

Queensland Government response to the report by the independent councillor complaints review panel, 'Councillor Complaints Review: A fair, effective and efficient framework'

July 2017

Chapter/topic	Recommendation	Queensland Government response
Assessment, investigation and hearing of complaints (Independent Assessor)	4.1 Preliminary assessments – The <i>Local Government Act 2009</i> (LG Act) be amended to provide that the 'preliminary assessment' of any complaint against a councillor should be made by an Independent Assessor, and not by a council CEO, or the department's chief executive.	The government supports the establishment of a statutory Independent Assessor to assess complaints and carry out investigations.
Assessment, investigation and hearing of complaints	4.2 The Ombudsman – The Panel does not recommend any additional involvement of the Ombudsman in the complaints handling process. However, it notes that the Ombudsman may review complaints about the administrative actions of a council dealing with inappropriate conduct matters.	The government supports the Ombudsman having no additional involvement in the complaints handling process. No action is required to address this response.
Inappropriate conduct (Independent Assessor)	4.3 The way a complaint is made – Complaints against councillor conduct should be made on a standardised form that requests the complainant to provide details of any supporting evidence and/or witnesses, and such other material as the Independent Assessor specifies. It should also explain the purpose and scope of the complaints system and explain the appropriate ways in which complaints about matters, other than councillor conduct, may be made. The standard form should contain a declaration that the complainant is acting in good faith and has provided information that is correct and true to the best of their knowledge. It should contain a warning that it is an offence to provide any information to the Independent Assessor that the complainant knows is false or misleading in a material particular.	The government supports developing a standardised form (not incorporating a declaration) that can be used for the making of written complaints. Despite this, the government wants to foster a culture that encourages complaints to be made, and thereby wishes to ensure that the way a complaint can be made is consistent with the way the Crime and Corruption Commission (CCC) and Ombudsman allow complaints to be made. This includes making a complaint in writing, by phone, by fax, email or in person.
Assessment, investigation and hearing of complaints (Independent Assessor)	4.4 The way a complaint is made – The LG Act should be amended to allow the form to be prescribed by the Independent Assessor.	The government supports in principle that a complaint should provide a certain level of detail, however, it needs not necessarily be made in a prescribed form as discussed in the response to recommendation 4.3 above.

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Assessment, investigation and hearing of complaints (Independent Assessor)	4.5 Anonymous complaints – Only those anonymous complaints that provide enough information to action a complaint against a councillor for possible inappropriate conduct or misconduct should be dealt with under the complaints process. Where the complaint cannot be actioned without further information, it should be dismissed.	The government supports that anonymous complaints should be allowed and that the Independent Assessor has an administrative process to decide if further investigation is or is not warranted.
Assessment, investigation and hearing of complaints (Administration and governance)	4.6 Frivolous or vexatious complaints – The offence in section 176C(8)—a person must not make a complaint about the conduct of a councillor if the complaint is substantially the same as a complaint the person has already made and the person has been warned not to repeat it—be deleted. In its place, the Act be amended to include a section making it an offence for a person to: (a) make repeated complaints about a councillor — (i) vexatiously; or (ii) not in good faith; or (iii) primarily for a mischievous purpose; or (iv) recklessly or maliciously; or (b) counsel or procure another person to make a complaint about a councillor as mentioned in paragraph (a).	The government supports in principle strengthening the processes and penalties for dealing with frivolous or vexatious complaints. The government supports the introduction of an offence for a person making a frivolous or vexatious complaint without a reasonable excuse, whether the complaint is repeated or not.
Assessment, investigation and hearing of complaints [Councillor Conduct Tribunal (CCT)]	4.7 Frivolous or vexatious complaints – The Tribunal also be given jurisdiction in relation to this offence. That the maximum penalty that the Tribunal can impose be 50 penalty units. An order can also be made for reimbursement of costs of the Independent Assessor and the Tribunal.	The government supports in principle strengthening the processes and penalties for dealing with frivolous or vexatious complaints. The government supports that the Independent Assessor should be able to prosecute a person making a frivolous or vexatious complaint without reasonable excuse and that the prosecution of the offence should remain with the Magistrates Court as a summary offence. The government also supports the Independent Assessor having a process for identifying and preventing multiple frivolous or vexatious complaints by adding the complainant to a register of frivolous/vexatious complainants.

