



I hereby certify that this PUBLIC BILL has finally passed the Legislative Assembly of Queensland.

Legislative Assembly Chamber,
Brisbane,

The Clerk of the Parliament.

21 May 2018

In the name and on behalf of the Queen, I assent to this Bill.

Paul de Jersey
Government House,
Brisbane,

21 May 2018



Queensland

No. 8 of 2018

A BILL for

An Act to amend the Local Government Act 2009 and the Public Service Act 2008 for particular purposes



Queensland

Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018

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2018

A Bill

for

An Act to amend the Local Government Act 2009 and the Public Service Act 2008 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Local Government Act 2009

3 Act amended

This part amends the *Local Government Act 2009*.

4 Amendment of s 5 (Relationship with City of Brisbane Act 2010)

Section 5—

insert—

- (c) the way in which the conduct of councillors of the Brisbane City Council in meetings of the council and its committees is to be dealt with; and
- (d) the way complaints about councillors of the Brisbane City Council are to be dealt with.

5 Amendment of s 120 (Precondition to remedial action)

Section 120(2)(b), from ‘tribunal’ to ‘section 180’—

omit, insert—

conduct tribunal has made a recommendation
under section 150AR

6 Amendment of s 122 (Removing a councillor)

(1) Section 122(1)(a), ‘tribunal recommends under section 180’—

omit, insert—

conduct tribunal recommends under section
150AR

(2) Section 122(2)(a), before ‘tribunal’—

insert—

conduct

7 Amendment of s 123 (Dissolving a local government)

Section 123(1)(a), ‘tribunal recommends under section 180’—

omit, insert—

conduct tribunal recommends under section
150AR

8 Amendment of s 148H (Referral to department)

Section 148H(3), from ‘Crime’ to ‘CCC’—

omit, insert—

Crime and Corruption Act 2001 to notify the
Crime and Corruption Commission

[s 9]

9 Amendment of s 149 (Obstructing enforcement of Local Government Acts etc.)

(1) Section 149, heading—

omit, insert—

149 Obstructing local government officials

(2) Section 149(1) and (4), ‘an official’—

omit, insert—

a local government official

(3) Section 149(2)—

omit, insert—

(2) A *local government official* is any of the following persons—

(a) the mayor;

(b) the chief executive officer;

(c) an authorised person.

10 Amendment of s 150 (Impersonating authorised persons and authorised officers)

(1) Section 150, heading, ‘and authorised officers’—

omit.

(2) Section 150(2)—

omit.

11 Amendment of s 150A (Duty to make documents available)

Section 150A, example—

omit.

12 Insertion of new ch 5A

After section 150A—

insert—

Chapter 5A Councillor conduct

Part 1 Preliminary

Division 1 Introductory matters

150B Overview of chapter

- (1) This chapter is about—
 - (a) setting appropriate standards for the behaviour of councillors; and
 - (b) dealing with the conduct of councillors at local government meetings that does not meet the standards; and
 - (c) investigating and dealing with complaints about the conduct of councillors; and
 - (d) disciplinary action that may be taken against councillors who engage in inappropriate conduct or misconduct; and
 - (e) the entities that investigate and deal with complaints about the conduct of councillors.
- (2) This chapter provides—
 - (a) that the conduct of councillors at local government meetings that does not meet appropriate standards of behaviour is generally to be dealt with by the chairperson of the meeting; and

[s 12]

- (b) that complaints about the conduct of councillors are to be made, or referred, to the assessor for investigation; and
- (c) that the assessor, after investigating a councillor's conduct—
 - (i) may refer the suspected inappropriate conduct of a councillor to the local government to be dealt with; or
 - (ii) may apply to the conduct tribunal to decide whether the councillor engaged in misconduct and, if the conduct tribunal decides the councillor engaged in misconduct, the action to be taken to discipline the councillor; and
- (d) that the assessor is to notify the Crime and Corruption Commission about suspected corrupt conduct as required under the *Crime and Corruption Act 2001*.

150C Definitions for chapter

In this chapter—

assessor means the Independent Assessor appointed under section 150CV.

behavioural standard means a standard of behaviour for councillors set out in the code of conduct approved under section 150E.

conduct includes—

- (a) failing to act; and
- (b) a conspiracy, or attempt, to engage in conduct.

inappropriate conduct see section 150K.

investigation policy, of a local government, see section 150AE(1).

local government meeting means a meeting of—

- (a) a local government; or
- (b) a committee of a local government.

misconduct see section 150L.

model procedures see section 150F.

referral notice see section 150AC.

unsuitable meeting conduct see section 150H.

Division 2 Code of conduct

150D Minister to make code of conduct

- (1) The Minister must make a code of conduct that sets out the standards of behaviour for councillors in performing their functions as councillors under this Act.

Notes—

- 1 See section 4 which requires the Minister, in making a code of conduct under this section, to do so in a way that is consistent with, and provides results that are consistent with, the local government principles.
 - 2 Also, see the obligations imposed on councillors under chapter 6, part 2, division 5 which apply to councillors in performing their functions as councillors under this Act.
- (2) The code of conduct may also contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

150E Approval and publication of code of conduct

- (1) The code of conduct does not take effect until it is approved by a regulation.
- (2) The approved code of conduct must be—

[s 12]

- (a) tabled in the Legislative Assembly with the regulation approving the code; and
- (b) published on the department's website.

Part 2 Conduct at local government meetings

Division 1 Requirement for meeting procedures

150F Department's chief executive to make model procedures

- (1) The department's chief executive must make procedures (the *model procedures*) for the conduct of meetings of a local government and its committees.
- (2) Without limiting subsection (1), the model procedures must state—
 - (a) how the chairperson of a local government meeting may deal with a councillor's unsuitable meeting conduct; and
 - (b) how the suspected inappropriate conduct of a councillor referred to the local government by the assessor must be dealt with at a local government meeting.
- (3) The department's chief executive must publish the model procedures on the department's website.

150G Adopting meeting procedures

- (1) A local government must either—
 - (a) adopt the model procedures; or

- (b) prepare and adopt other procedures for the conduct of its meetings and meetings of its committees.
- (2) If the local government prepares and adopts procedures under subsection (1)(b)—
- (a) the procedures must not be inconsistent with the model procedures; and
 - (b) if there is an inconsistency, the local government is taken to have adopted the model procedures to the extent of the inconsistency.

Division 2 Unsuitable meeting conduct

150H What is *unsuitable meeting conduct*

The conduct of a councillor is *unsuitable meeting conduct* if the conduct—

- (a) happens during a local government meeting; and
- (b) contravenes a behavioural standard.

150I Chairperson may deal with unsuitable meeting conduct

- (1) This section applies if, at a local government meeting, the chairperson of the meeting reasonably believes the conduct of a councillor during the meeting is unsuitable meeting conduct.
- (2) The chairperson may make 1 or more of the following orders—
 - (a) an order reprimanding the councillor for the conduct;

[s 12]

- (b) an order requiring the councillor to leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place for the rest of the meeting;
 - (c) if the councillor fails to comply with an order to leave and stay away from the place—an order that the councillor be removed from the place.
- (3) If the chairperson makes an order under subsection (2), the chairperson must ensure details of the order are recorded in the minutes of the meeting.

Note—

See also sections 150DX and 150DY about recording orders made by the chairperson of a local government meeting under this section in the councillor conduct register.

150J Unsuitable meeting conduct that becomes inappropriate conduct

If the conduct of a councillor at a local government meeting is inappropriate conduct under section 150K(2), the local government—

- (a) is not required to notify the assessor about the conduct; and
- (b) may deal with the conduct under section 150AG.

Part 3

Dealing with inappropriate conduct, misconduct and corrupt conduct

Division 1 Preliminary

150K What is *inappropriate conduct*

- (1) The conduct of a councillor is *inappropriate conduct* if the conduct contravenes—
 - (a) a behavioural standard; or
 - (b) a policy, procedure or resolution of the local government.
- (2) Also, the conduct of a councillor is *inappropriate conduct* if—
 - (a) the conduct 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; or
 - (b) it is part of a course of conduct at local government meetings leading to orders for the councillor's unsuitable meeting conduct being made on 3 occasions within a period of 1 year.
- (3) For subsection (2)(b), the conduct that led to the orders being made, taken together, is the inappropriate conduct.
- (4) However, inappropriate conduct does not include conduct that is—
 - (a) unsuitable meeting conduct, to the extent the conduct is not conduct mentioned in subsection (2); or
 - (b) misconduct; or
 - (c) corrupt conduct.

150L What is *misconduct*

- (1) The conduct of a councillor is *misconduct* if the conduct—
 - (a) adversely affects, directly or indirectly, the honest and impartial performance of the councillor's functions, or the exercise of the councillor's powers; or
 - (b) is or involves—
 - (i) a breach of the trust placed in the councillor, either knowingly or recklessly; or
 - (ii) a misuse of information or material acquired in, or in connection with, the performance of the councillor's functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person; or
 - (c) contravenes any of the following—
 - (i) an order of the local government or the conduct tribunal;
 - (ii) the acceptable requests guidelines of the local government under section 170A;
 - (iii) a policy of the local government about the reimbursement of expenses;
 - (iv) section 150R, 170(2), 171(3) or 173(4) or (5).
- (2) Also, the conduct of a councillor is *misconduct* if the conduct—
 - (a) is part of a course of conduct leading to the local government deciding to take action under section 150AG to discipline the

[s 12]

150O Complaints about councillor conduct

- (1) A person may make a complaint to the assessor about the conduct of a councillor.
- (2) The complaint may be made to the assessor orally or in writing.
- (3) Subsection (1) does not limit who a person can complain to about the conduct of a councillor.

Examples—

A person may complain to the Crime and Corruption Commission or the department's chief executive about a councillor's conduct.

150P Complaints about councillor conduct must be referred to assessor

- (1) This section applies if a government entity, other than the assessor, receives a complaint about the conduct of a councillor.
- (2) The government entity must—
 - (a) refer the complaint to the assessor; and
 - (b) give the assessor all information held by the entity that relates to the complaint.
- (3) However, subsection (2) does not apply if—
 - (a) the government entity has a duty to notify the Crime and Corruption Commission of the complaint under section 38 of the *Crime and Corruption Act 2001*; or

Note—

Sections 38 to 40 of the *Crime and Corruption Act 2001* state the duties of a public official to notify the Crime and Corruption Commission about corrupt conduct, subject to a direction by the Crime and Corruption Commission.

