Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017.

Policy objectives and the reasons for them

The policy objective of the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2017 (the Bill) is to implement the Government's response to the Independent Councillor Complaints Review Panel's Report '*Councillor Complaints Review: A fair, effective and efficient framework*' (the Councillor Complaints Report) to provide for a simpler, more streamlined system for making, investigating and determining complaints about councillor conduct in Queensland.[1]

The purpose of the independent review was to examine the statutory provisions relating to complaints to assess the effectiveness of the current legislative and policy framework and make recommendations about policy, legislative and operational changes required to improve the system of dealing with complaints about councillors' conduct.

The review was initiated in response to concerns raised by the Local Government Managers Australia Queensland Inc (LGMA) and the Local Government Association of Queensland (LGAQ) about the effectiveness of the current framework. Concerns included the role of local government chief executive officers (CEOs) in assessing complaints, the inability to seek a review of decisions and the need to better ensure natural justice for all parties.

The review examined the councillor complaints provisions under the *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (COBA). The Councillor Complaints Report made 60 recommendations for change.

On 20 July 2017, the Minister for Local Government and Minister for Aboriginal and Torres Strait Islander Partnerships tabled the Councillor Complaints Report and the Government's response in Parliament following the Estimates Hearing by the Infrastructure, Planning and Natural Resources Committee. The Government's response supports, partially supports or supports in principle 50 of the recommendations.

[1] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report). A copy of the report is available at: http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1073.pdf
A copy of the Government's response is available at: http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1074.pdf

The Government's response was developed by the Department of Infrastructure, Local Government and Planning (the department) in consultation with the LGAQ, LGMA, and state agencies including the Department of the Premier and Cabinet, Queensland Treasury and the Department of Justice and Attorney-General.

Achievement of policy objectives

To implement the Government's response, the Bill amends the LGA and the *Public Service Act 2008* (PSA) to provide a simpler, more streamlined system for making, investigating and determining complaints about councillor conduct in Queensland.

The Bill:

- establishes the Independent Assessor and the Office of the Independent Assessor to investigate and deal with the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the assessor by the Crime and Corruption Commission (CCC), corrupt conduct
- provides for local governments to investigate and deal with suspected inappropriate conduct when referred to a local government by the assessor and to take disciplinary action against councillors for inappropriate conduct
- reallocates the functions of the current Local Government Remuneration and Discipline Tribunal (LGRDT) and the Regional Conduct Review Panels (RCRPs) by:
  - establishing the Councillor Conduct Tribunal to conduct hearings about a councillor's alleged misconduct, decide whether the councillor has engaged in misconduct and what, if any, disciplinary action to take, and at the request of a local government investigate the suspected inappropriate conduct of a councillor
  - establishing the Local Government Remuneration Commission to establish the categories of local governments, decide the category to which each local government belongs and decide the maximum remuneration payable to councillors
- deals with the conduct of councillors at local government meetings that contravene the behavioural standards (a 'local government meeting' is defined to mean a meeting of a local government or a committee of a local government)
- allows for decisions made as part of the new councillor complaints system to be subject to appeal (by repealing current section 176(9), refer also to section 244 of the LGA), and provides for an application to the Queensland Civil and Administrative Tribunal (QCAT) under the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) for a review of:
  - the tribunal's decisions (new section 150AQ) (other than a decision to recommend the councillor's suspension or dismissal, refer new section 150AR(1)(b)(xi), (xii))
  - a review decision made by the assessor about a decision to seize a thing (new section 150CQ)
- provides for administration and governance matters including requiring:
  - a code of conduct (made by the Minister) to set appropriate standards of behaviour for councillors in performing their functions
  - the department's chief executive to make model procedures for the conduct of meetings of a local government and its committees
  - local governments to maintain a councillor conduct register recording particular orders and decisions

  - the assessor to give the Minister an annual written report about the operation of the Office of the Independent Assessor and for the Minister to table a copy of the report in the Legislative Assembly
- strengthens offences to support the new system, including providing protection from reprisal for local government employees and councillors who make complaints against councillors, discouraging frivolous and improper complaints and ensuring confidentiality of investigations
- provides for appropriate arrangements necessary for the transition to the new councillor complaints system.

Former councillors

The Bill new chapter 5A applies in relation to a person who was but is no longer a councillor if the person was a councillor when conduct the subject of a complaint or investigation is alleged to have happened (new section 150M).

Brisbane City Council (BCC)

The provisions of the Bill apply to all local governments other than the BCC.

Establishment

Independent Assessor

Currently, complaints about the conduct or performance of a councillor may be made to the local government, the department's chief executive, the mayor or the CEO of the local government. A preliminary assessment of the complaint is carried out by either the department's chief executive (if the complaint is made by the mayor or CEO) or the CEO (if the complaint is made by another entity).

The Councillor Complaints Report notes: *"Making such decisions can give rise to a clear conflict of interest for CEOs in assessing a complaint against one of their own councillors – one of their employers. Equally, assessment independent from the Department will more clearly separate the other oversight roles the Department has in dealing with offences under the LG Act. The Panel received overwhelming support for the proposition that this function should be transferred to an Independent Assessor."*[2]

The Councillor Complaints Report recommendation 4.1 states *"The LG Act be amended to provide that the 'preliminary assessment' of any complaint against a councillor should be made by an Independent Assessor, and not by a council CEO, or the Department's chief executive (ss. 148H(2), 176B, 176C, 177 and 177A)."*

The Government's response to recommendation 4.1 at page 1 *"…supports the establishment of a statutory Independent Assessor to assess complaints and carry out investigations."*

To implement the Government's response the Bill (new section 150CT) provides for the establishment of an Independent Assessor (the assessor). The Governor in Council may appoint

[2] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 11.

a qualified person to be the assessor, for a term of not more than 5 years. The Bill provides that the assessor is not subject to direction by another person about the way the assessor's powers in relation to an investigation under the LGA are to be exercised or the priority given to investigations.

The Bill (new section 150CU) provides that the assessor's functions are:

- to investigate and deal with the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the assessor by the CCC, corrupt conduct
- to provide advice, training and information about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct
- to prosecute offences against the conduct provisions (see new section 150AY for conduct provisions)
- to investigate any other matters decided by the Minister
- another function directed, in writing, by the Minister
- any other function given to the assessor under the LGA.

The Bill provides that 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* (CC Act).

Office of the Independent Assessor

The Bill (new section 150DG) establishes the Office of the Independent Assessor (the OIA) to help the assessor perform the assessor's functions. The assessor controls the OIA.

Investigators

The Councillor Complaints Report notes: *"…the Department's investigative powers in relation to complaints about councillor conduct are not clearly defined and potentially limit its capacity to investigate as thoroughly as required."*[3]

The Councillor Complaints Report recommendation 4.9 states: *"The Independent Assessor be given the same powers as an investigator is given in s. 214 of the Act, subject to the same requirements of s. 213 to provide natural justice."*

The Government's response to recommendation 4.9 at page 3 includes: *"…It would be more appropriate for the Independent Assessor to have investigatory powers, such as the power to require a person to attend and answer questions at a nominated time/place. Consequently, the Department of Infrastructure, Local Government Planning (DILGP) will investigate methods of ensuring that the Independent Assessor has sufficient investigative powers to carry out its functions, which are aligned with the investigatory powers of other investigators."*

To implement the Government's response the Bill (new section 150BA) provides for the assessor to appoint appropriately qualified persons as investigators to help the assessor perform the assessor's functions. The assessor is also an investigator. An investigator has the following functions (new section 150AY):

[3] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 36.

