

# DISCUSSION PAPER

Issues and options for Queensland's councillor conduct complaints policy,  
legislation and operations

**AUGUST 2016**

**PREPARED BY THE INDEPENDENT COUNCILLOR COMPLAINTS REVIEW PANEL**

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## CONTENTS

Introduction .....	5
1. Context.....	6
1.1. Why does councillor conduct matter? .....	7
1.2. Principles and standards of conduct .....	7
1.3. Defining unacceptable councillor conduct .....	8
1.4. Offences and prosecutions.....	9
2. Current arrangements for conduct complaints .....	9
2.1. Recent developments .....	9
2.2. Processing complaints.....	10
2.3. Role of the Crime and Corruption Commission.....	13
2.4. Role of the Ombudsman.....	13
2.5. Role of the Minister .....	13
3. Summary of data .....	14
3.1. Departmental data .....	14
3.2. Crime and Corruption Commission data .....	15
4. Areas of concern.....	17
4.1. Purpose and scope .....	17
4.2. Legislative framework .....	18
4.3. Efficiency and effectiveness .....	19
4.4. Offences and penalties .....	19
4.5. Roles of CEOs, mayors and the department.....	20
4.6. Procedural fairness and natural justice .....	21
4.7. Protection against reprisal .....	22
4.8. Costs .....	22
5. Options for Change.....	23
5.1. Incremental Improvement.....	23
5.2. Decentralise and Mainstream.....	25
5.3. Centralise and Streamline .....	26
How to have your say: .....	27
Attachment A: Councillor complaints review panel—Terms of Reference.....	28
Attachment B: Offences .....	29
Attachment C: Brisbane city council .....	31
Attachment D: Practices in South Australia and Victoria.....	34

**LIST OF ACRONYMS**

CCC	Crime and Corruption Commission
CC Act	<i>Crime and Corruption Act 2001</i>
CEO	Chief Executive Officer
CoBA	<i>City of Brisbane Act 2010</i>
LG Act	<i>Local Government Act 2009</i>
LGAQ	Local Government Association of Queensland
LGMA	Local Government Managers Australia
QCAT	Queensland Civil and Administrative Tribunal
VCAT	Victorian Civil and Administrative Tribunal

## INTRODUCTION

The Honourable Jackie Trad MP, Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment has appointed an independent Panel to review the current arrangements for dealing with complaints about the conduct of local government councillors.

The state's objective is to maintain public confidence in transparent, accountable, well-governed, efficient and effective local government; to hold councillors to high standards of ethical and legal behaviour; and to deter councillors from poor behaviour or abuse of their positions of trust. They must put the public interest ahead of their own private interests.

Hence the purpose of the review is to:

- Assess how well or otherwise, the current legislative and policy framework for dealing with complaints about councillor conduct supports these policy objectives
- Recommend, if necessary, policy, legislative and operational changes to achieve better results.

The Councillor Complaints Review Panel (the Panel) is chaired by Dr David Solomon AM, Queensland's former Integrity Commissioner. The other members are Mr Noel Playford OAM, nominated by the Local Government Association of Queensland (LGAQ), and Mr Gary Kellar PSM, nominated by Local Government Managers Australia (LGMA). The Panel's terms of reference are included as Attachment A.

Release of this discussion paper marks the end of the first stage of the review, which has involved background research; preliminary consultations with the LGAQ, the LGMA, local government officials, mayors and councillors, state agencies including the Queensland Ombudsman, Crime and Corruption Commission Queensland, Queensland Audit Office, the Queensland Integrity Commissioner, the Department of Infrastructure, Local Government and Planning; representatives from regional conduct review panels and the Local Government Remuneration and Disciplinary Tribunal; and discussions with counterparts in New South Wales, Victoria and South Australia.

This paper presents a summary of current arrangements, areas of concern, and several approaches for handling complaints in the future. The Panel does not have a fixed view or preferred direction at this stage, it is seeking both feedback and fresh ideas about how the system can and should be improved.



## HAVE YOUR SAY

- Email a written submission to  
ComplaintsReviewPanel@dilgp.qld.gov.au
- Post a written submission to:  
Councillor Complaints Review Panel  
c/o The Project Manager  
PO Box 15000  
City East, Queensland 4002

**Submissions close Friday 23 September 2016.**

All comments are welcome, however the Panel would appreciate responses to the questions included in sections 3, 4 and 5 of the paper.

## 1. CONTEXT

### 1.1. WHY DOES COUNCILLOR CONDUCT MATTER?

Councillors hold positions of authority that have significant potential to influence the wellbeing of their local government area. How they conduct themselves, and how they are seen to behave, matters to both their own constituents and the local government sector as a whole.

The Queensland *Local Government Act 2009* (LG Act) defines local governments (councils) as elected bodies that are responsible for the good rule and local government of a part of Queensland, and empowers them to do anything that is necessary or convenient to achieve that. Councillors must therefore make sound decisions for the benefit of the entire local government area, and for the current and future interests of its residents.

Councillors hold public office and hold a position of trust. Trust in all levels of government is fundamental to building and maintaining a stable, law-abiding, prosperous and mutually cooperative community. Integral to public trust in local government is the notion that councillors should abide by high standards of behaviour, ethics, integrity, transparency and accountability.

### 1.2. PRINCIPLES AND STANDARDS OF CONDUCT

The LG Act aims to foster a culture of personal integrity and accountability for elected officials consistent with community expectations (box 1). It sets out the behaviour expected of councillors through provisions about the:

- local government principles (s4)
- responsibilities of councillors [section also includes extra responsibilities for mayors] (s12)
- obligations of councillors (s169–173)
- conduct and performance of councillors (s176).

Note that to minimise replication and confusion in this paper, the LG Act is used as the primary legislative reference. The *City of Brisbane Act 2010* (CoBA) will generally mirror the LG Act. If the CoBA differs in a relevant and meaningful way, it will be specifically referenced.

#### BOX 1: LOCAL GOVERNMENT PRINCIPLES

Section 4 for of the LG Act provides the principles that underpin the Act.

To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires anyone who is performing a responsibility under this Act to do so in accordance with the local government principles, and to ensure that, as far as possible, their actions achieve results consistent with the principles.

The local government principles are:

- a) transparent and effective processes, and decision-making in the public interest
- b) sustainable development and management of assets and infrastructure, and delivery of effective services
- c) democratic representation, social inclusion and meaningful community engagement
- d) good governance of, and by, local government
- e) ethical and legal behaviour of councillors and local government employees.

Under s12, a councillor must represent the current and future interests of the residents of the local government area and, among other things, is accountable to the community for the council's performance. He or she must provide high quality leadership to the council and community, and ensure that the council complies with its legislative obligations.

Sections 169–173 focus in particular on:

- proper use and protection of 'inside' information acquired as a councillor (s171A)
- maintaining a correct register of interests (s171B)
- declaring and dealing with a material personal interest in matters before council, and dealing with potential conflicts of interest (s172 and 173).

Sections 176(3) and (4) define types of inappropriate conduct and misconduct that councillors should avoid (see section 1.3 below for definitions).

### 1.3. DEFINING UNACCEPTABLE COUNCILLOR CONDUCT

Under current arrangements, unacceptable or improper behaviour by councillors is generally dealt with under three headings—inappropriate conduct, misconduct and corrupt conduct.

**Inappropriate conduct** is broadly defined by s176(4) of the LG Act as conduct that is not appropriate for a councillor, but which is not 'misconduct'. Examples given by the Act include failure to comply with council procedures and behaving in an offensive or disorderly way at a council meeting.

**Misconduct** is defined by s176(3) to include use of a councillor's powers or authority in a way that is not honest or impartial; a breach of trust; misuse of information or material for the benefit of the councillor or someone else; failure to comply with a chairperson's direction to leave a council meeting; refusal to comply with a direction of a regional conduct review panel (review panel) or the Local Government Remuneration and Disciplinary Tribunal (the tribunal); repeated inappropriate conduct; release of confidential information; and failure to deal appropriately with a real or perceived conflict of interest.