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Assessment, investigation and hearing of complaints (Independent Assessor)	4.8 Council must be informed of complaint – On assessing a complaint about a councillor, the Independent Assessor should notify the relevant council about the complaint.	The government supports in principle the council being informed of a complaint at the appropriate time. However, there are some complaints where the council should not be informed until the investigation has been completed (e.g. where corrupt conduct is being investigated by the CCC).
Assessment, investigation and hearing of complaints (Independent Assessor)	4.9 Investigative powers of the Independent Assessor – The Independent Assessor be given the same powers as an investigator is given in section 214 of the LG Act, subject to the same requirements of section 213 to provide natural justice.	The government does not support the Independent Assessor being able to require a person to attend a hearing under section 214 of the LG Act. Section 214 is about requiring witnesses to attend full hearings before the CCT (i.e. similar to a subpoena to appear before a court hearing). It would be more appropriate for the Independent Assessor to have investigatory powers, such as the power to require a person to attend and answer questions at a nominated time/place. Consequently, the Department of Infrastructure, Local Government Planning (DILGP) will investigate methods of ensuring that the Independent Assessor has sufficient investigative powers to carry out its functions, which are aligned with the investigatory powers of other investigators.
Assessment, investigation and hearing of complaints (Independent Assessor)	4.10 Independent Assessor may initiate investigations – The Independent Assessor may initiate own-motion investigations of councillor conduct if sufficient cause arises during the course of another investigation, or if the Independent Assessor considers it in the public interest to do so.	The government supports the Independent Assessor having the power to initiate an investigation or make a preliminary assessment without having received a formal complaint.
Assessment, investigation and hearing of complaints (Independent Assessor)	4.11 Independent Assessor may initiate investigations – The Tribunal may provide the Independent Assessor with information about a councillor's conduct that the Tribunal considers should be brought to the attention of the Independent Assessor for possible investigation by the Independent Assessor.	The government supports the CCT being able to share information and intelligence about possible inappropriate conduct, misconduct or corrupt conduct with the Independent Assessor, subject to appropriate protections.

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Assessment, investigation and hearing of complaints (Independent Assessor)	<p>4.12 Functions of the Independent Assessor – The Independent Assessor be given a statutory guarantee of independence in relation to decision-making and:</p> <ul style="list-style-type: none"> • be responsible for assessing whether complaints against councillors are trivial, vexatious or frivolous – or for another reason, should be dismissed • refer corruption complaints to the CCC, and investigate such complaints that are referred back by the CCC • investigate allegations of inappropriate conduct and misconduct, being armed with appropriate powers to do so • be able to initiate investigations into possible misconduct • have an appropriate complaints management system, including provision for internal review of decisions • refer allegations of inappropriate conduct to councils • prosecute allegations of misconduct. 	The government supports the Independent Assessor being a statutory office, which reports directly to the relevant Minister. The government broadly supports the proposed functions, noting that legislative amendments will incorporate provisions appropriate for the Independent Assessor to carry out its functions.
Inappropriate conduct (Administration and governance)	5.1 Codes of Conduct and meeting procedure – There should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting procedure.	The government supports the development of a Code of Conduct and model meeting procedures, but will determine, during the development of the Code, whether it can be uniform across all councils. The government also supports continued breaches (i.e. three breaches within a 12 month period) of the Code of Conduct being defined as misconduct, which will be referred by the Independent Assessor to the CCT to deal with and impose potentially more serious penalties.
Inappropriate conduct (Administration and governance)	5.2 Codes of Conduct and meeting procedure – A Code of Conduct should be developed by the LGLG and approved by the Minister.	The government supports in principle the development of a Code of Conduct, which would be prescribed by legislation. However, administratively, the Code would be developed by DILGP in consultation with the Local Government Liaison Group (LGLG).

