

Local Government (Empowering Councils) and Other Legislation Amendment Bill 2025

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* (HR Act), I, Ann Leahy MP, Minister for Local Government and Water and Minister for Fire, Disaster Recovery and Volunteers, make this statement of compatibility with respect to the Local Government (Empowering Councils) and Other Legislation Amendment Bill 2025 (the Bill).

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

Overview of the Bill

The Bill delivers on the Queensland Government's commitment to re-empower local governments by reducing red tape and giving local governments the resources and legislative framework they need to deliver for their communities. It represents a focussed suite of amendments aimed at addressing priority issues identified by the local government sector.

The objectives of the Bill are to:

- empower councils
- empower mayors
- improve the councillor conflicts of interest and register of interests framework
- reduce unnecessary red tape and regulation
- provide certainty to councillors about matters relating to remuneration, leaves of absence, vacation of office, and eligibility
- promote good governance and decision-making
- enhance safeguards for local government election candidates and participants, and
- make various minor, administrative and/or technical amendments.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)

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)
- freedom of association (section 22 of the HR Act)
- taking part in public life (section 23 of the HR Act)
- property rights (section 24 of the HR Act)
- privacy and reputation (section 25 of the HR Act), and
- right to liberty and security (section 29 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 of the HR Act)

Measure 1: Requiring information to be included in councillor conduct registers

The Bill ensures that the name of a councillor who engages in unsuitable meeting conduct is included in the councillor conduct register.

Section 150DX of the *Local Government Act 2009* (LGA) requires local governments to keep an up-to-date register about certain councillor conduct matters (a ‘councillor conduct register’). Section 150DY of the LGA provides for the decisions and related details that must be included in a councillor conduct register, including:

- a summary of the decision and the reasons for the decision
- the name of the councillor about whom the decision was made, and
- the date of the decision.

However, currently the name of the councillor whose conduct is the subject of the decision may only be included:

- if the local government or councillor conduct tribunal decided the councillor engaged in a conduct breach or misconduct, or
- the councillor agrees to the councillor’s name being included.

Clause 61 amends section 150DY(3) of the LGA (Content of register—decisions) to provide that if a decision relates to an order made against a councillor (including the chairperson) for unsuitable meeting conduct, the councillor’s name is to be included in the local government’s councillor conduct register. This aligns with the original intent of the provision to include relevant details about all findings of unsuitable meeting conduct in councillor conduct registers.

(a) the nature of the right

The *right to privacy and reputation* (section 25 of the HR Act) 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. In this context, a limitation will be arbitrary if the limitation is not proportionate to the aim.

The amendments capture additional requirements about including in the councillor conduct register the name of a councillor who engages in unsuitable meeting conduct. This limits the

right to privacy and reputation of any councillor consequently included in the register because information about the councillor, including their name and decisions about their conduct, will be made public.

In addition to information about the councillor being made public, the published information could negatively impact the councillor's reputation because the information relates to negative behaviour, i.e., unsuitable meeting conduct.

The *right to freedom of expression* (section 21 of the HR Act) 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.

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. The right includes a concept of freedom of expression as a political right, aimed at integrating the individual in society with the focus on the political, collectivising function.

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 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'. This obligation is necessary for governments to be transparent and accountable.

The freedom of the public to seek and receive information is supported by providing information in councillor conduct registers regarding the conduct of elected local government officials and decisions made about the conduct, thereby promoting the right to freedom of expression for members of the public.

(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 amendments is to ensure councillor conduct registers include the relevant details about all findings of unsuitable meeting conduct.

More generally, the purpose of publishing a councillor conduct register is to:

- provide transparency and accountability regarding the councillor conduct framework and decisions regarding specific councillor conduct, and
- promote the right to freedom of expression for members of the public by providing information to members of the public regarding the conduct of elected local government officials and decisions made about the conduct, as discussed under section (a), above.

This purpose is consistent with a free and democratic society based on human dignity, equality and freedom because it increases government transparency and accountability and promotes a human right by providing members of the public with information about the conduct of elected local government officials.

- (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 purpose of the limitation directly relates to transparency and accountability of decisions regarding specific cases of councillor conduct. Providing this transparency and accountability necessarily requires information about councillors and decisions about their conduct to be made public, which consequently limits the right to privacy and reputation for affected councillors.

- (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 purpose of the amendments, noting:

- the limitation on human rights is a direct result of the purpose of the limitation, and
 - the amendments address decisions and details not currently captured by the councillor conduct register requirements in the LGA.
- (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

On balance, the importance of providing the additional transparency and accountability requirements through the councillor conduct register and promoting the right to freedom of expression for members of the public outweighs the negative impact that the requirements have on the right to privacy and reputation for affected councillors.

The transparency and accountability requirements support a broader system for setting appropriate standards for the behaviour of councillors and making, investigating and determining complaints about councillor conduct in Queensland. The requirements align with the purpose of the LGA, which includes providing for a system of local government in Queensland that is accountable, effective, efficient and sustainable.

In terms of the nature and extent of the limitation on human rights, the extent of the limitation on the right to privacy and reputation of a councillor is mitigated as a councillor has a diminished expectation of privacy as an elected representative and public official. Also, before assuming office, a councillor commits to complying with the local government principles as well as the standards of behaviour set out in the Councillor Code of Conduct.¹

In addition, as noted above, the amendments promote the right to freedom of expression for members of the public.