- to investigate the conduct of councillors as directed by the assessor
- to investigate whether an offence has been committed against the conduct provisions
- to enforce compliance with the conduct provisions
- to investigate whether an occasion has arisen for the exercise of powers in relation to a conduct provision.

The powers of an investigator include:
- the power to enter places by consent or under a warrant or to enter a public place when it is open to the public
- general powers after entering places including the power to search, inspect, examine or film any part of the place or anything at the place, the power to take for examination a thing at the place and to take extracts or copies of documents at the place
- the power to seize evidence under prescribed conditions
- the power to require a person to give the investigator information and the power to require a person to attend a meeting and answer questions.

The Bill includes a number of offences to support investigators in carrying out their functions and the appropriate safeguards on the exercise of their powers. Powers of investigators and offences are discussed in further detail in considering the Bill's consistency with fundamental legislative principles.

Councillor Conduct Tribunal

Under the current councillor complaints system, the LGRDT hears and decides the most serious complaints of misconduct by a councillor. Other misconduct complaints are heard and decided by an RCRP, established by the department's chief executive for different regions of the state. The LGRDT has additional responsibilities relating to remuneration of councillors.

The Councillor Complaints Report notes: *"The present system of having two bodies to adjudicate on complaints against councillors adds unnecessary complexity to the system… A disadvantage of the bifurcation of responsibility for determining and penalising misconduct is that the likelihood of a uniform application of the law is reduced. And this is done for no obvious reason."*[4]

The Councillor Complaints Report recommendation 12.1 states: *"The functions of the tribunal* [i.e. the LGRDT]*and the RCRPs be transferred to the proposed Tribunal."*

The Government's response to recommendation 12.1 at page 16 *"…supports reconstituting the Local Government Remuneration and Discipline Tribunal as the CCT* [i.e. Councillor Conduct Tribunal] *and removing the need for the regional conduct review panels."*

To implement the Government's response the Bill (new section 150DK) establishes the Councillor Conduct Tribunal (the tribunal). The tribunal's functions include:
- at the request of a local government, investigating the suspected inappropriate conduct of a councillor referred to the local government by the assessor to be dealt with by the local government, and making recommendations to the local government about dealing with the conduct

[4] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 52.

- another function directed, in writing, by the Minister
- any other functions given to the tribunal under the LGA, refer also to new section 150AL (Tribunal must conduct hearing), new section 150AQ (Deciding about misconduct) and new section 150AR (Disciplinary action against councillor).

The members of the tribunal are the president and the casual members. The Governor in Council may appoint a person to be the president of the tribunal and may appoint the number of casual members the Governor in Council considers appropriate. A member holds office for a term of not more than 4 years. The Minister may recommend a person for appointment as a member of the tribunal only if the person is qualified to be a member.

Costs of tribunal to be met by local government

Currently the LGA section 186 provides that the local government must pay the costs of the LGRDT in relation to a complaint of misconduct of a councillor, including the remuneration, allowances and expenses paid to members of the tribunal. Also, under the LGA current section 191 the local government must pay the costs of a regional conduct review panel in relation to a complaint of misconduct of a councillor, including the remuneration, allowances and expenses paid to members of the regional conduct review panel.

The Councillor Complaints Report recommendation 5.14 states: *"Where councils elect to use a Tribunal member to investigate and make recommendations about a complaint of inappropriate conduct, the council should pay the member's costs."*

The Government's response to recommendation 5.14 at page 9 *"...supports that council pays the costs of using the services of a CCT member in investigating and considering inappropriate conduct."*

To implement the Government's response the Bill (new section 150DU) provides that a local government must pay the costs of the tribunal in relation to the tribunal conducting a hearing about the misconduct of a councillor under part 3, division 6 (Application to tribunal about misconduct); or 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. The costs of the tribunal include the remuneration, allowances and expenses paid to a member of the tribunal conducting the hearing or investigation, or making the recommendations.

Local Government Remuneration Commission

The Councillor Complaints Report recommendation 12.4 states: *"The former tribunal's responsibilities for establishing categories of local governments and deciding to which category each local government belongs, be transferred to the Department, and its responsibility for deciding the remuneration that is payable to the mayors, deputy mayors and councillors be transferred to the Queensland Independent Remuneration Tribunal."*

The Government's response to recommendation 12.4 at page 17 *"...partially supports this recommendation as it supports the responsibility for deciding remuneration being separated from the disciplinary function of the CCT. However, the government will consult further about the appropriate body to determine the remuneration of local government councillors."*

Following consultation with key stakeholders, the Bill (clause 16 new section 176) provides for the establishment of the new Local Government Remuneration Commission (the remuneration commission). The remuneration commission will continue to undertake the current functions of the LGRDT relating to the remuneration of councillors. The functions of the remuneration commission are to establish the categories of local governments, decide the category to which each local government belongs, decide the maximum amount of remuneration payable to the councillors in each of the categories and another function as directed in writing by the Minister.

The commissioners of the remuneration commission are the chairperson and the casual commissioners. The remuneration commission is constituted for a matter by the chairperson or no more than 3 commissioners chosen by the chairperson for the matter. The Governor in Council may appoint a person to be the chairperson and may appoint the number of casual commissioners the Governor in Council considers appropriate. A commissioner holds office for a term of not more than 4 years. The Minister may recommend the appointment of a person as a commissioner only if the person is qualified to be a commissioner.

Processes to deal with councillor conduct

Making a complaint about the conduct of a councillor

The Government's response to recommendation 4.3 at page 1 in part states: *"…the government wants to foster a culture that encourages complaints to be made, and thereby wishes to ensure that the way a complaint can be made is consistent with the way the Crime and Corruption Commission (CCC) and Ombudsman allow complaints to be made. This includes making a complaint in writing, by phone, by fax, email or in person."*

To implement the Government's response the Bill (new section 150O) provides that a person may make a complaint to the assessor about the conduct of a councillor. The complaint may be made to the assessor orally or in writing.

The Bill (new section 150EC) provides that the assessor may approve forms for use under chapter 5A which may include an approved form for making a complaint about councillor conduct. The Bill does not require that complaints be made using an approved form.

If a government entity, other than the assessor, receives a complaint about the conduct of a councillor, the entity must refer the complaint to the assessor and give the assessor all information held by the entity that relates to the complaint unless the entity has a duty to notify the CCC of the complaint under section 38 of the CC Act or the 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 (new section 150P).

Assessor may initiate investigation

The Councillor Complaints Report states *"The Independent Assessor should be enabled to initiate own-motion investigations – that is, investigations that are not in response directly to an external complaint about councillor conduct. The need for such a power could arise in anumber of ways. For example, during the investigation of a complaint against a councillor the Independent Assessor could find information suggesting misconduct or even an offence*

under the LG Act that has not been complained about. Or the investigation could point to misconduct or worse by another councillor."[5]

The Councillor Complaints Report recommendation 4.10 states: *"The Independent Assessor may initiate own-motion investigations of councillor conduct if sufficient cause arises duringthe course of another investigation, or if the Independent Assessor considers it in the public interest to do so."*

The Government's response to recommendation 4.10 at page 3 states: *"The government supports the Independent Assessor having the power to initiate an investigation or make a preliminary assessment without having received a formal complaint."*

To implement the Government's response, the Bill (new section 150U) provides that on the assessor's own initiative, the assessor may investigate the conduct of a councillor if the assessor is aware of information indicating the councillor may have engaged in conduct that would be inappropriate conduct or misconduct; and the assessor has not received a complaint about the conduct; and the assessor reasonably believes it is in the public interest to investigate the information and the conduct is not likely to involve corrupt conduct.