Misconduct also includes failure to record or update the councillor's register of interests in the prescribed form and timeframe; prohibited use of inside information; and failure to declare and/or deal appropriately with a material personal interest at a council meeting.

**Corrupt conduct** is defined by s15 of the *Crime and Corruption Act 2001* (CC Act) (box 2). Examples of possible corrupt conduct include abuse of public office; bribery; extortion; fraud, stealing or forgery; perverting the course of justice; an offence relating to an electoral donation; and loss of revenue of the state. The Panel notes that this definition is currently under review by the Department of Justice and Attorney-General.

**BOX 2: DEFINITION OF CORRUPT CONDUCT**

Section 15 in the CC Act provides that corrupt conduct is conduct that:

- adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of a unit of public administration; or a person holding an appointment; and
- results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned above in a way that is not honest or is not impartial; or involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
- is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- would, if proved, be a criminal offence; or a dismissible disciplinary breach.

**1.4. OFFENCES AND PROSECUTIONS**

The LG Act makes some forms of misconduct offences with substantial penalties, including fines and imprisonment. Full details are provided at Attachment B. Where warranted, prosecutions would normally be initiated by the department responsible for local government (currently the Department of Infrastructure, Local Government and Planning). Councils may also initiate prosecutions, but this is very rare.

The department has prosecuted only once since the current provisions under the LG Act commenced in 2009 for a breach in maintaining an accurate register of interests. Between 2006 and 2009 there were four prosecutions relating to the register of interests (1), election gift register (1), and material personal interests (2).

**2. CURRENT ARRANGEMENTS FOR CONDUCT COMPLAINTS****2.1. RECENT DEVELOPMENTS**

Prior to 2006, the *Local Government Act 1993* did not contain a process for dealing with complaints about the conduct of councillors. It did, however, create a number of offences (e.g. failure to deal with a material personal interest, disclosing confidential information, misusing information for gain, failing to update registers of interests).

Alleged breaches of these offences could be investigated by the Crime and Misconduct Commission [now the Crime and Corruption Commission (CCC)] and councillors subsequently prosecuted.

In 2006, the 1993 Act was amended to introduce:

- a requirement for councils to adopt a code of conduct for councillors
- definitions of different types of breaches of the code
- a process for investigating, determining and enforcing penalties for complaints about the conduct of councillors.

In 2007, following a public inquiry into the 2004 Gold Coast City Council elections, a further amendment gave additional powers to council chief executive officers (CEOs) and the department to investigate offences about failure to complete or maintain accurate registers of interests.

As part of the 2009 revision of the 1993 Act, the government undertook a complete overhaul of the councillor conduct complaint processes. That review led to most of the current framework set out in the LG Act (and described in section 2.2 below). Changes included:

- dropping the requirement for councils to adopt a code of conduct, although a number of councils still voluntarily maintain a code
- revising the types of offences, penalties and disciplinary orders for misconduct and inappropriate conduct
- strengthening the role of the Brisbane City Council's own councillor conduct review panel.

However, the CoBA retained the requirement to have a code of conduct until 2012, when it was removed. Brisbane City Council voluntarily maintains a 'Code of Conduct for Councillors' that sets out standards of behaviour for councillors when carrying out official duties.

Since 2009, there have been minor amendments to:

- clarify who is responsible for preliminary assessments (LG Act)
- allow a review panel or tribunal to make a disciplinary order requiring a councillor to make a payment to the council (LG Act and CoBA).

## 2.2. PROCESSING COMPLAINTS

### Making a complaint

Under the LG Act (as amended) anyone – including a member of the public, a mayor or councillor, a council CEO, or a council employee – may lodge a complaint about councillor conduct to the council, the department or the CCC. Complaints may be made anonymously and the Act does not prescribe a particular format for complaints, or require presentation of supporting evidence.<sup>1</sup>

### Timeframes

The Act does not specifically prescribe timeframes within which complaints about the conduct of a councillor may be made.<sup>2</sup> It does, however, set some parameters as follows:

- A complaint may be made about a former councillor if the person was a councillor when the conduct is alleged to have happened and the complaint is made within two years after the person stopped being a councillor; nevertheless the relevant decision-maker has the discretion to decide to take no further action in relation to such a complaint if they consider it is in the public interest to do so.
- If there is evidence that a councillor may have committed a specific offence under the Act and Court action is being considered, the proceedings must be started either:
  - within one year after the offence was committed; or

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<sup>1</sup> Other complaints handling agencies such as the Queensland Ombudsman and the Human Rights Commission provide complaint forms and guidelines for complainants to use. These help ensure that a complaint contains sufficient information to enable the relevant decision maker decide whether it is in the public interest to further investigate the complaint.

<sup>2</sup> By comparison, the Queensland Ombudsman will generally not deal with a complaint if the person complaining has known about the matter for more than 12 months.

- within six months after the offence comes to the complainant's knowledge, but within two years after the offence was committed.

### **Preliminary assessments**

The current system is based on a two-tier approach. Complaints about inappropriate conduct are normally handled by the council concerned, whilst allegations of misconduct or corrupt conduct must be referred to the department or CCC.

Most complaints are first considered by the council's CEO, who makes a preliminary assessment. This could conclude that the complaint is: about a frivolous matter or made vexatiously; lacking in substance; really about 'another matter' (e.g. a more general complaint about council decisions or services). In those cases the complaint would not proceed, or may be referred elsewhere, and the complainant notified accordingly.

If the preliminary assessment concludes that the complaint has substance and is indeed about inappropriate conduct, misconduct or corrupt conduct, then the CEO must refer the complaint for further action as follows:

- complaints about inappropriate conduct on the part of any councillor other than the mayor or deputy mayor – to the mayor
- complaints about misconduct by any councillor – to the department
- complaints where there is a reasonable suspicion of corrupt conduct – to the CCC.

If the complaint is about the mayor or deputy mayor, or is made by the mayor or the CEO, the preliminary assessment must be undertaken by the department rather than the council CEO.

### **Inappropriate conduct**

For allegations of inappropriate conduct, the mayor is responsible for further consideration and making a decision on the action required. He or she may decide that no further action is warranted or may impose either or both of the following disciplinary orders:

- an order reprimanding the councillor
- an order that any repeat of the inappropriate conduct will be treated as misconduct and referred to a review panel.

However, if the complaint is about inappropriate conduct of the mayor or deputy mayor, or made by the mayor or the CEO, the department's chief executive decides what, if any, action will be taken and, if the complaint is upheld, whether one or both of the orders above will be made.

### **Misconduct**

The department's chief executive must consider complaints about misconduct and decide whether:

- the complaint should be dismissed on the basis that it is frivolous, vexatious or misconceived; lacking in substance; or otherwise an abuse of process<sup>3</sup>
- the complaint is really about inappropriate or corrupt conduct rather than misconduct
- the complaint is truly about misconduct and should be further investigated with a view to referral to either a review panel or the tribunal.

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<sup>3</sup> An abuse of process usually refers to the situation where the complainant is essentially repeating the same complaint that has already been dealt with by some other lawful process.

Review panels are established by the department, whilst members of the tribunal are appointed by the Governor in Council. Both review panels and the tribunal hear and determine complaints about misconduct.

A review panel may impose one or more of the disciplinary orders listed in box 3.

### BOX 3: DISCIPLINARY ORDERS

Under s180 of the LG Act a review panel may order or recommend one or more of the following disciplinary actions:

- an order that the councillor be counselled about the misconduct, and how not to repeat the misconduct
- an order that the councillor make an admission of error or an apology
- an order that the councillor participate in mediation with another person
- a recommendation to the department's chief executive to monitor the councillor or the local government for compliance with the Local Government Acts
- an order that the councillor reimburse the local government
- a recommendation to the CCC or the police commissioner that the councillor's conduct be further investigated
- an order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units (approximately \$6100).

The tribunal is expected to deal with more serious forms of misconduct. It may impose the same disciplinary orders as a review panel, but can also order the councillor to forfeit payments or privileges. In addition, the tribunal may recommend to the Minister that the councillor be suspended or dismissed.

