Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Steven Miles MP, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning, and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure, make this statement of compatibility with respect to the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The current councillor conduct complaints system (Complaints System) was introduced in 2018 in response to the 2017 Independent Councillor Complaints Review Panel Report '*Councillor Complaints Review: A fair, effective and efficient framework*'. The Complaints System provides for a simpler, more streamlined framework for making, investigating and determining complaints about councillor conduct in Queensland. A key element of the reforms was the establishment of the position of the Independent Assessor (IA) and the Office of the Independent Assessor (OIA) to 'investigate' all complaints and information about councillor conduct before deciding how it should be dealt with.

Generally speaking, the OIA assesses complaints as possible inappropriate conduct, misconduct or corrupt conduct. For complaints of possible inappropriate conduct, the OIA undertakes a natural justice process before referring the matter to the relevant local government for investigation. Complaints of possible misconduct are investigated by the OIA and, if appropriate, prosecuted in the Councillor Conduct Tribunal (CCT), and complaints of possible corrupt conduct are referred to the Crime and Corruption Commission. Also, the OIA has the power to dismiss a complaint or take no further action about the conduct of a councillor for a number of reasons, including, if the complaint does not raise a reasonable suspicion of inappropriate conduct or misconduct, dealing with the complaint would not be in the public interest or would be an unjustifiable use of resources, or the complaint is frivolous or vexatious. In addition, the OIA re-prosecutes matters subject to full merits review in the Queensland Civil and Administrative Tribunal (QCAT).

The framework under chapter 5A of the *Local Government Act 2009* (LGA) was wholly applied to Brisbane City Council (BCC) in 2020 to ensure the same behavioural standards,

offences, penalties and investigating and hearing bodies for all local governments and councillors.

In October 2021, the State Development and Regional Industries Committee (SDRIC) resolved to conduct an inquiry into the functions of the IA and the performance of those functions, in particular:

- whether the performance by the IA of their functions is consistent with the intent of the local government complaints system
- whether the powers and resources of the IA are being applied in accordance with the public interest, and
- any amendments to the LGA or changes to the functions, structures or procedures of the IA considered desirable for the more effective operation of the IA and/or the local government complaints system.

Over the course of the inquiry, issues relating to the operation of the CCT also emerged. SDRIC elected to also consider these matters as part of its inquiry. On 14 October 2022, SDRIC tabled Report No. 28, 57th Parliament, *Inquiry into the Independent Assessor and councillor conduct complaints system* (the Committee Report) in the Legislative Assembly.[1]

SDRIC made 40 recommendations to adjust and refocus the Complaints System, with nineteen recommendations requiring some form of legislative change. The Government's response to the Committee Report, tabled in the Legislative Assembly on 12 January 2023, supports or supports in-principle all 40 recommendations.

The key policy driver of the Bill is to recalibrate the Complaints System to make it more effective and more efficient and to ensure that only matters of substance and in the public interest would proceed to the CCT for determination. The proposed amendments in the Bill address the 19 recommendations which require legislative amendments.

Further, in response to issues raised by stakeholders, the Department of State Development, Infrastructure, Local Government and Planning (the department) identified a number of amendments to clarify and enhance the councillor conflict of interest requirement in the LGA and the *City of Brisbane Act 2010* (COBA).

The department also proposed amendments to:

- modernise local government advertising requirements
- address issues raised by the Electoral Commission of Queensland (ECQ) in connection with recovery of election costs, and
- make consequential amendment to a range of Acts to reflect the recent change of classification of the Moreton Bay Regional Council to city status.

[1] State Development and Regional Industries Committee (SDRIC), Report No. 28, 57th Parliament – Inquiry into the functions of the Independent Assessor and councillor conduct system, 14 October 2022 (Committee Report), https://documents.parliament.qld.gov.au/tp/2022/5722T1670-4778.pdf

The objectives of the Bill are to:

- recalibrate to the Complaints System to make it more efficient and effective and to implement the Government's policy in relation to the Committee Report
- clarify and enhance the councillor conflict of interest requirements
- make consequential amendments, transitional arrangements and other legislative changes about advertising requirements and recovery of election costs by the ECQ, and
- make a minor amendment to the *Queen's Wharf Brisbane Act 2016* (QWBA) to ensure the State can grant necessary tenure and meet its obligations under the Integrated Resort Development Agreement and the Treasury and Casino Hotel Agreement as part of the Queens Wharf Brisbane project.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion the Bill limits the following human rights:

- freedom of movement (section 19 of the HR Act)
- freedom of expression (section 21 of the HR Act)
- right to take part in public life (section 23 of the HR Act)
- right to property (section 24 of the HR Act)
- privacy and reputation (section 25 of the HR Act)
- right to liberty and security of person (section 29 of the HR Act), and
- right to a fair hearing (section 31 of the HR Act).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

Measure 1: Introduction of a preliminary assessment process and time limits for complaints, notices and information made, referred or given to the IA.

Clause 46 of the Bill inserts new divisions 3A and 3B into chapter 5A, part 3 of the LGA, establishing a preliminary assessment process for the IA in considering and responding to complaints, notices, or information. It is intended that a mandatory assessment process will ensure that the OIA's resources are focused on addressing substantive councillor conduct matters, enhancing the scope for insubstantial conduct matters to be 'closed out' as early as possible, and refining the jurisdiction of the Complaints System. It is intended to establish clear statutory parameters for when the IA should take further action for a complaint, notice, or information.

New section 150SA of the LGA provides that the preliminary assessment scheme will apply to a complaint about the conduct of a councillor made or referred to the IA under chapter 5A, part 3, division 2 of the LGA (Complaints about councillor conduct), a notice about the conduct of a councillor given to the IA under chapter 5A, part 3, division 3 (Local government duties to notify assessor about particular councillor conduct), or information given to the IA about the conduct of a councillor under section 150AF(3) of the LGA (Investigating suspected conduct breach).

New section 150SB provides that complaints, notices, or information about the conduct of a councillor must be made or given to the IA either within one year after the conduct occurred, or within six months after the conduct comes to the knowledge of the person who made the complaint or gave the information or notice but within two years after the conduct occurred.

New section 150SD provides that the IA must make a preliminary assessment of a complaint, notice or information. The IA must dismiss the complaint or decide to take no further action for the notice or information if satisfied that:

- dealing with the complaint, notice or information would not be in the public interest; or
- the complaint, notice or information was not made or given within the period required under new section 150SB , unless the conduct is suspected corrupt conduct or the complaint, notice or information was not given within the required period because of exceptional circumstances
- the conduct was engaged in by the councillor to comply with, honestly and without negligence a guideline made by the department's chief executive
- the conduct relates solely to behaviour engaged in by the councillor in a personal capacity unless the conduct is suspected corrupt conduct
- the conduct clearly does not constitute a conduct breach or misconduct
- the councillor's office becomes vacant, unless the conduct is suspected corrupt conduct, or
- for a complaint - the person who made the complaint is the subject of a vexatious complainant declaration under section 150AWA and the complaint is not permitted under a condition of the declaration or under section 150AWC.

The IA may dismiss the complaint or decide to take no further action for the notice or information if satisfied:

- the conduct has already been, is being, or may be dealt with by another entity
- the complaint is frivolous or vexatious; or was made other than in good faith; or lacks substance or credibility
- dealing with the complaint, notice or information would be an unjustifiable use of resources
- for a suspected conduct breach, at least six months have elapsed since the conduct the subject of the complaint, notice or information occurred, and it would not be in the public interest to take action under chapter 5A, part 3, or
- there is insufficient information to properly make a preliminary assessment of the complaint, notice or information.

If the complaint, notice or information is not dismissed, under new section 150SD(2), or the IA does not decide to dismiss or take no further action, the IA must decide:

- if the IA reasonably suspects the conduct is a conduct breach, to refer the suspected conduct breach to the local government to deal with
- to investigate the conduct, or
- not to deal with the complaint, notice or information and make any recommendation the assessor considers appropriate, including, for example, that the councillor attend training, counselling or mediation.

In making a preliminary assessment the assessor may have regard to any of the following matters:

- any reasons for, or factors relevant to, the conduct
- any steps taken by the councillor to mitigate or remedy the effects of the conduct
- the consequences, both financial and non-financial, resulting from the conduct.

The introduction of a preliminary assessment process and time limits for making or referring complaints, notices, and information limit the following human rights:

- the right to freedom of expression, and
- the right to take part in public life.