- (b) the government entity has the power to investigate the complaint or the councillor's

conduct under another law and decides to carry out the investigation under that law.

Example—

The police service receives and investigates a complaint alleging a councillor engaged in fraud.

- (4) As soon as practicable after receiving the complaint, the assessor must, if the assessor has the contact details of the person who made the complaint, give the person a notice that states—
- (a) the assessor has received the complaint from the government entity; and
 - (b) the assessor will deal with the complaint under this chapter.
- (5) In this section—
- government entity*** includes the following—
- (a) a local government;
 - (b) a councillor;
 - (c) the chief executive officer of a local government.

150Q Further information about complaints

- (1) This section applies if—
- (a) a complaint about the conduct of a councillor was made or referred to the assessor under this division; and
 - (b) in the assessor’s opinion, the complaint does not include sufficient information for the assessor to properly investigate the conduct; and
 - (c) the assessor has the contact details of the person who made the complaint.
- (2) The assessor may give a notice to the person who made the complaint asking the person to give the

[s 12]

assessor further information about the complaint within a stated reasonable period.

- (3) The assessor may decide not to investigate the conduct if—
 - (a) the person does not comply with the notice; or
 - (b) the person complies with the notice but, in the assessor's opinion, there is still insufficient information to investigate the conduct.
- (4) If the assessor decides not to investigate the conduct under subsection (3), the assessor must give the person who made the complaint a notice that states the assessor has decided not to investigate the conduct because there is insufficient information to do so.

Division 3 Local government duties to notify assessor about particular conduct

150R Local government official must notify assessor about particular conduct

- (1) This section applies if a local government official becomes aware of information indicating a councillor may have engaged in conduct that would be inappropriate conduct or misconduct other than—
 - (a) conduct mentioned in section 150J; and
 - (b) by receiving a complaint to which section 150P applies.
- (2) The local government official must give the assessor a notice about the councillor's conduct.

(3) In this section—

local government official means—

- (a) a councillor; or
- (b) the chief executive officer of a local government.

150S Local government must notify assessor about misconduct

(1) This section applies if a local government—

- (a) in relation to a course of conduct by a councillor, decides under section 150AG to take action to discipline the councillor for inappropriate conduct on 3 occasions during a period of 1 year; or
- (b) if the local government has previously made an order that a particular type of conduct engaged in by a councillor will be dealt with as misconduct—reasonably suspects the councillor has engaged in the same type of conduct again.

(2) The local government must give the assessor—

- (a) a notice about the councillor’s conduct; and
- (b) all information held by the local government that relates to the conduct.

Division 4 Investigation of councillor conduct

150T Assessor must investigate conduct of councillor

(1) The assessor must investigate the conduct of a councillor if the conduct is the subject of—

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- (a) a complaint made or referred to the assessor under division 2; or
- (b) a notice given to the assessor under division 3; or
- (c) information given to the assessor under section 150AF(4); or
- (d) a complaint referred to the assessor by the Crime and Corruption Commission.

Note—

The Crime and Corruption Commission may decide, under chapter 2, part 3 of the *Crime and Corruption Act 2001*, to refer a complaint to the assessor to deal with, whether or not in cooperation with the commission.

- (2) However, subsection (1)(a) does not apply if the assessor decided, under section 150Q(3), not to investigate the conduct.

150U Assessor may initiate investigation

- (1) This section applies if—
 - (a) the assessor is aware of information indicating a councillor may have engaged in conduct that would be inappropriate conduct or misconduct; and

Examples—

- a media report alleging a councillor has behaved inappropriately
 - while investigating a councillor for alleged misconduct, the assessor receives information that indicates another councillor has engaged in the same conduct
- (b) the assessor has not received a complaint about the conduct; and
 - (c) the assessor reasonably believes—

- (i) it is in the public interest to investigate the information; and
 - (ii) the conduct is not likely to involve corrupt conduct.
- (2) The assessor may, on the assessor's own initiative, investigate the conduct.

150V Investigative powers

- (1) The assessor may exercise the assessor's powers as an investigator under part 4 for an investigation under section 150T or 150U.
- (2) Subject to part 4, the assessor may—
 - (a) conduct an investigation in the way the assessor considers appropriate; and
 - (b) make any inquiries the assessor considers appropriate.
- (3) However, the assessor must conduct the investigation in a way that ensures the investigation is kept confidential to the extent practicable.

150W Decision about conduct

After investigating the conduct of a councillor, the assessor may decide to—

- (a) if the conduct was the subject of a complaint made or referred to the assessor under division 2—dismiss the complaint about the conduct under section 150X; or
- (b) if the assessor reasonably suspects the councillor's conduct is inappropriate conduct—refer the suspected inappropriate conduct to the local government to deal with; or

[s 12]

- (c) if the assessor is reasonably satisfied the councillor's conduct is misconduct—make an application to the conduct tribunal about the conduct; or
- (d) take no further action in relation to the conduct under section 150Y.

150X Decision to dismiss complaint

The assessor may decide to dismiss a complaint about the conduct of a councillor if the assessor is satisfied—

- (a) the conduct—
 - (i) has already been, or is being, dealt with by another entity; or
 - (ii) does not constitute inappropriate conduct or misconduct; or
- (b) the complaint—
 - (i) is frivolous or vexatious; or
 - (ii) was not made in good faith; or

Examples—

- a complaint made for a mischievous purpose, recklessly or maliciously
 - (iii) lacks substance or credibility; or
- (c) dealing with the complaint—
 - (i) would not be in the public interest; or
 - (ii) would be an unjustifiable use of resources.

150Y Decision to take no further action

The assessor may decide to take no further action about the conduct of a councillor if—

- (a) the conduct was not the subject of a complaint made or referred to the assessor under division 2; and
- (b) the assessor is satisfied—
 - (i) the conduct does not constitute inappropriate conduct or misconduct; or
 - (ii) there is insufficient information to properly investigate the conduct or form an opinion about whether the conduct is, or may be, inappropriate conduct or misconduct; or
 - (iii) taking further action would be an unjustifiable use of resources.

150Z Notice about decision to dismiss complaint or take no further action

- (1) This section applies if the assessor decides to—
 - (a) dismiss a complaint about the conduct of a councillor under section 150X; or
 - (b) take no further action about the conduct of a councillor under section 150Y.
- (2) The assessor must give a notice about the decision to—
 - (a) for a decision to dismiss a complaint—the person who made the complaint, if the assessor has the person’s contact details; and
 - (b) the councillor; and
 - (c) the local government.
- (3) The notice must—
 - (a) for a decision to dismiss a complaint—state the date the complaint was made; and
 - (b) briefly summarise the conduct; and

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- (c) briefly state the decision and the reasons for the decision; and
- (d) for a complaint dismissed because it is frivolous—advise the person who made the complaint that, if the person makes the same or substantially the same complaint to the assessor again, the person commits an offence punishable by a fine of up to 85 penalty units.

Note—

See section 150AU about the offence of making a frivolous complaint.

150AA Notice and opportunity for councillor to respond

- (1) This section applies if, under section 150W, the assessor is considering making a decision to—
 - (a) refer a councillor’s conduct to the local government to be dealt with; or
 - (b) make an application to the conduct tribunal to decide whether the councillor’s conduct is misconduct.
- (2) Before making the decision, the assessor must give a notice to the councillor that—
 - (a) states the assessor received a complaint, notice or information about the councillor’s conduct or, on the assessor’s own initiative, investigated the councillor’s conduct; and
 - (b) describes the nature of the conduct; and
 - (c) states the assessor is considering making a decision to—
 - (i) refer the conduct to the local government to be dealt with; or

- (ii) make an application to the conduct tribunal to decide whether the conduct is misconduct; and
 - (d) states that the councillor may give a statement or information to the assessor about—
 - (i) the conduct; and
 - (ii) why the assessor should not make the decision; and
 - (e) states the reasonable period in which the councillor may provide the statement or information.
- (3) The assessor must consider any statement or information given to the assessor by the councillor under the notice before making a decision under section 150W.

Division 5 Referral of conduct to local government

150AB Application of division

This division applies if the assessor—

- (a) reasonably suspects a councillor has engaged in inappropriate conduct; and
- (b) decides, under section 150W(b), to refer the conduct to the local government to deal with under this division.

150AC Referral of suspected inappropriate conduct

- (1) The assessor refers the councillor's conduct to the local government to deal with by giving a notice (a *referral notice*) to the local government.

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- (2) The referral notice must—
 - (a) include details of the conduct and any complaint received about the conduct; and
 - (b) state why the assessor reasonably suspects the councillor has engaged in inappropriate conduct; and
 - (c) include information about the facts and circumstances forming the basis for the assessor’s reasonable suspicion.
- (3) The referral notice may be accompanied by a recommendation from the assessor about how the local government may investigate or deal with the conduct, including, for example—
 - (a) the conduct should be referred to another entity for consideration; or
 - (b) additional information is required about the conduct; or
 - (c) the conduct should be dealt with by mediation.
- (4) A recommendation made under subsection (3) may be inconsistent with the local government’s investigation policy.

150AD Notice about referral

As soon as practicable after referring the councillor’s conduct to the local government, the assessor must give the councillor a notice that—

- (a) states the assessor has referred the councillor’s conduct to the local government to deal with under this division; and
- (b) attaches a copy of the referral notice.

150AE Local government must adopt investigation policy

- (1) A local government must adopt, by resolution, a policy (an *investigation policy*) about how it deals with the suspected inappropriate conduct of councillors referred, by the assessor, to the local government to be dealt with.
- (2) The policy must—
 - (a) include a procedure for investigating the suspected inappropriate conduct of councillors; and
 - (b) state the circumstances in which another entity may investigate the conduct; and
 - (c) be consistent with the principles of natural justice; and
 - (d) require councillors and persons who make complaints about councillors' conduct to be given notice about the outcome of investigations.
- (3) The policy may allow the local government to ask the president of the conduct tribunal to—
 - (a) investigate the conduct of a councillor; and
 - (b) make recommendations to the local government about dealing with the conduct.

Note—

See section 150DU about paying the costs of a conduct tribunal member.

- (4) The policy must be published on the local government's website.

150AF Investigating suspected inappropriate conduct

- (1) The local government must investigate the councillor's conduct.