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Inappropriate conduct (Administration and governance)	5.3 Codes of Conduct and meeting procedure – Regulation 254 of the LG Reg, the declaration of office that s.169 of the LG Act requires councillors to make before assuming office, be amended to include a statement that the councillor will abide by the Code of Conduct.	The government supports in principle the Code of Conduct being prescribed by legislation and requiring councillors to make a declaration that they will abide by the Code of Conduct.
Inappropriate conduct (Administration and governance)	5.4 Codes of Conduct and meeting procedure – DILGP, LGAQ and LGMA should develop the model code of meeting procedure.	The government supports in principle the development of model meeting procedures. However, the model would be developed by DILGP in consultation with Local Government Association of Queensland (LGAQ) and Local Government Managers Australia (LGMA), as it would need to be approved by the Director-General of DILGP.
Inappropriate conduct (Administration and governance)	5.5 Codes of Conduct and meeting procedure – Councils be required to adopt meeting standing orders, based on the model code of meeting procedure.	The government supports in principle the development of model meeting procedures. However, to allow for flexibility with councils of different sizes and compositions, the government proposes requiring that councils either adopt the model meeting procedures, or adopt procedures that are consistent with them.
Inappropriate conduct (Administration and governance)	5.6 Breaches of codes in a meeting are not inappropriate conduct – Breaches of a meeting code or Code of Conduct in a meeting should not be classified as inappropriate conduct. Such conduct breaches should be dealt with immediately by the chair of the meeting (council or committee) who, as appropriate, should be able to require a withdrawal (of words said), an apology (for what had been said or done), or to remove the offending councillor from the remainder of the council or committee meeting.	The government supports in principle that breaches of the codes be dealt with immediately in a manner similar to the role of the Speaker in Parliament. However, DILGP will consult further about how this would interact with the definition of 'inappropriate conduct' as there may need to be some follow up action if the breach of conduct is not dealt with in the meeting.
Inappropriate conduct (Administration and governance)	5.7 Repeated contrary conduct in meetings – A council may determine that a councillor's serious or repeated contrary conduct in meetings or committee meetings should be treated as inappropriate conduct and dealt with as such.	The government supports that serious or repeated breaches of conduct in meetings be dealt with as inappropriate conduct. This recommendation would need to be addressed in conjunction with the response to recommendations 5.6 and 5.8.

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<p>Inappropriate conduct (Administration and governance)</p>	<p>5.8 Definition of inappropriate conduct extended – The definition of ‘inappropriate conduct’ in section 176(4) of the LG Act be amended as follows:</p> <ul style="list-style-type: none"> • The two examples (a) and (b) be deleted and in their place be inserted: <ul style="list-style-type: none"> (a) serious or repeated conduct contrary to the code of conduct or meeting practice in formal council or committee meetings (b) a failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting (c) failure to comply with the council’s other policies, codes or resolutions (d) offensive or disorderly behaviour as a councillor that happens outside formal council meetings (e) failure to work respectfully and constructively with other councillors or staff (f) exerting or attempting to exert inappropriate influence over staff (g) repeated unreasonable requests for information (contrary to council guidelines); or (h) exercising or purporting to exercise an unauthorised power, duty or function. 	<p>The government supports in principle changing the definition of 'inappropriate conduct' to include breaches of the Code of Conduct. However, the government does not support the addition of paragraphs (f) and (h), as these aspects of the definition are covered by the definition of 'corrupt conduct' and must be referred to the CCC.</p>

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<p>Inappropriate conduct (Administration and governance)</p>	<p>5.9 Council to determine inappropriate conduct and may obtain advice – Section 181 of the LG Act be deleted and, in its place, the new section 181 should recognise:</p> <ul style="list-style-type: none"> • That complaints about inappropriate conduct are to be determined by the council. • • That the council may seek advice from a council Conduct Advisory Committee established under the LG Reg or from a member of the Tribunal selected by the President of the Tribunal. • That councils consider the formation of a Conduct Advisory Committee to provide it with advice, when requested by the council, when an inappropriate conduct complaint against a councillor has to be determined by the council. • A councillor whose conduct is being considered must cooperate with the council, the committee or the Tribunal member. Failure to do so could result in a misconduct complaint. 	<p>The government supports in principle that complaints about inappropriate conduct (other than conduct within a meeting) be determined by council.</p> <p>However, the government also supports that a council can resolve to delegate its decision-making powers, in respect to inappropriate conduct, to either the Mayor or an appropriate committee of the council. The government also supports that a council should be able to seek advice from any person or entity it considers necessary, including an advisory committee established by the council.</p> <p>Conduct within a meeting will be dealt with in accordance with the response to recommendation 5.6.</p>