Review panel and tribunal hearings are intended to be straightforward and swift. The standard of proof is the balance of probabilities, which applies in civil matters, rather than 'beyond reasonable doubt'. An accused councillor must be given adequate notice of a hearing and the principles of natural justice and a fair hearing must be upheld. Legal representation is at the discretion of the review panel or tribunal and is usually considered unnecessary, but anecdotal evidence suggests it is becoming more common.

In recent years most cases of misconduct have been referred to review panels, with comparatively few being referred to the tribunal. Disciplinary orders have been largely at the lower end of the range, and no recommendations have been made to the Minister for suspension or dismissal.

#### **Corrupt conduct**

Allegations involving a reasonable suspicion of corrupt conduct must be referred to the CCC, which may decide to take action itself or to refer them to the department. The department may consider prosecution through the courts, or in less serious cases refer the matter to a review panel or the tribunal to hear and determine.

#### **Brisbane City Council**

Similar arrangements apply under the CoBA, except that Brisbane City Council operates its own councillor conduct review panel and does not refer matters to the tribunal. Further detail is provided in Attachment C.

### **2.3. ROLE OF THE CRIME AND CORRUPTION COMMISSION**

The CCC's role in relation to local government councillors is limited because suspension or dismissal of a councillor is entirely a discretionary matter for the Minister and Governor in Council. The CCC's jurisdiction is therefore restricted to circumstances where the alleged conduct would, if proved, amount to a criminal offence (which includes offences under the LG Act).

Nevertheless, if a council receives a complaint and the CEO reasonably suspects corrupt conduct, the complaint must be referred to the CCC. An exception is when a s40 direction under the CC Act is in place and the complaint relates to a 'level 3' (relatively minor) matter, in which case the council must simply maintain a record of the complaint that may later be audited by the CCC.

In addition, the CCC's corruption prevention function provides a platform to make comment and provide guidance to council CEOs and councillors in managing complaints in a transparent and open manner.<sup>4</sup> There is evident scope to consider how the CCC might play a greater role in working with local government to promote a better understanding of the relationship between corrupt conduct and councillor conduct complaints.

### **2.4. ROLE OF THE OMBUDSMAN**

The Queensland Ombudsman is not authorised to investigate councillor conduct complaints. Nor can the Minister refer such matters to the Ombudsman. By contrast, the Panel notes that in South Australia the Ombudsman plays a central role in investigating conduct complaints (see attachment D).

Moreover, the Queensland Ombudsman cannot investigate administrative action (including imposition of disciplinary orders) taken by the tribunal or a review panel, because there is no right of appeal against their decisions.<sup>5</sup> Nevertheless, the Ombudsman may investigate administrative action taken by council CEOs and the department, including how they deal with conduct complaints. Since July 2011, the Ombudsman has dealt with 87 cases that to some extent involved a complaint about councillor conduct.

### **2.5. ROLE OF THE MINISTER**

As noted in section 2.2 above, in cases of serious misconduct the Minister may act on a recommendation from the tribunal to recommend that the Governor in Council suspend or dismiss a councillor.

In addition, and under another part of the LG Act (s122(b) or (c)), the Minister may act on advice from the department to seek the suspension or dismissal of a councillor, provided the Minister has followed the process prescribed and reasonably believes that:

- the councillor has seriously or continuously breached the local government principles, or
- is incapable of performing their responsibilities.

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<sup>4</sup> See *Codes of conduct for councillors: A guide for councillors and CEOs*, Prevention Pointer Series, Number 2, May 2004; and *The Councillor Conduct Guide: For representatives elected under the Queensland Local Government Act 2009*, July 2013.

<sup>5</sup> There has, however, been one case in which a councillor successfully appealed to the Supreme Court, which found that a review panel had exceeded its jurisdiction under the CoBA and for that reason (rather than the merits of the case) struck down the council's review panel's decision.

No councillor has been suspended or dismissed using these powers since they were introduced in 2009.

### 3. SUMMARY OF DATA

The Panel has reviewed available departmental data on the operation of the complaints system. It has also received information from the CCC. There is presently no data available on complaints dealt with by councils themselves. The Panel is therefore conducting its own survey of councils to collect as much information as possible on the handling of complaints at the local level. Note that councils may only deal with inappropriate conduct matters.

#### 3.1. DEPARTMENTAL DATA

The Panel has referenced complaints data compiled by the department from 1 July 2014. Prior to this date, complaints data was not recorded in a sufficiently specific manner to enable comparison. During the period 1 July 2014 to 30 June 2016 the department received a total of 210 complaints comprising 396 separate allegations (Table 1). The complaints referred to the department came from 44 of the state's 77 councils. More than half originated from only nine councils.

Grounds for complaints were wide-ranging, but there are two prominent themes:

1. Conflict of interest and failing to declare interests or maintain accurate registers.
2. Breach of trust and lack of honest and/or impartial performance of duties.

**Table 1: Types of Allegations from 1 July 2014 to 30 June 2016**

Type of allegation	2014/2015	2015/2016	Total
<b>Corrupt conduct</b>			
Incorrect register of interests	5	10	15
Failure to declare material personal interest	13	9	22
Other	17	77	94
<b>Subtotal</b>	<b>35</b>	<b>96</b>	<b>131</b>
<b>Misconduct</b>			
Lack of honest and/or impartial performance	9	6	15
Breach of trust	24	5	29
Conflict of interest	19	9	28
Other	21	63	84
<b>Subtotal</b>	<b>73</b>	<b>83</b>	<b>156</b>
<b>Inappropriate conduct</b>			
Failure to comply with council procedures	6	11	17
Other	36	56	92
<b>Subtotal</b>	<b>42</b>	<b>67</b>	<b>109</b>
<b>Total</b>	<b>150</b>	<b>246</b>	<b>396</b>

Department data for the period (table 2) also shows that only 30 complaints (12 per cent of the total received) were ultimately upheld (by the department's chief executive, a review panel or the tribunal), leading to penalties being applied. Furthermore, during those two years, it took on average 61 days to assess and investigate a matter and refer it to another body if required, and 117

days to finalise a matter. This included the time taken to conduct investigations (often involving the engagement of external investigators) and for a review panel or the tribunal to convene and conduct hearings.

Table 2 also indicates that the system for dealing with councillor conduct complaints is being burdened with many matters that should be filtered out at a very early stage – not necessarily because they are of no significance but because they are fundamentally requests for information or airing of grievances, or need to be addressed through other channels.

**Table 2: Complaint allegations finalised by the department from 1 July 2014 to 30 June 2016**

<b>Outcome</b>	<b>Number</b>	<b>Percentage of total</b>
<b>Complaints finalised under the CC Act</b>		
Lacks credibility	1	<1%
Lacks substance	17	7%
No further action	8	3%
Unjustifiable resources	6	2%
<b>Subtotal</b>	<b>32</b>	<b>13%</b>
<b>Complaints finalised under the LG Act</b>		
Information was provided to an enquirer and no further action was required	31	13%
Matter referred to another agency	52	21%
No jurisdiction under LG Act or CC Act	11	5%
Dismissed or diverted after preliminary assessment	69	28%
Dismissed by a review panel (as misconceived)	7	3%
Otherwise not sustained	10	4%
Lapsed or withdrawn	3	1%
<b>Subtotal unsustainable or diverted</b>	<b>183</b>	<b>75%</b>
<b>Complaints sustained</b>	<b>30</b>	<b>12%</b>
<b>Total</b>	<b>245</b>	<b>100%</b>