For example, the assessor may on the assessor's own initiative investigate the conduct of a councillor if the assessor is aware of a media report alleging the councillor has behaved inappropriately or while investigating a councillor for alleged misconduct, the assessor receives information that indicates another councillor has engaged in the same conduct.

Assessor must investigate the conduct of a councillor

The Bill (new section 150T) provides that the assessor must investigate the conduct of a councillor if the conduct is the subject of a complaint made or referred to the assessor, or a notice given to the assessor by a local government official or a local government about particular conduct, or information given to the assessor under new section 150AF(5), or a complaint referred to the assessor by the CCC.

After investigating the conduct of a councillor, the assessor:

- may dismiss a complaint (new section 150X)
- may decide to take no further action (new section 150Y)
- may refer the suspected inappropriate conduct to the local government to deal with if the assessor reasonably suspects the councillor's conduct is inappropriate conduct (new section 150AC)
- may make an application to the tribunal about the conduct, if the assessor is reasonably satisfied the councillor's conduct is misconduct (new section 150AJ).

The Bill (new section 150Z) provides that if the assessor decides to dismiss a complaint or take no further action about a councillor's conduct the assessor must notify the person who made the complaint (if relevant), the councillor and the local government.

If the reason for the dismissal is that the complaint is about a frivolous matter, the notice must advise the person who made the complaint that, if the person makes the same or substantially

[5] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 38.

the same complaint to the assessor again, the person commits an offence punishable by a fine of up to 85 penalty units. (The Government's response (page 2) to recommendation 4.7 supports in principle strengthening the processes and penalties for dealing with frivolous or vexatious complaints.)

The Bill (new section 150AV) also provides that a person must not make a complaint about the conduct of a councillor to the assessor vexatiously or not in good faith or counsel or procure another person to make a complaint about the conduct of a councillor to the assessor vexatiously or not in good faith. The maximum penalty imposed for the offence is 85 penalty units.

If the assessor is considering making a decision to refer a councillor's conduct to a local government to be dealt with by the local government or to make an application to the tribunal to decide whether a councillor's conduct is misconduct, the assessor must notify the councillor in accordance with new section 150AA, and in doing so, allow the councillor to give a statement or information to the assessor about the conduct and why the assessor should not make the decision.

The Bill (new section 150N) declares that nothing in new chapter 5A, part 3 limits the assessor's duty under section 38 of the CC Act to notify the CCC about suspected corrupt conduct.

Unsuitable meeting conduct

The Councillor Complaints Report notes: *"The Panel agrees that breaches of a meeting code or code of conduct in a meeting should not be classified as inappropriate conduct. Rather they should be regarded as conduct that is contrary to the council's code of meeting procedure. Such conduct breaches should be dealt with immediately by the chair of the meeting (council or committee) who, as appropriate, should be able to require a withdrawal (of words said), an apology (for what had been said or done) or to remove the offending councillor from the remainder of the council or committee meeting.*

The Panel also considers that the council itself may decide whether such meeting conduct is so serious, or so repeated, that it does need to be treated as inappropriate conduct and dealt with as such.

For this recommendation to be adopted, it would be necessary for all councils to put in place specific meeting standing orders, which give force to a model code of meeting procedure."[6]

(Refer to the Explanatory Notes page 18 for the details about model procedures for the conduct of meetings of a local government and its committees.)

The Councillor Complaints Report recommendation 5.6 states: *"Breaches of a meeting code or code of conduct in a meeting should not be classified as inappropriate conduct. Such conduct breaches should be dealt with immediately by the chair of the meeting (council or committee) who, as appropriate, should be able to require a withdrawal (of words said), an*

[6] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 42.

apology (for what had been said or done) or to remove the offending councillor from the remainder of the council or committee meeting."

The Government's response to recommendation 5.6 at page 5 *"…supports in principle that breaches of the codes be dealt with immediately in a manner similar to the role of the Speaker in Parliament…"*

To implement the Government's response the Bill (new section 150H) provides that the conduct of a councillor is unsuitable meeting conduct if the conduct happens during a local government meeting and contravenes a behavioural standard. The Bill (new section 150C) defines a behavioural standard to mean a standard of behaviour for councillors set out in the code of conduct approved under section 150E.

The Bill (new section 150I) provides that if, at a local government meeting, the chairperson of the meeting reasonably believes a councillor is engaging in unsuitable meeting conduct, the chairperson may make an order reprimanding the councillor, and/or an order requiring the councillor to leave the place at which the meeting is being held, and/or, 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.

Unsuitable meeting conduct that becomes inappropriate conduct

The Councillor Complaints Report recommendation 5.7 states: *"A council may determine that a councillor's serious or repeated contrary conduct in meetings or committee meetings should be treated as inappropriate conduct and dealt with as such."*

The Government's response to recommendation 5.7 at page 5 *"…supports that serious or repeated breaches of conduct in meetings be dealt with as inappropriate conduct."*

To implement the Government's response the Bill (new section 150J) provides the circumstances under which unsuitable meeting conduct will become inappropriate conduct.

The Bill provides that if the conduct of a councillor 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 is part of a course of conduct that leads to orders for the councillor's unsuitable meeting conduct being made on 3 occasions within a period of 1 year, the local government may deal with the conduct under new section 150AG (Decision about inappropriate conduct) and is not required to notify the assessor about the conduct.

Inappropriate conduct

Defining inappropriate conduct

The Councillor Complaints Report notes: *"…the need to define inappropriate conduct and misconduct in sufficient detail to enable all parties to understand what is intended and the standards against which conduct will be judged."*[7]

[7] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 104.

The Councillor Complaints Report recommendation 5.8 states: *"The definition of 'inappropriate conduct' in s. 176(4) of the LG Act be amended as follows.*
The two examples (a) and (b) be deleted and in their place be inserted:
(a) Serious or repeated conduct contrary to the code of conduct or meeting practice in formal council or committee meetings.
(b) A failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting.
(c) Failure to comply with the council's other policies, codes or resolutions.
(d) Offensive or disorderly behaviour as a councillor that happens outside formal council meetings.
(e) Failure to work respectfully and constructively with other councillors or staff.
(f) Exerting or attempting to exert inappropriate influence over staff.
(g) Repeated unreasonable requests for information (contrary to council guidelines).
(h) Exercising, or purporting to exercise, an unauthorised power, duty or function."

The Government's response to recommendation 5.8 at page 6 *"...supports in principle changing the definition of 'inappropriate conduct' to include breaches of the Code of Conduct. However, the government does not support the addition of paragraphs (f) and (h), as these aspects of the definition are covered by the definition of 'corrupt conduct' and must be referred to the CCC.*"

To implement the Government's response the Bill (new section 150K) provides that the conduct of a councillor is inappropriate conduct if the conduct contravenes a behavioural standard or a policy, procedure or resolution of the local government.

As previously mentioned, the conduct of a councillor is inappropriate conduct if it 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 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. However, inappropriate conduct does not include conduct that is unsuitable meeting conduct or misconduct or corrupt conduct.

Dealing with inappropriate conduct

Currently under the LGA, if an entity (not the mayor or local government CEO) makes a complaint about the conduct or performance of a councillor, the person who receives the complaint must refer the complaint to the local government CEO who must conduct a preliminary assessment of the complaint. If the complaint is about the mayor or deputy mayor, the local government CEO must refer the complaint to the department's chief executive. If the complaint is about the conduct of a councillor, other than the mayor or deputy mayor, the local government CEO must refer the complaint to the mayor for the mayor to take disciplinary action.