(a) the nature of the right

The *right to freedom of expression* protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and impart information and ideas of all kinds (including verbal and non-verbal communication). The forms of protected expression are broad, and include almost all forms of expression, including verbal (oral, writing and print), or through art or conduct. The right to freedom of expression and the free flow of information and ideas between people and through the media, particularly about public and political issues, is considered to be a foundation stone of a free and democratic society.[2]

The underlying values and interests represented by a right to the freedom of expression have been described as 'freedom, self-actualisation and democratic participation for individuals personally; and freedom, democracy under the rule of law and ensuring governmental transparency and accountability for society generally'.[3]

Freedom of expression is limited by the new prescribed timeframes for making a complaint or giving notice or information, as individuals will be required to convey information within specified time limits where previously no limits on when a complaint could be made or referred were in place. The introduction of time limits may result in some persons being prevented from submitting complaints, notices, or information about councillor conduct to the IA, which would result in a reduction in the free flow of information and ideas.

It is considered that generally the introduction of the preliminary assessment process does not otherwise limit a person's right to freedom of expression. While the IA's response to complaints, notices or information is governed by the criteria in the preliminary assessment process, a person's right to make or refer matters is not in itself limited, other than in circumstances where a person is declared a vexatious complainant. This is discussed separately below under measure 5 (Introduction of an administrative process to declare persons vexatious complainants).

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2 United Nations Human Rights Committee (UNHRC), General Comment No. 34, Geneva, 11-29 July 2011.
3 McDonald v Legal Services Commissioner (No 2) [2017] VSC 89 at [22], per Bell J.

The *right to take part in public life* protects the right and opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The United Nations Human Rights Committee (UNHCR) has indicated that the conduct of public affairs is a broad concept which relates to 'the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels'.[4]

In addition, there is an intrinsic connection between the right to participate in public affairs and the right to freedom of expression. The UNHRC has noted that 'citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association'.[5]

The introduction of timeframes limits the right to take part in public life. As outlined above, the introduction of time limits may result in some persons electing not to submit complaints, notices, or information about councillor conduct to the IA, which will impact their involvement with the administration of the Complaints System.

The introduction of a preliminary assessment process for complaints, notices and information made, referred or given to the IA will also limit the rights of persons to participate in public life by establishing statutory criteria for when the IA may or must dismiss a complaint or take no further action for a matter, meaning in certain circumstances, a person's complaint will not be further considered.

(b) <u>the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom</u>

The purpose of the amendments to introduce a preliminary assessment process, including time limits, is to enhance the efficiency and effectiveness of the Complaints System, and to help ensure that the resources of the OIA are focussed on addressing substantive councillor conduct matters in the public interest. The measures are also intended to reduce the administrative imposts on the OIA from dealing with potentially trivial, vexatious, or otherwise insubstantial matters.

While the preliminary assessment process was not explicitly recommended in the Committee Report, its introduction is consistent with the Committee Report's broad objective of ensuring the IA's performance of its functions is focused on substantive councillor conduct matters in the public interest. As noted above, the IA must dismiss a complaint or take no further action

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4 Human Rights Committee, *General Comment No 25: Participation in Public Affairs and the Right to Vote (Article 25 of the International Covenant on Civil and Political Rights),* 57th session, UN Doc CCPR/C/21/Rev.1/Add/7 (12 July 1006) [5].

5 UNHCR, General Comment No. 25, 57th Session, 12 July 1996.

if the conduct was engaged in by the councillor to comply with a guideline made by the department. This aspect of the assessment process reflects the Government's policy in relation to recommendation 39 of the Committee Report which raised issues of advice to councillors on integrity and conduct matters.

The introduction of time limits formed part of recommendation 1 of the Committee Report. Statutes of limitations are common in law and exist for both criminal and civil causes of action. The purpose of the introduction of statutory time limitations for the receipt of complaints and information about councillor conduct is to achieve an improved and more efficient system. The time limits for making a complaint or referring a notice or information to the IA are intended to achieve several related objectives. They seek to balance preserving the right of persons to make complaints or refer notices and information to the IA, with the right of councillors to be free from unreasonably delayed proceedings against them. Councillors will be given greater certainty about whether a complaint, notice, or information may be raised against them, and when this will occur.

Additionally, the introduction of time limits will further the efficiency, effectiveness, and responsiveness of the Complaints System. This will be achieved by reducing the overall number of matters that the IA is required to investigate and consider by potentially removing out of date of matters, and by ensuring that complaints, notices and information are appropriately contemporaneous, with a greater likelihood of relevant evidence being available to investigate and consider allegations.

(c) the relationship between the limitations to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The introduction of the preliminary assessment process and time limits for making complaints or referring notices or information to the IA, will restrict the IA's jurisdiction to contemporary, substantive conduct matters that are directly relevant to the efficient operation and integrity of Queensland's local government system. Proportionate limitations on the right to freedom of expression and the right to participate in public life are considered necessary. The purposes is to narrow the IA's jurisdiction and provide a clear statutory process to guide the IA's assessment of whether a conduct matter should proceed, and to thereby ensure that matters that are progressed are substantive issues requiring action.

In effect, following the amendments the IA will have fewer matters requiring their consideration, which will result in increased resources being available to assess, investigate and progress conduct matters that the IA determines require action in the public interest. Additionally, reducing the number of matters made or referred to the IA will increase their timeliness in progressing matters requiring action. This will help achieve the Bill's purpose of increasing the efficiency and effectiveness of the IA and increase a subject councillor's right to participate in public life by decreasing the time taken to consider and determine matters.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the system-wide enhancements to efficiency and effectiveness that are anticipated to result from the amendments.

Establishing clear statutory criteria for when the IA must dismiss a complaint or take no further action for a notice or information is essential to achieving the Bill's purpose of clarifying the ambit of the Complaints System. Removing any of the criteria for when a matter must be dismissed would not sufficiently restrict the IA's jurisdiction to substantive conduct matters affecting the efficient operation and integrity of the current local government system, and consequently would not sufficiently increase the efficiency and effectiveness of the Complaints System.

It would be less restrictive on the rights to freedom of expression and to take part in public life to not limit the IA's ability to take further action as proposed in the Bill. However, the enhanced efficiency and effectiveness that will result from removing these matters as part of the assessment process outweighs any limitations on complainants' human rights. It is also considered that it is not in the public interest to progress complaints, notices or information that relate to the personal behaviour of councillors that is not otherwise corrupt conduct. Councillor's personal conduct will still be subject to the laws and standards governing other persons in Queensland, and where appropriate other enforcement and/or compliance agencies may address a councillor's breach of those laws or standards.

Additionally, when a councillor complies honestly and without negligence with a guideline issued by the department, they do not intentionally breach any of the standards applicable to their office, and so it is of limited public value to conduct disciplinary proceedings against these councillors.

Following a declaration by the IA that a person is a vexatious complainant pursuant to new section 150AWA, actioning further complaints from the person would be of limited public value (see below for further explanation of vexatious complainants and why their complaints should not progress).

It is not possible to ensure that complaints made, or notices or information referred to the IA are appropriately contemporaneous without introducing statutory time limits. As with the preliminary assessment process, transparency and certainty are required for when complaints or referrals must be made to the IA.

It is considered that the proposed timeframe for submitting complaints provided by section 150SB is reasonable and proportionate, and appropriately balances the human rights of affected parties with the intended enhancements to the IA's efficiency. While a longer time limit may reduce the impacts on the right to freedom of expression and right to take part in public life, extending the time frame in which a matter can be referred to the IA will restrict the IA's efficiency, and therefore the IA's management of other matters.

Additionally, an extended time limit increases the possibility that evidence relevant to an assessment or investigation may become unavailable, which has the potential to impede the administration of the Complaints System and to prejudice the rights of the subject councillor.

To provide an additional safeguard to complainants' rights to freedom of expression and to take part in public life, where a complainant did not have knowledge of conduct about which they wish to complain, they have six months to make a complaint, or to give a notice or information to the IA, provided that the complaint, notice, or information is still made or referred within two years of when the conduct occurred. These timeframes are intended to balance complainants' rights with ensuring the timely handling of conduct matters by the IA, and to provide councillors greater certainty about when a conduct matter may be raised against them. New section 150SD(2)(b)(ii) also provides that the IA may consider a complaint, notice or information outside of the timeframes, if it is satisfied that there are exceptional circumstances.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments relating to the preliminary assessment process and the introduction of time limits are designed to balance human rights with a more efficient, effective, and responsive Complaints System. Additionally, they implement the Government's policy in relation to recommendations 1 and 39 of the Committee Report.

Councillors are ultimately accountable to voters for their conduct, with electors entitled to choose not to vote for a candidate if they disagree with or disapprove of their conduct as a councillor. This means that in practice persons dissatisfied with a councillor's conduct can continue to exercise their rights to freedom of expression and to participate in public life via the electoral process.

Introducing these restrictions on when the IA may progress a complaint, notice or information means that matters that are not in the public interest will be dealt with more quickly and efficiently, and the overall number of complaints in the Complaints System will be reduced. This will mean that the IA is better able to address conduct matters that are assessed as significant or in the public interest in a timelier way. The human rights of the subject councillor to take part in public life are protected by timely resolution of complaints. These broad improvements will create a better system, while placing only minor limitations on human rights, which are proportionate to the public interest.