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<p>Inappropriate conduct (Definition of inappropriate conduct)</p>	<p>5.10 Possible disciplinary orders for inappropriate conduct – That the council, if it decides to take disciplinary action against the councillor, may make one or more of the following orders that it considers appropriate in the circumstances:</p> <ul style="list-style-type: none"> • Censure of the councillor. • Formal reprimand. • Requirement for an apology. • Mandatory training or counselling. • Councillor to be excluded for up to two meetings of the council. • Councillor removed from any position representing the council, and not to chair or attend committees or other specified meetings for up to two months. • Payment of costs attributed to the actions of the councillor. • An order that any repeat of the inappropriate conduct be referred to the Tribunal as misconduct. <p>Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under section 162(1)(e) of the LG Act.</p>	<p>The government supports in principle that the council be able to make orders in responding to inappropriate conduct. However, the government's position is that, excluding the councillor for up to two meetings of the council is a serious consequence for inappropriate conduct and could lead to abuse of process and failure of representative democracy. Consequently, the government would support this being considered as a misconduct consequence because the CCT process would include a right of appeal.</p>
<p>Inappropriate conduct (Definition of inappropriate conduct)</p>	<p>5.11 Non-compliance with orders – Councillors against whom a complaint of inappropriate conduct has been upheld may not participate in council or committee meetings until any disciplinary order imposed has been paid or otherwise discharged. Section 162 of the LG Act (when a councillor's office becomes vacant) would apply in relation to such resulting non-attendance.</p>	<p>The government does not support this recommendation because the penalty seems excessive compared with the degree of non-compliance. The government supports there being a penalty for non-compliance, but suggests that non-compliance should amount to misconduct and be dealt with by the CCT.</p>

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Inappropriate conduct (Definition of conduct types)	5.12(1) Non-compliance with orders – That section 153 of the LG Act (qualifications of councillors) be amended to disqualify for four years a person who, as a result of their failure to comply with an order of the council following a finding of inappropriate conduct, has ceased to be a councillor as a result of the operation of section 162(1)(e) of the LG Act.	The government does not support this recommendation because the penalty seems excessive compared with the degree of non-compliance. The government supports there being a penalty for non-compliance, but suggests that non-compliance should amount to misconduct and be dealt with by the CCT.
Inappropriate conduct (Administration and governance)	5.12(2) Councils to have process for dealing with inappropriate conduct complaints – Councils develop and include a process for dealing with inappropriate conduct in their complaints management system. This should be in accordance with the principles of natural justice.	The government supports that councils should develop and comply with a process for dealing with inappropriate conduct.
Inappropriate conduct (Independent Assessor)	5.13 Role of Independent Assessor referring inappropriate conduct complaints to council – The Independent Assessor, when referring a complaint about inappropriate conduct to the council, should indicate how serious the inappropriate conduct might be, whether any further information needed to be obtained before the complaint could be dealt with, and whether mediation might be appropriate and by whom. The Independent Assessor should also recommend to the council whether it should deal with the matter itself, refer it for advice to its Conduct Advisory Committee, or refer it for advice (and possible further investigation) to a Tribunal member.	The government supports the Independent Assessor being able to advise council on how a matter should be dealt with. The council should follow this advice, or specify, in its resolution about the decision, why the advice was not followed.
Inappropriate conduct (Administration and governance)	5.14 Costs of Tribunal member – Where councils elect to use a Tribunal member to investigate and make recommendations about a complaint of inappropriate conduct, the council should pay the member's costs.	The government supports that council pays the costs of using the services of a CCT member in investigating and considering inappropriate conduct.

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<p>Inappropriate conduct (Administration and governance)</p>	<p>5.15 Possible appeal system – Twelve months after the proposed system commences, the LGLG should review the way councils have been adjudicating inappropriate behaviour matters with a view of determining whether it is necessary and desirable to introduce an appeal system, such as that described in this report.</p>	<p>The government supports a review after 12 months, but notes that this would ultimately be a matter for the LGLG, as a whole, to determine their priorities.</p>
<p>Misconduct (Definition of conduct types)</p>	<p>6.1 Extended definition of misconduct – The definition of misconduct [section. 176(3)(b) of the LG Act] should encompass:</p> <ul style="list-style-type: none"> (i) the performance of the councillor’s responsibilities, or the exercise of the councillor’s powers, in a way that is not honest or is not impartial (ii) a breach of the trust placed in the councillor (iii) a misuse of information or material acquired in or in connection with the performance of the councillor’s responsibilities, whether the misuse is for the benefit of the councillor or someone else (iv) unauthorised use of council staff or resources for private purposes (v) use of information obtained as a councillor to the financial detriment of the council or the public interest (vi) failure to cooperate with the council, Conduct Advisory Committee or Tribunal delegate during inappropriate conduct proceedings or to comply fully with a penalty for inappropriate conduct (vii) third or subsequent finding of inappropriate conduct during council term (viii) bullying or harassment (ix) failure to declare and resolve conflict of interest at a meeting in a transparent and accountable way (x) seeking gifts or benefits of any kind (xi) improper direction or attempted direction of staff (xii) deliberate release of confidential information. 	<p>The government supports in principle changing the definition of 'misconduct'. The government supports a definition of misconduct that allows for allegations of 'corrupt conduct' under of the <i>Crime and Corruption Act 2001</i> (CC Act) that are referred by the CCC to the Independent Assessor to be dealt with as misconduct, if appropriate.</p> <p>Any complaint that a public official reasonably suspects involves, or may involve, corrupt conduct must be referred to the CCC. The government supports that the Independent Assessor and the CCT should be able to respond to matters that are corrupt conduct but not sufficiently serious to warrant a full CCC investigation. In these circumstances, the CCC may still direct or monitor the investigation.</p> <p>In relation to (ix), the government will further investigate ways of ensuring conflicts of interest at a meeting are dealt with in a transparent and accountable way.</p>