The Councillor Complaints Report notes: *"At present, complaints about inappropriate conduct by councillors are dealt with by mayors and the disciplinary order that can be made is insubstantial – issuing a reprimand. The Panel considers that the full council, rather than the mayor, should determine the issue of inappropriate conduct and set the penalty; also that the range of conduct falling into the category of inappropriate conduct should be expanded, as should the orders that can be made. In a serious case, for example, the council could exclude the councillor from meetings and/or from any position representing the council, and require*

them to repay costs involved in dealing with the complaint. In making its decisions, the council should be able to seek advice from either a Conduct Advisory Committee (CAC) (a small committee of community leaders, which the council may appoint at its discretion) or a member of the Tribunal, who would have investigative powers."[8]

The Councillor Complaints Report recommendation 5.9 states: *"Section 181 of the LG Act be deleted and in its place the new s. 181 should recognise:*

- *That complaints about inappropriate conduct are to be determined by the council.*
- *That the council may seek advice from a council Conduct Advisory Committee (CAC) established under the LG Reg or from a member of the Tribunal selected by the president of the Tribunal. That councils consider the formation of a CAC to provide it with advice, when requested by the council, when an inappropriate conduct complaint against a councillor has to be determined by the council.*
- *A councillor whose conduct is being considered must cooperate with the council, the committee or the Tribunal member. Failure to do so could result in a misconduct complaint."*

The Government's response to recommendation 5.9 at page 7 *"...supports in principle that complaints about inappropriate conduct (other than conduct within a meeting) be determined by council. However, the government also supports that a council can resolve to delegate its decision-making powers, in respect to inappropriate conduct, to either the Mayor or an appropriate committee of the council. The government also supports that a council should be able to seek advice from any person or entity it considers necessary, including an advisory committee established by the council."*

The Councillor Complaints Report notes: *"The Independent Assessor, when referring a complaint about inappropriate conduct to the council, should indicate how serious the inappropriate conduct might be, whether any further information needed to be obtained before the complaint could be dealt with, and whether mediation might be appropriate and by whom. The Independent Assessor should also recommend to the council whether it should deal with the matter itself, refer it for advice to its CAC, or refer it for advice (and possible further investigation) to a Tribunal member."*[9]

To implement the Government's response the Bill (new section 150W) provides that if the assessor reasonably suspects a councillor's conduct is inappropriate conduct, the assessor may decide to refer the suspected inappropriate conduct to the relevant local government to deal with.

As part of the referral to the local government under new section 150AC, the assessor may give a recommendation to the local government about how the local government may investigate or deal with the conduct including for example, whether the local government should refer the conduct to another entity for consideration.

Also, the Bill provides that local governments must investigate the suspected inappropriate conduct of a councillor (new section 150AF) and decide whether or not a councillor has

[8] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 11.
[9] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 45.

engaged in inappropriate conduct and if the councillor has engaged in inappropriate conduct—what action the local government will take to discipline the councillor (new section 150AG).

The Bill (clause 27) provides that a local government may delegate the power to make a decision about a councillor's conduct under new section 150AG to the mayor or a standing committee of the local government.

Local government to take disciplinary action

The Councillor Complaints Report recommendation 5.10 states: *"That the council, if it decides to take disciplinary action against the councillor, may make one or more of the following orders that it considers appropriate in the circumstances:*

- *Censure of the councillor.*
- *Formal reprimand.*
- *Requirement for an apology.*
- *Mandatory training or counselling.*
- *Councillor to be excluded for up to two meetings of the council.*
- *Councillor removed from any position representing the council, and not to chair or attend committees or other specified meetings for up to two months.*
- *Payment of costs attributed to the actions of the councillor.*
- *An order that any repeat of the inappropriate conduct be referred to the Tribunal as misconduct.*

Where an order is made that the councillor be excluded from council meetings, such absence shall not trigger a vacancy under s. 162(1)(e) of the LG Act."

The Government's response to recommendation 5.10 at page 8 *"...supports in principle that the council be able to make orders in responding to inappropriate conduct. However, the government's position is that, excluding the councillor for up to two meetings of the council is a serious consequence for inappropriate conduct and could lead to abuse of process and failure of representative democracy. Consequently, the government would support this being considered as a misconduct consequence because the CCT process would include a right of appeal.*"

To implement the Government's response the Bill (new section 150AH) provides that a local government may order that no action be taken against the councillor or may make one or more of the following orders:

- an order that the councillor make a public admission that the councillor has engaged in inappropriate conduct
- an order reprimanding the councillor for the conduct
- an order that the councillor attend training or counselling to address the councillor's conduct, including at the councillor's expense
- an order that the councillor be excluded from a stated local government meeting
- an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor
- an order that if the councillor engages in the same type of conduct again it will be treated as misconduct
- an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's inappropriate conduct.

Appeals against decisions of inappropriate conduct

The LGA section 176(9) currently provides that decisions under chapter 6, part 2 (including decisions about inappropriate conduct) are not subject to appeal and section 244 provides that if a provision of the LGA declares a decision to be not subject to appeal that means the decision can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way, including under the *Judicial Review Act 1991*, for example and is not subject to any writ or order of a court on any ground. Under section 244 a decision includes conduct related to making the decision and a failure to make a decision and court includes a tribunal or another similar entity.

The Bill (clause 15) repeals chapter 6, part 2, division 2 in its entirety which includes section 176(9) thereby repealing the declaration that a decision (in relation to inappropriate conduct) is not subject to appeal.

Misconduct

Defining misconduct

The Councillor Complaints Report notes: *"The Panel also decided that the definition of misconduct, and the disciplinary orders that could be made, need to be expanded. The extended definition will make it clearer to councillors what constitutes misconduct. Increasing the range of penalties will ensure that the Tribunal can match an offence with an appropriate penalty."*[10]

The Councillor Complaints Report recommendation 6.1 states: *"The definition of misconduct (s. 176(3)(b) of the LG Act) should encompass:*
(i) The performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial.
(ii) A breach of the trust placed in the councillor.
(iii) A misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else.
(iv) Unauthorised use of council staff or resources for private purposes.
(v) Use of information obtained as a councillor to the financial detriment of the council or the public interest.
(vi) Failure to cooperate with the council, CAC or Tribunal member during inappropriate conduct proceedings or to comply fully with a penalty for inappropriate conduct.
(vii) Third or subsequent finding of inappropriate conduct during council term.
(viii)Bullying or harassment.
(ix) Failure to declare and resolve conflict of interest at a meeting in a transparent and accountable way.
(x) Seeking gifts or benefits of any kind.
(xi) Improper direction or attempted direction of staff.
(xii) Deliberate release of confidential information."

The Government's response to recommendation 6.1 at page 10 *"…supports in principle changing the definition of 'misconduct'. The government supports a definition of misconduct*

[10] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), pages 11-12.

that allows for allegations of 'corrupt conduct' under of the Crime and Corruption Act 2001 (CC Act) that are referred by the CCC to the Independent Assessor to be dealt with as misconduct, if appropriate."