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- (2) The investigation must be conducted—
 - (a) in a way that is consistent with—
 - (i) any recommendation of the assessor made under section 150AC(3); and
 - (ii) to the extent the local government's investigation policy is not inconsistent with a recommendation of the assessor—the investigation policy; or
 - (b) in another way the local government, by resolution, decides.
- (3) A resolution under subsection (2)(b) must state the decision and the reasons for the decision.
- (4) If, in investigating the conduct, the local government obtains information indicating the councillor may have engaged in misconduct, the local government must—
 - (a) give the information to the assessor for further investigation under division 4; and
 - (b) take no further action in relation to the conduct.

150AG Decision about inappropriate conduct

- (1) After conducting the investigation, the local government must decide—
 - (a) whether or not the councillor has engaged in inappropriate conduct; and
 - (b) if the local government decides the councillor has engaged in inappropriate conduct—what action the local government will take under section 150AH to discipline the councillor.

Note—

See section 257(2) which limits delegation of the local government's power to make decisions under this section.

- (2) In deciding what action to take, the local government may consider—
- (a) any previous inappropriate conduct of the councillor; and
 - (b) any allegation made in the investigation that—
 - (i) was admitted, or not challenged; and
 - (ii) the local government is reasonably satisfied is true.

150AH Disciplinary action against councillor

- (1) For section 150AG(1)(b), the local government may—
- (a) order that no action be taken against the councillor; or
 - (b) make 1 or more of the following orders—
 - (i) an order that the councillor make a public admission that the councillor has engaged in inappropriate conduct;
 - (ii) an order reprimanding the councillor for the conduct;
 - (iii) an order that the councillor attend training or counselling to address the councillor's conduct, including at the councillor's expense;
 - (iv) an order that the councillor be excluded from a stated local government meeting;

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- (v) an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor;

Example—

The councillor is ordered to resign from an appointment representing the local government on a State board or committee.

- (vi) an order that if the councillor engages in the same type of conduct again, it will be treated as misconduct;
 - (vii) an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's inappropriate conduct.
- (2) However, the local government may not make an order mentioned in subsection (1)(b)(iii), (iv), (v), or (vi) in relation to a person who is no longer a councillor.

Division 6 Application to conduct tribunal about misconduct

150AI Application of division

This division applies if the assessor is reasonably satisfied a councillor has engaged in misconduct.

150AJ Application to conduct tribunal about alleged misconduct

- (1) The assessor may apply to the conduct tribunal to decide whether the councillor has engaged in misconduct.
- (2) The application must—
 - (a) be in writing; and

- (b) include details of the alleged misconduct and any complaint received about the misconduct; and
- (c) state why the assessor is reasonably satisfied the councillor has engaged in misconduct; and
- (d) include information about the facts and circumstances forming the basis for the assessor's reasonable satisfaction.

150AK Copy of application must be given to councillor

- (1) The assessor must—
 - (a) write on a copy of the application the day, time and place of the hearing of the application; and
 - (b) give the copy of the application to the councillor.
- (2) The assessor must make all reasonable attempts to give the copy of the application to the councillor at least 7 days before the hearing starts.
- (3) If the assessor is unable to give the copy of the application to the councillor, the assessor may take other reasonable steps to ensure the councillor is aware of the day, time and place of the hearing, including, for example, by giving the copy to the local government to give to the councillor.

150AL Conduct tribunal must conduct hearing

The conduct tribunal must conduct a hearing about the application.

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150AM Constitution of conduct tribunal

The conduct tribunal is to be constituted by—

- (a) for hearing a matter about the conduct of a councillor—at least 2, but not more than 3, members of the conduct tribunal chosen by the president; or
- (b) for dealing with an administrative or procedural matter related to hearing a matter about the conduct of a councillor—
 - (i) the president; or
 - (ii) not more than 3 members of the conduct tribunal chosen by the president.

150AN Role of the assessor

- (1) The assessor is a party to the hearing.
- (2) The onus of proof is on the assessor to prove the councillor engaged in misconduct.

150AO Respondent

The councillor is—

- (a) the respondent to the application; and
- (b) a party to the hearing.

150AP Conduct of hearing

- (1) The hearing must be conducted in the way set out in chapter 7, part 1.
- (2) The conduct tribunal may conduct the hearing from the documents brought before the conduct tribunal, without the parties or the witnesses appearing, if—

- (a) the conduct tribunal considers it appropriate in all the circumstances; or
- (b) the parties agree.
- (3) The hearing may be about the conduct of more than 1 councillor, unless the conduct tribunal is satisfied doing so may prejudice the defence of any of the councillors.
- (4) The standard of proof in the hearing is the balance of probabilities.
- (5) The conduct tribunal must keep a written record of the hearing, in which it records—
 - (a) the statements of the councillor and all witnesses; and
 - (b) any reports relating to the councillor that are tendered at the hearing.

150AQ Deciding about misconduct

- (1) After conducting the hearing, the conduct tribunal must decide—
 - (a) whether or not the councillor has engaged in misconduct; and
 - (b) if the conduct tribunal decides the councillor has engaged in misconduct—what action the conduct tribunal will take under section 150AR to discipline the councillor.
- (2) In deciding what action to take, the conduct tribunal may consider—
 - (a) any previous misconduct of the councillor; and
 - (b) any allegation made in the hearing that—
 - (i) was admitted, or not challenged; and
 - (ii) the conduct tribunal is reasonably satisfied is true.

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150AR Disciplinary action against councillor

- (1) For section 150AQ(1)(b), the conduct tribunal may decide—
 - (a) that no action be taken against the councillor; or
 - (b) to make 1 or more of the following orders or recommendations—
 - (i) an order that the councillor make a public admission that the councillor has engaged in misconduct;
 - (ii) an order reprimanding the councillor for the conduct;
 - (iii) an order that the councillor attend training or counselling to address the councillor's conduct, including at the expense of the councillor;
 - (iv) an order that the councillor pay to the local government an amount that is not more than the monetary value of 50 penalty units;
 - (v) an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's misconduct;
 - (vi) an order that the councillor is not to act as the deputy mayor or the chairperson of a committee of the local government for the remainder of the councillor's term;
 - (vii) an order that the councillor is not to attend a stated number of local government meetings, up to a maximum of 3 meetings;
 - (viii) an order that the councillor is removed, or must resign, from a position

representing the local government,
other than the office of councillor;

Example—

The councillor is ordered to resign from an appointment representing the local government on a State board or committee.

- (ix) an order that the councillor forfeit an allowance, benefit, payment or privilege paid or provided to the councillor by the local government;
- (x) an order that the councillor is to forfeit, for a stated period, access to equipment or a facility provided to the councillor by the local government;
- (xi) a recommendation to the Minister that the councillor be suspended from office for a stated period or from performing particular functions of the office;

Examples of particular functions—

- attending council meetings or offices
- representing the council at public functions

- (xii) a recommendation to the Minister that the councillor be dismissed from office.
- (2) A recommendation mentioned in subsection (1)(b)(xi) may include a recommendation about the details of the suspension, including, for example, whether the councillor should be remunerated during the period of the suspension.
 - (3) However, the conduct tribunal may not make an order or recommendation mentioned in subsection (1)(b)(iii) or (vi) to (xii) in relation to a person who is no longer a councillor.

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150AS Notices and publication of decisions and orders

- (1) This section applies to a decision made by the conduct tribunal—
 - (a) under section 150AQ(1)(a) about whether or not a councillor has engaged in misconduct; or
 - (b) to take action mentioned in section 150AR(1)(b) to discipline the councillor for the misconduct.
- (2) The conduct tribunal must—
 - (a) keep a written record of the decision and the reasons for the decision; and
 - (b) give a notice that states the decision and briefly states the reasons for the decision to—
 - (i) the assessor; and
 - (ii) the councillor; and
 - (iii) the local government; and
 - (iv) if the conduct tribunal's decision relates to the conduct of a councillor that was the subject of a complaint and the conduct tribunal has the contact details of the person who made the complaint—the person who made the complaint; and
 - (c) give a summary of the decision, including the reasons for the decision, to the department's chief executive for publication on the department's website.
- (3) A notice about a decision, other than a decision to recommend the councillor's suspension or dismissal, given to the assessor or councillor under subsection (2)(b) must be a QCAT

information notice for the decision.

- (4) Also, a notice about a decision given to a local government under subsection (2)(b) must include the information about the decision that is required to be included in the councillor conduct register under section 150DY.
- (5) The conduct tribunal must not—
 - (a) give another entity any information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*, unless giving the information is required or permitted by another Act; or
 - (b) if a decision relates to the conduct of a councillor that was the subject of a complaint—include in a summary of the decision to be published on the department’s website—
 - (i) the name of the person who made the complaint; or
 - (ii) information that could reasonably be expected to result in identification of the person.

150AT Review by QCAT

A person who is entitled under section 150AS(3) to be given a QCAT information notice for a decision of the conduct tribunal may apply to QCAT, as provided under the QCAT Act, for a review of the decision.

Division 7 Offences

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150AU Frivolous complaint

- (1) This section applies to a person who has been given a notice under section 150Z that advises the person that if the person makes the same or substantially the same complaint to the assessor again the person commits an offence.
- (2) The person must not make the same or substantially the same complaint to the assessor again, unless the person has a reasonable excuse.
Maximum penalty—85 penalty units.
- (3) In this section—
make, a complaint to the assessor, means—
 - (a) make a complaint to the assessor under section 150O; or
 - (b) make a complaint to a government entity that is required, under section 150P, to refer the complaint to the assessor; or
 - (c) cause a complaint to be referred to the assessor.

150AV Other improper complaints

- (1) A person must not—
 - (a) make a complaint about the conduct of a councillor to the assessor—
 - (i) vexatiously; or
 - (ii) not in good faith; or

Examples—

a complaint made for a mischievous purpose, recklessly or maliciously
 - (b) counsel or procure another person to make a complaint mentioned in paragraph (a) to the assessor.

Maximum penalty—85 penalty units.

(2) In this section—

make, a complaint to the assessor, means—

- (a) make a complaint to the assessor under section 150O; or
- (b) make a complaint to a government entity that is required, under section 150P, to refer the complaint to the assessor; or
- (c) cause a complaint to be referred to the assessor.

150AW Protection from reprisal

(1) A councillor must not take detrimental action against a protected person in reprisal for a complaint or notification about the councillor's conduct.

Maximum penalty—167 penalty units or 2 years imprisonment.