(f) any other relevant factors

Not applicable.

Measure 2: Change to the constitution of the Councillor Conduct Tribunal

Under the current Complaints System, if the CCT is hearing a matter about the conduct of a councillor, the CCT is to be constituted by at least two, but not more than three members. The

CCT may be constituted by a single member to deal with administrative or procedural matters related to a hearing about the conduct of a councillor (LGA, section 150AM).

Clause 63 of the Bill amends section 150AM of the LGA to provide that the CCT may be constituted by up to three members (chosen by the president) for hearing a matter about councillor conduct, and by one member (chosen by the president) for dealing with administrative or procedural matters related to a hearing. Determining whether a matter is sufficiently complex, serious, or contested to require the CCT to be constituted by more than one member will be dealt with administratively by the president.

Clause 63 implements the Government's policy in relation to Recommendation 8 of the Committee Report, which stated:

That the Local Government Act 2009 be amended to allow one Councillor Conduct Tribunal member to hear and determine matters such as uncontested or expedited matters, and that a panel of 3 tribunal members continue to hear and determine complex, serious or contested misconduct matters.

Reducing the number of members required to constitute the CCT for a hearing limits the right to a fair hearing.

(a) the nature of the right

The *right to a fair hearing* affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal. The right includes that each party must be given a reasonable opportunity to present their case and that the same procedural rights are provided to all parties unless distinctions based on law can be justified on objective and reasonable grounds.[6]

Reducing the number of members required to constitute the CCT for a hearing may limit a councillor's right to a fair hearing. This is because relying on the opinion of a single member to make findings of law and fact, rather than multiple members, reduces the checks and balances provided by a multi-member tribunal.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to increase the overall efficiency of the CCT by expanding the circumstances that can be adjudicated by a single CCT member, providing that more matters can be dealt with by a single member rather than the current arrangement where hearings are to be conducted by two or three members. Providing the president of the CCT with greater discretion about how many members are allocated to a hearing will allow the CCT to more

[6] UNHRC, General Comment No. 32, Geneva, 23 August 2007.

efficiently allocate its resources, and help ensure that a greater number of CCT members are available to deal with more complex or significant matters in a timelier way.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

During SDRIC's inquiry into the Complaints System, the CCT's resourcing and corresponding timeliness for dealing with matters was raised as a concern, including by the CCT president. [7]

Reducing the number of members required to constitute the CCT will increase its efficiency and the number of matters that the CCT may consider at any one time.

The CCT president will determine the number of members required to hear a matter, which allows for a more efficient allocation of resources tailored to the particular circumstances of individual matters.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Section 150AM of the LGA currently provides that the CCT may be constituted by two members for hearing a matter about the conduct of a councillor. Given the impacts of this arrangement on the CCT's allocation of resources, which is evidenced by the CCT's significant backlog of unresolved matters, providing that a single member can constitute the CCT is considered the only change way to help improve the CCT's efficiency.

This approach is supported by SDRIC's comment in the Committee Report, which notes that there is an opportunity for more matters to be heard by one tribunal member, particularly in cases where a councillor admits fault.[8]

In addition to increased administrative efficiency of reducing the number of members required to constitute the CCT, the president of the CCT has previously indicated that it is undesirable for two members to adjudicate a conduct matter because 'if you reach a decision and the members cannot agree, which is not uncommon, that panel would have to be reconstituted and the whole matter reheard.'[9]

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments to section 150AM of the LGA are not considered unduly restrictive to the right to a fair hearing, as the president of the CCT will continue to choose the composition of the CCT for each individual matter depending on the complexity, seriousness, and potential penalty of the matter. For more complex or contested matters the president may choose that the CCT is to be constituted by up to three members.

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7 CCT President, SDRIC, public hearing transcript, Brisbane, 9 February 2022, p 12.
8 SDRIC, Committee Report, p 28.
9 SDRIC, Committee Report, p 26.

Additionally, because the change is expected to expedite the CCT's hearing and adjudication of councillor conduct matters, the changes will positively impact persons' right to a fair hearing in some regards.

(f) any other relevant factors

Not applicable.

Measure 3: Publication of investigation reports and summaries of investigation reports

Local governments to which the IA refers matters for investigation may engage investigators to conduct investigations into councillor conduct matters.

Clauses 56 and 57 implement the Government's policy in relation to recommendation 19 of the Committee Report, which states:

…that reports of external investigators appointed by local governments to consider substantiated inappropriate conduct matters be published by the local government with appropriate redactions.

Clause 56 of the Bill inserts new section 150AFA into the LGA to require a local government, before making a decision at a local government meeting about a councillor's suspected conduct breach, to make a summary of the investigation report into the councillor's conduct publicly available on or before the day and time prescribed by regulation.

Summaries of investigation reports must include the following:

- the name of the councillor whose conduct has been investigated
- a description of the alleged conduct
- a statement of the facts established by the investigation
- a description of how natural justice was afforded to the councillor during the conduct of the investigation
- a summary of the findings of the investigation, and
- any recommendations made by the entity that investigated the conduct.

However, the following information must not be made publicly available:

- the name of a person who made a complaint, or any other person other than the relevant councillor or information that could reasonably be expected to result in identifying a person other than the councillor
- the name of a person, other than the councillor, who provided information for the purposes of the investigation of the conduct matter, or information that could reasonably be expected to result in identifying the person or any other person other than the councillor, or
- any other information the local government is entitled or required to keep confidential under a law.

Similarly, clause 57 of the Bill inserts new section 150AGA into the LGA to require a local government, after making a decision about a councillor's suspected conduct breach, to make the investigation report publicly available on or before the day and time prescribed by

regulation (if the decision is made at a local government or committee meeting); or otherwise, within 10 business days after the decision is made.

The following information must not be made publicly available in an investigation report:

- the name of a person who made a complaint, or any other person other than the relevant councillor or information that could reasonably be expected to result in identifying a person other than the councillor
- the name of a person, other than the councillor, who provided information for the purposes of the investigation of the conduct matter, or information that could reasonably be expected to result in identifying the person or any other person other than the councillor
- the submission or affidavit of, or a record or transcript of information provided orally by the person mentioned above, or
- any other information the local government is entitled or required to keep confidential under a law.

However, an investigation report made publicly available pursuant to new section 150AGA of the LGA must include the name of the person who made the complaint if the person is a councillor or the chief executive officer of a local government and the person's identity as the complainant was disclosed at the meeting at which the report for the investigation was considered.

The publication of investigation reports and summaries of investigation reports limits the right to privacy and reputation of councillors mentioned in the reports (and in certain circumstances the chief executive officer of the council).

(a) the nature of the right

The *right to privacy and reputation* protects the individual from unlawful or arbitrary interferences with their privacy, family, home, correspondence (written and verbal) and reputation. It also protects a person from having their reputation unlawfully attacked.

The right to privacy and reputation manifests the underlying value of human beings as autonomous individuals with power over their actions. The right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

Arbitrariness in a human rights context has been defined by case law to mean conduct that is capricious, unpredictable, or unjust; or interferences with rights that are unreasonable.[10] In this context, a limitation will be arbitrary if the limitation is not proportionate to the aim.

[10] WBM v Chief Commission of Police (2012) 43 VR 446, 472 [114].

The publication of investigation reports and summaries of investigations reports limits the right to privacy and reputation of any councillor mentioned in a report because information about the councillor, including their alleged conduct, will be made public.

In addition to information about the councillor being made public, the public information could negatively impact the councillor's reputation.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to implement the Government's response to recommendation 19 of the Committee Report, and to enhance the transparency of the Complaints System, specifically with regard to local governments' investigation and adjudication of conduct matters that are referred to them.

As outlined above, there are several prescribed matters that must not be made publicly available in either investigation reports or summaries of investigation reports in order to protect the privacy of persons involved in the investigation. This includes witnesses and complainants. Prescribing that these matters are not to be made publicly available will help ensure that only information that appropriately enhances the transparency of the Complaints System will be made public under these amendments, furthering the system's effective operations and integrity, and consequently the effective operation and integrity of Queensland's local government sector.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy is directly related to achieving the Bill's purpose of implementing the Government's response to recommendation 19 of the Committee Report and enhancing the transparency of the councillor conduct complaints system. Expanding the information that is to be made publicly available, which is required to enhance the transparency of the system, necessarily impacts privacy.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

It is not possible to implement the Government's response to recommendation 19 of the Committee Report without impacting the right to privacy of certain persons involved in local government investigations of conduct matters. It will also help ensure that local governments may be held to account for the decisions taken in relation to councillor conduct. However, given the range of safeguards in sections new 150AFA and 150AGA of the LGA, only information that can appropriately be made publicly available will be published.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Because new sections 150AFA and 150AGA of the LGA prescribe several matters that are not to be made publicly available with summaries of investigation reports, or as part of investigation reports, it is considered that the impacts on privacy and reputation are minimal, reasonable, and proportionate to achieving the Bill's objectives. Impacts on the right to privacy and reputation are outweighed by the overall improvements to the transparency and accountability of the Complaints System that will result from implementing the measures.