To implement the Government's response the Bill (new section 150L) provides that the conduct of a councillor is misconduct if the conduct:

- involves or adversely affects, directly or indirectly, the honest and impartial performance of the councillor's functions, or the exercise of the councillor's powers
- is or involves –
  - a breach of the trust placed in the councillor, either knowingly or recklessly; or
  - 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
- contravenes any of the following:
  - an order of the local government or the tribunal
  - the acceptable requests guidelines of the local government under section 170A
  - a policy of the local government about the reimbursement of expenses
  - the LGA new section 150R (Local government official must notify assessor about particular conduct); section 170(2) (the mayor may give a direction to the local government CEOor senior executive but no councillor, including the mayor, may give a direction to any other local government employee); section 171(3) (a councillor must not release information that the councillor knows, or should reasonably know is information that is confidential to the local government); section 173(4) (the councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way); or section 173(5) (the councillor must inform the meeting of the councillor's personal interest in the matter and if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest).

The conduct of a councillor is also misconduct if the conduct:

- is part of a course of conduct leading to the local government taking action to discipline the councillor for inappropriate conduct on 3 occasions within a period of 1 year; or
- is of the same type stated in an order of the local government that if the councillor engages in the same type of conduct again, it will be dealt with as misconduct.

Dealing with misconduct

The Bill (new section 150W and new section 150AJ) provides that if after investigating the conduct of a councillor the assessor is reasonably satisfied the councillor's conduct is misconduct, the assessor may make an application to the tribunal about the conduct. Before making the decision, the assessor must give the councillor a notice and an opportunity to respond (new section 150AA). The tribunal must conduct a hearing about the application (new section 150AL).

The assessor must give a copy of the application to the councillor. The copy of the application must state the day, time and place of the hearing of the application. 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. The assessor is a party to a hearing and the onus of proof is on the assessor to prove the councillor engaged in misconduct. The councillor is the respondent to the application and a party to the hearing.

The Bill (new section 150AQ) provides that after conducting the hearing the tribunal must decide whether or not the councillor has engaged in misconduct and if the tribunal decides the councillor has engaged in misconduct—what action the tribunal will take under new section 150AR to discipline the councillor.

Under new section 150AR, the tribunal may decide that no action be taken against the councillor or may make one or more of the following orders or recommendations:

- an order that the councillor make a public admission that the councillor has engaged in misconduct
- an order reprimanding the councillor for the conduct
- an order that the councillor attend training or counselling to address the councillor's conduct, including at the expense of the councillor
- an order that the councillor pay to the local government an amount that is not more than the monetary value of 50 penalty units
- an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's misconduct
- 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
- an order that the councillor is not to attend a stated number of local government meetings, up to a maximum of 3 meetings
- an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor
- an order that the councillor forfeit an allowance, benefit, payment or privilege paid or provided to the councillor by the local government
- 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
- a recommendation to the Minister that the councillor be suspended from office for a stated period or from performing particular functions of the office
- a recommendation to the Minister that the councillor be dismissed from office.

Appeals against decisions of misconduct

The Bill (new section 150AS) provides that a notice about a decision made by the tribunal, other than a decision to recommend the councillor's suspension or dismissal, given to the assessor or councillor must be a QCAT information notice for the decision. The Bill (new section 150AT) provides that a person who is entitled under new section 150AS(3) to be given a QCAT information notice for a decision of the tribunal may apply to QCAT as provided under the QCAT Act for a review of the decision.

Also, the LGA section 244 provides that if a provision of the LGA declares a decision is not subject to appeal, the decision can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way including under the *Judicial Review Act 1991*, for example and is not subject to any writ or order of a court on any ground. The Bill does not declare that a decision of the tribunal is not subject to appeal.

Administration and governance matters

Code of conduct

The Councillor Complaints Report notes: *"The Panel also considers there will be benefits if a uniform Code of Conduct is reintroduced and made mandatory…This is particularly important now because there is a very high turnover of councillors – at each of the last two elections about half of those elected had no previous experience on a council…Introducing a code of conduct and other governance measures will make councillors more aware of their obligations. The system will be efficient, effective, fair and transparent, far simpler than that it replaces, and will produce a more timely response to genuine complaints…Codes of conduct are increasingly being used to set standards of ethical behaviour for public and governmental organisations. Such codes have been adopted in Queensland, for example, by the parliament, the cabinet and the public service. The Panel considers that there should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting practice…."*[11]

The Councillor Complaints Report recommendation 5.1 states : "*There should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting procedure."* Recommendation 5.2 provides: *"A Code of Conduct should be developed by the Local Government Liaison Group (LGLG) and approved by the Minister."*

The Government's response to recommendation 5.1 at page 4 *"…supports the development of a Code of Conduct and model meeting procedures, but will determine, during the development of the Code, whether it can be uniform across all councils. The government also supports continued breaches (i.e. three breaches within a 12 month period) of the Code of Conduct being defined as misconduct, which will be referred by the Independent Assessor to the CCT to deal with and impose potentially more serious penalties."*

The Government's response to recommendation 5.2 at page 4 *"…supports in principle the development of a Code of Conduct, which would be prescribed by legislation. However, administratively, the Code would be developed by DILGP* [i.e. the Department of Infrastructure, Local Government and Planning] *in consultation with the Local Government Liaison Group (LGLG)."*

To implement the Government's responses the Bill (new section 150D) provides that the Minister must make a code of conduct that sets out the standards of behaviour for councillors in performing their functions as councillors under the LGA. The code of conduct may also contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

Refer also to section 4 of the LGA which requires the Minister, in making the code of conduct under section 150D, to do so in a way that is consistent with the local government principles. Also, the obligations imposed on councillors under the LGA chapter 6, part 2, division 5 apply to councillors in performing their functions as councillors.

[11] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), pages 12, 13 and 42.

The Bill (new section 150E) provides that the code of conduct will not take effect until approved by a regulation, must be tabled in the Legislative Assembly with the regulation approving the code, and must be published on the department's website. These requirements are to ensure that the delegated legislative power is subject to the scrutiny of the Legislative Assembly and are discussed in further detail in considering the Bill's consistency with fundamental legislative principles.

Model procedures for the conduct of meetings of a local government and its committees

The Councillor Complaints Report notes: *"…There is no mandatory or model code of conduct, nor one for meeting procedures…The result seems to be a very large number of complaints, many of which lack substance or derive from disagreements and disputes rather than unsatisfactory conduct as such, or which are motivated by political considerations, particularly in the lead up to elections."*[12]

The Councillor Complaints Report recommendation 5.1 states *"There should be a uniform, mandatory Code of Conduct for local government councillors in Queensland and a model code of meeting procedure."* Recommendation 5.4 states *"The Department, LGAQ and LGMA should develop the model code of meeting procedure."* Recommendation 5.5 states *"Councils be required to adopt meeting standing orders, based on the model code of meeting procedure."*

The Government's response to recommendation 5.1 at page 4 *"…supports the development of a Code of Conduct and model meeting procedures."* The Government's response to recommendation 5.4 at page 5 *"…supports in principle the development of model meeting procedures. However, the model would be developed by DILGP in consultation with Local Government Association of Queensland (LGAQ) and Local Government Managers Australia (LGMA), as it would need to be approved by the Director-General of DILGP."* The Government's response to recommendation 5.5 at page 5 *"…supports in principle the development of model meeting procedures. However, to allow for flexibility with councils of different sizes and compositions, the government proposes requiring that councils either adopt the model meeting procedures, or adopt procedures that are consistent with them."*

To implement the Government's responses the Bill (new section 150F) requires the department's chief executive to make model procedures for the conduct of meetings of a local government and its committees. The department's chief executive must publish the model procedures on the department's website.