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<p>Misconduct (Definition of conduct types)</p>	<p>6.2 LG Act offences are also misconduct – A further clause should be added to section 176(3) of the LG Act to provide that an offence against sections 171(1), 171A(2) and (3), 171B(2), 172(5) and 176C(8) may be dealt with as misconduct.</p>	<p>The government partially supports this recommendation, as the definition of misconduct may be sufficient to include conduct potentially captured by these offences. The government supports the CCC’s jurisdiction over corrupt conduct being maintained and that conduct, which would ordinarily constitute corrupt conduct, being notified to the CCC.</p> <p>A person who is convicted of any of these offences [apart from section 176C(8)] is <u>disqualified</u> from being a councillor for a period of four years, therefore it is imperative that a decision to deal with such conduct as misconduct, instead of by way of criminal prosecution, only be made after proper consultation with the CCC.</p>
<p>Misconduct (Definition of conduct types)</p>	<p>6.3 Complaints against former councillors – Section 176A of the LG Act (application to former councillors) should be amended to provide that a complaint has to be made within six months of the person ceasing to be a councillor.</p>	<p>The government supports in principle amending the processes for dealing with complaints against former councillors. The government does not support imposing a blanket time limitation on when a complaint may be made, as complaints about serious conduct issues, such as misconduct or corrupt conduct, might warrant investigation – even if they come to light sometime after the person ceases to be a councillor. However, the Independent Assessor should have the power to take no further action in relation to an allegation against a former councillor if it is not in the public interest or a justifiable use of public resources.</p>

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<p>Misconduct (Definition of conduct types)</p>	<p>6.4 Penalties for misconduct – Section 180 of the LG Act be amended to provide the following penalties for misconduct: One or more of the following:</p> <ul style="list-style-type: none"> • Mandatory training or counselling. • An order that the councillor reimburse the local government and/or pay up to 50 penalty units. • An order that a councillor may not remain as or become deputy mayor or a committee chair for the remainder of the term. • Councillor to be excluded for up to three meetings of the council. • Councillor removed from any position representing the council for a period of up to three months. • Councillor not to attend committees and/or other specified meetings for a period of up to three months • An order suspending the councillor (without pay) for a period of up to three months. • A recommendation to the Minister that the councillor be suspended for more than three months and up to six months (without pay) or dismissed. • A recommendation that DILGP prosecute the councillor for an offence under the LG Act. <p>Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under section 162(1)(e) of the LG Act.</p>	<p>The government supports in principle providing for a range of penalties for breaches of conduct that amount to misconduct.</p> <p>However, the government does not support the CCT making an order suspending the councillor (without pay) for a period of up to three months, as suspension from office is a power that should only be exercised by the Governor in Council based on a recommendation of the Minister.</p> <p>See also the government's response to recommendation 9.1 regarding the prosecution of offences.</p> <p>In addition, see the government's response to recommendations 6.5 and 6.6. The CCT could order that a councillor be excluded from council meetings or recommend that a councillor be suspended or dismissed due to wilful noncompliance with an order.</p> <p>The CCT should also be able to order that a councillor apologise or be subject to an official reprimand.</p> <p>The government supports the recommendation that an order for exclusion of a councillor should not trigger a vacancy under section 162(1)(e) of the LG Act.</p> <p>During drafting of the legislation, the government may consider additional options for inclusion as an appropriate penalty.</p>