(f) any other relevant factors

Not applicable.

Measure 4: Mandatory councillor training

The Committee Report noted that several councillors struggle to identify what constitutes a conflict of interest, and that training on this issue has not been given appropriate importance.[11]

Recommendation 27 of the Committee Report is:

'That the Department of State Development, Infrastructure, Local Government and Planning make training and professional development on the councillor conduct system, including conflicts of interest, compulsory for all local government councillors, mayors and senior council managers.'

The Government supported this recommendation in principle.

Clauses 7 and 97 insert a new section 169A in to both the COBA and LGA to establish a mandatory training scheme for councillors. New section 169A requires councillors to complete approved councillor training about the responsibilities of councillors under section 14 of COBA and section 12 of the LGA, respectively.

The training must be completed by a councillor within the period prescribed by regulation, or if the department's chief executive extends the period for the councillor, within the extended period. The department's chief executive may extend the period for the completion of training only if the department's chief executive is satisfied it would be appropriate in the circumstances.

A regulation may prescribe the format of the mandatory training, and the requirements about how the training may be successfully completed.

The department's chief executive must publish a notice about approved mandatory councillor training on the department's website within the period prescribed by regulation. The department's chief executive must also give a notice about the approved mandatory councillor

[11] SDRIC, Committee Report, p 61.

training to each local government and each councillor of the local government within the period prescribed by regulation, and if a councillor is appointed or elected to fill a vacancy in the office of another councillor, must give a notice to the local government and the councillor within 20 business days after the councillor is appointed or elected.

The Bill also establishes the consequences for non-compliance with the new mandatory councillor training provisions.

Clause 34 amends section 122 of the LGA to prescribe the consequences for councillors who do not fulfil their mandatory training obligations. If the Minister reasonably believes that a councillor has not complied with the obligation to complete training, the Minister may recommend to the Governor in Council that they are suspended or dismissed from office.

However, before exercising this discretion, the Minister must provide a notice to the councillor pursuant to section 120 of the LGA. Clause 33 amends section 120 to require that the notice must state that

- for a failure to comply with their training obligations within the period required under the relevant provision, the Minister proposes to suspend the councillor until the councillor complies with their mandatory training obligations, or
- if the councillor has not complied with their training obligations within one year after the period required for the completion of the training, the Minister proposes to dismiss the councillor.

Councillors suspended because they have not completed mandatory training are not entitled to be paid remuneration as a councillor other than the remuneration necessary to comply with a councillor training provision. In this context remuneration includes allowances, expenses, superannuation contributions and access to facilities and equipment provided by the local government.

The amendments limit the following human rights:

- the right to take part in public life, and
- property rights.

(a) the nature of the right

The nature of the *right to take part in public life* is discussed above, under measure 1.

The amendments limit the right of councillors to take part in public life by providing the Minister with a discretion to recommend suspension or dismissal of a councillor for failure to complete prescribed training.

The *right to property* protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. Property is likely to include all real and personal property interests recognised under general law and may include some statutory rights.

The scope of the right is affected by an internal limitation, that the person has the right not to be arbitrarily deprived of their property. Case authority suggests that ‘arbitrary’ in the human

rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.[12] The amendments limit the right to property by depriving suspended councillors of remuneration.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to address the issues identified by SDRIC in relation to councillor training about the conflict of interest provisions, in particular the comment that 'councillors must take some responsibility in mastering the requirements and how best to manage them.'[13] The limitation is consistent with a free and democratic society given SDRIC's comment that 'conflict of interest matters are serious issues that can undermine confidence in a local government.'[14]

Providing that councillors are not entitled to be paid remuneration when they are suspended from office for failing to complete their mandatory training is intended to establish a meaningful consequence for breaching training obligations, and to promote compliance.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on councillors' right to take part in public life is necessary to achieve the provision's purpose of enhancing councillors' knowledge of their obligations under legislation. While it is anticipated that the majority of councillors will complete prescribed training within the required time frame, it is necessary that the LGA provides consequences for councillors who do not fulfil their training obligations.

The limitation on councillors' right to property by providing that suspended councillors are not entitled to remuneration is intrinsically related to establishing a meaningful penalty for non-compliance with the mandatory training regime, and directly achieves the provision's purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

It is essential that the training requirement includes a sufficiently serious consequence for non-compliance. While any penalty for non-compliance will impose some sort of limitation on a councillor's right to participate in public life, it is considered that the consequences of suspension and dismissal are reasonable and proportionate to achieving the Bill's purpose, and that the timeframes for compliance are appropriate.

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[12] WBM v Chief Commission of Police (2012) 43 VR 446, 472 [114].
[13] SDRIC, Committee Report, p 61.
[14] SDRIC, Committee Report, p 61.

Suspension or dismissal from office is consistent with existing consequences under the LGA for councillors where the Minister believes that they have committed serious or continuous breaches of the local government principles, they are incapable of performing their responsibilities, or it is otherwise in the public interest.

Additionally, removing the entitlement to remuneration for councillors suspended for failing to comply with their mandatory training obligations further ensures compliance with the mandatory training regime. Councillors may not be adequately deterred from non-compliance by a period of suspension from council while still being remunerated, which could limit the completion of training and its consequent enhancements to the operations and integrity of the local government sector.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Prescribing mandatory training supports the Bill's purpose of enhancing the operation of the Complaints System, and the broader local government sector. By increasing councillors' understanding of their obligations under legislation via uniform training, councillors are in turn supported to fulfil those obligations. The resulting improvements throughout the local government sector will be a direct consequence of councillors' participation in training.

The nature and extent of the limitation to councillors' right to participate in public life is relatively modest, as the circumstances where a councillor may be suspended or dismissed from office are considered unlikely to arise often, given the possibility of the department's chief executive extending the period for completion of training.

Expanding councillors' knowledge of their obligations will assist with reducing instances where councillors unintentionally participate in council decisions about matters where they have a conflict of interest. It is anticipated that this will help build public confidence in councils, and support consistent understanding of councillor obligations across the local government sector.

Consequently, it is considered that the infringements of the right to participate in public life and to a councillor's right to property are outweighed by the overall enhancement of the local government sector that would result from councillors' greater knowledge of their obligations under legislation.

(f) any other relevant factors

Not applicable.

Measure 5: Introduction of an administrative process to declare persons vexatious complainants

The Committee Report considered the measures available to the IA to reduce or eliminate the submission of complaints or referrals of notices or information to the IA that are vexatious or made other than in good faith. The Committee Report noted concerns from several

stakeholders, including councillors and the Local Government Association of Queensland,[15] that the Complaints System has been used improperly by some complainants to inflict personal or political harm. SDRIC made two recommendations (Recommendations 28 and 29) with respect to vexatious complainants, which broadly suggested that additional action on this issue may be merited.

To respond to SDRIC's recommendations, amendments were developed modelled on vexatious applicant processes at sections 114, 115 and 121 of the *Right to Information Act 2009* and sections 127, 128 and 133 of the *Information Privacy Act 2009*.

Clause 67 inserts new division 8 into chapter 5A, part 3 of the LGA, providing in new section 150AWA that the IA may declare persons as vexatious complainants where they have repeatedly made complaints under chapter 5A of the LGA, and at least three of the complaints made by the person have been dismissed by the IA as being frivolous or vexatious pursuant to sections 150SD(3)(b) or 150X, or have been made other than in good faith. Complaints made other than in good faith includes complaints made for a mischievous purpose or made maliciously, complaints that are an abuse of process for making complaints, complaints made to harass, annoy or cause detriment, or complaints made on grounds that lack substance or credibility.

Clause 46 inserts new section into 150SD(2)(e) to provide that complaints made by persons declared vexatious complainants must be dismissed by the IA during preliminary assessment.

The IA must not make a declaration that a person is a vexatious complainant without giving the person an opportunity to make a submission about the proposed declaration.

If the IA decides to declare that a person is a vexatious complainant, the IA must give the person who is the subject of a declaration an information notice about the decision and may publish a notice in the way that they consider appropriate that states that the person has been declared a vexatious complainant including the name of the person the subject of the declaration and the reasons for the declaration.

The IA may declare that a person is a vexatious complainant for a period of no more than 4 years.

New section 150AWB provides that the IA may shorten the period of a declaration in effect, or revoke a declaration. The person the subject of a declaration may also apply to the assessor to shorten or revoke the declaration. If the IA refuses an application to shorten or revoke the declaration pursuant, the IA must provide the person with an information notice about the decision.

[15] SDRIC, Committee Report, pp 64-65.