The model procedures must state how the chairperson of a local government meeting may deal with a councillor's unsuitable meeting conduct and 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.

A local government must either adopt the model procedures or prepare and adopt other procedures for the conduct of its meetings and meetings of its committees that are consistent with the model procedures (new section 150G).

[12] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 27.

Local government investigation policy

The Bill (new section 150AE) provides that a local government must adopt, by resolution, a policy (an investigation policy) about how it deals with suspected inappropriate conduct of councillors referred by the assessor to the local government to be dealt with. The policy must be published on the local government's website.

The policy must include a procedure for investigating the suspected inappropriate conduct of councillors, state the circumstances in which another entity may investigate the conduct, be consistent with the principles of natural justice, and require councillors and persons who make complaints about councillors' conduct to be given notice about the outcome of investigations.

The policy may allow the local government to ask the president of the tribunal to investigate the conduct of a councillor and make recommendations to the local government about dealing with the conduct.

The local government may decide, by resolution, the way the investigation into the councillor's conduct will be conducted. The resolution must state the process for investigating the conduct decided by the local government and the reasons for the decision. If the local government does not make a resolution the local government must investigate the councillor's conduct in a way that is consistent with any recommendation of the assessor and its investigation policy, other than to the extent a recommendation of the assessor is inconsistent with the policy (new section 150AF).

Councillor conduct register

The Councillor Complaints Report recommendation 12.8 states *"Section 181A of the LG Act (Records about complaints) be amended to provide in ss. (1) that the section also concerns complaints received by the Independent Assessor that are referred to the council to be dealt with as inappropriate conduct and relevant misconduct decisions by the proposed Tribunal."*

The Government's response to recommendation 12.8 at page 18 *"...supports in principle publication of decisions subject to appropriate protections."*

To implement the Government's response the Bill (new section 150DX) provides that a local government must keep an up-to-date councillor conduct register about the following matters for the local government:

- orders made about unsuitable meeting conduct
- decisions about suspected inappropriate conduct referred to the local government
- decisions about misconduct made by the tribunal
- complaints about the conduct of councillors dismissed by the assessor
- decisions of the assessor to take no further action about the conduct of councillors investigated by the assessor.

The Bill provides that the local government must publish the register on the local government's website and ensure the public may inspect the register, or purchase a copy of an entry in the register, at the local government's public office. However, the local government must not publish on the register any information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010* (PID Act).

The Bill (new section 150DY) provides for the content of the register in relation to decisions, including:

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

However, the name of the councillor whose conduct is the subject of a decision may be included in the entry in the register only if the local government or tribunal decided that the councillor engaged in inappropriate conduct or misconduct or the councillor agrees to the councillor's name being included. A summary of a decision included in the register must not include the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person.

The Bill (new section 150DZ) provides for the content of the register in relation to dismissed complaints.

Annual report of the assessor

The Bill (new section 150EB) provides that 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 OIA during the year.

The report must include a description of the following matters for the year:

- complaints made, or referred, to the assessor about the conduct of councillors
- complaints dismissed by the assessor
- investigations conducted by the office
- decisions made by the assessor to take no further action after conducting an investigation
- suspected corrupt conduct notified to the CCC by the assessor
- suspected inappropriate conduct referred by the assessor to local governments to be dealt with
- decisions about whether councillors engaged in misconduct made by the tribunal.

The report must also include details about the number of times each investigation and enforcement power under new chapter 5A, part 4 was exercised by the assessor and other investigators during the year and details of other functions performed by the assessor during the year.

The report must be prepared in a way that does not disclose the identity of a person investigated and 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.

New or amended offences

The Bill amends a number of existing offences and inserts a number of new offences to support the operation of the new councillor complaints system. Offences are detailed in the context of considering the Bill's consistency with fundamental legislative principles.

Appeals against decisions

Generally

The LGA section 176(9) currently provides that decisions under chapter 6, part 2 are not subject to appeal and section 244 provides that if a provision of the LGA declares a decision to be not subject to appeal that means the decision can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way, including under the *Judicial Review Act 1991*, for example and is not subject to any writ or order of a court on any ground. Under section 244 a decision includes conduct related to making the decision and a failure to make a decision; and court includes a tribunal or another similar entity.

The Bill (clause 15) repeals chapter 6, part 2, division 2 in its entirety which includes section 176(9) thereby repealing the declaration that a decision is not subject to appeal.

Inappropriate conduct

The Councillor Complaints Report notes: *"However the Panel decided that it would be premature to establish an appeal system for inappropriate conduct at this stage. There is no reason to believe that councils will not apply the principles of natural justice and reach appropriate decisions, particularly as they will be able to seek advice from their own CAC or from a member of the Tribunal.*

The Panel recommends that 12 months after the system comes into operation, the LGLG should review its operation and consider whether an appeal system such as that described above should be introduced."[13]

The Councillor Complaints Report recommendation 5.15 states: *"Twelve months after the proposed system commences, the LGLG should review the way councils have been adjudicating inappropriate conduct matters with a view to determining whether it is necessary and desirable to introduce an appeal system such as that described in this report."*

The Government's response to recommendation 5.15 at page 10 *"...supports a review after 12 months, but notes that this would ultimately be a matter for the LGLG, as a whole, to determine their priorities."*

QCAT review

The Councillor Complaints Report recommendation 10.5 states: *"The provisions of the LG Act limiting appeals, be amended to permit appeals to the District Court from decisions of the proposed Tribunal on misconduct matters on questions of law only, and for jurisdictional error."*

The Government's response to recommendation 10.5 at page 16 *"...supports in principle allowing for an appeal against a decision of the CCT. However, the government supports that an appeal should also be permitted on the merits of the matter and not just on a question of*

[13] *Councillor Complaints Review: A fair effective and efficient framework* (the Councillor Complaints Report) , page 45.

law or jurisdictional error. An appropriate body to conduct reviews and appeals will be identified."

To implement the Government's response the Bill (new section 150AS) provides that a notice about a decision made by the tribunal, other than a decision to recommend the councillor's suspension or dismissal, given to the assessor or councillor must be a QCAT information notice for the decision. The Bill (section 150AT) provides that a person who is entitled under section 150AS(3) to be given a QCAT information notice for a decision of the tribunal may apply to QCAT as provided under the QCAT Act for a review of the decision.

Transitional arrangements

The Bill (clause 30) provides transitional arrangements for the commencement of the new councillor complaints system, including:

- if, immediately before the commencement, an existing complaint about a councillor's conduct had not been assessed (new section 316)
- if, immediately before the commencement, an existing complaint about a councillor was assessed as being about inappropriate conduct and a final decision dealing with the complaint had not been made (new section 317)
- if, immediately before the commencement, an existing complaint about a councillor was assessed to be about misconduct and a final decision dealing with the complaint had not been made (new section 318)
- if, before the commencement, an order was made against a councillor under former section 180 or 181 and the order is substantially the same as an order that may be made under new chapter 5A (new section 319)
- if, immediately before the commencement, the LGRDT had recommended the suspension or dismissal of a councillor to the Minister under former section 180; and the Minister had not considered or made a decision in relation to the recommendation (new section 320).

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objectives as the objectives require amendments of existing legislation.

Estimated cost for government implementation

Any additional cost associated with the implementation of the new system will be considered through the established budgetary processes.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992* (LSA). Potential breaches of the fundamental legislative principles are addressed below.

Sufficient regard to rights and liberties of individuals

The fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals (LSA section 4(2)(a)).