¹ Section 241, *City of Brisbane Regulation 2012* (Qld) and section 254, *Local Government Regulation 2012* (Qld).

Therefore, the amendments reach an appropriate balance between the importance of the purpose of the amendments and the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

(f) any other relevant factors

Not applicable.

Measure 2: Clarifying an offence applies to frivolous complaints dismissed on preliminary assessment

Clause 141, schedule 1, part 1, amendment 5 under the LGA updates an offence provision in the LGA to confirm the original intent that a person who, following the assessment of their complaint, is given a notice about making a frivolous complaint can be prosecuted.

Section 150SD(3)(b)(i) of the LGA allows the Independent Assessor, following a preliminary assessment, to dismiss a councillor conduct complaint if satisfied the complaint is frivolous.

A person who makes a complaint that is dismissed as frivolous must be given a notice under section 150SE(4)(e) of the LGA. The notice must advise the person that if they make the same or substantially the same complaint to the Independent Assessor again, they commit an offence punishable by a fine of up to 85 penalty units. A *Note* refers the reader to section 150AU of the LGA for the offence.

Inadvertently, the offence provision under section 150AU of the LGA was not consequentially amended in the *Local Government (Councillor Conduct) and Other Legislation Amendment Act 2023* when the preliminary assessment process was introduced. This means section 150AU continues to apply only to a person given a notice under section 150Z of the LGA in relation to the dismissal of a frivolous complaint following the investigation of a councillor's conduct by the Independent Assessor, not following a preliminary assessment by the Independent Assessor.

Therefore, clause 141, schedule 1, part 1, amendment 5 under the LGA inserts a reference to section 150SE of the LGA in section 150AU(1) (Frivolous complaint) to clarify that the section and related offence (maximum 85 penalty units) also applies to a person given a notice under section 150SE following the dismissal of a frivolous complaint by the Independent Assessor on the completion of a preliminary assessment. For the offence, a person must not make the same, or substantially the same, complaint to the Independent Assessor again, unless the person has a reasonable excuse. This offence was always intended to apply in this instance as evidenced by section 150SE(4)(e) which mentions the offence and refers the reader to section 150AU for the offence.

The amendments mean the maximum penalty of 85 penalty units for repeated frivolous complaints will be the same regardless of whether the original frivolous complaint was dismissed following the preliminary assessment process or the investigation process. This maximum penalty is equivalent to the maximum monetary penalty in the *Crime and Corruption Act 2001*.

(a) the nature of the right

The *right to property* (section 24 of the HR Act) protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property. Property includes real and personal property (e.g., land, chattels and money), including contractual rights, leases, shares, patents and debts. Property may include statutory rights and non-traditional or informal rights (e.g., licence to enter or occupy land and the right to enjoy uninterrupted possession of land) and other economic interests.

As noted under Measure 1, in a human rights context, ‘arbitrary’ refers to conduct that is capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim.

The term ‘deprived’ is not defined by the HR Act. However, the term ‘deprived’ in the context of property rights is considered to include the substantial restriction on a person’s use or enjoyment of their property.

The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality, and freedom.

It could be argued that the amendments expand the current offence in section 150AU by including a reference to section 150SE. Penalty provisions may impact on a person’s property rights by depriving a person of property (money) by requiring them to pay a penalty for contraventions of legislation. In this instance, the right to property is limited by requiring a person (a person who repeats a frivolous complaint after being given a notice under section 150SE) to pay a penalty for a contravention of section 150AU, as amended by the Bill.

The amendments will also limit property rights if failure to pay a fine results in enforcement action being taken by the registrar of the State Penalty Enforcement Registry, including seizure of a person’s property.

(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 clarify that an offence applies for repeated frivolous complaints following the dismissal of a frivolous complaint on the completion of the Independent Assessor’s preliminary assessment. This ensures the original policy intent is applied, noting the original policy intent is evident from current section 150SE(4)(e) and was approved by the Legislative Assembly in November 2023.

The purpose is consistent with a free and democratic society based on human dignity, equality and freedom because it aims to deter vexatious complainants from misusing the councillor conduct framework, in view of the possible reputational damage to councillors.

In addition, as any penalties will be issued for a breach of a particular provision (i.e., section 150AU), the penalties are not arbitrary and are therefore consistent with a free and democratic society based on human dignity, equality, and freedom.

(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 limitations imposed by the amendments directly help to achieve the purpose. By ensuring the penalty applies, people will be deterred from making repeated frivolous complaints, thereby safeguarding the councillor conduct framework from being misused and causing unreasonable reputational damage to councillors.

(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 or reasonably available ways to achieve the purpose of the amendments, noting:

- the amendments are necessary to ensure the original policy intent is applied
 - the maximum penalty of 85 penalty units for repeated frivolous complaints will be the same regardless of whether the original frivolous complaint was dismissed following the preliminary assessment process or investigation process, and
 - the maximum penalty of 85 penalty units is equivalent to the maximum monetary penalty in the *Crime and Corruption Act 2001*.
- (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 importance of ensuring the original policy intent applies and deterring vexatious complainants from misusing the councillor conduct framework and causing unreasonable reputational damage to councillors, outweighs the negative impact that the requirements have on the right to property.

In terms of the nature and extent of the limitation, as noted above, the limitation on property rights is not arbitrary because the penalty applies only under a breach of a particular provision. Also, individuals to whom the offence applies are first advised under section 150SE that if they again make the same or substantially the same complaint to the Independent Assessor, they commit an offence punishable by a fine of up to 85 penalty units. This means individuals can decide whether to make another complaint knowing they may be subject to a financial penalty if the complaint is substantially the same as a previous frivolous complaint.