New section 150AWC provides that a person the subject of a vexatious complainant declaration may apply to the IA for permission to make a complaint. If the IA refuses to grant the permission, the IA must provide the person with an information notice about the decision.

The amendments limit the following human rights:

- the right to take part in public life
- the right to freedom of expression, and
- the right to privacy and reputation

(a) the nature of the right

The nature of the *right to take part in public life* and the *right to freedom of expression* is discussed above, under measure 1, section (a) 'the nature of the right.'

The amendments limit the rights of persons declared vexatious complainants by restricting their right to make a complaint under the Complaints System about councillor conduct. This simultaneously limits their right to participate in public affairs and to participate in the free exchange of ideas and information.

The nature of the *right to privacy and reputation* is discussed above, under measure 3.

Publishing the names of persons declared vexatious complainants limits those persons' right to privacy.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the intended limitation to persons declared vexatious complainants' right to participate in public life and right to freedom of expression is to reduce the number of vexatious or frivolous complaints submitted to the IA, to strengthen the arrangements in the LGA to prevent the improper use of the Complaints System, and to implement the Government's policy in relation to recommendations 28 and 29 of the Committee Report. Achieving these interrelated purposes will enhance the overall operation of the Complaints System by reducing the number of matters that the IA is required to assess and action, and by increasing the likelihood that complainants make complaints or refer notices or information to the IA that are substantive concerns whose resolution would be in the public interest.

The Committee Report at recommendation 28 states:

That all stakeholders involved in the councillor conduct process use a consistent definition of vexatious and frivolous complaints and complainants, and the Office of the Independent Assessor continue to report annually on actions taken on these complainants.

The Committee Report at recommendation 29 states: *'That the Queensland Government consider adopting Recommendation 4.6 in the 2017 Independent Councillor Complaints Review Panel report regarding repeatedly vexatious complainants.'*

The Government supported recommendations 28 and 29 in-principle.

Limiting persons declared vexatious complainants' right to participate in public life is intended to respond to concerns raised by several local government sector stakeholders that the existing arrangements in the LGA to address complaints made vexatiously or frivolously to the IA are inadequate to address the alleged improper use of the complaints process.[16]

SDRIC acknowledged these concerns by members of the local government sector and in recommendation 29 suggested that the Government consider adopting recommendation 4.6 of the 2017 *Independent Councillor Complaints Review Panel report* regarding vexatious complaints, which recommended creating an offence for a person who makes repeated vexatious complaints. New chapter 5A, part 3, division 8 does not create a new offence regarding vexatious complainants but does expand the measures available to the IA to deal with persons who repeatedly make or refer vexatious or frivolous complaints via the making of a vexatious complainant declaration.

The intent of permitting the IA to publish a notice that includes the name of persons declared vexatious complainants is to strengthen the arrangements in the LGA for preventing vexatious or frivolous complaints. It is considered that the reputational impacts for complainants that would result from making public that those persons have been declared vexatious complainants would simultaneously disincentivise those persons from continuing to submit vexatious or insubstantial complaints after the declaration expires, and act as a system-wide general deterrent to the submission of vexatious complaints from other persons.

The IA's power to publish the name of a person is discretionary, and consequently it is expected that the IA will exercise the power judiciously and in a manner that is appropriate in the circumstances of a particular matter. The power to publish the name of a person declared a vexatious complainant is modelled on the arrangements for dealing with vexatious applicants under the *Right to Information Act 2009* and the *Information Privacy Act 2009*, where the Information Commissioner may decide to publish the name of a person declared a vexatious applicant.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

It is not possible to achieve the Bill's purpose of strengthening the measures available to the IA to reduce the submission of frivolous or vexatious complaints without limiting the rights of some persons to take part in public life and to freedom of expression; the limitations are a necessary consequence of the measures.

Limiting the rights to take part in public life and to freedom of expression of persons who repeatedly submit frivolous or vexatious complaints to the IA directly achieves the amendments' purpose of limiting the number of such complaints in the Complaints System.

[16] SDRIC, Committee Report, pp 64-65.

This is because restricting those persons' ability to submit complaints or to refer notices or information to the IA will reduce the number of complainants using the councillor conduct complaints system for improper purposes, which in turn is very likely to reduce the number of improper complaints that the IA is required to assess and action.

The impact on the right to privacy of persons who are declared vexatious complainants is directly related to achieving the Bill's purpose of enhancing the efficiency and effectiveness of the councillor conduct complaints system. As noted above, publishing the names of persons declared vexatious complainants will disincentivise the making of vexatious complaints, and will help deter other persons from making such complaints.

As with other measures implemented by the Bill, implementing these measures will ultimately enhance the efficiency, effectiveness, and responsiveness of the Complaints System.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

A new offence that imposes a penalty on persons who repeatedly submit frivolous or vexatious complaints would be less restrictive on human rights than the proposal to allow the IA to declare a person a vexatious complainant set out in new chapter 5A, part 3, division 8. While a new offence provision would impose a penalty on a vexatious complainant, the person's right to submit complaints to the IA in the future would not be affected, and consequently their rights to participate in public life and right to freedom of expression would not be limited. Additionally, the requirement for the IA to demonstrate to the standard of proof required for an offence would ensure that the offence's penalty was only applied to persons who clearly made a frivolous or vexatious complaint.

However, the creation of a vexatious complainant offence would not effectively achieve the Bill's purpose of reducing the number of frivolous or vexatious complaints in the councillor conduct complaints system.

A vexatious complainant offence would not directly reduce the number of frivolous or vexatious complaints made to the IA except by the general deterrence of the potential imposition of a penalty under an offence provision. Given the submissions made to SDRIC that suggest the existing offence provision at section 150AV of the LGA does not deter persons from making a single frivolous or vexatious complaint to the IA, it is unlikely that a new offence for making repeated frivolous or vexatious complaints would have any additional deterrent effect.[17]

Additionally, the IA has not successfully prosecuted a person for making a vexatious complaint under the existing offence provision at section 150AV of the LGA, citing the high evidential standard required for establishing that a complaint is frivolous or vexatious beyond reasonable

[17] SDRIC, Committee Report, pp 64-65.

doubt as a barrier to prosecution. A vexatious complainant offence would face similar challenges, which would limit its effectiveness as a deterrent.

The power to declare a person a vexatious complainant is considered a more effective measure for reducing the number of frivolous and vexatious complaints entering the Complaints System. It will simultaneously restrict the number of complaints made by persons likely to make frivolous or vexatious complaints, and also operate more effectively as a general deterrent because of the increased chance of the penalty being applied (given it is easier for the IA to make a declaration that a person is a vexatious complainant than to successfully conduct a prosecution to the appropriate evidential standard).

Declaring persons vexatious complainants, but not publishing their name or identifying information would be less impactful to complainants' right to privacy. However, it is likely that this approach would be less effective in deterring persons from submitting vexatious complaints to the IA.

The impact to a complainant's reputation is central to the effectiveness of the vexatious complainant declaration process, which in turn is an important component of the Bill's overall amendments that seek to ensure that the resources of the Complaints System are focused on addressing substantive conduct matters.

Section 150AWA(1) provides that a vexatious complainant declaration may be made for up to four years. The IA may elect to make the declaration for a shorter period if appropriate in the circumstances.

The Bill provides several protections to persons who are subject to vexatious complainant declarations which will help ensure that the power to declare a person a vexatious complainant is exercised appropriately. These protections include a requirement that the IA or their delegate must not make a declaration without providing the person the subject of the declaration the opportunity to make submissions. The Bill also provides for internal and external reviews of vexatious complainant declarations. The Bill amends section 150CO of the Act to provide that where a vexatious complainant declaration was made by a delegate of the IA, the person the subject of the declaration may apply for an internal review of the decision, which may confirm or amend the original decision, or substitute another decision for the declaration.

An applicant for internal review of a vexatious complainant declaration who is dissatisfied with the decision in the review may apply for external review of the decision by the Queensland Civil and Administrative Tribunal.

After a declaration has been made, a person may apply to the IA to shorten the period of the declaration or revoke the declaration (new section 150AWB), or to seek their permission to make a complaint (new section 150AWC). The IA's decisions under these sections will also be subject to internal and external review arrangements.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Reducing the number of frivolous or vexatious complaints submitted to the IA will enhance the overall efficiency and effectiveness of the Complaint System, ensure that the OIA's resources are directed towards substantive conduct matters, and reduce the use of the Complaints System for improper purposes. Because the limitation of complainants' rights to participate in public life and to freedom of expression are mitigated by several safeguards and review mechanisms, the overall benefits of implementing the process outweighs the human rights limitations for the limited number of persons who are declared vexatious complainants.

(f) any other relevant factors

Not applicable.