Powers of investigators

Clause 12 (Insertion of new ch 5A)
- New Part 4 (Investigation and enforcement powers)

The Councillor Complaints Report identified a concern that conduct complaints made under the current system would be resolved more quickly and satisfactorily if the department's investigators possessed sufficient investigative powers.[14]

The Government's response to recommendation 4.9 at page 3 included *"…the Department of Infrastructure, Local Government Planning (DILGP) will investigate methods of ensuring that the Independent Assessor has sufficient investigative powers to carry out its functions, which are aligned with the investigatory powers of other investigators."*

To ensure that the assessor has sufficient investigative powers, the Bill inserts new chapter 5A, part 4 to provide that the assessor may appoint particular persons as investigators with particular powers to ensure that the assessor has appropriately qualified persons available who can help the assessor to perform the assessor's functions under chapter 5A.

The powers of investigators under chapter 5A, part 4 include the power to enter a place, to conduct searches, take things for examination, seize particular things, require a person to provide information or to attend a place to answer questions. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer (LSA section 4(3)(e)).

The powers generally align with the powers of other officers investigating conduct complaints (see chapter 3 of the CC Act about investigating a criminal or corruption complaint under the CC Act and chapter 6 of the *Legal Profession Act 2007* (LPA) about investigating complaints about the conduct of a legal practitioner) and powers of other persons investigating compliance with local government legislation (see chapter 5, part 2, division 1 of the LGA for powers of authorised persons under the LGA investigating compliance with the Local Government Acts and chapter 5, part 3 of the LGA for investigations of local government registers or records).

The Bill provides for safeguards in relation to the exercise of the powers to minimise the interference with individual rights and liberties. A person may only be appointed as an investigator if the assessor is satisfied the person is appropriately qualified. Once appointed, an investigator will be issued with an identity card, which must be produced or displayed when the investigator is exercising their powers in a person's presence.

The power to enter a place will apply only with the occupier's consent or under a warrant unless the place is a public place and entry is at a time when the place is open to the public. The

[14] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 37.

occupier of a place may impose conditions on entry to the place and may withdraw consent at any time. The investigator must explain the purpose of entry when requesting consent and give the occupier a written acknowledgement of the consent. When entering a place under a warrant, an investigator must identify themselves to the occupier and give the occupier a copy of the warrant and an opportunity to allow immediate entry without using force, unless the investigator reasonably believes that to do so would frustrate the execution of the warrant. The power to search, inspect, take items etc. from a place only applies once lawful entry has been obtained and is subject to any conditions of the consent or terms of the warrant.

The power to seize things applies only if an investigator enters the place with the consent of an occupier or under a warrant. The Bill also provides for limitations on what things may be seized, including that the investigator reasonably believes the thing is evidence of an offence against the conduct provisions and the seizure is consistent with the purpose of entry as explained to the occupier. In relation to any things seized, the investigator must give the owner or person in control of the seized thing a receipt for the thing and an information notice. A person given an information notice may apply to the assessor for a review of the decision. If the person is dissatisfied with the review decision by the assessor, the person may appeal to QCAT about the seizure. Investigators must allow the owner of a seized thing to inspect it or, if it is a document, to copy it. The assessor must return the seized thing to its owner when there are no longer reasonable grounds to retain it.

The Bill also imposes a duty on investigators to take all reasonable steps to cause as little inconvenience and damage as possible when exercising a power and provides a person may claim compensation for any loss incurred through the exercise of a power.

Adequate investigative powers are essential to ensure the integrity of the new councillor complaints system. The Bill provides sufficient safeguards so that the scope of investigators' powers is considered reasonable and proportionate having sufficient regard to the rights and liberties of individuals.

Notice of confidentiality

Clause 12 (Insertion of new ch 5A)

- New section 150CK (Notice about confidentiality)

To implement the Government's response that the assessor should have sufficient investigative powers to carry out the functions of the assessor, the Bill inserts a power for the assessor to require a person to keep particular information related to an investigation confidential. The Councillor Complaints Report acknowledged that almost any complaints system can be misused for political purposes and that complaints may be made public by complainants through social media.[15]

The Bill (new section 150CK) provides for the assessor to give a notice to a person if an investigator intends to, or does:

- under new section 150CH, require a person to give information to the investigator; or
- under new section 150CJ, require the person to attend a place and answer questions.

[15] *Councillor Complaints Review: A fair effective and efficient framework* (the Councillor Complaints Report), pages 69-70.

The notice may state that the person's attendance, or the information given by the person, is confidential information. A maximum penalty of 85 penalty units applies if the person discloses the confidential information to another person other than in particular situations (such as for the purpose of obtaining legal advice or complying with another lawful obligation to disclose the information) or unless the person has a reasonable excuse.

The restriction on disclosure may adversely affect the rights and liberties of individuals (section 4(2)(a) of the LSA).

The Bill includes safeguards on the exercise of the power by providing that the notice may only be given if the assessor reasonably believes the notice is necessary to prevent the commission of an offence or to ensure the investigation of a councillor's conduct is kept confidential. Further, the assessor must give the notice personally and may not delegate this power (see new section 150DF).

The new offence of disclosing confidential information is similar to an offence in the CC Act, section 84. This offence allows the chairperson of the CCC to specify that a notice given under chapter 3, part 1 of the CC Act is a confidential document and that a person must not disclose the existence of a confidential document to another person, without reasonable excuse. This offence has a maximum penalty of 85 penalty units or 1 years imprisonment.

The new offence is considered to be sufficiently justified in order to ensure that the assessor is able to carry out an investigation confidentially and to prevent the commission of offences. Further, without the power of the assessor to specify that the information is confidential, the disclosure of the information may itself adversely affect the rights and liberties of individuals by causing interference in an investigation, the commission of an offence or reputational damage to a councillor.

Proportionality - penalties

Clause 9 (Amendment of section 149 (Obstructing enforcement of Local Government Acts etc.))
Clause 10 (Amendment of section 150 (Impersonating authorised persons and authorised officers))
Clause 12 (Insertion of new ch 5A)

- New section 150AU (Frivolous complaint)
- New section 150AV (Other improper complaints))
- New section 150AW (Protection from reprisal)
- New section 150BF (Return of identity card)
- New section 150BW (Offence to contravene help requirement)
- New section 150CA (Offence to contravene seizure requirement)
- New section 150CB (Offence to interfere)
- New section 150CI (Offence to contravene information requirement)
- New section 150CJ (Power to require attendance)
- New section 150CK (Notice about confidentiality)
- New section 150DB (Conflict of interest)
- New section 150DT (Conflict of interest)
- New section 150EA (Secrecy)

Clause 13 (Amendment of section 153 (Disqualification for certain offences))

Clause 22 (New section 233A (Obstructing State officials))
Clause 22 (New section 233B (Impersonating particular persons))
Clause 23 (Amendment of section 234 (False or misleading information))
Clause 28 (New section 260B (New convictions must be disclosed))

The Bill inserts a number of new offences and amends existing offences to apply to new entities established under the Bill or to increase the maximum penalties for the offences. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

Frivolous and other improper complaints

The Bill inserts two new offences applying to frivolous and other improper complaints (new sections 150AU and 150AV). The maximum penalties for these offences are increased from 10 penalty units (for the offence in current section 176C of the LGA) to 85 penalty units. The new offences are modelled on offences in section 216 and 216A of the CC Act.