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Misconduct (Definition of conduct types)	6.5 Non-compliance with orders – A councillor, who is the subject of an order by the CCT in relation to a misconduct finding, may not attend a council meeting until such time as the councillor has complied fully with the order. Section 162 of the LG Act (when a councillor’s office becomes vacant) would apply in relation to such resulting non-attendance.	The government does not support this recommendation because an automatic exclusion seems excessive compared with the degree of non-compliance. The government proposes that non-compliance with an order would be misconduct and could result in a more serious order being applied by the CCT for the non-compliance.
Misconduct (Definition of conduct types)	6.6 Non-compliance with orders – Section 153 of the LG Act (qualifications of councillors) be amended to disqualify, for seven years, a person who, as a result of their failure to comply with an order of the Tribunal following a finding of misconduct, has ceased to be a councillor as a result of the operation of section 162(1)(e) of the LG Act.	The government does not support this recommendation because an automatic disqualification seems excessive compared with the degree of non-compliance. The government proposes that non-compliance with an order would be misconduct and could result in a more serious order being applied by the CCT for the non-compliance.
Corrupt conduct (Independent Assessor)	7.1 Independent Assessor's role in corruption complaints – The LG Act be amended to deem the Independent Assessor to be the holder of an appointment in a unit of public administration for the purposes of the <i>Crime and Corruption Act 2001</i> (CC Act), and that such complaints about corruption, that the CCC would otherwise have directed back to DILGP or to councils, should be sent instead to the Independent Assessor.	The government supports the Independent Assessor being the assessor and investigator of complaints and that the interaction of the CCC with councillor complaints be through the Independent Assessor and not the Director-General of DILGP.
Corrupt conduct (Independent Assessor)	7.2 Independent Assessor's role in corruption complaints – Section 182(2) of the LG Act be amended to substitute the Independent Assessor for the department’s chief executive as the public official dealing with corruption complaints.	The government supports the Independent Assessor being the public official who works with the CCC on councillor complaints and not the Director-General of DILGP.

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Election issues (Administration and governance)	8.1 Complainant must not publicise complaint during election caretaker period – The LG Act be amended to provide that, during the local government caretaker period before an election, it is an offence for a person who has made a complaint alleging inappropriate conduct, misconduct or corrupt conduct of a councillor or candidate for election, or an associate of the complainant, to disclose information that the complaint has been made, or disclose any detail of the complaint. The CCT has jurisdiction to hear a complaint under this section and may impose a penalty of up to 50 penalty units.	The government will consider this recommendation as part of its broader consideration of the CCC’s report, <i>Publicising allegations of corrupt conduct: Is it in the public interest?</i> (the CCC report). The CCC report recommended that the CC Act be amended to make it an offence for any person to publicise allegations of corrupt conduct against a councillor or candidate during a local government election period. The CCC’s proposal is still currently under consideration.
Election issues (Independent Assessor)	8.2 Offence to give false information to Independent Assessor – Section 234 (1)(f) (false or misleading information) of the LG Act be amended to substitute ‘Independent Assessor’ for ‘a regional conduct review panel’. The CCT has jurisdiction to hear a complaint under this section and may impose a penalty of up to 50 penalty units.	The government supports in principle changing the offence to refer to the Independent Assessor. However, any prosecution should be considered by a court of relevant jurisdiction.
Offences in the Act (Independent Assessor)	9.1 Recommendations for prosecution of offences – Both the Independent Assessor and the Tribunal have the power to make recommendations to DILGP that a councillor or former councillor be prosecuted for an offence under the LG Act.	The government does not support this recommendation. However, the government supports prosecutions being made by the Independent Assessor rather than the Independent Assessor and CCT referring matters to the department for prosecution. As the investigating body, the Independent Assessor should have sufficient authority to bring any prosecutions.
Offences in the Act (Definition of conduct types)	9.2 Misuse of information offence – Section 171(1) of the LG Act be amended to read: 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. Maximum penalty—100 penalty units or two years imprisonment.	The government does not support this recommendation because it would remove the offence that a councillor must not use privileged information to cause detriment to the local government.