(2) A councillor takes detrimental action in reprisal for a complaint or notification about the councillor's conduct if—

- (a) the councillor takes, threatens to take, or attempts to take the action because—
 - (i) a protected person has made, or intends to make, a complaint or notification about the councillor's conduct; or
 - (ii) the councillor believes a protected person has made, or intends to make, a complaint or notification about the councillor's conduct; or
- (b) the councillor incites, permits or conspires with another person to take or threaten to take the action for either of those reasons.

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- (3) In determining whether a councillor takes detrimental action in reprisal, it does not matter whether a reason stated in subsection (2)(a)(i) or (ii) is the only or main reason for taking the action, as long as it is a substantial reason.
- (4) An offence against subsection (1) is an indictable offence that is a misdemeanour.
- (5) In this section—
notification, about a councillor’s conduct, means a notice about the conduct given under section 150R.
protected person means—
 - (a) a councillor; or
 - (b) a local government employee.

Part 4 Investigation and enforcement powers

Division 1 General provisions about investigators

Subdivision 1 Appointment

150AX Investigators

- (1) This part provides for the appointment of investigators and gives investigators particular powers.
- (2) The purpose of this part is to ensure the assessor has appropriately qualified persons available to help the assessor perform the assessor’s functions under this chapter.

150AY Functions of investigators

An investigator has the following functions—

- (a) to investigate the conduct of councillors under part 3 as directed by the assessor;
- (b) to investigate whether an offence has been committed against any of the following provisions (each a *conduct provision*)—
 - section 150AU, 150AV, 150AW, 150BW, 150CA, 150CB, 150CI, 150CJ(3) or 150CK(4)
 - section 171, 171A(2) or (3), 171B(2) or 172(5)
 - section 233A or 233B to the extent the offence involves obstructing or impersonating the assessor, an investigator or a member of the conduct tribunal
 - section 234 to the extent the offence involves giving information to the assessor, a staff member of the Office of the Independent Assessor, an investigator or a member of the conduct tribunal;
- (c) to enforce compliance with the conduct provisions;
- (d) to investigate whether an occasion has arisen for the exercise of powers in relation to a conduct provision.

150AZ Assessor is an investigator

- (1) The assessor is an investigator for this part.
- (2) However, sections 150BB and 150BC do not apply to the assessor.

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150BA Appointment and qualifications

- (1) The assessor may, by instrument in writing, appoint any of the following persons as investigators—
 - (a) a staff member of the Office of the Independent Assessor;
 - (b) a public service employee;
 - (c) another person prescribed by regulation.
- (2) However, the assessor may appoint a person as an investigator only if the assessor is satisfied the person is appropriately qualified.

150BB Appointment conditions and limit on powers

- (1) An investigator holds office on the conditions stated in—
 - (a) the investigator's instrument of appointment; or
 - (b) a signed notice given to the investigator; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers.
- (3) In this section—

signed notice means a notice signed by the assessor.

150BC When office ends

- (1) The office of a person as an investigator ends if—
 - (a) the term of office stated in a condition of office ends; or

- (b) under another condition of office, the office ends; or
 - (c) the investigator resigns by signed notice given to the assessor.
- (2) Subsection (1) does not limit the ways the office of a person as an investigator ends.
- (3) In this section—
- condition of office* means a condition under which the investigator holds office.

Subdivision 2 Identity cards

150BD Issue of identity card

- (1) The assessor must issue an identity card to each investigator.
- (2) This section does not prevent the issue of a single identity card to a person for this chapter and other purposes.

150BE Production or display of identity card

- (1) In exercising a power in relation to a person in the person's presence, an investigator must—
 - (a) produce the investigator's identity card for the person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.

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- (3) For subsection (1), an investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in section 150BI(1)(b).

150BF Return of identity card

If the office of a person as an investigator ends, the person must return the person's identity card to the assessor within 21 days after the office ends, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Subdivision 3 Miscellaneous provisions

150BG References to exercise of powers

- (1) This section applies if—
- (a) a provision of this chapter refers to the exercise of a power by an investigator; and
 - (b) there is no reference to a specific power.
- (2) The reference is to the exercise of all or any investigators' powers under this part or a warrant, to the extent the powers are relevant.

150BH Reference to document includes reference to reproductions from electronic document

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Division 2 Entry of places by investigators

Subdivision 1 Power to enter

150BI General power to enter places

- (1) An investigator may enter a place if—
 - (a) an occupier at the place consents under subdivision 2 to the entry and section 150BL has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 150BS has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (4) In this section—

public place means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under paragraph (a)—

a beach, a park, a road

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- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Examples of a place that may be a public place under paragraph (b)—

a saleyard, a showground

Subdivision 2 Entry by consent

150BJ Application of subdivision

This subdivision applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 150BI(1)(a).

150BK Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an investigator may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

150BL Matters investigator must tell occupier

Before asking for the consent, the investigator must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and

- (b) tell the occupier that—
 - (i) the occupier is not required to consent; and
 - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

150BM Consent acknowledgement

- (1) If the consent is given, the investigator may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and
 - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers to be exercised; and
 - (c) that the occupier has been told—
 - (i) that the occupier is not required to consent; and
 - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (d) that the occupier gives the investigator or another investigator consent to enter the place and exercise the powers; and
 - (e) the day and time the consent was given; and
 - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the investigator must immediately give a copy to the occupier.
- (4) If—

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- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

150BN Application for warrant

- (1) An investigator may apply to a magistrate for a warrant for a place.
- (2) The investigator must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

150BO Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that a particular thing or activity that may provide

evidence of an offence against a conduct provision—

- (a) is at the place; or
 - (b) will be at the place within the next 7 days.
- (2) The warrant must state—
- (a) the place to which the warrant applies; and
 - (b) that a stated investigator may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the investigator’s powers; and
 - (c) particulars of the offence that the magistrate considers appropriate; and
 - (d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate’s name; and
 - (h) the day and time of the warrant’s issue; and
 - (i) the day, within 14 days after the warrant’s issue, the warrant ends.

150BP Electronic application

- (1) An application under section 150BN may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the investigator reasonably considers it necessary because of—

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- (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the investigator's remote location.
- (2) The application—
- (a) may not be made before the investigator prepares the written application under section 150BN(2); but
 - (b) may be made before the written application is sworn.

150BQ Additional procedure if electronic application

- (1) For an application made under section 150BP, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
- (a) it was necessary to make the application under section 150BP; and
 - (b) the way the application was made under section 150BP was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the investigator, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the investigator; or
 - (b) otherwise—
 - (i) the magistrate must tell the investigator the information mentioned in section 150BO(2); and
 - (ii) the investigator must complete a form of warrant, including by writing on it the information mentioned in section 150BO(2) provided by the magistrate.

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- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
 - (4) The investigator must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 150BN(2) and (3); and
 - (b) if the investigator completed a form of warrant under subsection (2)(b), the completed form of warrant.
 - (5) Despite subsection (3), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
 - (6) This section does not limit section 150BN.

150BR Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
 - (a) the warrant; or
 - (b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—

warrant includes a duplicate warrant mentioned in section 150BQ(3).

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150BS Entry procedure

- (1) This section applies if an investigator named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the investigator's identity card or another document evidencing the investigator's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the investigator is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.
- (3) However, the investigator need not comply with subsection (2) if the investigator reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

warrant includes a duplicate warrant mentioned in section 150BQ(3).

Division 3 General powers of investigators after entering places

150BT Application of division

- (1) The powers under this division may be exercised

if an investigator enters a place under section 150BI(1).

- (2) However, if the investigator enters under section 150BI(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

150BU General powers

- (1) The investigator may do any of the following (each a *general power*)—
- (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) take for examination a thing, or a sample of or from a thing, at the place;
 - (d) place an identifying mark in or on anything at the place;
 - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
 - (g) take to, into or onto the place and use any person, equipment and materials the investigator reasonably requires for exercising the investigator's powers under this chapter;
 - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The investigator may take a necessary step to
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allow the exercise of a general power.

- (3) If the investigator takes a document from the place to copy it, the investigator must copy the document and return it to the place as soon as practicable.
- (4) If the investigator takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the investigator must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

150BV Power to require reasonable help

- (1) The investigator may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the investigator reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the investigator must give the person an offence warning for the requirement.

150BW Offence to contravene help requirement

- (1) A person of whom a help requirement has been made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

Division 4 Seizure by investigators

Subdivision 1 Power to seize

150BX Seizing evidence at a place that may be entered only with consent or warrant

- (1) This section applies if—
 - (a) an investigator is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the investigator enters the place after obtaining the consent or under a warrant.
- (2) If the investigator enters the place with the occupier's consent, the investigator may seize a thing at the place only if—
 - (a) the investigator reasonably believes the thing is evidence of an offence against a conduct provision; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the investigator enters the place under a warrant, the investigator may seize the evidence for which the warrant was issued.
- (4) The investigator may also seize anything else at the place if the investigator reasonably believes—

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- (a) the thing is evidence of an offence against a conduct provision; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

150BY Seizure of property subject to security

- (1) An investigator may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the investigator or a person acting under the direction or authority of the investigator.

Subdivision 2 Powers to support seizure

150BZ Power to secure seized thing

- (1) Having seized a thing under this division, an investigator may—
 - (a) leave it at the place it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the investigator may, for example—
 - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or

Example—

make it inoperable by dismantling it or removing a component without which the equipment can not be used

- (c) require a person the investigator reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an investigator could do under subsection (1)(a).
- (3) When making a requirement of a person under subsection (2)(c), the investigator must give the person an offence warning for the requirement.

150CA Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 150BZ(2)(c), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

150CB Offence to interfere

- (1) If access to a seized thing is restricted under section 150BZ, a person must not tamper with the thing or with anything used to restrict access to the thing without—
- (a) an investigator's approval; or
 - (b) a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If access to a place is restricted under section 150BZ, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
- (a) an investigator's approval; or
 - (b) a reasonable excuse.

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Maximum penalty—50 penalty units.

Subdivision 3 Safeguards for seized things

150CC Receipt and information notice for seized thing

- (1) This section applies if an investigator seizes anything under this division, unless—
 - (a) the investigator reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
 - (b) because of the condition, nature and value of the thing it would be unreasonable to require the investigator to comply with this section.
- (2) The investigator must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
 - (a) a receipt for the thing that generally describes the thing and its condition; and
 - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.
- (5) The investigator may delay giving the receipt and information notice if the investigator reasonably

suspects giving them may frustrate or otherwise hinder an investigation by the investigator under this chapter.

- (6) However, the delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep the place under observation.