### 3.2. CRIME AND CORRUPTION COMMISSION DATA

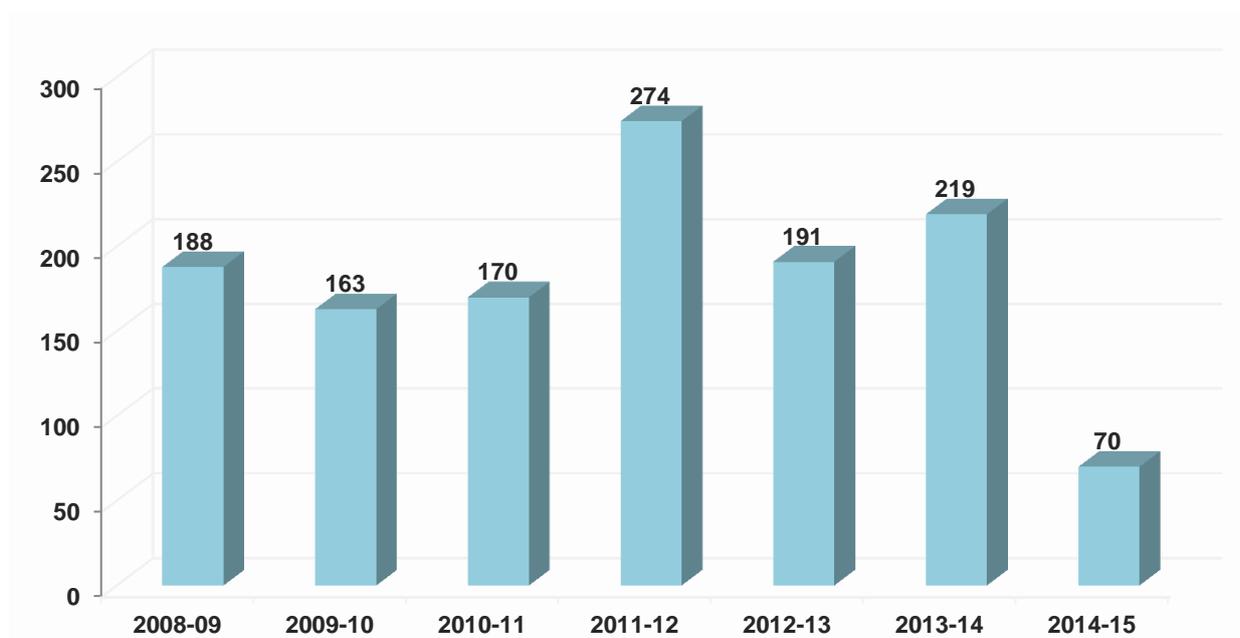
Allegations of corrupt conduct in the local government sector since July 2014 comprised approximately eight per cent of all allegations made to the CCC<sup>6</sup>. Only about one per cent of all allegations received related to councillors. The CCC's statistics indicate that most allegations of corruption against councillors are made directly to the CCC rather than by way of complaints to either the council CEO or the department.

Figure 1 shows the number of allegations against councillors received by the CCC from 1 July 2008 to 30 June 2015. Spikes in allegations appear to coincide with council elections. However, it should be noted that in all years many more allegations of corruption were made to the CCC about council officers than councillors. For the period 2008–9 to 2014–15, the CCC received 1275 allegations about councillors, and 4784 about staff.

<sup>6</sup> One complaint may involve several or more specific allegations.

Of note is the steady decline in the number of allegations against councillors since 2012, which coincides with an overall reduction in the number of public sector complaints received by the CCC. This is likely due to amendments to the CC Act which commenced on 1 July 2014. In particular the tighter definition of corrupt conduct; the raising of the threshold to notify the CCC of corrupt conduct by public officials; and the imposition of a statutory declaration to accompany a complaint. Perceptions about the nature of the CCC's role may also have changed due to amendments requiring the CCC to focus on more serious cases of corrupt conduct and systemic corrupt conduct.

**Figure 1: Allegations of corrupt conduct received by year against councillors**



During the financial year 2014–2015 the CCC assessed only 70 allegations against councillors.

Of those, the CCC:

- retained five matters (7 per cent) for investigation
- referred three matters (5 per cent) to the department, subject to close monitoring of follow-up action
- referred 19 matters (27 per cent) to the department, requiring no further advice
- took no further action on 43 allegations (61 per cent).

**Q1. What does the available data tell us about the extent and significance of poor conduct by councillors?**

**Q2. Does handling conduct complaints warrant a very substantial application of government resources?**



## 4. AREAS OF CONCERN

The Panel has conducted an initial round of discussions with key stakeholders to scope the issues that need to be addressed, and has received a number of helpful submissions. There appears to be widespread agreement on the principal areas of concern, which are summarised below. Section 5 of this paper suggests some broad approaches for change.

At this stage, however, the Panel is neither endorsing all the concerns raised nor advocating particular alternatives to the current arrangements. Also it expects that further concerns and options will be raised as the review progresses.

### 4.1. PURPOSE AND SCOPE

There are concerns about insufficient clarity in the complaints system, deriving in part from the current lack of a requirement for councils to adopt and apply a code of conduct; and about the sheer number of 'complaints' being processed as such, with very few ultimately being upheld.

- The purpose of the complaints system is very broadly defined: to ensure that 'appropriate standards' of conduct and performance [emphasis added] are maintained, and that councillors who contravene those standards are disciplined. But in the absence of a commonly applied code of conduct 'appropriate standards' are only defined by exception (i.e. neither inappropriate conduct nor misconduct have occurred), and 'performance' in this context is not defined at all.
- Moreover, the system attempts to deal with multiple types of complaints – including complaints about behaviour in council meetings, and complaints by staff or members of the public as well as by fellow councillors.
- There is no mandatory or model code of conduct, nor one for meeting procedures (standing orders).
- The result of these factors seems to be a very large number of complaints, many of which lack substance or derive from disagreements and disputes rather than unsatisfactory conduct as such; or which are clearly motivated by political considerations – notably in the lead-up to elections.

## 4.2. LEGISLATIVE FRAMEWORK

There is a perceived need to strengthen and clarify certain aspects of the legislative framework and eliminate duplication of processes.

- The legislative framework is complex, and the LG Act contains other channels for raising and handling concerns about councillor conduct, as well as the complaints system. Under s115 the department may 'monitor and evaluate' a councillor's performance and compliance with the Act, perhaps leading ultimately to suspension or dismissal by the Minister. Also, under s148H a council CEO may 'reasonably conclude' that a councillor has failed to maintain an accurate register of interests, and thus committed an offence, and must then report the matter to the department (but the Act does not state what action the department may or must take). Similarly, a CEO must refer suspected corrupt activity to the CCC.
- There is a widespread view that the terms 'inappropriate conduct' and 'misconduct' require clearer definition. This includes the question of what constitutes repeated inappropriate conduct that must be dealt with as misconduct, and whether demonstrably unintended breaches of the Act should be excluded, particularly in those cases (e.g. conflict of interest) where they may be treated as possible corrupt conduct. For example, maintaining accurate registers of interests in full accordance with the Act can be a complex and demanding task and genuine errors may be made.
- A small number of actions (or failures to act properly) constitute formal offences under the LG Act and this tends to weaken the overall framework around councillor conduct.
- The reach of the CCC has been reduced by the recent re-definition of 'corrupt conduct' (this definition is now under further review).
- The department's investigative powers in relation to complaints about councillor conduct are not clearly defined and potentially limit its capacity to investigate matters thoroughly. There is no clear authority to require persons to produce documents, give assistance or answer questions, nor any penalty for non-compliance with an investigation.<sup>7</sup>

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<sup>7</sup> However, if the matter under investigation is one that has been referred by the CCC, it may be possible to seek assistance from the CCC to exercise its coercive powers on a case-by-case basis. To date, few requests of this nature have been made by other agencies or councils.

### 4.3. EFFICIENCY AND EFFECTIVENESS

The current arrangements are seen to be cumbersome and slow, and doubts are being raised about whether they are delivering worthwhile results in terms of both the outcomes of complaints and the broader objective of good governance (see also section 4.4 below).

- Despite the legislative intent to deliver a simple, timely, cost effective and independent system, the current arrangements are cumbersome and complex to administer, and far from timely. As discussed in section 2.2, the process involves multiple steps and a range of alternative pathways dependent on who makes the complaint, whom it is about, and the nature of the alleged conduct. Particular concerns have been raised regarding the time taken to commission and complete investigations, and the quality of some of the documentation produced.
- There are no time limits on the various stages of the process, notably the preliminary assessment that determines whether there is a case to answer. Allegations of misconduct by councillors (but not mayors or CEOs) are subject to two preliminary assessments – by the council CEO and then the department (which may alter the CEO's assessment).
- Handling of significant complaints may be delayed due to processing of others that lack substance, or reflect personal disputes, or are made for purely political purposes.
- Extended delays can also occur whilst investigations and hearings are being carried out, or because matters are referred from one pathway and organisation to another.