In addition, as noted above, the offence provision safeguards the councillor conduct framework from being misused, thereby supporting a system designed to hold councillors and mayors accountable to the communities they serve. The councillor conduct framework itself aligns with the purpose of the LGA, which includes providing for a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Therefore, the amendments reach an appropriate balance between the importance of the purpose of the amendments and the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

(f) any other relevant factors

The *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* (2018 Act) inserted section 150AU into the LGA, creating a new offence applying to frivolous complaints with a maximum penalty of 85 penalty units (relevant to section 150Z and complaints dismissed following the investigation of a councillor's conduct by the Independent Assessor). The Explanatory Notes to the Bill considered fundamental legislative principles in terms of sufficient regard to rights and liberties of individuals and the proportionality of penalties.²

The Explanatory Notes noted the maximum penalty of 85 penalty units was equivalent to the maximum monetary penalties under the *Crime and Corruption Act 2001*. The Explanatory Notes noted the penalty was considered proportionate and reasonable to deter these kinds of complaints in view of the possible reputational damage to a councillor by a frivolous complaint.

Measure 3: Removing unnecessary red tape and regulation – removing conduct breaches

The Bill simplifies the councillor conduct framework by removing the process for managing conduct breaches (refer to clauses 72 to 106).

The councillor conduct framework under chapter 5A of the LGA deals with the conduct of councillors, including unsuitable meeting conduct, suspected conduct breaches, suspected misconduct, and suspected corrupt conduct. The system applies to all local governments in Queensland, including Brisbane City Council (BCC).

Under the councillor conduct framework, the Independent Assessor undertakes a preliminary assessment of all complaints, notices and information about councillor conduct before deciding how the conduct should be dealt with. Following a preliminary assessment, the Independent Assessor may refer a suspected conduct breach of a councillor to the relevant local government to deal with.

A conduct breach, under section 150K of the LGA, involves a councillor contravening a behavioural standard set out in the 'Code of Conduct for Councillors in Queensland', or a policy, procedure or resolution of the local government. A conduct breach does not include conduct that is unsuitable meeting conduct, misconduct or corrupt conduct. In general, the definition 'conduct breach' means that most allegations are relatively minor in nature and primarily involve how councillors interact with others and how they communicate on local government issues.

To address feedback from the local government sector, the Bill amends chapter 5A of the LGA (Councillor conduct) to remove 'conduct breaches' from the councillor conduct framework. The framework will continue to deal with councillors' unsuitable meeting conduct, misconduct and corrupt conduct.

² Explanatory Notes, *Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018* (Qld), page 27.

Clause 79 of the Bill also amends the definition of ‘misconduct’ in section 150L of the LGA (What is *misconduct*) to capture some of the more serious ‘conduct breach’ matters, i.e., conduct that:

- is or involves repeated unreasonable behaviour directed at another person that causes a risk to the health or safety of the other person
- is or involves harassment of a sexual nature, including, for example, unwelcome behaviour of a sexual nature and making a remark with a sexual connotation, or
- contravenes an order of the chairperson of a local government meeting for the councillor to leave and stay away from the place at which the meeting is being held.

(a) the nature of the right

The *right to freedom of expression* is discussed under Measure 1, section (a) ‘the nature of the right’.

Removing ‘conduct breaches’ from the councillor conduct framework will limit the right to freedom of expression for individuals. This is because individuals will not be able to use the framework to make complaints about a councillor’s behaviour currently within the scope of a conduct breach, thereby limiting an individual’s ability to express their opinion regarding an elected official’s behaviour and participate democratically with regards to governmental accountability in this way.

The *right to take part in public life* (section 23 of the HR Act) protects the right and opportunity, without discrimination, of all persons to participate in the conduct of public affairs, directly or through freely chosen representatives, covering all aspects of public administration and the formulation and implementation of policy at all levels of government.

The United Nations Human Rights Committee (UNHRC) 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.

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.

As outlined above, the proposal means individuals will not be able to use the councillor conduct framework to make complaints about a councillor’s potential conduct breach, thereby limiting the right to take part in public life for individuals.

(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 simplify the councillor conduct framework and to empower councillors to confidently do their jobs to the best of their abilities, noting feedback from the local government sector that the conduct breach category:

- is open to misuse on political and personal grounds – with councillors required to determine whether a fellow councillor has breached the code of conduct
- has led to unwarranted reputational harm for councillors
- has significant cost implications for councils, including paying for independent investigations, and
- is a disproportionate way of dealing with lower-level councillor behavioural issues.

In the councillor conduct framework, conduct breaches are considered to be relatively minor when compared to misconduct. By removing conduct breaches and simplifying the councillor conduct framework, it allows the framework to focus on more substantial issues of misconduct which pose greater governance, integrity and accountability concerns and impact on the public's trust in local government.

By empowering councillors to confidently do their jobs, councillors are more able to fulfil their responsibilities under the LGA and the *City of Brisbane Act 2010* (COBA).

This is a proper purpose and consistent with a free and democratic society based on human dignity, equality and freedom because it supports government transparency and accountability and promotes a human right by providing members of the public with information about the conduct of elected local government officials.

- (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 limitation directly achieves its purpose. Removing conduct breaches simplifies the councillor conduct framework (a category is removed from the framework, and the associated processes are no longer required) and councillors are empowered to confidently do their jobs without the risk of reputational harm from potentially weaponised conduct breach complaints.