150CD Access to seized thing

- (1) Until a seized thing is returned, the investigator who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

150CE Return of seized thing

- (1) This section applies if a seized thing is not forfeited under subdivision 4.
- (2) As soon as the assessor stops being satisfied there are reasonable grounds for retaining the thing, the assessor must return it to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the assessor for its return.
- (4) Within 30 days after receiving the application, the assessor must—

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- (a) if the assessor is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner a notice about the decision, including the grounds for retaining the thing; or
 - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for retaining a seized thing if—
 - (a) the thing is being, or is likely to be, examined; or
 - (b) the thing is needed, or may be needed, for the purposes of—
 - (i) a proceeding for an offence against a conduct provision that is likely to be started or that has been started but not completed; or
 - (ii) an appeal from a decision in a proceeding for an offence against a conduct provision; or
 - (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—

examine includes analyse, test, measure, weigh, grade, gauge and identify.

Subdivision 4 Forfeiture

150CF Forfeiture by assessor decision

- (1) The assessor may decide a seized thing is forfeited to the State if an investigator—
 - (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the investigator is not required to—
 - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example—

The owner of the thing has migrated to another country.

- (3) Regard must be had to the thing's condition, nature and value in deciding—
 - (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

150CG Dealing with property forfeited to State

- (1) A thing becomes the property of the State if the thing is forfeited to the State under section 150CF(1).
- (2) The assessor may deal with the thing as the assessor considers appropriate, including, for example, by destroying it or giving it away.

Division 5 Other information-obtaining powers of investigators

150CH Power to require information

- (1) This section applies if an investigator reasonably believes—
 - (a) an offence against a conduct provision has been committed and a person may be able to give the investigator information about the commission of the offence; or
 - (b) a person has information reasonably necessary for the investigator to investigate the conduct of a councillor.
- (2) The investigator may, by notice given to the person, require the person to give the investigator the information by a stated reasonable time.
- (3) When making a requirement of a person under subsection (2), the investigator must give the person an offence warning for the requirement.
- (4) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—
information includes a document.

150CI Offence to contravene information requirement

- (1) A person of whom a requirement is made under section 150CH(2) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

150CJ Power to require attendance

- (1) The investigator may require a person to—
 - (a) attend a meeting with the investigator at a stated reasonable time and place; and
 - (b) answer questions, related to the investigation of the conduct of a councillor or an offence against a conduct provision, asked by the investigator.
- (2) When making a requirement of a person under subsection (1), the investigator must give the person an offence warning for the requirement.
- (3) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) It is a reasonable excuse for an individual to fail to answer a question if answering the question might tend to incriminate the individual or expose the individual to a penalty.

150CK Notice about confidentiality

- (1) This section applies if an investigator intends to, or does, exercise a power—
 - (a) under section 150CH requiring a person to give information to the investigator; or
 - (b) under section 150CJ requiring a person to attend a place and answer questions.

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- (2) The assessor may give a notice to the person stating that the fact of the person's attendance, or information given by the person, is confidential information.
- (3) However, the assessor may give the notice to the person only if the assessor reasonably believes the notice is necessary—
 - (a) to prevent the commission of an offence; or
 - (b) to ensure the investigation of a councillor's conduct is kept confidential.
- (4) The person must not disclose the confidential information to another person, unless the disclosure is permitted under subsection (5) or the person has a reasonable excuse.
Maximum penalty—85 penalty units.
- (5) The person may disclose the confidential information if—
 - (a) the disclosure was made before the person received the notice; or
 - (b) the disclosure is made to—
 - (i) obtain legal advice; or
 - (ii) obtain information to comply with the investigator's requirement; or
 - (iii) comply with another lawful obligation to disclose the information.
- (6) However, disclosure by a person (the *discloser*) under subsection (5)(b)(ii) is permitted only if the discloser informs another person to whom the disclosure is made that the information is confidential information under this section.

Division 6

Miscellaneous provisions relating to investigators

150CL Duty to avoid inconvenience and minimise damage

In exercising a power, an investigator must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 150CN.

150CM Notice about damage

- (1) This section applies if—
 - (a) an investigator damages something when exercising, or purporting to exercise, a power; or
 - (b) a person (the *assistant*) acting under the direction or authority of an investigator damages something.
- (2) However, this section does not apply to damage the investigator reasonably considers is trivial or if the investigator reasonably believes—
 - (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
- (3) The investigator must give a notice about the damage to a person who appears to the investigator to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the investigator must—
 - (a) leave the notice at the place at which the damage happened; and
 - (b) ensure it is left in a conspicuous position and in a reasonably secure way.

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- (5) The investigator may delay complying with subsection (3) or (4) if the investigator reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the investigator.
- (6) The delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place at which the damage happened.
- (7) If the investigator believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the investigator or the assistant, the investigator may state the belief in the notice.
- (8) The notice must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 150CN.

150CN Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an investigator, including a loss arising from compliance with a requirement made of the person under division 3, 4 or 5.
- (2) The compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an offence against a conduct provision, or another offence relating to the conduct of

a councillor, the investigation of which gave rise to the claim for compensation.

- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) In considering whether it is just to order compensation, the court must have regard to—
 - (a) any relevant offence committed by the claimant; and
 - (b) whether the loss arose from a lawful seizure or lawful forfeiture.
- (5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (6) Section 150CL does not provide for a statutory right of compensation other than as provided by this section.
- (7) In this section—
loss includes costs and damage.

Division 7 Review

Subdivision 1 Internal review

150CO Who may apply for review

- (1) This section applies to a person who is given, or is entitled to be given, an information notice under section 150CC about a decision to seize a thing (the *original decision*).
- (2) If the person is dissatisfied with the decision, the person may apply to the assessor for a review (an

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internal review) of the decision.

150CP Application for review

- (1) The application must be—
 - (a) made within 30 days after—
 - (i) if the person is given an information notice about the decision—the person is given the information notice; or
 - (ii) otherwise—the person otherwise becomes aware of the decision; and
 - (b) in writing; and
 - (c) supported by enough information to enable the assessor to decide the application.
- (2) The assessor may extend the time for making the application if, within the 30-day period applying under subsection (1), the person asks the assessor to extend the time.

150CQ Review decision

- (1) Unless the assessor made the original decision personally, the assessor must ensure the application is not dealt with by—
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office in the Office of the Independent Assessor than the person who made the original decision.
- (2) Within 90 days after the application is made, the assessor must review the original decision and make a decision (the *review decision*)—
 - (a) confirming the original decision; or
 - (b) amending the original decision; or

- (c) substituting another decision for the original decision.
- (3) The assessor must make the review decision on the material that led to the original decision and any other material the assessor considers relevant.
- (4) The assessor must, as soon as practicable after making the review decision, give the applicant notice of the review decision.
- (5) If the review decision is not the decision sought by the applicant, the notice must be a QCAT information notice.

Subdivision 2 External review

150CR External review by QCAT

If the applicant is dissatisfied with a review decision made by the assessor, the applicant may apply, as provided under the QCAT Act, to QCAT for a review of the review decision.

150CS No power to stay decision

If a person applies to QCAT for a review of a review decision, QCAT may not—

- (a) stay the operation of the review decision; or
- (b) grant an injunction in the proceeding for the review.

Part 5 Administration

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Division 1 Independent Assessor and Office of the Independent Assessor

Subdivision 1 Independent Assessor

150CT Establishment

There is to be an Independent Assessor.

150CU Functions

- (1) The functions of the assessor are—
 - (a) to investigate and deal with the conduct of councillors if it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the assessor by the Crime and Corruption Commission, corrupt conduct; and
 - (b) to provide advice, training and information to councillors, local government employees and other persons about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct; and
 - (c) to prosecute offences against the conduct provisions; and
 - (d) to investigate other matters decided by the Minister; and
 - (e) another function related to a function mentioned in paragraph (a), (b), (c), (d) or (f) directed, in writing, by the Minister; and
 - (f) any other functions given to the assessor under this Act.
- (2) The assessor is the public official responsible for

dealing with a complaint about the corrupt conduct of a councillor for the purposes of consultation about, or a referral of, the complaint under the *Crime and Corruption Act 2001*.

150CV Appointment

- (1) The Governor in Council may appoint a qualified person to be the Independent Assessor.
- (2) The assessor is appointed under this Act and not the *Public Service Act 2008*.

150CW Qualifications for appointment

- (1) A person is qualified to hold the office of assessor if the person has extensive knowledge of, and experience in, any of the following areas—
 - (a) local government;
 - (b) investigations;
 - (c) law;
 - (d) public administration;
 - (e) public sector ethics.
- (2) A person is not qualified to hold the office of the assessor if the person—
 - (a) has a conviction for an indictable offence, other than a spent conviction; or
 - (b) is an insolvent under administration; or
 - (c) is guilty of misconduct of a type that could warrant dismissal from the public service if the assessor were an officer of the public service.

150CX Term of office

Subject to this division, the assessor holds office

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for the term, of not more than 5 years, stated in the assessor's instrument of appointment.

150CY Conditions of appointment

The assessor—

- (a) is to be paid the remuneration and allowances decided by the Governor in Council; and
- (b) holds office on the terms and conditions decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

150CZ Preservation of rights

- (1) This section applies if a public service officer is appointed as the assessor.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the assessor were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or on resignation as the assessor, the person's service as the assessor is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

150DA Restriction on local government employment etc.

The assessor must not, without the Minister's approval in each particular case, hold office or be engaged in any way by a local government, whether or not for profit.

150DB Conflict of interest

- (1) This section applies if the assessor has an interest that may conflict with a fair and impartial investigation into the conduct of a councillor.
- (2) The assessor must not take part, or take further part, in consideration of the matter.
Maximum penalty—35 penalty units.
- (3) As soon as practicable after the assessor becomes aware this section applies, the assessor must give a notice about the matter to the Minister.
Maximum penalty—35 penalty units.
- (4) If the assessor gives a notice to the Minister about a conflict of interest in relation to a matter, the Minister must nominate a person to act as the assessor under section 150DD in relation to the matter.

150DC Vacancy of office

The office of the assessor becomes vacant if the person holding the office—

- (a) completes a term of office and is not reappointed; or
- (b) is not qualified under section 150CW to hold the office; or
- (c) is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity; or
- (d) resigns from the office by signed notice given to the Minister.

