ‘a mayor’ in the definitions of ***government entity*** and ***local government official*** to avoid confusion because the definition of Councillor includes a Mayor
- clarifying that the conflict of interest requirements for a member of the CCT in relation to a hearing also apply if the CCT member has an interest that may conflict with the fair and impartial investigation of the conduct of a Councillor
- clarifying that the annual report of the Office of the IA must be prepared in a way that does not disclose the identity of the person who made the complaint about the conduct of a Councillor as well as the person investigated
- providing that the Minister must ensure a notice about the conviction of the IA, a CCT member or a LGRC commissioner is to be destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

*Consequential amendments*

The objective will be achieved by amending the Bill as a consequence of the Belcarra Act commencing on assent the amendments to the LGA to prescribe serious integrity offences and integrity offences in schedule 1.

## Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

## Estimated Cost for Government Implementation

There are no anticipated costs for Government.

## Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles.

## Consultation

As the amendments give effect to the Government's support of the Report's recommendation 2, and the Report's suggestions and comments to clarify the Bill, no additional consultation was undertaken.

## NOTES ON PROVISIONS

*Amendment 1* amends clause 4 (Amendment of s 5 (Relationship with City of Brisbane Act 2010)) to clarify that the *City of Brisbane Act 2010* continues to provide for:

- the way in which the conduct of Councillors of the Brisbane City Council in meetings of the Council and its committees is to be dealt with; and
- the way complaints about Councillors of the Brisbane City Council are to be dealt with.

The Report commented:

*'Clause 4 seeks to clarify that the new councillor complaints system will not apply to the Brisbane City Council by providing that the COB Act and not the LG Act provides for 'the way complaints about councillors of the Brisbane City Council are to be dealt with' (complaints are dealt with under Chapter 6, Part 2, Division 6 of the COB Act). The committee noted this clarification did not capture the provisions under division 7 of the COB Act, regarding conduct in council meetings, ...and suggests that the Bill be amended to clarify that the COB Act and not the LG Act provides for the management of councillors' conduct in council meetings.'*<sup>3</sup>

The Government supports the Report's suggestion.

*Amendment 2* amends clause 12 (Insertion of new ch 5A) to correct in section 150L an anomaly in the definition of **misconduct**.

The Report commented:

*'The committee noted that the proposed new section defining misconduct may contain a drafting error that could result in conduct that involves a councillor honestly and impartially performing their functions and exercising their powers being categorised as misconduct....The committee...suggests that this drafting error be corrected.'*<sup>4</sup>

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<sup>3</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 53.*

<sup>4</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 21.*

The Government supports the Report's suggestion to correct the anomaly.

**Amendment 3** amends clause 12 (Insertion of new ch 5A) to insert in section 150L(2)(a) the words 'deciding to take action under section 150AG' to clarify that the conduct of a Councillor is misconduct if the conduct is part of a course of conduct leading to the Local Government deciding to take action under section 150AG to discipline the Councillor for inappropriate conduct on 3 occasions within a period of 1 year.

The Report commented:

*'For clarity in the interpretation of what constitutes 'taking action' to discipline a councillor for the purpose of considering whether a councillor has engaged in misconduct, and to ensure consistency in the application of the provisions, the committee suggests that proposed new section 150L(2)(a) be amended to align with the terminology in 150S to state that the conduct: 'is part of a course of conduct leading to the local government taking action under section 150AG to discipline the councillor for inappropriate conduct on 3 occasions during a period of 1 year.'*<sup>5</sup>

The Government supports the Report's suggestion to amend the provision.

**Amendment 4** amends clause 12 (Insertion of new ch 5A) to clarify in section 150P(4) that the obligation to give a notice to a complainant applies if the IA has the contact details of the person who made the complaint.

The Report commented:

*'The Bill provides that the Assessor or CCT must give a complainant a notice in a range of circumstances...The committee...suggests that for clarity and consistency in drafting proposed new sections 150AS, 150P and 150Q include a proviso that a notice be provided to a complainant only if the Assessor or CCT has the person's contact details.'*<sup>6</sup>

The Government supports the Report's suggestion to clarify the provision.

**Amendment 5** amends clause 12 (Insertion of new ch 5A) to omit in section 150P(5) the reference to a Mayor in the definition of **government entity** to avoid confusion because the definition of Councillor includes a Mayor.