- (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, reasonably available alternatives.

An important safeguard exists, which is that even though the conduct breach category is proposed to be removed, it is also proposed to capture some of the more serious 'conduct breach' matters as 'misconduct' matters. This means a category and all the associated processes can be removed from the framework while still addressing within the framework the more serious behaviours originally captured under that category.

In addition, there will still be methods for addressing councillor conduct which fits under the current category of conduct breach. For example:

- an individual will still be able to make a complaint directly to a councillor or the local government regarding a councillor's conduct, and the councillor or local government will be able to respond to these complaints as considered appropriate, or
- an individual will still be able to raise their concerns in other ways, for example in social media, or to media outlets.

Furthermore, councillors are elected officials, and if electors are not satisfied with a councillor's conduct, electors have the option of not voting for the councillor if the councillor stands for re-election.

- (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 amendment strikes a fair balance between the benefits gained and the limitation.

Importantly, the limitation on human rights is relatively minor noting the safeguard and other methods for addressing behaviour which is currently considered a conduct breach as discussed above.

On the other hand, by allowing the councillor conduct framework to focus on more serious conduct matters, the ability for the framework to achieve its purpose is strengthened. Local governments will not be required to expend time and resources addressing conduct breaches under the framework and will be able to dedicate more of their resources to deliver their responsibilities under the LGA and the COBA.

At the same time, councillors will be able to do their jobs confidently without the risk of reputational harm arising from weaponised conduct breach complaints, while still being required to fulfil their responsibilities under the LGA and the COBA, uphold the principles of the LGA and the COBA, and adhere to the standards of conduct expected of them.

- (f) any other relevant factors

Not applicable.

Measure 4: Empowering councils – closing Brisbane City Council meetings to discuss appointments

Sections 192 and 193 of the COBA provide that BCC is responsible for the appointment of senior executive employees, with the CEO responsible for the appointment of other council employees.

Clause 15 amends section 192 of the COBA and restores BCC’s power to also appoint ‘senior contract employees’.

The requirements for BCC meetings (including committee meetings) are governed by chapter 8, part 2 of the *City of Brisbane Regulation 2012* (CBR). Section 242J of the CBR allows a council meeting (or part of a meeting) to be closed to the public if considered necessary to discuss particular matters.

Clause 37 makes consequential amendments to section 242J of the CBR (Closed meetings) to provide that BCC, or a committee, may close a meeting to the public to discuss the appointment of a senior contract employee.

Closing council meetings limits human rights, while promoting the right to privacy and reputation of persons affected by the appointment process by ensuring information regarding such persons’ applications is not shared publicly in open council meetings.

(a) the nature of the right

The *right to freedom of expression* is discussed under ‘Measure 1’, section (a) ‘the nature of the right’.

The *right to take part in public life* is discussed under ‘Measure 3’, section (a) ‘the nature of the right’.

The amendments limit the scope of information available to the public about the appointment of the relevant employees and limit the community’s ability to participate in the part of the meeting that is closed.

(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 limitations to be imposed in relation to closed meetings is to ensure that BCC can confidentially manage sensitive information about the appointment of senior contract employees while also ensuring the public is sufficiently aware of the matters being discussed in closed meetings.

The CBR already provides 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 BCC should have the flexibility to close meetings for the discussion of appointments, equivalent to the flexibility they currently have to discuss existing prescribed matters. It should be noted that under existing provisions, BCC or a committee of the council, can close a meeting to discuss the appointment of a senior executive employee or the CEO. Other local governments and committees can close a meeting to discuss the appointment of the CEO. Further, all local governments can close meetings to discuss discipline or dismissal of the CEO while BCC can also close meetings to discuss discipline or dismissal of senior executive employees.

The purpose of the limitation is consistent with a free and democratic society in which the community expects a local government to act with integrity and in the public interest but also to manage sensitive information confidentially and to protect the right to privacy and reputation of those affected by appointment processes.

(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 limitations imposed on the right to take part in public life and the right to freedom of expression will help achieve the purpose of ensuring local governments can manage and consider sensitive information.

Section 242J of the CBR (and section 254J of the *Local Government Regulation 2012* (LGR)) already provide for a balance between transparency and confidentiality by providing clear guidance about when and how a meeting may be closed. Local governments are only permitted to discuss appropriately sensitive matters in closed meetings. Further, a part of a meeting can

be closed to discuss a prescribed matter to ensure that a whole meeting is not closed for all matters to be discussed.

The LGR and the CBR also require that a resolution to close a meeting must state which type of matter from the prescribed list is to be discussed and an overview of what is to be discussed while the meeting is closed, rather than simply stating the nature of the matter to be discussed. This promotes transparency by giving the community a better understanding of the matters discussed by the local government without breaching the confidentiality of the matter.

- (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 purpose of enabling local government to manage sensitive matters confidentially.

The limitations on human rights could be lessened by removing the ability to close a meeting or part of a meeting and requiring all meetings to be open to the public. However, this would not reflect that in a range of circumstances it is necessary and appropriate for BCC to confidentially discuss certain matters.

- (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

On balance, taking into account the nature and extent of the limitation on the right to take part in public life and the right to freedom of expression, the purpose of enabling BCC to manage sensitive matters confidentially outweighs the negative impact of the limitations. The amendments are consistent with, and complement, the current framework for closed meetings under the legislation and promote the right to privacy and reputation of those affected by appointment processes.