150DD Acting assessor

- (1) The Minister may appoint a person to act as the assessor during—

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- (a) a vacancy in the office of the assessor; or
 - (b) a period the assessor is absent, or can not perform the duties of the office, for any reason.
- (2) The person can not be appointed for more than 6 months in a 12-month period.
 - (3) However, the person may be appointed only if the person is qualified under section 150CW to hold the office of the assessor.

150DE Assessor not subject to outside direction

The assessor is not subject to direction by another person about—

- (a) the way the assessor’s powers in relation to an investigation under this Act are to be exercised; or
- (b) the priority given to investigations.

150DF Delegation

- (1) The assessor may delegate any of the assessor’s functions to an appropriately qualified staff member of the Office of the Independent Assessor.
- (2) However, the assessor may not delegate the assessor’s power to give a notice under section 150CK.
- (3) In this section—
functions includes powers.

Subdivision 2 Office of the Independent Assessor

150DG Establishment

- (1) An office called the Office of the Independent Assessor is established.
- (2) The office consists of the assessor and the staff of the office.

150DH Function

The office's function is to help the assessor perform the assessor's functions.

150DI Staff

Staff of the office are employed under the *Public Service Act 2008*.

150DJ Control of office

- (1) The assessor controls the office.
- (2) Subsection (1) does not prevent the attachment of the office to the department for the purpose of ensuring the office is supplied with the administrative support services it requires to carry out its functions effectively and efficiently.

Division 2 Councillor Conduct Tribunal

150DK Establishment

The Councillor Conduct Tribunal (the *conduct tribunal*) is established.

150DL Functions

- (1) The functions of the conduct tribunal are—

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- (a) at the request of a local government—
 - (i) to investigate the suspected inappropriate conduct of a councillor referred to the local government, by the assessor, to be dealt with by the local government; and
 - (ii) to make recommendations to the local government about dealing with the conduct; and
 - (b) another function related to a function mentioned in paragraph (a) or (c) directed, in writing, by the Minister; and
 - (c) any other functions given to the conduct tribunal under this Act.
- (2) A member of the conduct tribunal chosen by the president may constitute the conduct tribunal to perform the functions mentioned in subsection (1)(a) for a particular request.

150DM Membership of conduct tribunal

The members of the conduct tribunal are—

- (a) the president; and
- (b) the casual members.

150DN Appointment of president and casual members

- (1) The Governor in Council may appoint a person to be the president of the conduct tribunal.
- (2) The Governor in Council may appoint the number of casual members the Governor in Council considers appropriate.
- (3) The Minister may recommend the appointment of a person as a member of the conduct tribunal only

if the person is qualified under section 150DO to be a member.

150DO Qualifications for membership

- (1) A person is qualified to be a member of the conduct tribunal only if the person has extensive knowledge of, and experience in, any of the following—
 - (a) local government;
 - (b) investigations;
 - (c) law;
 - (d) public administration;
 - (e) public sector ethics.
- (2) However, a person is not qualified to be a member if the person—
 - (a) is a councillor; or
 - (b) is a nominee for election as a councillor; or
 - (c) accepts an appointment as a councillor; or
 - (d) is an employee of a local government; or
 - (e) is a contractor of a local government; or
 - (f) is a consultant engaged by a local government; or
 - (g) is a member of an Australian Parliament; or
 - (h) is a nominee for election as a member of an Australian Parliament; or
 - (i) is a member of a political party; or
 - (j) has a conviction for an indictable offence, other than a spent conviction; or
 - (k) is an insolvent under administration; or

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- (l) is a person prescribed by regulation for this subsection.

150DP Term of office

Subject to this division, a member holds office for the term, of not more than 4 years, stated in the member's instrument of appointment.

150DQ Conditions of appointment

A member—

- (a) is to be paid the remuneration and allowances decided by the Governor in Council; and
- (b) holds office on the terms and conditions decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

150DR Vacancy of office

The office of a member becomes vacant if the person holding the office—

- (a) completes a term of office and is not reappointed; or
- (b) is not qualified under section 150DO to hold the office; or
- (c) is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity; or
- (d) resigns the office by signed notice given to the Minister.

150DS Acting president

- (1) The Minister may appoint a casual member to act as the president during—
 - (a) a vacancy in the office of the president; or
 - (b) a period the president is absent, or can not perform the duties of the office because of a conflict of interest or for any other reason.
- (2) The casual member can not be appointed for more than 3 months in a 12-month period.

150DT Conflict of interest

- (1) This section applies if a member has an interest that may conflict with a fair and impartial hearing about or investigation of the conduct of a councillor.
- (2) The member must not take part, or take further part, in consideration of the matter.
Maximum penalty—35 penalty units.
- (3) As soon as practicable after the member becomes aware this section applies, the member must give a notice about the matter—
 - (a) if the member is the president—to the Minister; or
 - (b) otherwise—to the president.Maximum penalty—35 penalty units.
- (4) If the president gives the Minister a notice about a conflict of interest in relation to a matter, the Minister must nominate a casual member to act as the president under section 150DS in relation to the matter.

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150DU Costs of conduct tribunal to be met by local government

- (1) A local government must pay the costs of the conduct tribunal in relation to the conduct tribunal—
 - (a) conducting a hearing about the misconduct of a councillor under part 3, division 6; or
 - (b) at the request of the local government, investigating the suspected inappropriate conduct of a councillor and making recommendations to the local government about dealing with the conduct.
- (2) For subsection (1), the costs of the conduct tribunal include the remuneration, allowances and expenses paid to a member of the conduct tribunal conducting the hearing or investigation, or making the recommendations.

150DV Practice directions

- (1) The president may issue practice directions for conducting a hearing.
- (2) A practice direction must not be inconsistent with this Act or any requirements prescribed by regulation about procedures for a hearing.
- (3) The practice directions must be published on the department's website.

150DW Assistance from departmental staff

The department's chief executive must make available to the conduct tribunal the help from public service employees employed in the department that the conduct tribunal needs to effectively perform its functions.

Part 6 Miscellaneous

Division 1 Councillor conduct register

150DX Local governments to keep and publish register

- (1) A local government must keep an up-to-date register (a *councillor conduct register*) about the following matters for the local government—
 - (a) orders made about the unsuitable meeting conduct of councillors at its local government meetings;
 - (b) decisions about the suspected inappropriate conduct of councillors referred to the local government under part 3, division 5;
 - (c) decisions about whether or not councillors engaged in misconduct made by the conduct tribunal under part 3, division 6;
 - (d) complaints about the conduct of councillors dismissed by the assessor;
 - (e) decisions to take no further action in relation to the conduct of councillors investigated by the assessor.
- (2) The local government must—
 - (a) publish the register on the local government's website; and
 - (b) ensure the public may inspect the register, or purchase a copy of an entry in the register, at the local government's public office.
- (3) However, subsection (2) does not apply to information recorded in the register that is part of a public interest disclosure under the *Public*

Interest Disclosure Act 2010.

150DY Content of register—decisions

- (1) This section applies to each of the following decisions—
 - (a) a decision by a chairperson of a local government meeting to make an order against a councillor under section 150I(2) for unsuitable meeting conduct;
 - (b) a decision by the local government about the suspected inappropriate conduct of a councillor referred to the local government under part 3, division 5 and any action taken to discipline the councillor;
 - (c) a decision about the misconduct of a councillor made by the conduct tribunal under part 3, division 6 and any action taken to discipline the councillor;
 - (d) a decision by the assessor to take no further action in relation to the conduct of a councillor after conducting an investigation.
- (2) The councillor conduct register must include the following details for the decision—
 - (a) a summary of the decision and the reasons for the decision;
 - (b) the name of the councillor about whom the decision was made;
 - (c) the date of the decision.

Notes—

- 1 See section 150AS(2)(b) and (4) for the conduct tribunal's obligation to give the local government a notice about a decision of the conduct tribunal.
- 2 Also, see section 150Z for the assessor's obligation to give the local government a notice about a decision to take no further action.

- (3) However, the name of the councillor whose conduct is the subject of the decision may be included in the entry in the register for the decision only if—
 - (a) the local government or conduct tribunal decided the councillor engaged in inappropriate conduct or misconduct; or
 - (b) the councillor agrees to the councillor's name being included.
- (4) If a decision relates to the conduct of a councillor that was the subject of a complaint, a summary of the decision included in the register must not include—
 - (a) the name of the person who made the complaint; or
 - (b) information that could reasonably be expected to result in identification of the person.

150DZ Content of register—dismissed complaints

- (1) The councillor conduct register must include the following particulars for each complaint about the conduct of a councillor dismissed by the assessor—
 - (a) the date the complaint was made;
 - (b) a summary of the complaint;
 - (c) a statement about why the complaint was dismissed.

Note—

See section 150Z for the assessor's obligation to give a notice about the dismissal of a complaint to the local government.

- (2) However, the name of the councillor against whom the complaint was made is not to be

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included in the entry in the register for the complaint, unless the councillor agrees to the councillor's name being included.

- (3) A summary of a complaint included in the register must not include—
- (a) the name of the person who made the complaint; or
 - (b) information that could reasonably be expected to result in identification of the person.

Division 2 Other provisions

150EA Secrecy

- (1) This section applies to a person who—
- (a) is, or has been, the assessor, an investigator or a staff member of the Office of the Independent Assessor; and
 - (b) obtains confidential information in the course of performing, or because of, the person's functions under this Act.
- (2) The person must not—
- (a) make a record of the confidential information; or
 - (b) directly or indirectly disclose the confidential information to another person; or
 - (c) use the confidential information to benefit a person or cause detriment to a person.

Maximum penalty—100 penalty units.

- (3) However, subsection (2) does not apply to a person if the record is made, or the confidential

information is disclosed or used—

- (a) in the performance of the person’s functions under this Act; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) as otherwise required or permitted by law.
- (4) In this section—

confidential information means information, other than information that is publicly available—

- (a) about a person’s personal affairs or reputation; or
- (b) that would be likely to damage the commercial activities of a person to whom the information relates.