Measure 6: Information in councillor conduct registers

Section 150DX of the LGA provides that a local government must keep an up-to-date register about certain councillor conduct matters and publish the register on the local government's website. The register must include, among other things, specific details about a decision by the IA to take no further action in relation to councillor conduct (section 150DY of the LGA), and specific particulars for each councillor conduct complaint dismissed by the IA (section 150DZ of the LGA).

The OIA submitted to SDRIC that this process was unduly onerous and its removal from the LGA would generate significant efficiencies.

The Committee Report Recommendation 30 is:

That the Local Government Act 2009 be amended to remove the requirement to record in councillor conduct registers matters that have been dismissed or deemed to require no further action by the Office of the Independent Assessor or Councillor Conduct Tribunal.

The Government supported this recommendation in principle. It should be noted that the Government also supported recommendation 31 that the OIA continue to publish the number of complaints dismissed or deemed to require no further action in its annual report.

To implement SDRIC's recommendation, clause 83 of the Bill omits section 150DX(1)(d) and (e) from the LGA, removing the requirement for local governments to include complaints about the conduct of councillors dismissed by the IA, and decisions to take no further action in relation to the conduct of councillors investigated by the IA in their councillor conduct register.

Clauses 84 and 85 remove sections 150DY(1)(d) and 150DZ respectively from the LGA to make necessary consequential amendments, removing the requirements for a local government's councillor conduct register to include details about a decision to take no further action and particulars about complaints dismissed by the IA.

In addition to implementing Recommendation 30 of the Committee Report, clause 83 expands the application of section 150DX(1)(a) of the LGA to require local governments to include orders made about the unsuitable meeting conduct of chairpersons at local government meetings in the local government's councillor conduct register. It also requires local governments to include in their councillor conduct register decisions by the local government not to start, or to discontinue, investigations of suspected conduct breaches of councillors under new section 150AEA.

Clause 84 makes a consequential amendment to section 150DY of the LGA to require that the details prescribed by section 150DY for inclusion in the councillor conduct register are applied to orders made about the unsuitable meeting conduct of chairpersons at local government meetings and decisions by local governments not to start, or to discontinue, an investigation of a matter under new section 150AEA in the LGA.

Clause 84 also includes in section 150DY that a summary of a decision included in a councillor conduct register must not include the name of any person, or information that could reasonably be expected to result in identifying a person, other than the name of the councillor under subsection (2)(b) and (c) of section 150DY.

This proposal limits the right of freedom of expression, specifically in relation to persons' right to seek and receive information.

(a) the nature of the right

The nature of the *right to freedom of expression* is discussed above, under measure 1.

An additional aspect to the right to freedom of expression is that it creates an obligation for government to provide information. The International Covenant on Civil and Political Rights (ICCPR) Human Rights Committee General Comment No. 34 regarding Article 19: Freedoms of opinion and expression, states: 'Parties should make every effort to ensure easy, prompt, effective and practical access to such information.'[18] This obligation is necessary for governments to be transparent and accountable.

Whilst the OIA's annual report addresses dismissed matters and decision to take no further action, the information provided may be less detailed than what is provided in councillor conduct registers. Councillor conduct register entries contain details about individual IA decisions to dismiss or to take no further action, whilst the OIA's annual report typically provides a more general comment on all dismissed matters and decisions to take no further action across a year. The amendments limit the right to freedom of expression of members of the public because their freedom to seek and receive information is limited. This is because it is likely that less detailed information would be available to the public than the information that was previously provided in local governments' councillor conduct registers.

[18] UNHRC, General comment No. 34, Geneva, 11-29 July 2011.

The timing and accessibility of information is also affected as the OIA's annual report is published once a year, while local government councillor conduct registers are required to be continually updated and available for public inspection both online and at the local government's public office. Relying solely on the OIA's annual report to publish the information means there will be a delay from when these decisions are made to when the information is made publicly available. The information will also be less easily accessible if it is only available through one source rather than two.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

This measure imposes a limitation on freedom to seek and receive information in order to enhance the efficiency of the administration of the councillor conduct complaints system. The amendment will ease the administrative burden placed on local governments to record and publish information about decisions by the IA to dismiss or take no further action.

SDRIC noted that the requirement to publish information about councillor conduct matters that the IA has dismissed or about which the IA has elected to take no further action imposes an administrative burden on the OIA and local governments that is not commensurate with the benefits.[19] SDRIC also noted that while information of this kind can be of assistance to members of the public, similar information can be published centrally and on an annual basis by the OIA in its annual report.[20]

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Reducing the amount of information about councillor conduct matters that local governments and the OIA are required to publish simultaneously reduces their administrative burden while also limiting persons' right to seek and receive information. Consequently, the limitation directly helps achieve the Bill's purpose of enhancing the efficiency of the councillor conduct complaint system.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no other reasonably available ways of achieving the intended enhancements to the efficiency of the Complaint System while also retaining the current level of reporting on matters that have been dismissed or otherwise discontinued by the IA.

The details that will be no longer be available in councillor conduct registers are of limited value to the public, given that they relate to matters that have been dismissed or otherwise discontinued, and consequently the limitation on the right to seek and receive information is

[19] SDRIC, Committee Report, p 71.
[20] Ibid.

minor. Because the limitation on human rights is quite minor, it is not possible to implement even less restrictive measures that achieve the Bill's purpose.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

This amendment fairly balances the limitation on freedom to seek and receive information with the benefits of a more efficient complaints system. The resulting benefit to the councillor conduct system and the positive effects this would produce outweigh the minor limitation imposed on persons' right to seek and receive information.

(f) any other relevant factors

Not applicable.

Measure 7: Conduct of the chairperson in a local government meeting

The LGA does not currently provide for the unsuitable meeting conduct of a chairperson. It is considered that because a person is carrying out a statutory function when chairing a meeting, any allegations about a chairperson carrying out that role dishonestly or with bias could amount to misconduct.

Clause 40 inserts new section 150IA into the LGA to establish a process for councillors to deal with unsuitable meeting conduct by the chairperson of a local government meeting. Councillors may by resolution decide whether the conduct of the chairperson is unsuitable meeting conduct and make an order reprimanding the chairperson for the conduct. If minutes are not required for the meeting, details of the order must be recorded in another way prescribed by regulation. Further, councillor conduct registers must include a decision by a local government to make an order against the chairperson.

The amendments may limit the right of a chairperson to fair hearing.

(a) the nature of the right

The nature of the *right to a fair hearing* is discussed above under measure 2.

This proposal limits the chairperson's right to a fair hearing by replacing the IA as the adjudicator of a chairperson's meeting conduct, with those councillors present at the meeting.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of this amendment is to allow potential unsuitable meeting conduct of a chairperson to be dealt with in a local government meeting so the conduct is resolved quickly and efficiently, with the ultimate purpose of enhancing the efficiency of the councillor conduct complaints system. Currently, section 150I of the LGA provides that unsuitable meeting conduct of a councillor in a local government meeting may be dealt with by the chairperson of

the meeting. This amendment establishes an equivalent arrangement for dealing with the unsuitable meeting conduct of a chairperson.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments will streamline the process for dealing with unsuitable meeting conduct by chairpersons in local government meetings. The limitation of a chairperson's right to a fair hearing is a direct consequence of implementing a more efficient arrangement for dealing with unsuitable meeting conduct. The amendments will achieve their purpose in two ways: matters will be dealt with more quickly by councils without the need for referral to a third party, and the overall number of matters that the IA is required to assess and deal with will be reduced.

Replacing the IA as the adjudicator of a chairperson's meeting conduct directly limits the chairperson's right to a fair hearing, but also directly accomplishes the Bill's purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no alternative mechanisms for dealing with unsuitable meeting conduct by a chairperson in a local government meeting that achieve the efficiencies of the approach in the Bill. Referring unsuitable conduct to a third party for adjudication would be a less efficient method of resolving unsuitable meeting conduct when compared to allowing councillors at the local government to deal with the matter.

Given the safeguards in the Bill to minimise the impacts of the amendments on a chairperson's right to a fair hearing, it is unlikely that other potential measures to deal with unsuitable meeting conduct would be less restrictive on the chairperson's rights. A decision about a chairperson's conduct must be made by resolution. As noted above, if minutes are not required for the meeting, details of the order must be recorded in another way prescribed by regulation. Further, councillor conduct registers must include a decision by a local government to make an order against the chairperson. This ensures that decisions about unsuitable meeting conduct are transparent. The amendments were also refined in response to stakeholder feedback on a consultation draft of the Bill.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill's purpose of enhancing the efficiency and effectiveness of the Complaints System will benefit the entire local government sector. Because the limitation of chairperson's right to a fair hearing is only modest, given the safeguards in the Bill, it is considered that the benefit of achieving the Bill's purpose outweighs the limitation of human rights.

(f) any other relevant factors

Not applicable.

Measure 8: Require that all decisions/reasons of the Councillor Conduct Tribunal be published in full

Section 150AS of the LGA requires the CCT to keep a written record of its decisions under section 150AQ about whether a councillor has engaged in misconduct or inappropriate conduct or both; or to take disciplinary action under section 150AR for misconduct or inappropriate conduct or both.