- (f) any other relevant factors

Not applicable.

Measure 5: Conflicts of interest amendments – compliance measures

The Bill includes a range of compliance measures as part of a revised conflicts of interest framework.

The Bill replaces the current conflicts of interest framework in the COBA and the LGA with the framework that was in place from 2013 to early 2018, with modifications to provide additional conflicts of interest exceptions and to clarify penalties for breaches. The current concepts of ‘prescribed conflicts of interest’ and ‘declarable conflicts of interest’ are replaced by ‘material personal interests’ and ‘conflicts of interest’ respectively. A number of the amendments raise human rights considerations.

Under section 26 of the *Local Government Electoral Act 2011* (LGEA), a person may only be nominated as a candidate, or for appointment, as a councillor if the person is qualified to be a councillor under the LGA or the COBA.

The LGA and the COBA provide that some offences are disqualifying offences for a councillor, including ‘integrity offences’.

If convicted of an integrity offence, a person is disqualified from being a councillor for a period of four years (section 153 and schedule 1 of both the LGA and the COBA).

A councillor is automatically suspended if charged with an integrity offence (section 175K of the LGA and section 186B of the COBA).

The Bill provides for new offences and changes to the definition of ‘misconduct’ as a consequence of the proposed conflicts of interest amendments.

New section 177F (Councillor’s material personal interest at a meeting) of the COBA and new section 150EI (Councillor’s material personal interest at a meeting) of the LGA (refer to clauses 24 and 107) provide for a councillor’s material personal interest at a meeting.

A councillor must inform the meeting of the councillor’s material personal interest in a matter and leave the place where the meeting is being held while the matter is discussed and voted on.

The maximum penalty that applies if the councillor contravenes these requirements with an intention to gain a benefit or avoid a loss, for the councillor or someone else, is 200 penalty units or 2 years imprisonment. Otherwise, contravention of the provisions is misconduct (refer to clause 79 for the amended definition of ‘misconduct’).

New sections 177F(3) of the COBA and 150EI(3) of the LGA are listed as integrity offences in schedule 1, part 2 of the COBA and the LGA (refer to clauses 28 and 111).

New section 177G (Councillor’s conflict of interest at a meeting) of the COBA and new section 150EJ (Councillor’s conflict of interest at a meeting) of the LGA (clauses 24 and 107) provide for conflicts of interest at a meeting. A councillor must deal with a real or perceived conflict in a transparent and accountable way. Contravention of new section 177G of the COBA and new section 150EJ of the LGA is misconduct (refer to clause 79 for the amended definition of ‘misconduct’). There are no integrity offences arising from contravention of these requirements.

New sections 177F(7) and 177G(6) of the COBA and new sections 150EI(7) and 150EJ(6) of the LGA (clauses 24 and 107) provide that once a councillor has informed the meeting of a material personal interest or conflict of interest, information related to these interests must be recorded in the minutes of the meeting which are made publicly available, or, if minutes are not required for the meeting, in another way prescribed by regulation. The information required to be recorded includes the name of the councillor and the nature of the interest.

The compliance measures outlined above engage the following human rights:

- right to property
- freedom of movement
- right to liberty and security of person
- freedom of association
- taking part in public life, and
- privacy and reputation.

a) the nature of the right

The *right to property* is discussed under Measure 2, section (a) ‘the nature of the right’.

Penalty provisions may impact on a person’s property rights by depriving a person of property (money) in requiring them to pay a penalty for contraventions of legislation. In this instance, the right to property is limited by requiring a person to pay a penalty for a contravention of section 177F of the COBA or section 150EI of the LGA (Councillor’s material personal interest at a meeting). The amendments will also limit property rights if failure to pay a fine results in enforcement action being taken by the registrar of the State Penalties Enforcement Registry, including seizure of a person’s property.

Further, disqualification as a councillor would result in loss of remuneration as a councillor, which would deprive a person of property in the form of lost remuneration.

Providing for circumstances in which a person may be imprisoned limits:

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

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.

Amendments providing for terms of imprisonment limit councillors’ right to freedom of movement and right to liberty and security of person.

The *right to freedom of association* protects the rights of individuals to freely associate with others. This includes the right to join together with others to formally pursue a common interest, such as political groups, non-government organisations and trade unions. It includes the freedom to choose between existing organisations or to form new ones.

By protecting the right for individuals to join together as a political group, the right to freedom of association is fundamental to a free and democratic society. In addition, the right to freedom of association is closely linked to the right to freedom of expression and the right to take part in public life.

The ‘integrity offence’ amendments (clauses 28 and 111) resulting in the suspension of charged councillors, and disqualifying convicted persons from being councillors for four years, limit the right to freedom of association by also precluding an offender from being a member of a group of candidates under the LGEA, from being endorsed by a political party as a candidate in a local government election and from being a councillor for a particular local government area.

The *right to take part in public life* is discussed under Measure 3, section (a) ‘the nature of the right’.

The amendments disqualifying persons from being councillors for four years, and suspending them automatically when charged, limit the right to take part in public life by limiting the rights of offenders to be elected or to stay in public office and the rights of community members to vote for them.

The *right to privacy and reputation* is discussed under Measure 1, section (a) ‘the nature of the right’.

The amendments requiring a councillor to inform a meeting of the councillor’s personal interests in a matter limit the right to privacy and reputation for councillors and any associate or related party of the councillor who is connected with the personal interest, because the councillor will be required to share information about the interest in a public meeting.