150EB Annual report

- (1) As soon as practicable after the end of each financial year, but no later than 3 months after the end of the financial year, the assessor must give the Minister a written report about the operation of the Office of the Independent Assessor during the year.
- (2) Without limiting subsection (1), the report must include—
 - (a) a description of the following matters for the year—
 - (i) complaints made, or referred, to the assessor about the conduct of councillors;
 - (ii) complaints dismissed by the assessor;
 - (iii) investigations conducted by the office;

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- (iv) decisions made by the assessor to take no further action after conducting an investigation;
 - (v) suspected corrupt conduct notified to the Crime and Corruption Commission by the assessor;
 - (vi) suspected inappropriate conduct referred by the assessor to local governments to be dealt with;
 - (vii) decisions about whether councillors engaged in misconduct made by the conduct tribunal; and
- (b) details about the number of times each power under part 4 was exercised by the assessor and other investigators during the year; and
 - (c) details of other functions performed by the assessor during the year.
- (3) The report must be prepared in a way that does not disclose the identity of a person who made a complaint about the conduct of a councillor or the identity of a person investigated.
 - (4) The Minister must ensure a copy of the report is tabled in the Legislative Assembly as soon as practicable after the report is given to the Minister.

150EC Approved forms

The assessor may approve forms for use under this chapter.

14 Amendment of s 162 (When a councillor's office becomes vacant)

Section 162(1)(e)—

omit, insert—

- (e) is absent from 2 or more consecutive ordinary meetings of the local government over a period of at least 2 months, unless the councillor is absent—
 - (i) in compliance with an order made by the conduct tribunal, the local government or the chairperson of a meeting of the local government or a committee of the local government; or
 - (ii) with the local government’s leave; or

15 Amendment of s 170A (Requests for assistance or information)

Section 170A(3)(a)—

omit, insert—

- (a) that is a record of the conduct tribunal; or

16 Amendment of s 171 (Use of information by councillors)

Section 171(3), note—

omit.

17 Omission of ch 6, pt 2, div 6 (Conduct and performance of councillors)

Chapter 6, part 2, division 6—

omit.

18 Replacement of ch 6, pts 3 and 4

Chapter 6, parts 3 and 4—

omit, insert—

Part 3 Local Government Remuneration Commission

176 Establishment

The Local Government Remuneration Commission (the *remuneration commission*) is established.

177 Functions

The functions of the remuneration commission are—

- (a) to establish the categories of local governments; and
- (b) to decide the category to which each local government belongs; and
- (c) to decide the maximum amount of remuneration payable to the councillors in each of the categories; and
- (d) another function related to the remuneration of councillors directed, in writing, by the Minister.

178 Membership of remuneration commission

The commissioners of the remuneration commission are—

- (a) the chairperson; and
- (b) the casual commissioners.

179 Constitution of remuneration commission

The remuneration commission is constituted for a

matter by—

- (a) for performing a function of the remuneration commission—at least 2, but not more than 3, commissioners of the remuneration commission chosen by the chairperson; or
- (b) for dealing with an administrative or procedural matter related to performing a function of the remuneration commission—
 - (i) the chairperson; or
 - (ii) not more than 3 commissioners of the remuneration commission chosen by the chairperson.

180 Appointment of chairperson and casual commissioners

- (1) The Governor in Council may appoint a person to be the chairperson of the remuneration commission.
- (2) The Governor in Council may appoint—
 - (a) a person to be a casual commissioner of the remuneration commission; and
 - (b) the number of casual commissioners the Governor in Council considers appropriate.
- (3) The Minister may recommend the appointment of a person as a commissioner only if the person is qualified under section 181 to be a commissioner.

181 Qualifications to be commissioner

- (1) A person is qualified to be a commissioner only if the person—
 - (a) has extensive knowledge of, and experience in, any of the following—

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- (i) local government;
 - (ii) community affairs;
 - (iii) industrial relations;
 - (iv) public administration;
 - (v) public finance; or
 - (b) has other knowledge and experience the Governor in Council considers appropriate.
- (2) However, a person is not qualified to be a commissioner if the person—
- (a) is a councillor; or
 - (b) is a nominee for election as a councillor; or
 - (c) accepts appointment as a councillor; or
 - (d) is an employee of a local government; or
 - (e) is a contractor of a local government; or
 - (f) is a consultant engaged by a local government; or
 - (g) is a member of an Australian Parliament; or
 - (h) is a nominee for election as a member of an Australian Parliament; or
 - (i) is a member of a political party; or
 - (j) has a conviction for an indictable offence, other than a spent conviction; or
 - (k) is an insolvent under administration; or
 - (l) is a person prescribed by regulation.

182 Term of office

Subject to this part, a commissioner holds office for the term, of not more than 4 years, stated in the commissioner's instrument of appointment.

183 Conditions of appointment

A commissioner—

- (a) is to be paid the remuneration and allowances decided by the Governor in Council; and
- (b) holds office on the terms and conditions decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

184 Vacancy of office

The office of a commissioner becomes vacant if the person holding the office—

- (a) completes a term of office and is not reappointed; or
- (b) is not qualified under section 181 to hold the office; or
- (c) is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity; or
- (d) resigns the office by signed notice given to the Minister.

185 Assistance from departmental staff

The department's chief executive must make available to the remuneration commission the help from public service employees employed in the department that the commission needs to effectively perform its functions.

19 Amendment of s 212 (What this part is about)

Section 212(2), *'investigator'*—

omit, insert—

[s 20]

decision-maker

20 Amendment of s 213 (Procedures at hearing)

(1) Section 213, ‘investigator’—

omit, insert—

decision-maker

(2) Section 213(3), from ‘rules’—

omit, insert—

requirements prescribed by regulation.

21 Amendment of s 214 (Witnesses at hearings)

Section 214, ‘investigator’—

omit, insert—

decision-maker

22 Amendment of s 215 (Contempt at hearing)

Section 215, ‘investigator’—

omit, insert—

decision-maker

23 Amendment of ch 7, pt 4, hdg (Legal provisions)

Chapter 7, part 4, heading—

omit, insert—

**Part 4 Offences and legal
provisions**

24 Insertion of new ch 7, pt 4, div 1

Chapter 7, part 4, before section 234—

insert—

Division 1 Offences relating to State officials

233A Obstructing State officials

- (1) A person must not obstruct a State official exercising a power under this Act, or a person helping a State official exercise a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If a person has obstructed a State official, or a person helping a State official, and the official decides to proceed with the exercise of the power, the official must warn the person that—
- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the official considers the person’s conduct is an obstruction.

- (3) In this section—

State official means the following persons—

- (a) the Minister;
- (b) the department’s chief executive;
- (c) an authorised officer;
- (d) the assessor;
- (e) an investigator;
- (f) the president or a casual member of the conduct tribunal;
- (g) a member of the change commission.

[s 25]

233B Impersonating particular persons

A person must not impersonate an authorised officer, the assessor or an investigator.

Maximum penalty—50 penalty units.

25 Amendment of s 234 (False or misleading information)

(1) Section 234(1)(f)—

omit, insert—

(f) the assessor or a member of the staff of the Office of the Independent Assessor;

(fa) an investigator;

(fb) the conduct tribunal;

(2) Section 234(1)(g)—

omit, insert—

(g) the remuneration commission;

(3) Section 234(1)(fa) to (h)—

renumber as section 234(1)(g) to (j).

26 Insertion of new ch 7, pt 4, div 2, hdg

After section 234—

insert—

Division 2 Legal matters

27 Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability)

(1) Section 235(2)—

insert—

(ca) the assessor; or

(cb) an investigator; or

-
- (cc) a member of the conduct tribunal; or
- (2) Section 235(2)(f) and (g)—
omit, insert—
- (f) a commissioner of the remuneration commission; or
- (3) Section 235(2)(h), ‘or (c)’—
omit, insert—
- , (c), (d) or (e)
- (4) Section 235(2)(ca) to (i)—
renumber as section 235(2)(d) to (k).
- (5) Section 235(8), from ‘(including)’—
omit, insert—

, including, for example, the *Public Interest Disclosure Act 2010* and the *Public Service Act 2008*.

Note—

For protection from civil liability in relation to State employees—see the *Public Service Act 2008*, section 26C.

28 Replacement of s 242 (Types of offences under this Act)

Section 242—

omit, insert—

242 Proceedings for indictable offences

- (1) Subject to subsection (2), a charge of an indictable offence against this Act must be heard and decided summarily.
- (2) A Magistrates Court must not deal summarily with a charge mentioned in subsection (1) if satisfied, on an application made by the prosecution or the defence, that because of

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exceptional circumstances the charge should not be heard and decided summarily.

- (3) If subsection (2) applies to a Magistrates Court—
- (a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily and start treating the proceeding as a committal proceeding; and
 - (b) the defendant's plea at the start of the hearing must be disregarded; and
 - (c) the evidence already heard by the court must be taken to be evidence in the committal proceeding; and
 - (d) to avoid any doubt, it is declared that the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

29 Amendment of s 257 (Delegation of local government powers)

- (1) Section 257—

insert—

(1A) However, a local government may only delegate a power to make a decision about a councillor's conduct under section 150AG to—

- (a) the mayor; or
- (b) a standing committee of the local government.

- (2) Section 257(2), 'However,'—

omit, insert—

Also,

- (3) Section 257(1A) to (4)—

renumber as section 257(2) to (5).

30 Insertion of new ss 260A and 260B

Chapter 7, part 6—

insert—

260A Criminal history report

- (1) This section applies if the Minister is deciding whether a person is qualified to hold, or to continue to hold, the office of assessor, a member of the conduct tribunal or a commissioner of the remuneration commission.
- (2) The Minister may ask the police commissioner for a written report about the criminal history of the person including a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (4) The police commissioner must comply with the request.
- (5) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (6) The Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

260B New convictions must be disclosed

- (1) This section applies if a person who holds the office of the assessor, a member of the conduct tribunal or a commissioner of the remuneration commission is convicted of an indictable offence during the term of the person's appointment.
- (2) The person must, unless the person has a

[s 31]

reasonable excuse, immediately give the Minister a notice about the conviction.

Maximum penalty—100 penalty units.

- (3) The notice must include the following information—
 - (a) the existence of the conviction;
 - (b) when the offence was committed;
 - (c) sufficient details to identify the offence;
 - (d) the sentence imposed on the person.
- (4) The Minister must ensure the notice is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

31 Amendment of s 270 (Regulation-making power)

- (1) Section 270(2), ‘For example, a’—

omit, insert—

A

- (2) Section 270(2)(a), ‘tribunal’—

omit, insert—

conduct tribunal or remuneration commission

32 Insertion of new ch 9, pt 12

Chapter 9—

insert—

Part 12 **Transitional provisions for Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018**

316 Definitions for pt 12

In this part—

assessed, in relation to a complaint about the conduct or performance of a councillor, means—

- (a) a preliminary assessment of the complaint was conducted under former section 176B; or
- (b) the department’s chief executive decided, under former section 177, that the complaint is about inappropriate conduct or misconduct.

existing complaint means a complaint about the conduct or performance of a councillor made to any of the following entities before the commencement—

- (a) the local government;
- (b) the department’s chief executive;
- (c) the mayor of the local government;
- (d) the chief executive officer of the local government.

former, for a provision of this Act, means as in force immediately before the commencement of the section in which the provision is mentioned.

local government official see section 150R(3).