### 4.4. OFFENCES AND PENALTIES

Issues have been raised concerning possible gaps in the range of offences specified under the LG Act and CoBA (Attachment B), and the need to consider tougher penalties for those offences as well as firmer disciplinary orders for inappropriate conduct and misconduct.

- Existing disciplinary orders for inappropriate conduct or misconduct are widely regarded as ineffectual.
- The tribunal and review panels appear reluctant to impose more serious orders (such as a recommendation to the Minister for suspension or dismissal), and prosecutions for offences under the Act are infrequent, partly due to investigations either taking too long or not yielding sufficient evidence.
- There is currently no direct penalty for non-compliance with a disciplinary direction or order from a review panel or tribunal—non-compliance is simply considered misconduct.
- It is an offence for someone to make a complaint about a councillor that is substantially the same as one they have made before if the complainant was advised by the council CEO or department that the previous complaint had been assessed as frivolous, vexatious or lacking in substance. However, the maximum penalty is only 10 penalty units (currently a maximum fine of \$1219). Also, there is no definition of what constitutes 'substantially the same' complaint, and in some instances (notably during election campaigns), even a single well-timed vexatious complaint can be very damaging and should perhaps be subject to a penalty.

#### 4.5. ROLES OF CEOS, MAYORS AND THE DEPARTMENT

Strong concerns are being expressed regarding the demands being placed on council CEOs and mayors to deal with complaints, and whether the expectations placed on them are reasonable and realistic. There are also significant questions about whether the department should continue in its current role.

- The requirement for council CEOs to undertake preliminary assessments of complaints, as well as monitor the adequacy of registers of interests and possible corrupt conduct, can lead to perceptions of bias and severely prejudice their relationships with the mayor and councillors – sometimes leading to their dismissal. (The current arrangement is analogous to the head of a state department being required to assess the ethical conduct of a Minister or MP).
- Perhaps as a consequence, questions have been raised about the quality of many preliminary assessments undertaken by council CEOs.
- CEOs may also be placed in a similarly difficult position due to their responsibilities under the CC Act to report suspected corrupt conduct.
- Mayors are expected to take disciplinary action in cases of inappropriate conduct by councillors, but this may involve acting against political allies. On the other hand, mayors could use their disciplinary powers to undermine opponents. Some mayors lack the training, skills or experience to discharge these responsibilities effectively.
- Under the current provisions, the department plays a central investigative and decision-making role in its own right (i.e. going beyond the provision of administrative support to the Minister or the independent tribunal and review panels). There is a perception that the department's independence might be compromised by political relationships between state and local government.

#### 4.6. PROCEDURAL FAIRNESS AND NATURAL JUSTICE

Various criticisms are being levelled against the current arrangements in terms of perceived deficiencies in fairness, due process and natural justice, notably the absence of a guaranteed right of appeal.

- Complaints may be made anonymously and without any formal declaration as to their validity. As noted earlier, there is no standard form or template to collect basic information about a complaint.
- There is no provision for review of a preliminary assessment made by the department, other than through a hearing by the tribunal or a review panel.
- The LG Act is silent on the responsibilities of mayors, CEOs and the department to observe natural justice and procedural fairness in conducting preliminary assessments or taking disciplinary action, although the department's Guidelines for mayors and chief executive officers for dealing with complaints about councillor conduct, published at [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au), do address this issue.
- The LG Act provides that tribunal or review panel hearings must comply with any procedural rules prescribed under a regulation. However, to date, no such regulation has been made and hearing procedures may vary from case to case.
- The tribunal and review panels must observe natural justice but also act as quickly and informally as is consistent with fair and proper consideration of the issues raised, bearing in mind that these are civil hearings where the standard of proof is the balance of probabilities rather than 'beyond reasonable doubt'. For example, the tribunal and review panels may or may not require witnesses to appear and give evidence or provide documents, and may refuse representation by a legal practitioner or disregard rules of evidence.
- There appears to be trend in hearings to allow legal representation for accused councillors. Where this occurs an increasingly common scenario is that the conduct of the hearing tends to become more adversarial and formal rather than inquisitorial and informal.
- At the same time, in some cases the tribunal / review panel has heard from the accused councillor and the councillor's legal representative but has not asked the complainant to appear or has not afforded the complainant an opportunity also to be legally represented.
- There is no right of appeal against, or provision for reviews of, decisions made about complaints (although as noted earlier the Supreme Court under its inherent powers may find there has been jurisdictional error).
- Some people argue that it is unfair for complaints against a councillor to continue being pursued once he or she has resigned or been defeated at an election. On the other hand, continued action may be warranted in cases of serious misconduct (e.g. offences against the Act) or to deter councillors from making vexatious complaints against opponents during elections.
- There is no guarantee that matters will remain confidential until resolved. Complainants are not bound by privacy laws, and the tribunal's annual reports have published details of complaints that it is considering but have yet to be determined.

#### 4.7. PROTECTION AGAINST REPRISAL

There is concern that complainants – particularly council staff – are not adequately protected against harassment or other forms of reprisal by a councillor whilst a complaint is being processed.

- Where a CEO identifies that a complaint involves a public interest disclosure as defined by *Public Interest Disclosure Act 2010*, the council must ensure the complainant is protected from reprisals and maintain the confidentiality of the complainant unless authorised to disclose information under that Act. A person who suffers reprisal may report the matter to the police and may also bring proceedings for damages. The maximum penalty for taking reprisal is 167 penalty units (a fine of more than \$18,000) or two years imprisonment.
- By contrast, the LG Act does not offer any similar protections to persons making complaints about councillor conduct and not all such complaints satisfy the definition of a public interest disclosure. In practice the department aims to keep the identity of a complainant confidential although that is not always possible or appropriate.
- There is no provision for a councillor to be immediately stood down while investigations take place, regardless of the seriousness of the complaint and the potential impact of the alleged behaviour (e.g. repeated bullying, harassment or improper direction of council staff). While s122 of the LG Act provides that the Minister may recommend the Governor in Council suspend or dismiss a councillor, this process may take time.

#### 4.8. COSTS

The current arrangements are viewed as costly and an excessive demand on public resources.

- Substantial costs may be generated and charged to the affected council, but lack of information about the likely extent and cost of the process means that the council cannot budget for this expense. Nor can the council 'opt out' if it decides the cost is becoming excessive.
- Significant departmental resources are used to deal with complaints, with a disproportionate amount applied to allegations of (low-level) inappropriate conduct.
- Recent amendments to the CCC legislation, designed to narrow its operational focus to the investigation of the most serious cases of corrupt conduct and to reduce the number of trivial complaints handled by the Commission, is increasing the demand on departmental resources to handle complaints. In turn, this will have an adverse impact on the department's ability to deal effectively and in a timely fashion with other complaints.

**Q3. Does the list of concerns presented in section 4 accurately reflect the key issues that the Panel should address?**

**Q4. Are there further significant gaps or deficiencies in the current arrangements that should be added?**



## 5. OPTIONS FOR CHANGE

Fundamentally, the test of the conduct complaints system is whether it contributes to good governance and ensuring that the purpose and principles of local government set out in the LG Act are being implemented for the benefit of local communities. There is little doubt that steps can and should be taken to improve the current arrangements for handling conduct complaints, but this cannot be done in isolation. Achieving and sustaining good governance involves a broader range of functions and mechanisms that will, amongst other things, create an environment in which councillors are fully aware of their responsibility to reach high standards of conduct and performance. In turn, this will require a concerted and coordinated effort on the part of all those agencies and organisations that play leadership roles in advancing the quality of local governance – notably the department, the CCC, the Ombudsman, the Auditor-General, the LGAQ, and LGMA. The Panel will return to this theme in its final report.

