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Legal Affairs and Community Safety Committee  
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## **Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017 - Submission by Redlands2030 Inc.**

Redlands2030 Inc. is an incorporated not-for-profit association advocating good governance and community participation in government decisions about matters and issues affecting the Redlands.

Redlands2030 welcomes the opportunity to make a submission to the Committee about this proposed legislation dealing with the councillor complaints process.

It is important that the councillor complaints process operate effectively, impartially and promptly to deal with instances of perceived bad behaviour.

It is also important that the process be based on principles of natural justice and transparency.

Justice must be done and it must be seen to be done, especially when complaints relate to councillors who may have acted unlawfully.

### **Timeframes**

The proposed new laws do not deal with the need for complaints to be investigated and determined in a timely fashion. Justice delayed is justice denied.

Required timeframes should be written into the legislation to ensure that complaints are resolved expeditiously. Redlands2030 suggests the following:

- A person making a complaint should receive advice within 20 business days as to whether the complaint will be investigated or not, and who will be doing the investigation.
- Any complaint about inappropriate conduct should be resolved within a further period of 20 business days.
- Complaints about misconduct should be resolved within a further period of 60 business days.

Redlands2030 is aware of a case where a complaint investigated as misconduct took more than 11 months to be resolved. Details are appended to this submission.

## **Transparency**

In its current form the councillor complaints process operates with minimal transparency. Complaint goes in, very little comes out.

The proposed amendments requiring that a complainant be provided with “a brief statement of reasons” for a decision is a step in the right direction. But given the secretive culture of local government in Queensland, the word “briefly” may result in very little information being divulged.

The following amendment is proposed to clause 150AS of the draft legislation

(2) (b) should be amended by deleting the word “briefly” and including additional words “and a summary of the evidence that was considered”

The amended wording should read: “give a notice that states the decision, the reasons for the decision and a summary of the evidence considered to—“

The names of the people who sit on the Councillor Complaints Tribunal should be disclosed to the complainant, and be publicly available information. At present, information about membership of the Regional Conduct Panels is kept secret from complainants and the community which undermines public confidence in the councillor complaints process.

## **Make it easy to lodge a complaint**

The Government wants to foster a culture that encourages complaints to be made, and proposes to make it easy for people to raise their concerns by adopting a process consistent with the way the Crime and Corruption Commission (CCC) and Ombudsman allow complaints to be made, orally or in writing. This approach is supported by Redlands2030.

Provisions in the proposed laws aimed at preventing frivolous and/or vexatious complaints appear to be adequate.

Any suggestions that complaints should have to be made in the form of signed statements or as statutory declarations should be viewed with great concern as such proposals would likely be intended to make it more unlikely that complaints would be submitted.

## **Why keep complaints secret?**

If people are not happy with the behaviour of a councillor it is quite appropriate that this be discussed within the community. It’s also quite OK for people to disclose the fact that a complaint has been lodged. Such discussion might help other aggrieved people understand that they also have remedies available to them which could be important if a councillor has exhibited a pattern of bad behaviour.

Any suggestion that people be prohibited from disclosing that they have made a complaint and penalised if they do so, should be viewed with great concern. Such restrictions would conflict with the principles of free speech which underpin our democratic form of government.

### **The quality of evidence is variable**

The proposed laws continue with the notion that matters be decided “on the balance of probabilities” which is reasonable.

However, the quality of a decision is only as good as the investigation, and the evidence which has been obtained and considered during the investigation.

It is likely that in many cases the evidence to be considered will include statements by the councillor who is the subject of a complaint. But what if they wilfully mislead the Independent Assessor or the Tribunal?

The proposed laws don't seem to deal adequately with this possibility. It seems that there is no significant consequence such as the offence of perjury if a councillor knowingly says something which is untrue, in their own defence.

Redlands2030 suggests that the process of dealing with councillor complaints should clarify that the credence placed upon evidence offered by the respondent to a complaint should have regard to the certainty of their testimony. Evidence which is provided as sworn statements should be valued more than unsworn statements. A suggested amendment to the proposed laws is

150AP (4)

(a) The standard of proof in the hearing is the balance of probabilities.

(b) Greater value should be placed upon statements provided as statutory declarations or sworn testimony than statements which are not.

### **Other points**

Redlands2030 agrees that:

- The Independent Assessor should be able to initiate investigations, without a complaint.
- Councillor complaints decisions should be subject to appeal.
- Matters referred to council should be determined by the full council, not the mayor.

The legislation should clarify that matters determined by the council must be dealt with transparently in public formal meetings.

The sanctions for bad behaviour are inadequate.

A reprimand means what exactly?

And why make a councillor miss a meeting when it's actually their job to attend meetings?

More thought should go into making the punishment fit the crime.

## Case study

A short case study follows which demonstrates problems with the current process including:

- Taking far too long to resolve what should have been a straightforward matter
- Providing an outcome that is wholly unsatisfactory and fails even to pass the 'pub' test.'
- Lack of transparency about who made the finding and what evidence was considered.

## Redlands2030 Case Study of a complaint

A few months after being elected ██████████ declared a ██████ gift from an entity described as ██████████. Her register of interests said the gift was received on ██████████ but the donor's address was not disclosed.

After ██████████ post election disclosure dated ██████████ included the donor's address. This made it possible to understand that the donor was related to ██████████, developer of two major accommodation projects in the Redlands. The two companies had common directors. They had the same address.

One of these projects was approved at a Council meeting on ██████████ did not declare any interest in the matter. She stayed in the room, chaired the meeting and voted.

Redlands2030 was told by ██████████ was unaware of any relationship between ██████████ and ██████████ of the same address. ██████████ never responded to the followup question: "If you have not been aware of any relationship between the two entities, can you advise what you understood at the time this gift was given and received about the nature of ██████████ and why you thought this ██████████ entity chose to give you ██████████"

A complaint about ██████████ behaviour was lodged with Redland City Council that ██████████:

- Misled the community by not making meaningful disclosure of ██████ interests and gifts received; and
- Failed to make an adequate disclosure of ██████ interests in a matter discussed at Council's general meeting on ██████████

The timeframe for handling this complaint is shown in the table below:

3 August 2016	Complaint about the ██████████ behaviour was lodged with Redland City Council
11 August 2016	Complaint was referred by Redland City Council to the Crime and Corruption Commission (CCC)
22 August 2016	Advice received that the CCC had referred this complaint to the Department of Local Government
10 May 2017	Local Government Department advised that it had decided to refer this matter as a complaint about misconduct to a Regional Conduct Panel
11 July 2017	Local government Department advised that the complaint was "not sustained".

In accordance with current laws and procedures, no details were provided about why the complaint was “not sustained”.

Redlands2030 lodged a Right To Information (RTI) request seeking details of who made the decision, what evidence the decision was based on and the reason for the decision.

The Department advised a charge \$1,206.90 would be applicable. It was indicated that much of the information requested would be redacted or withheld.

After making a representation to the Minister for Local Government, Redlands2030 was advised by the Minister that the Regional Conduct Panel determined, on the balance of probabilities, that there was not sufficient evidence to show that [REDACTED] had knowledge of the connection between [REDACTED] before the Council meeting which considered the development application.

This is a finding which many in the community find implausible.

The matters summarised in this case study have previously been written about by Redlands2030 in:

[REDACTED]

[REDACTED]

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Chris Walker  
Secretary  
Redlands2030 Inc.

26 October 2017