Clause 65 of the Bill amends section 150AS to require the CCT to provide notices to the IA, a councillor who is the subject of a CCT proceeding, the councillor's local government, the complainant (if any), and the chief executive of the department stating the CCT's decision about a matter and the reasons for decision. This expands the current requirements prescribed by section 150AS that the CCT gives a notice that states the decision and 'briefly states' the reasons for a decision, rather than providing the reasons for the decision in full.

The Bill also amends section 150AS to require the CCT to provide a notice stating its decision and reasons for decision for publication on the department's website (a publication notice). A publication notice must not include any of the following:

- the name of the councillor, or information that could reasonably be expected to result in identifying the councillor, unless the councillor agrees or if the CCT decided that the councillor engaged in misconduct, a conduct breach, or both
- if the decision relates to a complaint against the councillor – the name of the person who made the complaint
- the name of any other person
- information that could reasonably be expected to result in identifying a complainant or any other person, or
- information that the CCT considers is not in the public interest to include.

The right to privacy and reputation is limited by the proposals.

(a) the nature of the right

The nature of the *right to privacy and reputation* is discussed above under measure 3.

Requiring the CCT to provide reasons for their decisions in councillor conduct matters may result in more detailed information about councillors and their conduct potentially becoming publicly available, thereby limiting their right to privacy and reputation.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

It was submitted to SDRIC that CCT decisions and the reasons for decision should be published in full, to assist stakeholders to better understand the councillor conduct complaints framework and the standards of behaviour required of councillors.

The Committee Report Recommendation 10 is:

That the Local Government Act 2009 be amended to require publication of Councillor Conduct Tribunal decisions in full, subject to appropriate redactions.

The Government's response supported Recommendation 10.

The purpose of the amendments to section 150AS of the LGA is to implement the Government's policy in relation to Recommendation 10, enhance the transparency of the Complaints System and provide greater guidance to councillors and local governments about the CCT's decision making processes. It is anticipated that greater transparency about how the CCT decides conduct matters will foster greater awareness and capability for councillors and local governments about their conduct obligations, and the Complaints System generally.

Each of these purposes is considered to be compatible with human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a councillor's right to privacy and reputation through the publication of the CCT's reasons for decisions in full directly achieves the amendments' purpose of increasing transparency around how the CCT decides councillor conduct matters. Making reasons for decision available in full will also allow councillors and local governments to understand the factors relevant to conduct decisions, and consequently increase their ability to meet their conduct obligations.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The limitation of the right to privacy and reputation is relatively minor given the range of matters that must not be included in notices containing decisions and reasons for decision that are published. The amendments suppress the names of complainants, other persons, and in some circumstances, councillors who are the subject of an application, information that could be reasonably expected to result in identifying those persons, or information that the CCT considers is not in the public interest. The effect of the amendments is that the privacy and reputation of a councillor are limited only where there has been a finding of misconduct or conduct breach or both, or where the councillor has agreed to publication.

Because of these protections, it is very unlikely that potentially private information published in a notice of decision and reasons for decision will be linked to a specific person, reducing the risk that that person's right to privacy will be infringed.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposals strike a fair balance between potentially limiting the right to privacy and increasing the transparency of CCT decision making about councillor conduct matters. SDRIC supported proposals for the publication of the full decision of the CCT, not only in the interest of transparency and capacity building for councillors but also to provide additional insight into how the legislation is being interpreted and whether further adjustments to the framework are necessary. Given the minor nature of any potential limitation of the right to privacy and reputation, the value for councillors and local governments from the publication of CCT decisions in full outweighs any human rights concerns.

(f) any other relevant factors

Not applicable.

Measure 9: Disciplinary action - public apologies

Clauses 58 and 64 amend sections 150AH and 150AR respectively to provide local governments and the CCT with a discretion to order a councillor who has engaged in a conduct breach or misconduct to make a public apology in the manner determined by the local government or the CCT. This replaces the existing powers of a local government and the CCT to order a councillor to make a public admission that the councillor has engaged in the alleged conduct.

The amendments limit the right to freedom of expression.

(a) the nature of the right

The nature of the *right to freedom of expression* is discussed above, under measure 1.

Expanding the requirement on the subject councillor to not just admit engaging in the conduct but to apologise for it and do so in a way decided by either the local government or the CCT interferes with a person's right to express themselves in a manner of their choosing, thereby limiting their right to freedom of expression.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to stop 'non-apologies' and encourage more meaningful and sincere apologies by councillors who have been found to have engaged in inappropriate conduct (or a conduct breach) or misconduct.

There is a wide range of views about the authenticity and value of apologies offered in a legal setting.[21]

In case law, the NSW Anti-Discrimination Tribunal defined a court-ordered apology as an acknowledgement of 'wrongdoing' that is distinguished from a personal apology which is 'sincere and which is incapable of being achieved by a court order'.[22] Australian law also recognises the significance of apologies where there has been damage to personality or reputation, in a range of actions at statute, equity and at the common law.[23] Further, apologies are very important to many people including complainants. There is some evidence to suggest an ordered apology goes beyond compensation and may be perceived to have psychological value to a person who has been wronged by another. This supports a theory that apology has many meanings, and the value people attribute to each apology is highly circumstantial.[24]

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

A more effective apology is more likely to be made if the defendant is ordered to make one in accordance with the law. It should be noted that several Australian jurisdictions provide that members of local governments may be required to apologise for their conduct in the way decided by the relevant disciplinary entity if they are found to have breached behavioural standards (see *Local Government Act 1993* (NSW) section 440I(2)(d), *Local Government Act 2020* (Vic) section 167(3)(b), *Local Government Act 1999* (SA) section 262C(1)(b), *Local Government Act 1995* (WA) section 5.110(6)(b)(ii) and section 5.117(1)(a)(ii)).

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No alternative has been identified, other than the current requirement for an 'admission'.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

While the legislation cannot completely control the sincerity of an apology, allowing the CCT and local government to determine the manner of the apology will highlight the importance of the apology itself and may contribute to its impact as a deterrent for future conduct.

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[21] Carroll, R. Apologies as a legal remedy, The Sydney Law Review, January 2013, http://classic.austlii.edu.au/au/journals/SydLawRw/2013/12.pdf

[22] Burns v Radio 2UE Sydney Pty Ltd (No 2) [2005] NSWADTAP 69 (6 December 2005)

[23] Australian Law Reform Commission; https://www.alrc.gov.au/publication/serious-invasions-of-privacy-in-the-digital-era-alrc-report-123/12-remedies-and-costs/apology-orders-2/

[24] Carroll, R. Apologies as a legal remedy, The Sydney Law Review, January 2013, http://classic.austlii.edu.au/au/journals/SydLawRw/2013/12.pdf

(f) any other relevant factors

Not applicable.

Measure 10: Participation in a matter where a councillor has a declarable conflict of interest

In relation to prescribed conflicts of interests, the current provisions in the COBA and the LGA clearly state that a councillor must not participate in a decision relating to a matter if the councillor has a prescribed conflict of interest in the matter (section 177H of the COBA and section 150EK of the LGA). In contrast, for declarable conflicts of interests, there is currently no discrete legislative provision that states a councillor must not participate in a decision relating to a matter if the councillor has a declarable conflict of interest in the matter.

Clauses 14 and 92 insert new provisions in the COBA and the LGA respectively (new sections 177MA of the COBA and 150EPA of the LGA) to clarify that a councillor with a declarable conflict of interest must not participate in a decision relating to the matter unless the councillor participates in compliance with a decision under section 177P COBA/section 150ES LGA (Procedure if councillor has declarable conflict of interest) or an approval under section 177S COBA/section 150EV LGA (Minister's approval for councillor to participate or be present to decide matter).

Clauses 19 and 99 of the Bill amend sections 198D of COBA and section 201D of the LGA (Dishonest conduct of councillor or councillor advisor) respectively to include new sections 177MA of the COBA and 150EPA of the LGA (Councillor must not participate in decisions unless authorised) as 'relevant integrity provisions'. Contravention of a relevant integrity provision with intent to dishonestly obtain a benefit for a person or to dishonestly cause detriment to another person is an offence punishable by a fine of up to 200 penalty units or 2 years imprisonment.

Expanding the circumstances in which a person may be imprisoned limits:

- the right to freedom of movement, and
- the right to liberty and security of person

(a) the nature of the right

The *right to freedom of movement* protects the right of people to move freely within Queensland and to enter and leave Queensland. The right to move freely within Queensland means that a person cannot be arbitrarily forced to remain in a particular place. The scope of the right:

- extends only to those who are 'lawfully within Queensland', and
- means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place.

The nature of the *right to liberty and security of person* entitles all persons to liberty of the person, including the right not to be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security of person expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society.

