

6 October 2023

Our ref: OccD/KB

Committee Secretary  
State Development and Regional Industries Committee  
Parliament House  
George Street  
Brisbane Qld 4000

  
Dear Committee Secretary**Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023**

Thank you for the opportunity to provide a submission to the inquiry into the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 (**Bill**).

The Committee will be aware that the Queensland Law Society (**QLS**) has a number of policy committees who undertake advocacy and provide advice to governments, courts and other stakeholders on myriad issues in the promotion of good lawyers, good law and the public good. Unfortunately, the short timeframe within which to consider this **Bill** has coincided with the school holiday period which has meant that a number of our volunteer policy committee members have been on leave. As a result, we have been unable to conduct a comprehensive review of the **Bill**, including to ensure there are no unintended consequences. We do acknowledge and thank the Committee for the extension of time it was able to provide.

We have limited our comments to the “councillor conduct” amendments.

**General comments**

We note this **Bill** seeks to address 19 recommendations from this Committee’s report, ‘Inquiry into the Independent Assessor and councillor conduct complaints system’. We commend the Committee for the work undertaken to produce this report which included examining a number of submissions and evidence given at public hearings. You may recall that QLS made a written submission to that inquiry and appeared at a public hearing. We are pleased to see that a number of the Committee’s recommendations adopt suggestions made by QLS.

QLS expresses support for the provisions in the **Bill** that seek to improve the timeliness of investigations and decision-making by the Office of the Independent Assessor (**IA**), as well greater transparency. We support improved processes so that the Councillor Conduct Tribunal (**CCT** or **Tribunal**) can function more efficiently, for example, by allowing the **IA** to withdraw applications to the Tribunal.

We also consider there will be an improved perception of the Tribunal's independence following the amendments to remove its investigation function and the amendments that will effectively mean the IA is a party to a QCAT proceeding, instead of the CCT.

However, we are concerned that these measures will not address all of the issues identified by stakeholders during the previous inquiry. Fundamentally, there is a resourcing issue that needs to be continually monitored and addressed by government. We are pleased that there are to be further reporting requirements introduced for both bodies.

### Former councillors

QLS broadly supports the amendments to limit the system's application in relation to former councillors. However, while we appreciate this may allow for a re-direction of resources and, as stated in the explanatory material, the penalties that can be imposed against former councillors cannot be enforced, and in any event, are very limited compared to the penalties that can be imposed on sitting councillors, it will be important for some alleged conduct to be formally dealt with so as to establish:

1. this conduct is in breach of the local government laws and not acceptable, which can be used as a precedent; and
2. a finding against the former councillor is recorded in the event this is necessary for the public to know should the individual seek re-election.

We therefore consider a discretion is appropriate.

### Preliminary assessment process

QLS expresses broad support for a preliminary assessment process that will deal with complaints or matters brought to the IA in an expeditious and appropriate manner.

#### 1. Timeframes for IA's decisions

We note this Committee's report called for "targeted timeframes" to be applied to the complaints framework by the IA and CCT. The preliminary assessment process has been designed to respond to this recommendation, but it does not impose any time limits on the IA. Reasonable timeframes for the IA in respect of this process should be considered.

#### 2. Time limitations

The timeframe for making a complaint, outlined in proposed section 150SB, is 1 year after the conduct arose, or 6 months from when the complainant became aware of the conduct, but within two years of it occurring. Proposed section 150SD(2) requires the IA to dismiss a complaint that is "out of time" unless it relates to suspected corrupt conduct or there are exceptional circumstances. "Exceptional circumstances" is not defined, but there is a concern this may be too high a threshold.

There is some discretion under proposed section 150SD(3) to allow a complaint to be dismissed if it relates to a suspected conduct breach that occurred more than 6 months ago. This seems



to conflict with the general timeframes in proposed section 150SB and creates confusion and uncertainty if the complaint otherwise met the other criteria

QLS calls for a simplified process, consistent with other jurisdictions, where there is a 2 year period for minor breaches and no limitation for complaints relating to corruption.

### **Publishing full decision of the Tribunal**

QLS supports the amendments allowing CCT decisions about councillor conduct (including reasons) to be published in full, subject to appropriate redactions.

### **Allowing IA to withdraw applications**

QLS also supports the ability for the IA to withdraw an application made to the CCT, in whole or in part.

However, it is hoped that the IA will undertake appropriate and timely investigations so that matters are not improperly referred to the Tribunal. Even if a matter will now be able to be withdrawn, there are still adverse impacts on a respondent if the CCT process is commenced.

### **Composition of the Councillor Conduct Tribunal**

The Bill provides for the appointment of a deputy president of the CCT and that the Tribunal 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.

QLS is supportive of one member hearing administrative/procedural matters, but considers it unhelpful if there are only two members hearing a substantive matter (as opposed to one or three).

### **Natural justice processes**

The Bill amends a number of provisions in the local government legislation to remove the requirement for the IA to provide natural justice on the basis that this will be duplicated by the local government. For example, this means, if the IA is considering referring the matter to the CCT, then it will need to provide a notice and opportunity for the councillor to respond. However, if it is considering referring the matter back to the local government, then it will not be required to provide this notice.

On the basis that the rights of the councillor are not impacted by this referral, we consider this amendment to be consistent with decision in *Norvill v Commissioner of Queensland Police Service & Anor* [2022] QCA 104.

### **Provision of training**

The Bill establishes compulsory training requirements for councillors. QLS has previously called for more training to be provided to councillors and staff to ensure they are able comply with their

legislative obligations, particularly in respect of conflicts of interest requirements. QLS does not support the imposition of mandatory training, but considers instead, there should sufficient time and support provided to allow for the completion of the training.

**Publication of suspected conduct breach investigation reports and summaries**

QLS does not support, and is concerned by, these proposed amendments. These investigation reports are part of the process and do not represent final outcome. The final outcome, being the Tribunal's decision, is published, providing sufficient transparency and information for the public.

We also refer to the recent decision of the High Court of Australia in *Crime and Corruption Commission v Carne* [2023] HCA 28. These amendments are inconsistent with this authority.

**IA to give notice of potential disciplinary orders to councillors.**

QLS is supportive of this amendment as it will allow the councillor, and their representatives, to know what orders are being sought at the earliest opportunity.

We would be pleased to receive an invitation to appear at the public hearing for this inquiry should the Committee consider this would be of assistance.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully

[REDACTED]

Chloé Kopilović  
**President**