Similarly, the requirement to record information about an interest in meeting minutes limits the right to privacy and reputation for the same individuals because information about those individuals will be recorded and made publicly available.

(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 limitations to be imposed by the amendments is to improve the current framework by appropriately placing the onus on councillors to consider whether they have a conflict of interest in a matter. The amendments allow councillors to manage any conflicts in the public interest, backed by significant penalties for those who fail to comply with the framework. Reinstating the previous conflicts of interest framework, with modifications, will have the following benefits and support effective, transparent and accountable decision making:

- the framework focuses on council meetings where actual, binding decisions are being made by the council
- removal of the requirement for non-conflicted councillors to vote on whether to allow a conflicted councillor to participate in decision-making, which was open to political manipulation where councillors could be voted out based on their political views rather than the public interest
- removal of the concept of a person ‘who has a close personal relationship’ with a councillor being a ‘related party’ – this provision lacked specificity and in smaller communities could lead to councillors having a conflict of interest in nearly every decision, and

- removal of the duty on a councillor to report a belief or suspicion of another councillor's conflict, which was open to misuse for political reasons and created fears for possible reprisals.

The Bill's compliance provisions are essential elements of the framework, acting as an effective deterrent to non-compliance.

- (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 limitations on human rights imposed by the Bill's compliance provisions will achieve their purpose and the purpose of the framework generally by providing for an appropriate level of deterrence. The limitations to be imposed by the Bill on councillors' right to freedom of movement and right to liberty and security of person are intrinsically related to maintaining a meaningful penalty for non-compliance with the conflicts of interest framework. The limitations on the right to privacy and reputation are also an essential element to maintaining transparency.

- (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 purpose. The amendments include removing current conflicts of interest offences from the list of 'relevant integrity provisions' in sections 201D (Dishonest conduct of councillor or councillor advisor) of the LGA (clause 108) and section 198D of the COBA (Dishonest conduct of councillor or councillor advisor) (clause 25). The element of dishonesty is no longer required to be established for an offence to be prosecuted.

While this approach may be more restrictive, by lowering the threshold for prosecution, it should be noted that the level of the penalty (200 penalty units or imprisonment for 2 years) where an offence is established is the same under the current scheme and the amended scheme. The current scheme also includes penalties under section 177J(2) of the COBA (Dealing with prescribed conflict of interest at a meeting) and section 150EM(2) of the LGA (Dealing with prescribed conflict of interest at a meeting) of 200 penalty units or 2 years imprisonment.

Less serious penalties for breaching the requirements would limit their effectiveness as a deterrent and would potentially reduce compliance.

Further, current integrity offences in relation to taking retaliatory action (section 177V of the COBA and section 150EY of the LGA) are repealed, meaning the scope of suspension and disqualification consequences is reduced by the amendments. Only the offences arising from contravention of the material personal interest requirements (clauses 28 and 111) are listed as an integrity offence. It should be noted that current section 177J(2) of the COBA (Dealing with prescribed conflict of interest at a meeting) and current section 150EM(2) of the LGA (Dealing with prescribed conflict of interest at a meeting) are listed as integrity offences in schedule 1, part 2 of the COBA and the LGA respectively.

Lowering the penalties or removing the imprisonment or disqualification elements of the amendments would reduce the deterrent effect. Measures achieving the purpose but to a lesser extent do not qualify as a true alternative. Safeguards include the tailoring of the provisions to retain exceptions requested by stakeholders in recent years (refer to clauses 24 and 107, sections 177A of the COBA and 150ED of the LGA). These include the development of whole of council documents including budgets and operational plans. It should also be noted that a councillor has a material personal interest in relation to an associate only if the councillor knows, or ought reasonably to know, about the associate's involvement in the matter (refer to clauses 24 and 107, sections 177B(2) of the COBA and section 150EE(2) of the LGA).

- (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

It is considered that the compliance provisions are closely linked with the overall purpose of the conflicts of interest framework.

The limitations on freedom of movement and 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 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, a fine of up to 200 penalty units could be applied 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 or right to liberty and security of person would be impacted.

On balance, taking into account the nature and extent of the limitations on the rights listed above, the importance of ensuring that the provisions cannot be circumvented outweighs the negative impact the amendments will have on the relevant rights.

- (f) any other relevant factors

Not applicable.

Measure 6: Register of interests – published extracts

The Bill refines the register of interests framework in the CBR and the LGR to align with the new conflicts of interest framework for councillors under the COBA and the LGA.

Chapter 8, part 5 of the CBR and the LGR are about registers of interests for relevant persons, including councillors and persons related to councillors.

A register of interests must contain the financial and non-financial particulars mentioned in schedule 3 of the CBR or schedule 5 of the LGR for an interest held by the person. Local governments must make a copy of each councillor's register available for inspection at the local government's public office.

In addition, local governments must make an extract of each councillor's register of interests available for inspection on the local government's website. An extract must show the particulars mentioned in schedule 3 of the CBR or schedule 5 of the LGR. The current reporting term for a councillor (or a person related to a councillor) is the 'relevant term' for the councillor.

The Bill amends schedule 3 of the CBR (Financial and non-financial particulars for registers of interests) and schedule 5 of the LGR (Financial and non-financial particulars for registers of interests) to remove the concept of 'relevant term' and instead provide that the reporting term for a councillor (or a person related to a councillor) is the councillor's current term, rather than the councillor's current term and previous term (refer to clause 45 and clause 130).