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Offences in the Act (Definition of conduct types)	9.3 Additional misconduct offence – The definition of misconduct in section 176(3)(b) of the LG Act be amended to include: Cause financial detriment to the local government.	The government does not support this recommendation because a councillor using privileged information to cause detriment to the local government is a serious matter and should be an offence and not merely misconduct.
Natural justice, procedural fairness and confidentiality (Councillor Conduct Tribunal)	10.1 Procedural rules – Section 213(3) of the LG Act, requiring review panels and the tribunal to comply with any procedural rules prescribed under a regulation, be retained. One year after the proposed CCT commences, its President should consider whether to recommend to the Minister the adoption of a regulation prescribing procedural rules for the CCT.	The government partially supports this recommendation as it supports retaining section 213(3) of the LG Act. However, there should be no restriction on the procedural rules being prescribed by a regulation. In addition, the government considers that the President should have discretion as to how and when he/she considers recommending to the relevant Minister that procedural rules be prescribed.
Natural justice, procedural fairness and confidentiality (Councillor Conduct Tribunal)	10.2 Legal representation – Section 213(2)(c) of the LG Act, giving the regional conduct review panels and tribunal power to refuse to allow a person to be represented by a legal practitioner be amended to read: Where it considers it desirable to do so in the interests of justice, may allow a person to be attended by a legal practitioner.	The government supports in principle allowing legal representation only where the CCT considers it desirable, but specific drafting of the provision will be guided by similar provisions included in other Queensland Government legislation.
Natural justice, procedural fairness and confidentiality (Councillor Conduct Tribunal)	10.3 Standard of proof – Section 179(5) of the LG Act, which establishes that the standard of proof in misconduct hearing is the balance of probabilities, be retained.	The government supports retaining section 179(5) of the LG Act.
Natural justice, procedural fairness and confidentiality (Councillor Conduct Tribunal)	10.4 Reasons – Section 179(6) of the LG Act, that requires the panel or tribunal to keep a written record of the hearing, be amended to add: (c) the reasons for its decision.	The government supports in principle requiring the CCT to keep reasons for its decision, however specific drafting of the provision will be guided by similar provisions included in other Queensland Government legislation.

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Natural justice, procedural fairness and confidentiality (Councillor Conduct Tribunal)	10.5 Appeals – The provisions of the LG Act limiting appeals, be amended to permit appeals to the District Court for decisions of the proposed Tribunal on misconduct matters on questions of law only, and for jurisdictional error.	The government supports in principle allowing for an appeal against a decision of the CCT. However, the government supports that an appeal should also be permitted on the merits of the matter and not just on a question of law or jurisdictional error. An appropriate body to conduct reviews and appeals will be identified.
Natural justice, procedural fairness and confidentiality (Councillor Conduct Tribunal)	10.6 Councillor as complainant – That subsections 177A(4)(5) and (6), which require a complainant who is also a councillor to appear before the panel or tribunal to confirm the complaint, be deleted as several other recommendations of the Panel will make it redundant.	The government supports in principle making consequential amendments to remove obsolete and redundant provisions.
Role of the Minister and the department (Administration and governance)	11.1 Local Government Liaison Group – DILGP establish the Local Government Liaison Group to coordinate the provision of advice for local government councillors on the interpretation of relevant legislative provisions, and to provide assistance and training in areas such as declarations of interests, declarations of material interests and conflicts of interest. The group should provide advice to the Minister, through DILGP, on governance issues such as the proposed Code of Conduct. And it should include the CCC, the Ombudsman, the Auditor-General and the Independent Assessor, together with the LGAQ and the LGMA.	The government supports establishing the LGLG as an administrative action.
Reconstituting the complaints authorities (Councillor Conduct Tribunal)	12.1 Local Government Conduct Tribunal – the functions of the Local Government Remuneration and Discipline Tribunal and the regional conduct review panels be transferred to the proposed CCT.	The government supports reconstituting the Local Government Remuneration and Discipline Tribunal as the CCT and removing the need for the regional conduct review panels. However, see the government's response to recommendations 12.2 and 12.4.

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Reconstituting the complaints authorities (Councillor Conduct Tribunal)	12.2 Councillor Conduct Authority – The Local Government Remuneration and Discipline Tribunal be reconstituted as the Councillor Conduct Authority with the Councillor Conduct Tribunal as one of its two constituent parts, the other being the Independent Assessor.	The government supports in principle the reconstitution of the Local Government Remuneration and Discipline Tribunal as the CCT. However, the creation of a new statutory authority is not required to achieve this objective.
Reconstituting the complaints authorities (Independent Assessor)	12.3 Authority's chief executive – The Independent Assessor be the chief executive officer of the Councillor Conduct Authority.	The government supports in principle the creation of a statutory role for the Independent Assessor, reporting directly to the relevant Minister. However, the creation of a new statutory authority is not required to achieve this objective.
Reconstituting the complaints authorities (Councillor Conduct Tribunal)	12.4 Transfer of tribunal's responsibilities – The former tribunal's responsibilities for establishing categories of local governments and deciding to which category each local government belongs, be transferred to DILGP, and its responsibility for deciding the remuneration that is payable to the mayors, deputy mayors and councillors be transferred to the Queensland Independent Remuneration Tribunal (QIRT).	The government partially supports this recommendation as it supports the responsibility for deciding remuneration being separated from the disciplinary function of the CCT. However, the government will consult further about the appropriate body to determine the remuneration of local government councillors.
Reconstituting the complaints authorities (Independent Assessor)	12.5 Statutory appointment of Independent Assessor and Tribunal President The Independent Assessor and the President of the new Tribunal be statutory appointments, and that both should be appointed for fixed-terms of up to five years. Other sessional members of the Tribunal be appointed for three year terms by the Minister, on the recommendation of the President of the Tribunal.	The government partially supports this recommendation as it supports the appointment of the Independent Assessor and CCT members as statutory appointments, but all significant appointments should be approved by the Governor in Council, not by the Minister.