Turning more specifically to complaints about councillor conduct, and based on its investigations to date, the Panel has identified three broad options for addressing concerns being raised about the current system. These options reflect suggestions put forward in the first round of submissions from councils and stakeholders, as well as the Panel's preliminary inquiries about arrangements in some other states. An overview of current practices in Victoria and South Australia is presented in attachment D.

The three approaches are by no means mutually exclusive: elements of each could be combined to create a new system.

### 5.1. INCREMENTAL IMPROVEMENT

Option 1 retains the current framework, but involves a series of amendments to the LG Act, together with other actions that can be taken under existing provisions, in order to address apparent gaps or deficiencies.

A number of possible actions to achieve incremental improvement are suggested below, but more could be added. Most of the changes suggested could also be incorporated into the alternative options set out in sections 5.2 and 5.3 below.

## INCREMENTAL IMPROVEMENT: IDEAS FOR CONSIDERATION

1. Require each council (individually or in regional groups) to appoint an independent complaints assessor to undertake preliminary assessments (thus relieving CEOs of this role), with appointees to be selected from a list of suitable candidates compiled by the department or LGAQ.
2. All complaints received by a council are referred in the first instance to the independent complaints assessor, to be categorised in accordance with the Act (i.e. lacking in substance, inappropriate conduct, misconduct, corrupt conduct or 'another matter').
3. The assessor may determine that, as a first step, the complaint should be treated as a dispute to be resolved by compulsory mediation/conflict resolution.
4. Require complainants to complete a standard form detailing the grounds for their complaint, and to provide as much supporting evidence as possible, such that a preliminary assessment can be made on the basis of the information provided and without further investigation.
5. Use the standard form to explain the purpose and scope of the conduct complaints system, and to indicate alternative pathways for addressing the complainants' concerns.
6. Introduce tougher disciplinary orders for inappropriate conduct and misconduct, as well as higher penalties for frivolous or vexatious complaints that have been found to lack substance and are then either repeated without justification, or that have been made and timed deliberately to inflict unwarranted damage on the subject councillor.
7. Expand the range of offences under the Acts (Attachment B), thus increasing the potential for prosecutions in more serious cases of misconduct.
8. Strengthen confidentiality provisions to protect the anonymity of both complainants and accused councillors whilst a complaint is being processed.
9. Enable the Minister to stand down a councillor who is the subject of multiple complaints about serious misconduct either for a fixed period or until the complaints are determined if the Minister reasonably believes the councillor will engage in reprisals against complainants.
10. Set timelines for processing complaints, with scope for extensions to be approved if warranted.
11. Standardise review panel and tribunal hearing procedures in a Regulation.
12. Introduce a right of appeal against review panel and tribunal decisions on grounds of failure to observe procedural fairness and natural justice in accordance with the Regulation.
13. Expand awareness and training programs to promote effective administration of the relevant provisions of the Act, codes of conduct and codes of meeting practices, including specialised training for members of the tribunal and review panels, mayors, deputy mayors and council CEOs.
14. Establish a completely separate unit within the department for complaints handling; and codify the department's investigative powers.

**Q5. Which elements of option 1 warrant further consideration?**

**Q6. Are there other ways in which the current framework could be 'fine-tuned'?**

**Q7. Are there any potentially negative consequences to the measures suggested?**



## 5.2. DECENTRALISE AND MAINSTREAM

Option 2 combines elements of the Victorian and South Australian arrangements. It suggests devolving more responsibility to councils, and making use of 'mainstream' state agencies such as the Ombudsman and QCAT (Queensland Civil and Administrative Tribunal) rather than the department and/or a specialist tribunal to investigate and determine complaints. The Panel acknowledges that in both cases this would significantly add to the role of those agencies, and that any such changes would require very careful consideration. However, it believes arrangements along the lines of those adopted in Victoria and South Australia do offer potential benefits and warrant further discussion.

This option also draws on the parliamentary model of an Ethics Committee, as well as the Standards Committees previously established by councils in the United Kingdom to provide advice on good governance and conduct issues. In addition, it suggests that the current level of autonomy in dealing with conduct complaints enjoyed by Brisbane City Council could be extended to a number of other large metropolitan and regional councils.

### DECENTRALISE AND MAINSTREAM: IDEAS FOR CONSIDERATION

1. Require all councils to adopt codes of conduct and meetings procedures, plus a complaints resolution process based on model provisions prescribed by regulation.
2. Require each council (individually or in regional groups) to appoint an independent complaints assessor to undertake preliminary assessments (thus relieving CEOs of this role), and to establish an 'ethics and conduct panel', that would both advise on good governance practices and determine conduct complaints.
3. Appointees to the position of complaints assessor and to ethics and conduct panels would be selected from a list of suitable candidates, that could be compiled by the department or LGAQ.
4. All complaints received by a council are referred in the first instance to the independent complaints assessor, to be categorised in accordance with the Act (i.e. lacking in substance, inappropriate conduct, misconduct, corrupt conduct or 'another matter').
5. The assessor may determine that, as a first step, the complaint should be treated as a dispute to be resolved by compulsory mediation/conflict resolution.
6. Allegations of inappropriate conduct (defined to include 'behavioural' breaches of the codes, as in South Australia) are determined by the council's ethics and conduct panel.
7. Allegations of misconduct are referred to the Ombudsman for investigation and advice, except in the case of Brisbane City Council and other large metropolitan or regional councils that are considered to have the capacity to operate an autonomous complaints system to handle both inappropriate conduct and misconduct.
8. Require councils to act on the Ombudsman's findings and advice, which may involve action by the council's ethics and conduct panel or referring more serious matters to QCAT (including all cases in which the Ombudsman finds sufficient evidence that a specific offence under the Act has been committed).
9. Empower council ethics and conduct panels, acting on the advice of the Ombudsman, to impose any disciplinary order currently available to existing regional conduct review panels and the tribunal, including making a recommendation to the Minister that a councillor be suspended or dismissed.
10. All allegations of corrupt conduct are referred as at present to the CCC, which may refer some back to the council ethics and conduct panel or QCAT as appropriate.
11. Other elements of option 1 as considered appropriate, except number 14.

**Q8. Which elements of option 2 warrant further consideration?**

**Q9. Is it desirable and realistic to involve the Ombudsman and QCAT in the manner suggested?**

**Q10. Are there any potentially negative consequences to the measures suggested?**



### **5.3. CENTRALISE AND STREAMLINE**

Option 3 focuses on strengthening administration of complaints handling at the state level but without the department's involvement (other than as an adviser to the Minister). It draws on elements of the arrangements in Victoria and reconstitutes the tribunal as the over-arching investigative and disciplinary body for all aspects of councillor conduct complaints other than corrupt conduct.

#### **CENTRALISE AND STREAMLINE: IDEAS FOR CONSIDERATION**

1. Elements of Option 1 as considered appropriate, except number 14.
2. Reconstitute the tribunal to deal solely with councillor conduct, and with its own CEO, support staff and investigative powers.
3. Transfer all the complaint handling functions and powers of the department to the tribunal and its CEO.
4. Empower the tribunal to establish regional conduct review panels where appropriate to deal with less serious matters, and to delegate authority to those panels to exercise its disciplinary powers.
5. Make the tribunal the relevant Unit of Public Administration for the purposes of the CC Act (for referral of matters the CCC decides not to investigate itself).

**Q11. Which elements of option 3 warrant further consideration?**

**Q12. Is it desirable and realistic to reconstitute the tribunal in the manner suggested?**

**Q13. Are there any potentially negative consequences to the measures suggested?**





## HAVE YOUR SAY

Your feedback and ideas on the topics raised in this discussion paper will be given serious consideration by the Panel, and will inform its recommendations for a more effective and fairer system for handling complaints about councillor conduct.

To respond to the discussion questions or provide any other feedback, please submit a written submission by emailing [ComplaintsReviewPanel@dilgp.qld.gov.au](mailto:ComplaintsReviewPanel@dilgp.qld.gov.au).