[s 32]

317 Existing complaints not assessed

- (1) This section applies if, immediately before the commencement, an existing complaint about a councillor's conduct had not been assessed.
- (2) The assessor must deal with the existing complaint under chapter 5A as if the existing complaint was made or referred to the assessor under chapter 5A.
- (3) An entity holding information relating to the existing complaint must, as soon as practicable after the commencement, give the information to the assessor.
- (4) This section is subject to section 322.

318 Existing inappropriate conduct complaints

- (1) This section applies if, immediately before the commencement—
 - (a) an existing complaint about a councillor was assessed as being about inappropriate conduct; and
 - (b) a final decision dealing with the complaint had not been made.
- (2) Former chapter 6, part 2, division 6 continues to apply in relation to the existing complaint as if the provisions had not been repealed by the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*.
- (3) This section applies despite section 322.

319 Existing misconduct complaints

- (1) This section applies if, immediately before the commencement—

- (a) an existing complaint about a councillor was assessed to be about misconduct; and
 - (b) a final decision dealing with the complaint had not been made.
- (2) The assessor must deal with the existing complaint under chapter 5A as if the existing complaint was made or referred to the assessor under chapter 5A.
 - (3) An entity holding relevant information relating to the existing complaint must, as soon as practicable after the commencement, give the information to the assessor.
 - (4) This section is subject to section 322.

320 Existing orders taken into account

- (1) This section applies if, before the commencement—
 - (a) an order was made against a councillor under section 180 or 181 as in force from time to time before the commencement; and
 - (b) the order is substantially the same as an order that may be made under chapter 5A.
- (2) The order may be taken into account for the following purposes—
 - (a) the local government or a local government official deciding whether—
 - (i) to notify the assessor about a councillor's conduct under chapter 5A, part 3, division 3; or
 - (ii) to give information about a councillor's conduct to the assessor under section 150AF;
 - (b) the assessor deciding how to deal with the conduct of a councillor, or a complaint

[s 32]

about the conduct of a councillor, under section 150W;

- (c) the local government or conduct tribunal deciding what action to take in relation to any inappropriate conduct or misconduct of the councillor.

321 Existing recommendations continue

- (1) This section applies if—
 - (a) before the commencement, the Local Government Remuneration and Discipline Tribunal had recommended the suspension or dismissal of a councillor to the Minister under former section 180; and
 - (b) immediately before the commencement, the Minister had not considered or made a decision in relation to the recommendation.
- (2) For sections 120, 122 and 123, the recommendation is taken to be a recommendation made by the conduct tribunal under section 150AR.

322 Dealing with particular pre-commencement complaints or conduct

- (1) This section applies in relation to conduct engaged in by a councillor before the commencement, including conduct that is the subject of an existing complaint mentioned in section 317(1) or 319(1).
- (2) In deciding how to deal with the conduct, the assessor, a local government official, the local government and the conduct tribunal must—
 - (a) apply the former conduct definitions to the conduct; and

-
- (b) if the conduct is referred to the local government—only make an order that is substantially the same as an order that could have been made under former section 181; and
 - (c) if the conduct is referred to the conduct tribunal—only make an order that is substantially the same as an order that could have been made under former section 180.
- (3) To remove any doubt, it is declared that chapter 5A otherwise applies in relation to an order mentioned in subsection (2).
- (4) In this section—
- former conduct definitions*** means—
- (a) the definition of *misconduct* under former section 176(3); and
 - (b) the definition of *inappropriate conduct* under former section 176(4); and
 - (c) the qualification of those definitions under former section 177A(5) and (6); and
 - (d) the extension of the definition of *misconduct* under former section 181(3) and (4).

323 Model procedures apply until procedures adopted

- (1) If, immediately before the commencement, a local government has not adopted the model procedures or other procedures under section 150G, on the commencement the local government is taken to have adopted the model procedures.
- (2) Subsection (1) applies until the local government adopts the model procedures or other procedures under section 150G.

[s 32A]

324 Process if no investigation policy

- (1) This section applies if, on or after the commencement—
 - (a) a local government is required to deal with the inappropriate conduct of a councillor under chapter 5A, part 3, division 5; and
 - (b) the local government has not adopted an investigation policy under section 150AE.
- (2) The local government must decide, by resolution, the procedure for investigating the conduct.
- (3) However, subsections (4) and (5) apply if the assessor has recommended, under section 150AC(3), how the conduct may be dealt with.
- (4) The local government must follow the process recommended by the assessor or decide, by resolution, to deal with the complaint in another way.
- (5) The local government must state the reasons for its decision in the resolution.

32A Amendment of sch 1 (Serious integrity offences and integrity offences)

Schedule 1, part 2, entry for This Act—
insert—

150AW(1) Protection from reprisal

33 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *approved form*—
omit.
- (2) Schedule 4, definitions *CCC*, *Crime and Corruption Act*, *inappropriate conduct*, *investigator*, *misconduct*, *occupier*,

preliminary assessment, regional conduct review panel and tribunal—

omit.

(3) Schedule 4—

insert—

approved form means—

- (a) for chapter 5A, a form approved by the assessor under section 150EC; or
- (b) otherwise, a form approved by the department's chief executive under section 266.

assessor see section 150C.

casual member, in relation to the conduct tribunal, means a person appointed to be a casual member of the conduct tribunal under section 150DN(2).

conduct tribunal see section 150DK.

insolvent under administration see the Corporations Act, section 9.

member means—

- (a) in relation to the grants commission—the chairperson, deputy chairperson or another person appointed as a member of the grants commission under section 231; or
- (b) in relation to the conduct tribunal—the president or a casual member of the conduct tribunal.

president, of the conduct tribunal, means the person appointed as the president of the conduct tribunal under section 150DN(1).

(4) Schedule 4—

insert—

[s 33]

behavioural standard, for chapter 5A, see section 150C.

casual commissioner means—

- (a) in relation to the change commission—a person appointed as a casual commissioner of the change commission under section 23(2); or
- (b) in relation to the remuneration commission—a person appointed as a casual commissioner of the remuneration commission under section 180(2).

chairperson means—

- (a) in relation to the grants commission—the person appointed to be the chairperson of the grants commission under section 231; or
- (b) in relation to the remuneration commission—the person appointed to be the chairperson of the remuneration commission under section 180(1).

commissioner, in relation to the remuneration commission, means—

- (a) the chairperson of the remuneration commission; or
- (b) a casual commissioner of the remuneration commission.

conduct, for chapter 5A, see section 150C.

conduct provision, for chapter 5A, see section 150AY.

corrupt conduct see the *Crime and Corruption Act 2001*, section 15.

councillor conduct register see section 150DX(1).

decision-maker see section 212(2).

deputy chairperson, in relation to the grants commission, means the person appointed as the deputy chairperson of the grants commission under section 231.

electronic document, for chapter 5A, means a document of a type mentioned in the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

general power, for chapter 5A, see section 150BU.

help requirement, for chapter 5A, see section 150BV(1).

inappropriate conduct, for chapter 5A, see section 150K.

information notice, for a decision, means a notice that states the following information—

- (a) the decision;
- (b) the reasons for the decision;
- (c) the rights of review under this Act for the decision;
- (d) how, and the period within which, a review under this Act for the decision may be started;
- (e) how a stay of the operation of the decision may be applied for under this Act.

investigation policy, of a local government, for chapter 5A, see section 150AE(1).

investigator means a person who holds office under chapter 5A as an investigator.

local government meeting, for chapter 5A, see section 150C.

misconduct, for chapter 5A, see section 150L.

model procedures, for chapter 5A, see section

[s 33]

150F.

notice means a written notice.

occupier—

(a) of a place, for chapter 5A, includes—

- (i) if there is more than 1 person who apparently occupies the place—any of the persons; and
- (ii) a person at the place who is apparently acting with the authority of a person who apparently occupies the place; and
- (iii) if no person apparently occupies the place—a person who is an owner of the place; or

(b) of property, other than for chapter 5A, see section 125(6).

of, a place, for chapter 5A, includes at or on the place.

offence warning, for a direction or requirement by an investigator under chapter 5A, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with it.

owner, of a thing that has been seized under chapter 5A, includes a person who would be entitled to possession of the thing had it not been seized.

place, for chapter 5A, includes—

- (a) premises; and
- (b) vacant land; and
- (c) a place in Queensland waters; and
- (d) a place held under more than 1 title or by more than 1 owner; and

-
- (e) the land or water on which a building or other structure, or a group of buildings or other structures, is situated.

premises, for chapter 5A, includes—

- (a) a building or other structure; and
(b) a part of a building or other structure; and
(c) a caravan or vehicle; and
(d) a cave or tent; and
(e) premises held under more than 1 title or by more than 1 owner.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably satisfied means is satisfied on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

referral notice, for chapter 5A, see section 150AC.

remuneration commission see section 176.

unsuitable meeting conduct, for chapter 5A, see section 150H.

- (5) Schedule 4, definition *identity card*, paragraph (a), after ‘person as an’—

insert—

investigator,

34 Amendment of various sections

Each of the following provisions is amended by omitting ‘written notice’ and inserting ‘notice’—

[s 34]

- section 16(b)
- section 62(7)
- section 68(2) and (7)
- section 70(3)(b) and (5)
- section 71(1)
- section 77(1) and (3)(a)
- section 78(4)
- section 85(4), (5) and (6)
- section 120(2)
- section 133(3) and (4)
- section 136(2)
- section 138AA(1) and (3)
- section 142(6) and (8)
- section 165(4)
- section 166(7) and (8)
- section 202(5)(b)
- section 204D(2)(b)
- section 214(1)
- section 216B(1)(b) and (3)
- section 216C(b)
- section 219(2)
- section 219A(1)
- section 222(2)
- section 269(1).

Part 3 **Amendment of Public Service Act 2008**

35 **Act amended**

This part amends the *Public Service Act 2008*.

36 **Amendment of sch 1 (Public service offices and their heads)**

Schedule 1—

insert—

Office of the Independent Assessor
under the *Local Government Act*
2009

Independent Assessor