Complementary amendments are also made to replace schedule 3A of the CBR and schedule 5A of the LGR to consolidate the interests that councillors must show in an extract of their registers of interests, as well as to adjust the period of time that those interests must be shown (refer to clause 46 and clause 131).

The overall intent is to provide that the reporting term for a councillor or a person related to a councillor for a councillor's register of interests, is the councillor's current term. In relation to an extract of a councillor's register of interests, particulars about gifts, donations and sponsored travel or accommodation benefits only need to be shown for the financial year in which the gift or sponsored travel or accommodation benefit is received, or the donation is made. All other interests under schedule 3 of the CBR and schedule 5 of the LGR that must be shown in an extract will continue to be shown for the period the councillor holds the interest.

(a) the nature of the right

The *right to freedom of expression* is discussed under Measure 1, section (a) 'the nature of the right'.

The freedom of the public to seek and receive information is an important aspect of the right to freedom of expression. It could be argued that curtailing the information published in the extract of a councillor's register of interests limits the public's right to access information. However, it is considered that a councillor's existing *right to privacy and reputation* is promoted by the amendments, as the amount of information to be published is modified and not increased.

(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 publishing an extract of each councillor's register of interests is to provide transparency and accountability and promote the right to freedom of expression for members of the public by providing information. The purpose of refining these requirements is to complement the new requirements about conflicts of interests. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom because it maintains transparency and accountability in line with the scope of the new requirements.

- (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 purpose of the limitation directly relates to providing for the appropriate level of transparency and accountability of information about a councillor's interests. The limitation on the public's ability to access information helps achieve the purpose of ensuring that the requirements for registers of interests complement and are consistent with the new conflicts of interest framework.

- (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 purpose. Maintaining the current requirements for the published extract would be inconsistent with the amendments to the conflicts of interest framework. Providing for less information to be published would reduce transparency and accountability.

- (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

On balance, the importance of ensuring consistency between the conflicts of interest framework and the requirements for registers of interests outweighs the impact of reducing the public's access to information about a councillor's interests. There are also no changes to the accountability and transparency requirements in section 295 of the LGR and section 273 of the CBR that a local government must make a copy of the register of interests of each councillor available for inspection at the local government's public office.

- (f) any other relevant factors

Not applicable.

Measure 7: Local government access to essential State-owned quarry materials

The Bill also includes amendments to facilitate local government access to essential State-owned quarry material.

Clause 59 amends section 143 of the LGA (Entry by a local government worker, with reasonable entry notice, to take materials) to provide for the period when a local government worker gives a reasonable entry notice to the owner and the occupier of relevant land in order to enter the land, search for the required materials, and remove the materials from the land.

A reasonable entry notice is to be given to the owner and the occupier within a reasonable period before the land is to be entered. The period to give the notice under current section 138AA of the LGA (seven days) no longer applies.

- (a) the nature of the right

The *right to property* is discussed under Measure 2, section (a) 'the nature of the right'.

As noted under Measure 2 the term 'deprived' is not defined by the HR Act. However, in the context of property rights it is considered to include the substantial restriction on a person's use or enjoyment of their property.

The *right to privacy* is discussed under Measure 1, section (a) ‘the nature of the right’.

Arbitrariness is relevant to both the right to property and the right to privacy and 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. In this context, a limitation will be arbitrary if the limitation is not proportionate to the aim.

Changing, and potentially reducing, the timeframe applicable to giving a reasonable entry notice limits the owner’s or occupier’s right to the use or enjoyment of their property and their 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 limitation to be imposed by the Bill is to better facilitate local governments’ access to quarry material. The purpose is consistent with a free and democratic society based on human dignity, equality and freedom as it is not establishing new rights of entry but clarifies and improves the operation of the existing provisions giving rights of entry.

It is also important to note that local governments can rely on section 143 of the LGA only if the requirements outlined in the relevant sections are met, in addition to giving a reasonable entry notice, namely that the local government:

- requires the materials to perform its responsibilities
- has no other reasonably practicable way of obtaining the materials, and
- pays compensation to the relevant person for the loss of the value of the materials removed.

- (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 limitation helps to achieve the purpose by changing the timeframe for a reasonable entry notice to be given from seven days to a reasonable time before the property is proposed to be entered.

- (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 purpose. Replacing the seven-day requirement with a ‘reasonable time’ requirement may potentially be less restrictive, as in some circumstances, a period longer than seven days may be considered reasonable.

Where a shorter period is reasonable, for example due to emergency situations, the other existing requirements of section 143 and section 147 (Compensation for damage or loss caused) of the LGA provide sufficient safeguards for the rights of the owner or occupier.

- (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 do not confer a new right of entry but only change the notice period applicable. A test of reasonableness applies, which may mean that in some circumstances the period is longer than the current seven-day period and in some circumstances it is shorter. This is less arbitrary than the current seven-day period which may not be appropriate in all circumstances.

It should be noted that State-owned quarry material is the only source of material for many councils, particularly in western and northern Queensland. It is particularly important for maintenance and rectification works, and natural disaster recovery (e.g., to ensure the safety of local roads for regional and remote communities). On balance, the importance of providing access to quarry materials outweighs the importance of preserving the rights to property and privacy, particularly where the local government's right of entry already exists in the legislation and the change is only to the appropriate timeframe for giving notice.

- (f) any other relevant factors

Not applicable.

