Queensland Law Society

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Office of the President

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Our ref: KB-ODLC

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email: egc@parliament.qld.gov.au

Dear Committee Secretary

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

Thank you for the opportunity to provide a response on the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (the Bill).

The Queensland Law Society (the Society) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Given the time constraints surrounding the introduction of this Bill, and of other bills, and the committee process, we have not undertaken an exhaustive review of each provision of the Bill and its effect. We also do not make any comment as to the policy intent of this Bill except to say that we endorse clear complaints and investigation procedures being adopted by local governments.

Further, we note that over the past year, the Queensland Law Society has made several submissions about powers of entry and seizure of information which have been placed in bills introduced by the Government. We commend the drafters of the bill for modifying the provisions which impose the powers given to these investigators to the extent that they do not allow entry to a place that is not a public place without consent or a warrant and, that they do not seek to abrogate the right to claim privilege against self-incrimination.

We make the following comments on specific provisions in this Bill.

1. We are concerned by the orders that can be made under both proposed section 150AH(i)(b)(i) and proposed section 150AR(i)(b)(i). Requiring a person to make an

admission is a breach of a fundamental tenant of our justice system. We consider that it is appropriate to make a finding public, and for the person to have to disclose this finding, however we do not consider it is appropriate to require someone to make a non-genuine admission.

2. As to the conduct of a hearing under proposed section 150AP, we consider that in accordance with the principles of natural justice and procedural fairness, the councillor ought to be given the opportunity to present his or her case and respond to submissions made by the assessor whether this be in written or oral form.

3. We support the right of review and consider this right should be extended to a councillor in all matters.

4. We are concerned by the offence provisions contained in Part 2, Division 7, particularly proposed sections 150AU and 150AV. A person is subjected to a very serious assessment process to be declared a "vexatious litigant" by the Courts and if this assessment is made, he or she is still not charged with an offence. In our opinion, there are more effective, fair and just ways to discourage frivolous or improper complaints and such action does not warrant the imposition of an offence.

   Further, any steps taken to prevent frivolous or improper complaints should not deviate from an individual's ability to make a complaint about a councillor or public official.

5. As stated above, the right to claim privilege against self-incrimination should be preserved. Proposed section 233A should therefore be clear that a refusal to provide information etc will not be considered obstruction.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on (07) 3842 5851 or by email to K.Brodnik@qls.com.au.

Yours faithfully

Ken Taylor

President