The Report commented:

*'The committee ...suggests, for clarity and to avoid any possible interpretation that a mayor is not a councillor, that the reference to 'a mayor' be removed from the definition of a government entity in new section 150P and the definition of a local government official in new section 150R.'*<sup>7</sup>

The Government supports the Report's suggestion to clarify the provisions.

**Amendment 6** amends clause 12 (Insertion of new ch 5A) to clarify in section 150Q(1) that the obligation to give a notice to a complainant applies if the IA has the contact details of the person who made the complaint.

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<sup>5</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 52.*

<sup>6</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 52.*

<sup>7</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 52.*

The Report commented:

*'The Bill provides that the Assessor or CCT must give a complainant a notice in a range of circumstances...The committee...suggests that for clarity and consistency in drafting proposed new sections 150AS, 150P and 150Q include a proviso that a notice be provided to a complainant only if the Assessor or CCT has the person's contact details.'*<sup>8</sup>

The Government supports the Report's suggestion to clarify the provision.

**Amendment 7** amends clause 12 (Insertion of new ch 5A) to omit in section 150R(3) the reference to a Mayor in the definition of **local government official** to avoid confusion because the definition of Councillor includes a Mayor.

The Report commented:

*'The committee...suggests, for clarity and to avoid any possible interpretation that a mayor is not a councillor, that the reference to 'a mayor' be removed from the definition of a government entity in new section 150P and the definition of a local government official in new section 150R.'*<sup>9</sup>

The Government supports the Report's suggestion to clarify the provisions.

**Amendment 8** amends clause 12 (Insertion of new ch 5A) to clarify that section 150S applies if the local government decides under section 150AG to take action.

**Amendment 9** amends clause 12 (Insertion of new ch 5A) to provide in section 150AM that the CCT is constituted by at least 2, but not more than 3 members when hearing a matter about the conduct of a Councillor; or for dealing with an administrative or procedural matter related to hearing a matter about the conduct of a Councillor, the president or not more than 3 members of the CCT chosen by the president.

Recommendation 2 of the Report:

*'The Bill be amended to provide that:*

- *the Councillor Conduct Tribunal must be constituted by at least two members for the purpose of conducting a hearing about whether a councillor has engaged in misconduct*
- *the Local Government Remuneration Commission must be constituted by at least two commissioners for the purpose of making decisions establishing the categories of councils, determining which category each council belongs to and the maximum amount of remuneration payable to councillors in each category.*<sup>10</sup>

The Report commented:

*'While the committee acknowledges that there is little benefit in more than one member being involved in administrative functions, such as scheduling a hearing, the committee is of the view that there may be substantial benefit in retaining a panel-based approach for hearings about councillors' conduct. Requiring hearings to be conducted by a panel of at least two members, while allowing other administrative functions to be performed by individual members, may appropriately balance efficiency considerations with the importance of maintaining public and council confidence in the decisions of the CCT.'*<sup>11</sup>

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<sup>8</sup> Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 52.

<sup>9</sup> Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 52.

<sup>10</sup> Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 14.

<sup>11</sup> Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, pages 13 and 14.

The Government agrees with the Report's view regarding the importance of maintaining public and Council confidence in the decisions of the CCT. Accordingly, the Government supports recommendation 2.

**Amendment 10** amends clause 12 (Insertion of new ch 5A) to clarify in section 150AS(2) that the obligation to give a notice to a complainant applies if the CCT has the contact details of the person who made the complaint.

The Report commented:

*'The Bill provides that the Assessor or CCT must give a complainant a notice in a range of circumstances...The committee...suggests that for clarity and consistency in drafting proposed new sections 150AS, 150P and 150Q include a proviso that a notice be provided to a complainant only if the Assessor or CCT has the person's contact details.'*<sup>12</sup>

The Government supports the Report's suggestion to clarify the provision.

**Amendment 11** amends clause 12 (Insertion of new ch 5A) to clarify in section 150DT(1) that the conflict of interest requirements for a member of the CCT apply if the member has an interest that may conflict with the fair and impartial hearing or investigation of the conduct of a Councillor.