Measure 8: Automatic removal from office upon nomination as a candidate for the Legislative Assembly

Clauses 8 and 62 amend section 155 of the COBA and the LGA (Disqualification because of other high office) to provide that a person cannot be a councillor while the person is an electoral candidate and that a person automatically stops being a councillor when the person becomes an electoral candidate.

A person is an 'electoral candidate' if, under section 93(3) of the *Electoral Act 1992*, the person has become a candidate under that Act for an election of a member of the Legislative Assembly.

- (a) the nature of the right

The *right to take part in public life* is discussed under Measure 3, section (a) 'the nature of the right'. It should be noted that section 23(2) of the HR Act provides that every eligible person has the right, and is to have the opportunity, without discrimination, to:

- vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors, and
- have access, on general terms of equality, to the public service and to public office.

The amendments limit the right to take part in public life for councillors. This is because any councillor who automatically stops being a councillor under the amendments will no longer hold the public office of councillor to which they were elected and will not be able to carry out the role and responsibility of a councillor.

The amendments also limit the right to take part in public life for councillors to the extent the amendments may disincentivise councillors from nominating as candidates for the Legislative Assembly to pursue public office as State Members of Parliament. Importantly, however, the amendments do not remove a councillor's right to stand and be elected at periodic State elections.

The amendments also limit the rights of constituents of councillors who are automatically removed from office under the amendments because the constituents will not be able to be represented in their local governments by those councillors.

The *right to property* is discussed under Measure 2, section (a) 'the nature of the right'.

The amendments limit the right to property of a person who is automatically removed from office under the amendments because the person will no longer receive their remuneration as a councillor.

(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 limitations to be imposed by the Bill is to ensure stability, minimise disruption and reduce operational impacts of councillors running for State office during their term of office as a councillor.

Without the amendments, councillors who choose to contest State elections must take leave without pay for the duration of the period for which they are an electoral candidate under the *Electoral Act 1992*. During this period:

- local governments and their communities face uncertainty as to whether a councillor, on leave to contest a State election, will return to their role as councillor, and
- councillors on leave are unable to carry out their responsibilities and local governments and communities may face adverse operational impacts and disruption while responsibilities are delayed from being carried out or are temporarily carried out by other councillors.

Following this period, if the councillor is successful in the State election and consequently becomes disqualified as a councillor (refer section 155 of both the COBA and the LGA), the local government must undertake a process to fill the vacancy of the councillor.

Depending on the circumstances, this process can include appointing the election runner up from the local government quadrennial election, holding a by-election, or appointing by resolution a person qualified to be a councillor. If the vacancy occurs less than three months before the next quadrennial election, a local government may resolve to not fill the vacancy (refer chapter 6, part 2, division 3 of both the COBA and the LGA).

The amendments ensure a councillor who nominates as a candidate for election as a member of the Legislative Assembly immediately stops being a councillor, meaning the process to fill a councillor's vacancy begins immediately. In this way, extended periods of instability where local governments and communities face periods of uncertainty, disruption and adverse operational impacts (while councillors are on leave to contest a State election), potentially

followed by a further process to fill a councillor vacancy (if the councillor is elected) are avoided.

The purpose of the limitations is consistent with a free and democratic society based on human dignity, equality and freedom, as it supports an effective and efficient system of local government, as per the purpose of the COBA and the LGA (refer section 3 of both the COBA and the LGA).

- (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 imposed by the amendments directly relate to the purpose of the limitations. By requiring councillors who nominate as candidates for the Legislative Assembly to be automatically removed from office, the process to fill councillors' vacancies can begin immediately and extended periods of instability, disruption and adverse operational impacts are avoided.

- (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 purpose.

Only requiring councillors who are ultimately successful in the State election to be automatically removed from office on nomination as a candidate for the Legislative Assembly would be less restrictive. However, this is not a reasonably available alternative because there is no way to know whether a councillor who nominates as a candidate for the Legislative Assembly will be successful.

- (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

On balance, the importance of the purpose of the amendments outweighs the negative impact that the amendments may have on the right to take part in public life and the right to property.

In terms of the importance of the purpose, the amendments ultimately support an effective and efficient system of local government and promote certainty and stability for the community who elect councillors to hold office.

In terms of the nature and extent of the limitation, the limitation is not considered to be severe, for the following reasons.

Regarding the right to take part in public life for constituents of councillors who are automatically removed from office under the amendments, section 14 of the COBA and section 12 of the LGA place a responsibility on all councillors to represent the current and future interests of all the residents of the local government area.

In relation to the right to take part in public life for councillors, the limitation only applies in relation to a councillor's particular term of public office in which the councillor nominates as a candidate for the Legislative Assembly. If a person is automatically removed from office under the amendments, the person can still exercise their right to take part in public life in other

ways, including by contesting the State election and, if successful, by taking public office at the State level.

Importantly, the amendments do not limit a person from becoming a councillor again, including potentially through any process to fill the vacancy left by the councillor when the councillor nominated as a candidate for the Legislative Assembly.

In addition, a person will be able to factor in the automatic removal from office provision when considering if they should nominate to be a councillor. Similarly, a councillor will be able to factor in the automatic removal from office provision when considering if they should nominate to be a candidate for the Legislative Assembly.

(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 human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

ANN LEAHY MP
MINISTER FOR LOCAL GOVERNMENT AND WATER
MINISTER FOR FIRE, DISASTER RECOVERY AND VOLUNTEERS

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