The right is directed at all deprivations of liberty, including imprisonment.

The expansion of the circumstances in sections 198D of the COBA and section 201D of the LGA providing for terms of imprisonment limits councillors' right to freedom of movement and right to liberty and security of person.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The amendments address enforcement issues where complaints about councillors participating in decisions in circumstances where they could reasonably be taken to have declarable conflicts have been unable to progress to investigation, due to the legislative requirement to first establish that a councillor had become aware of a declarable conflict of interest and notified the chief executive officer and/or council.

The intention of expanding defined 'relevant integrity provisions' to include new sections 177MA of COBA and 150EPA of the LGA is to maintain the integrity and transparency of the local government system by providing meaningful penalties that are consistent with those already applying in relation to prescribed conflicts of interest. As outlined above, section 177H of the COBA and section 150EK of the LGA provide that a councillor with a prescribed conflict of interest must not participate in a decision unless under the Minister's approval. These are currently 'relevant integrity provisions' under section 198D of the COBA and section 201D of the LGA. It should also be noted that the other provisions listed as 'relevant integrity provisions' under section 198D of the COBA and section 201D of the LGA include section 177N of the COBA and section 150EQ of the LGA which set out the obligations of councillors with declarable conflicts of interest.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations to be imposed by the Bill on councillors' right to freedom of movement and right to liberty and security of person is intrinsically related to establishing a meaningful penalty for non-compliance with the requirement for councillors not to participate in deciding matters where they have a declarable conflict of interest.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no other reasonably available ways to achieve the Bill's purpose with regard to ensuring compliance with the declarable conflict of interest provisions. As noted above, the amendments ensure consistency with the current relevant integrity provisions for the purposes of section 198D of the COBA and section 201D of the LGA.

Additionally, given the potentially serious consequences of councillors breaching section 177MA of the COBA and 150EPA of the LGA in the circumstances outlined in section 198D of the COBA and 201D of the LGA, it is considered that a period of imprisonment as

punishment for breaches could be appropriate in some circumstances. Less serious penalties for breaching those provisions would limit their effectiveness as a deterrent and would potentially reduce compliance.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Expanding the definition of relevant integrity provision to include section 177MA of the COBA and section 150EPA of the LGA establishes stronger penalties for breaching declarable conflict of interest arrangements, and consequently enhances the likelihood of compliance with those arrangements. The limitations on freedom of movement and/or right to liberty and security of person will only arise after a councillor who has breached the provisions has been successfully prosecuted to the relevant standard of proof and has been sentenced to a period of imprisonment. Because of the very limited circumstances in which councillors' right to freedom of movement and/or right to liberty and security of person could be impacted it is considered that the limitation on rights is outweighed by the importance of the purpose of the changes.

Additionally, the COBA and LGA provide that a fine of up to 200 penalty units could be applied as a penalty for breaching this provision instead, which means that imprisonment will not necessarily be ordered for every substantiated breach of the provisions. This further reduces the circumstances in which a councillor's right to freedom of movement and/or right to liberty and security of person sections 198D of the COBA and section 201D of the LGA would be impacted.

(f) any other relevant factors

Not applicable.

Measure 11: Closed local government meetings

The requirements for local government meetings (including committee meetings) are governed by the *Local Government Regulation 2012* (LGR) chapter 8, part 2 and the *City of Brisbane Regulation 2012* (CoBR) chapter 8, part 2. LGR section 254J and CoBR section 242J allow a local government meeting (or part of a meeting) to be closed to the public if considered necessary to discuss particular matters.

Clauses 27 and 109 amend sections 242J of the CoBR and 254J of the LGR respectively to provide that local governments, or committees, may resolve to close all or part of a meeting from the public to discuss an investigation report given to the council under chapter 5A, part 3, division 5 of the LGA.

Closing a meeting to discuss an investigation report limits community members' right to take part in public life.

(a) the nature of the right

The nature of the *right to take part in public life* is discussed above under measure 1.

The amendments limit individual community members' right to take part in public life by providing that councils can limit their community's access to and understanding of conduct matters that the local government is addressing.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to enable the issues contained in an investigation report to be fully discussed and considered without councillors inadvertently disclosing material that is defamatory or otherwise confidential in nature.

Sections 242J of the CoBR and 254J of the LGR already provide that councils, and committees, can close meetings to the public for prescribed matters that are sensitive, confidential, or otherwise inappropriate to discuss publicly. It is considered that local governments should have flexibility for the discussion of investigation reports equivalent to the existing prescribed matters.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation to be imposed by the Bill on the right to take part in public life is directly linked to ensuring that local governments can properly discuss and consider investigation reports about councillor conduct and is essential to achieving the Bill's purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no alternative methods for achieving the purpose of the amendments. It is likely that if local governments were not able to close their meetings to the public, for some conduct matters it would not be possible for councillors to properly discuss and consider investigation reports without inadvertently making public some matters that should not be made public. Because it is not possible to exhaustively prescribe the circumstances where this could occur, it is considered that the only adequate legislative arrangement is to provide local governments a discretion to close a meeting, or part of a meeting, to consider an investigation report.

Several measures safeguard the right to take part in public life. Local governments and committees must not make a resolution about a conduct matter in a closed meeting (refer current sections 242J(6) of the CoBR and 254J(6) of the LGR). Additionally, new section 150AGA requires local governments to make investigation reports publicly available subject to appropriate redactions, which allows the community to engage with local governments' administration of councillor conduct, albeit without obtaining access to information that should not be made publicly available.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Clauses 27 and 109 impose a minor limitation on the right to take part in public life while significantly enhancing local governments' ability to have open and robust discussions about investigation reports. Because local governments are required to decide conduct breach matters under current section 150AG, it is essential to the administration of the Complaints System to ensure there is full and proper consideration of investigations. For this reason, the importance of the purpose of the Bill outweighs the minor limitation on the right to take part in public life.

(f) any other relevant factors

Not applicable.

Measure 12: Vacancy of office – Independent Assessor and Councillor Conduct Tribunal member

Section 150DC of the LGA currently provides the circumstances in which the office of the IA can become vacant, providing at section 150DC(c) that their office may become vacant if they are removed from office by the Governor in Council for misbehaviour or physical or mental incapacity.

Clauses 72 omits from sections 150DC(c) the grounds of 'misbehaviour or physical or mental incapacity' and instead provides that the grounds for removal are that the person is mentally or physically incapable of satisfactorily performing the IA's functions or has performed the functions incompetently or inefficiently. Under current section 150CW the IA is not qualified to hold the office of the IA if the person is guilty of misconduct of a type that could warrant dismissal from the public service if the IA were an officer of the public service.

Section 150DR of the LGA currently provides the circumstances in which the office of a member of the CCT can become vacant, providing at section 150DR(c) that their office may become vacant if they are removed from office by the Governor in Council for misbehaviour or physical or mental incapacity.

Clause 79 omits from section 150DR the grounds of 'misbehaviour or physical or mental incapacity' and provides that the grounds for removal are that the CCT member is mentally or physically incapable of satisfactorily performing their functions; or has performed their functions carelessly, incompetently or inefficiently or has engaged in conduct that would result in dismissal from the public service if the member were a public service officer.

The amendments limit the right to take part in public life and property rights.

(a) the nature of the right

The nature of the *right to take part in public life* and *property rights* are discussed above under measures 1 and 4, respectively.

Expanding the circumstances when the IA and members of the CCT can be removed from office limits their right to take part in public life.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Expanding the conditions under which the IA or a member of the CCT could be removed from office helps ensure that they perform their functions properly, which in turn enhances the performance and integrity of the Complaints System and the local government sector more broadly.

Many jurisdictions in Queensland provide for termination or vacation from office where duties are performed carelessly, incompetently or inefficiently, for example, members of the Mental Health Review Tribunal under the *Mental Health Act 2016* and various offices under the *Queensland Civil and Administrative Tribunal Act 2009*, such as senior and ordinary members of QCAT and QCAT adjudicators. For greater consistency with other Queensland jurisdictions, the Bill amends the vacancy of office provisions for CCT members and the IA in this regard.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting the IA's and CCT's member's right to take part in public life and property rights through a loss of office and associated remuneration is essential for achieving the Bill's purpose of ensuring appropriate performance of those parties' functions in a way that is aligned with the vacancy of office provisions that are also in place for comparable entities.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no alternative methods of expanding the conditions for removing the IA or a member of the CCT from office.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Ensuring that the IA and members of the CCT discharge their functions appropriately and efficiently outweighs the limitation on their right to take part in public life and property rights. The expanded standards that the IA and members of the CCT will be required to meet do not impose unreasonably high standards for the discharge of their functions, and the IA and members of the CCT will be able to meet the expanded standards by fulfilling their responsibilities appropriately.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Bill is compatible with human rights under the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

STEVEN MILES MP
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