Or, post your submission to:  
Councillor Complaints Review Panel  
c/o The Project Manager  
PO Box 15000  
City East, Queensland 4002

**Submissions close on 23 September 2016.**

## ATTACHMENT A: COUNCILLOR COMPLAINTS REVIEW PANEL—TERMS OF REFERENCE

The independent Panel is established to assess, in accordance with the Terms of Reference, how well or otherwise the current legislative and policy framework for dealing with complaints about councillor conduct under the relevant provisions of the LG Act and the CoBA is working. The Panel will determine, in consultation with the department, the detailed methodology for the review.

The Panel will prepare a report for consideration by the state government which will include recommendations, as determined, about policy, legislative and operational changes to improve the current process and framework.

The Panel will consider all aspects of the framework, including but not limited to:

- appropriate levels of responsibility and accountability for local governments in setting and dealing with breaches of standards for councillor conduct
- categories of councillor conduct other than those that are under the jurisdiction of the justice system
- triggers or points at which the public interest demands or requires intervention by the state consistent with the state's position of minimum intervention in the operation of a democratically elected sphere of government
- the most effective and efficient way to deliver fair and defensible outcomes that are in the public interest
- ensuring the provision of natural justice and procedural fairness for councillors and complainants including legal representation for parties to a complaint
- emerging environmental issues including the use of social and digital media and the way in which use of digital media (smartphones, tablets, recording capacity) has impacted the way in which councillors conduct the business of council
- specific issues raised by stakeholders, including but not limited to:
  - appropriate levels of investigative powers for investigating agencies (local government or department)
  - the role of council CEOs arising from the statutory complaints assessment process under the LG Act provisions
  - the complexity of existing processes and the impact on timeliness for dealing with complaints
  - appeal mechanisms and rights of review
  - penalties where a complaint is substantiated or sustained
  - provisions in relation to disqualification from being a councillor
- analysis of submissions received through a public consultation process and engagement with stakeholders
- provision of report with recommendations to the state government within agreed timeframes.

## ATTACHMENT B: OFFENCES

Table 3 sets out currently defined offences under various sections of the LG Act and CoBA, together with the penalties that apply.

**Table 3: Offences under the LG Act and CoBA.**

Topic	Description of offence	Penalty
Use of Information by councillors LG Act: s171(1) CoBA: s173	A person who is, or has been, a councillor must not use information that was acquired as a councillor to—  gain, directly or indirectly, a financial advantage for the person or someone else; or cause detriment to local government.	Maximum penalty – 100 penalty units or 2 years imprisonment. NOTE: A person automatically ceases to be a councillor when convicted of an offence under s.171 of LG Act or s173 of CoBA that is an ‘integrity offence’.
Prohibited conduct by councillor in possession of inside information LG Act: s171A(2) & (3) CoBA: s173A(1)(2)(3)	(1) This section applies to a person (the insider) who is, or has been, a councillor if the insider—  acquired inside information as a councillor; and knows, or ought reasonably to know, that the inside information is not generally available to the public.  (2) The insider must not cause the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset.  (3) The insider must not cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.	Maximum penalty – 1000 penalty units or 2 years imprisonment.
Obligation of councillor to correct register of interests LG Act: s171B(2) CoBA: s173B(2)	The councillor must, in the approved form, inform the chief executive officer of the particulars of the interest or the change to the interest within 30 days after the interest arises or the change happens.	If the councillor fails to comply with subsection (2) intentionally – 100 penalty units  Otherwise – 85 penalty units
Councillor’s material personal interest at a meeting LG Act: s172(5) CoBA s174(5)	The councillor must –  inform the meeting of the councillor’s material personal interest in the matter; and leave the meeting room (including any area set aside for the public), and stay out of the meeting room while the matter is being discussed and voted on.	If a councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or someone else – 200 penalty units or 2 years imprisonment  Otherwise – 85 penalty units.

<p>Action after preliminary assessments          LG Act: s176C(8)          CoBA: s180(7)</p>	<p>A person must not make a complaint about the conduct or performance of a councillor if –</p> <p>the complaint is substantially the same as a complaint that the person has previously made; and</p> <p>the complaints assessor has given the person the required notice</p>	<p>Maximum penalty – 10 penalty units.</p>
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Note: A person cannot be a councillor for 4 years if convicted of an ‘integrity offence’. This includes offences against s171, s171A(2) or (3) and s172(5) of the LG Act, or their equivalents under CoBA; and against s171B(2) of the LG Act, or its equivalent under CoBA, if paragraph (a) of the penalty applies.

## ATTACHMENT C: BRISBANE CITY COUNCIL

The process for handling councillor conduct complaints under the CoBA is broadly the same as that under the LG Act, but with some important variations.

First, a complaint about the conduct of councillors at a meeting of the council or its committees has no effect. Instead, the Brisbane City Council *Meetings Local Law 2001* sets out rules of procedure at meetings.

Under s186A of CoBA the chair of a meeting may deal with disorderly conduct that contravenes those rules by making:

- an order that the councillor's conduct be noted in the minutes of the meeting
- an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting
- if the councillor fails to comply with an order under paragraph (b) to leave a place—an order that the councillor be removed from the place.

A failure to comply with the order of the chair to leave the meeting can be referred to a councillor conduct review panel as potential misconduct.

In addition, the *Meetings Local Law 2001* allows the Council Chamber by resolution to suspend a councillor from the chamber and all council meeting places for eight days.

Second, all preliminary assessments of complaints are carried out by Brisbane City Council's CEO, unless the CEO is the complainant, in which case the assessment is made by the department.

Third, the council has its own councillor conduct review panel, members of which are appointed by the council itself on such conditions (including remuneration and allowances) as it considers appropriate. The term of appointment is up to four years, but may be extended.

Essentially anyone may be appointed to the conduct review panel, provided they are not:

- a councillor of a local government, or a nominee for election as a councillor
- an employee or contractor of the council, or a consultant engaged by the council
- a member of an Australian Parliament or a nominee for election as a member of an Australian Parliament
- a member of a political party
- someone with a conviction for an indictable offence that is not an expired conviction
- an insolvent under administration (within the meaning of the *Corporations Act 2001*, s9)
- a type of person prescribed under a regulation.

The councillor conduct review panel investigates complaints and conducts hearings. A complainant must appear before the panel to confirm his or her complaint, but failure to do so by a councillor is not deemed to constitute inappropriate conduct or misconduct.

Preliminary assessments that conclude a complaint has substance and relates to inappropriate conduct or misconduct must be referred to the conduct review panel.

It may alter the preliminary assessment, whether made by either the council CEO or the department, without conducting a hearing, and also order that the complaint, or a part of the complaint, be dismissed or struck out if it considers the complaint or part is:

- frivolous, vexatious or misconceived
- lacking in substance, or
- otherwise an abuse of process.<sup>8</sup>

However, if the conduct review panel dismisses or strikes out the complaint or part of the complaint in this way, it must give written notice of that decision to the council's CEO or the department's chief executive, the accused councillor and the complainant.

The council's conduct review panel has the same authority as that given to both the regional conduct review panels and the tribunal under the LG Act. It may make any one or more of the following orders or recommendations that it considers appropriate in view of the circumstances relating to the misconduct or inappropriate conduct:

- an order that the councillor be counselled about the misconduct or inappropriate conduct, and how not to repeat the misconduct or inappropriate conduct
- an order that the councillor make an admission of error or an apology
- an order that the councillor participate in mediation with another person
- a recommendation to the department's chief executive to monitor the councillor or the council for compliance with the local government related laws
- an order that the councillor reimburse the council
- a recommendation to the Minister that the councillor be suspended for a stated period
- a recommendation to the CCC or the police commissioner that the councillor's conduct be further investigated
- an order that the councillor pay to the council an amount of not more than the monetary value of 50 penalty units (about \$6100).

Fourth, the council itself is the responsible Unit of Public Administration to follow-up matters referred by the CCC.

## **INVESTIGATIONS AND PROSECUTIONS**

For matters referred by the CCC for investigation, depending upon the nature of the matter the following areas of council conduct the investigation:

- human resource matters usually go to the Chief Human Resources Officer
- most other matters go to the council's Ethical Standards Unit (which has trained investigators on staff).