The Report commented:

*'The committee noted that proposed new section 150DT imposed requirements on members of the CCT in relation to interests that may conflict with the fair and impartial hearing of a councillor's conduct. However, there are no similar requirements relating to interests that may conflict with the fair and impartial investigation of suspected inappropriate conduct of a councillor.'*

*To reflect the fact that the impartiality of the CCT is critical to maintaining public and council confidence in the new councillor complaints system, the committee is of the view that the conflict of interest requirements should also apply to a member of the CCT undertaking investigation of suspected inappropriate conduct.'*<sup>13</sup>

The Government supports the views of the Report.

**Amendment 12** amends clause 12 (Insertion of new ch 5A) to clarify in section 150EB(3) that the IA's annual report about the operation of the Office of the IA must be prepared in a way that does not disclose the identity of the person who made the complaint about the conduct of a Councillor as well as the person investigated.

The Report commented:

*'The committee noted that proposed new section 150EB requires the annual report for the OIA to be prepared in a way that does not disclose the identity of any councillor investigated, but does not contain a requirement to not disclose the identity of any complainants. The committee ...suggests that this be clarified in the Bill.'*<sup>14</sup>

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<sup>12</sup> Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 52.

<sup>13</sup> Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 12.

<sup>14</sup> Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 10.

The Government supports the Report's suggestion to clarify the provision.

**Amendment 13** omits clause 13 (Amendment of s 153 (Disqualification for certain offences) as a consequence of the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Belcarra Act) relocating prescribed integrity offences from section 153 to schedule 1.

**Amendment 14** amends clause 18 (Replacement of ch 6, pts 3 and 4) to provide that in section 179, the LGRC is constituted by at least 2, but not more than 3, commissioners when performing a function of the LGRC; or for dealing with an administrative or procedural matter related to performing a function of the LGRC, the chairperson; or not more than 3 commissioners of the LGRC chosen by the chairperson.

Recommendation 2 of the Report:

*'The Bill be amended to provide that:*

- *the Councillor Conduct Tribunal must be constituted by at least two members for the purpose of conducting a hearing about whether a councillor has engaged in misconduct*
- *the Local Government Remuneration Commission must be constituted by at least two commissioners for the purpose of making decisions establishing the categories of councils, determining which category each council belongs to and the maximum amount of remuneration payable to councillors in each category.*<sup>15</sup>

The Report commented:

*'Requiring these decisions to be made by a panel of at least two members, while allowing other administrative functions to be performed by individual members, may appropriately balance efficiency considerations with the importance of maintaining public and council confidence in the decisions of the LGRC.'*<sup>16</sup>

The Government agrees with the Report's view regarding the importance of maintaining public and Council confidence in the decisions of the LGRC. Accordingly, the Government supports recommendation 2.

**Amendment 15** amends clause 30 (Insertion of new ss 260A and 260B) to insert section 260B(4) to provide that the Minister must ensure a notice about the conviction of the IA, a CCT member or a LGRC commissioner, is to be destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

The Report commented:

*'...additional protections could be introduced to ensure the privacy of a prospective or existing Assessor, CCT member or LGRC commissioner. Such protections would be consistent with other legislation, such as the Grammar Schools Act 2016 and Plumbing and Drainage Act 2002, that provides express safeguards for criminal history reports obtained in relation to becoming a member of a board or trade council and for criminal history information required to be disclosed during their appointment.'*<sup>17</sup>

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<sup>15</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 14.*

<sup>16</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 14.*

<sup>17</sup> *Economics and Governance Committee, Report No. 5, 56<sup>th</sup> Parliament, page 47.*

The Government notes the Report's comments and amendment 14 provides for protections to ensure the privacy of a prospective or existing IA, CCT member or LGRC commissioner consistent with section 23A(5) of the *Grammar Schools Act 2016* and section 20(4) of the *Plumbing and Drainage Act 2002*.

**Amendment 16** inserts clause 32A (Amendment of sch 1 (Serious integrity offences and integrity offences) to prescribe section 150AW(1) (Protection from reprisal) as an integrity offence in schedule 1 part 2 of the *Local Government Act 2009*, as a consequence of the Belcarra Act relocating prescribed integrity offences from section 153 to schedule 1.

Section 150AW(1) provides that a Councillor must not take detrimental action against a protected person in reprisal for a complaint or notification about the Councillor's conduct.