Chapter/topic	Recommendation	Queensland Government response
Reconstituting the complaints authorities (Councillor Conduct Tribunal)	<p>12.6 Qualifications of Tribunal members – A person who is to be appointed to the Tribunal must have extensive knowledge of, and experience in, one or more of the following:</p> <ul style="list-style-type: none"> • Local government. • Investigations. • Law. • Public administration. • Public sector ethics. • Public finance. 	The government supports the requirement for certain qualifications for CCT members.
Reconstituting the complaints authorities (Councillor Conduct Tribunal)	<p>12.7 Rules for Tribunal – The president should draw up and publish on the website the rules governing the way Tribunal hearings are conducted.</p>	The government supports the publication of practice directions to govern how CCT hearings are conducted.
Reconstituting the complaints authorities (Independent Assessor)	<p>12.8 Independent Assessor's decisions about councillors to be published – Section 181A of the LG Act (records about complaints) be amended to provide in sub-section (1) that the section also concerns complaints received by the Independent Assessor that are referred to the council to be dealt with as inappropriate conduct and relevant misconduct decisions by the proposed Tribunal.</p>	The government supports in principle publication of decisions subject to appropriate protections.
Reconstituting the complaints authorities (Administration and governance)	<p>12.9 CEOs must publish disciplinary decisions – Section 181A(2)(a) of the LG Act (records about complaints) be amended by substituting ‘and’ for ‘or’.</p>	The government supports in principle publication of decisions.
Reconstituting the complaints authorities (Councillor Conduct Tribunal)	<p>12.10 Authority to publish complaints decisions on website – The CCA establish a website where all the Tribunal’s decisions, and the reasons for them, are published and where decisions of councils concerning inappropriate conduct are also published.</p> <p>Decisions by the Independent Assessor dismissing complaints that are trivial, vexatious etc. should also be published in summary form.</p>	The government supports in principle the publication of the CCT’s decisions, subject to appropriate protections and provided those decisions are not subject to confidentiality due to an overlap with an ongoing investigation by the CCC. The government considers that councils should be responsible for publishing their own decisions, but the CCT website could link to the council decisions.

Chapter/topic	Recommendation	Queensland Government response
Reconstituting the complaints authorities (Administration and governance)	12.11 Authority to publish complaints decisions on website – The publication of information about new councillor complaints should be suspended during the caretaker period before a council election.	The government will consider this recommendation as part of its broader consideration of the CCC’s report. The CCC report recommended that the CC Act be amended to make it an offence for any person to publicise allegations of corrupt conduct against a councillor or candidate during a local government election period. The CCC’s proposal is still currently under consideration.
Reconstituting the complaints authorities (Brisbane City Council)	12.12 Brisbane City Council – The disciplinary system provided for in the <i>City of Brisbane Act 2010</i> be aligned with that proposed for the LG Act.	The Queensland Government supports in principle the systems being aligned between the two Acts, but proposes that changes be made to the LG Act in the first instance and the system be rolled out to the City of Brisbane Act within six months if, after review and consultation with Brisbane City Council, this is desirable.

Abbreviations:

CC Act = *Crime and Corruption Act 2001*

CCC = Crime and Corruption Commission

CCT = Councillor Conduct Tribunal

DILGP = Department of Infrastructure, Local Government and Planning

LG Act = *Local Government Act 2009*

LGAQ = Local Government Association of Queensland

LGLG = Local Government Liaison Group

LGMA = Local Government Managers Australia

QIRT = Queensland Independent Remuneration Tribunal