External investigators may also be appointed under the direction of one of the above. Otherwise, the council's conduct review panel will conduct an investigation. It can seek support from council through its secretariat to access staff, experts and relevant documents.

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<sup>8</sup> An abuse of process usually refers to the situation where the complainant is essentially repeating the same complaint that has already been dealt with by some other lawful process.

If an offence is committed in respect of a local law or a statute within the jurisdiction of the council, then prosecutions are authorised by the Manager, Compliance and Regulatory Services with advice from the Brisbane City Legal Practice, under delegation from the council chamber.

## ATTACHMENT D: PRACTICES IN VICTORIA AND SOUTH AUSTRALIA

To help identify options for change, the Panel is examining the systems for handling complaints against councillors in some other states. This attachment includes brief notes on key features of the arrangements in Victoria and South Australia. It should be noted that in both cases reviews are under way, but on current indications only minor adjustments are likely.

### VICTORIA

Victoria's arrangements place significant responsibilities on councils themselves, but also include two powerful statutory offices at state level. Some key features include:

- a detailed set of councillor conduct principles, shown in 4
- a threefold definition of 'misconduct', 'serious misconduct' and 'gross misconduct' – as in Queensland, corrupt conduct is addressed under separate legislation
- each council must have a Councillor Code of Conduct that incorporates prescribed provisions, plus an internal disputes resolution procedure, and all councillors must make a declaration that they will abide by the code

#### BOX 4: VICTORIA'S PRINCIPLES OF COUNCILLOR CONDUCT

It is a primary principle of councillor conduct that, in performing the role of a councillor, a councillor must:

- act with integrity
- impartially exercise his or her responsibilities in the interests of the local community
- not improperly seek to confer an advantage or disadvantage on any person.

In addition to acting in accordance with the primary principle of councillor conduct, a councillor must:

- avoid conflicts between his or her public duties as a councillor and his or her personal interests and obligations
- act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person
- treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other councillors, council staff and other persons
- exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office
- endeavour to ensure that public resources are used prudently and solely in the public interest
- act lawfully and in accordance with the trust placed in him or her as an elected representative
- support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of councillor.

- a statutory position of Principal Council Conduct Registrar, who establishes conduct panels to consider allegations of ‘misconduct’ or ‘serious misconduct’ (but not if he/she considers the allegations to be frivolous, vexatious, misconceived or lacking in substance; or that there is sufficient evidence; or that the council concerned has already taken sufficient or appropriate steps to resolve the matter)
- conduct panels are selected from a list of eligible persons, maintained by the Minister
- a statutory position of Chief Municipal Inspector, who heads a substantial inspectorate that amongst other things investigates complaints and is responsible for initiating proceedings before a conduct panel or the Victorian Civil and Administrative Tribunal (VCAT) in cases of serious or gross misconduct
- substantial penalties for code breaches and the three levels of misconduct, shown in table 4.

**Table 4: Victorian penalties for code and misconduct breaches**

Type	Definition	Reviewed by	Available penalties
<b>Breach of Code of Councillor Conduct</b>		Council (through its internal resolution process and conducted by an independent arbiter).	<ul style="list-style-type: none"> <li>• Apology as ordered.</li> <li>• Councillor not to attend up to 2 meetings of the council.</li> <li>• Removal for up to 2 months from any position representing the council, chairing or attending committees or any other specified meeting.</li> </ul>
<b>Misconduct</b>	<ul style="list-style-type: none"> <li>• Failure to comply with the council's internal resolution procedure, or with a written direction given by the council.</li> <li>• Repeated contravention of any of the councillor conduct principles.</li> </ul>	Conduct panel established by Principal Council Conduct Registrar.	<ul style="list-style-type: none"> <li>• Reprimand.</li> <li>• Apology as ordered.</li> <li>• ‘Leave of absence’ for up to 2 months (allowance still paid but no expenses or use of council equipment).</li> </ul>
<b>Serious Misconduct</b>	<ul style="list-style-type: none"> <li>• Failure to attend a conduct panel hearing, to give a panel any requested information, to comply with a direction of a panel.</li> <li>• Continued or repeated misconduct after a finding has been made.</li> <li>• Bullying; improper direction of staff.</li> <li>• Unlawful release of confidential information.</li> </ul>	Conduct panel established by the Principal Council Conduct Registrar.	<ul style="list-style-type: none"> <li>• As above, plus councillor may not become a mayor or committee chair for the remainder of the term.</li> <li>• Suspension for up to 6 months (no allowance, ceases to be a councillor).</li> <li>• Prosecution for specific offences under Act.</li> </ul>
<b>Gross Misconduct</b>	<ul style="list-style-type: none"> <li>• Behaviour that demonstrates that a councillor is not of good character or is otherwise not a fit and proper person to hold the office of councillor.</li> </ul>	VCAT.	<ul style="list-style-type: none"> <li>• As above, plus disqualification for up to 8 years (2 terms).</li> <li>• Prosecution for specific offences under Act.</li> </ul>

## SOUTH AUSTRALIA

Arrangements in South Australia are looser and more decentralised. Key features include:

- a standard, mandatory Code of Conduct to be applied by all councils, which sets out conduct principles and distinguishes between ‘behavioural’ breaches and misconduct
- conduct principles that focus in part on the knowledge and skills expected of councillors, and the need for councils to provide training and education opportunities – professional development for councillors is now mandatory in South Australia (see box 5).

### BOX 5: SOUTH AUSTRALIA’S CONDUCT PRINCIPLES

- Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.
- Council members will work together constructively as a council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in local government.
- As representatives of open, responsive and accountable government, council members are committed to considering all relevant information and opinions, giving each due weight, in line with the council’s community consultation obligations.
- In the performance of their role, council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the council.
- Council members will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position. All councils are expected to provide training and education opportunities that will assist members to meet their responsibilities under the *Local Government Act 1999*.
- Council members will comply with all legislative requirements of their role and abide by this Code of Conduct.

### Behavioural code

- Robust debate within councils conducted in a respectful manner is not a breach of the code.
- Each council is expected to adopt procedures for dealing with alleged behavioural breaches, which include, among other things:
  - failure to comply with all council policies, codes and resolutions
  - failure to act respectfully
  - failure to deal responsibly with information
  - bullying or harassment.
- Complaints may be investigated and resolved in any manner that the council deems appropriate. This can include, but is not limited to: a mediator or conciliator, the Local Government Governance Panel (established by the Local Government Association), a regional governance panel or an independent investigator.
- A complaint may be considered within this process to be trivial, vexatious or frivolous, and accordingly not investigated.
- Failure by a councillor to cooperate with the council’s process, or to comply with a finding of an investigation that has been adopted by the council, as well as sustained breaches of the behavioural code, may be referred for investigation as misconduct.
- Breaches of the behavioural code must be reported to a public meeting of the council.
- Penalties for breaches of the South Australian behavioural code are shown in box 6.

## BOX 6: SOUTH AUSTRALIA PENALTIES FOR BEHAVIOURAL BREACHES

A council may:

- take no action
- pass a censure motion in respect of the council member
- request a public apology, whether written or verbal
- request the council member to attend training on the specific topic found to have been breached
- resolve to remove or suspend the council member from a position within the council (not including the member's elected position on council)
- request the member to repay monies to the council.

### Misconduct

- The definition of misconduct in the code is wide-ranging and includes:
  - failure to act honestly and with due care and diligence
  - divulging confidential information
  - improper direction of staff
  - being influenced by gifts and benefits
  - failure to maintain accurate registers of gifts and benefits, interests and campaign donations
  - conflict of interest
  - misuse of council resources.
- Alleged breaches are investigated by the Ombudsman, who makes a determination and recommends action as appropriate.
- A report from the Ombudsman that finds misconduct has occurred must be provided to a public meeting of the council, and the council **must** pass resolutions to give effect to any recommendations received from the Ombudsman, within two ordinary meetings of the council following the receipt of these recommendations.
- Councillors may be prosecuted if they fail to comply with the council's orders, and councils may be prosecuted for failing to give effect to the Ombudsman's recommendation.