The LGA provides that it is an offence to make a repeated complaint that was frivolous, vexatious or lacking in substance (current section 176C(8) of the LGA). The new offence for frivolous complaints will also apply to repeated complaints, however, it is an offence to make an improper complaint whether the complaint is repeated or not.

The Councillor Complaints Report provides: "*The Panel considers that the present penalty under the LG Act for repeated frivolous complaints should be increased, and also that the offences concerning meretricious complaints should be expanded to reflect those in the CC Act ...*"[16]

The Government's response to recommendation 4.6 at page 2 *"...supports in principle strengthening the processes and penalties for dealing with frivolous or vexatious complaints."*

The maximum penalties are higher than those recommended in the Councillor Complaints Report[17] but are equivalent to the maximum monetary penalties under the CC Act. This is considered proportionate and reasonable to deter these kinds of complaints in view of the possible reputational damage to a councillor by a frivolous or improper complaint.

Protection from reprisal

The new offence in new section 150AW provides that a councillor must not take detrimental action against a protected person (a councillor or a local government employee) in reprisal for a complaint or notification about the councillor's conduct. This offence is similar to the offence in section 41 of the PID Act which protects a person making a public interest disclosure under that Act. The proposed maximum penalty for the new offence is 167 penalty units or 2 years imprisonment which is equivalent to the PID Act offence.

[16] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 36.
[17] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 36.

In addition, the reprisal offence is prescribed as an *integrity offence* under the LGA by the amendment to current section 153 in clause 13. A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction (current section 153(1)(d) of the LGA). Other integrity offences include a person using information they obtained as a councillor to gain a financial advantage for themselves or someone else or to cause detriment to the local government (current section 171 of the LGA); and failure by a councillor to declare a material personal interest in a matter to be discussed at a local government meeting and to leave the meeting room during the discussion and vote (current section 172(5) of the LGA). The offence of taking a reprisal is considered to be equivalent in seriousness to the offences currently prescribed as integrity offences.

The maximum penalty for the offence, and its inclusion as an integrity offence, is significant but is considered reasonable and proportionate to maintain public confidence in the councillor complaints system, deter councillors from taking reprisals and encourage the reporting of inappropriate conduct and misconduct.

Offences relating to investigators

The new offence in new section 150BF for failure of an investigator to return an identity card without a reasonable excuse is equivalent to offences in current sections 138A, 204 and 204F of the LGA that apply to local government workers, authorised persons and authorised officers respectively. The proposed maximum penalty of 10 penalty units is the same as the penalty for these offences.

New offences are inserted in new sections 150BW, 150CA, 150CB, 150CI and 150CJ to apply if a person fails to comply with a requirement of an investigator or tampers or interferes with a restriction imposed by an investigator. Where the offence relates to a requirement of an investigator, the investigator must warn the person that it is an offence not to comply when making the requirement. These offences are similar to other offences applying to other investigators, including in the LGA, the CC Act and the LPA. The proposed maximum penalties of 50 penalty units for these offences are higher than the penalties applying under the LGA but lower than those applying under the LPA or the CC Act. This is considered proportionate and reasonable with regard to the seriousness of investigating conduct complaints and offences against the conduct provisions committed by councillors.

Secrecy and notices of confidentiality

The new offences in new sections 150CK and 150EA will ensure confidentiality of investigations undertaken by the assessor. The LGA contains existing offences relating to the use and release of information by councillors (current section 171) and by local government employees (current section 200). These offences have maximum penalties of 100 penalty units or 2 years imprisonment. The CC Act includes a provision allowing the chairperson of the CCC to specify that a notice given under chapter 3, part 1 of the CC Act is a confidential document (section 84(1)). The offence in section 84(2) of disclosing the existence of a confidential document has a maximum penalty of 85 penalty units or 1 years imprisonment.

The maximum penalties for the new offences in new sections 150CK and 150EA (85 penalty units and 100 penalty units respectively) are considered proportionate and appropriate in light of the maximum penalties that apply to other similar offences.

Conflicts of interest

New sections 150DB and 150DT insert new offences relating to conflicts of interest of the assessor and tribunal members respectively. The maximum penalties for these offences are 35 penalty units which is consistent with the penalties that currently apply under sections 187 and 192 of the LGA in relation to conflicts of interest of members of the LGRDT and the RCRPs respectively. The penalties are considered proportionate and appropriate to reflect the importance of maintaining public confidence in the councillor complaints system.

Amendment of existing offences

The existing offence in current section 149 of the LGA of obstructing an official is amended by clause 9 to apply only to local government officials. Similarly, the existing offence in current section 150 of impersonating an authorised person or authorised officer is amended by clause 10 to apply only to authorised persons. New offences equivalent to current sections 149 and 150 will be inserted in new sections 233A and 233B respectively to apply to state officials and authorised officers previously included in sections 149 and 150. New sections 233A and 233B also apply to the assessor, an investigator and a member of the tribunal as appropriate. The maximum penalties for the new offences are the same as the offences under sections 149 and 150.

The existing offence in current section 234 of the LGA of giving false or misleading information is amended by clause 23 to provide that it is also an offence to give false or misleading information to the assessor, staff of the OIA, an investigator and a commissioner of the remuneration commission. Members of the new tribunal will be captured by current section 234.

It is necessary and appropriate to include the new entities in these offences which currently apply to bodies involved in the councillor complaints system to support the assessor, staff of the OIA, investigators, the tribunal and the remuneration commission in carrying out their functions.

Disclosure of criminal convictions

The new offence in new section 260B for the assessor, members of the tribunal and commissioners of the remuneration commission failing to notify the Minister of new convictions is similar to section 55 of the *Building Queensland Act 2015*. The offence and its maximum penalty of 100 penalty units is considered proportionate to ensure that persons investigating and deciding councillor conduct matters or deciding local government remuneration continue to remain qualified throughout the term of their appointment and reinforces the expectation that these persons should observe ethical and legal behaviour in carrying out their functions. The rights and liberties of the person are protected because the provision allows for the assessor, members or commissioners to have a reasonable excuse for non-compliance.

Proportionality - orders

Clause 12 (Insertion of new ch 5A)
- New section 150AH (Disciplinary action against councillor)
- New section 150AR (Disciplinary action against councillor)

New sections 150AH and 150AR allow a local government and the tribunal to make a range of orders, including monetary orders, if it is decided that a councillor has engaged in inappropriate conduct or misconduct respectively.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation.

The purpose of providing for a range of orders to be made is to provide flexibility for the local government and the tribunal to impose orders that are appropriate and proportionate in the circumstances and in light of the seriousness of the conduct. Currently, for inappropriate conduct, the only orders that may be made are a reprimand or an order that any repeat of the inappropriate conduct be referred to a RCRP as misconduct (current section 181 of the LGA). By providing for a broader range of orders, a local government will be better equipped to ensure that the order is proportionate to the conduct.

Currently for misconduct, a RCRP may make a range of orders and recommendations and the LGRDT may make any order or recommendation it considers appropriate in the circumstances (current section 180 of the LGA). The Bill provides a broad range of options for orders or recommendations for misconduct and specifies in new section 150AQ that, in deciding what disciplinary action to take, the tribunal may consider any previous misconduct of the councillor and any allegation made in the hearing that was admitted or not challenged provided the tribunal is reasonably satisfied the allegation is true. This will also ensure that any order or recommendation imposed by the tribunal is appropriate and proportionate in light of past behaviour and cooperation during the hearing.

Immunity from civil liability

Clause 25 (Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability))

Current section 235 of the LGA confers immunity upon state and local government administrators who act honestly and without negligence for acts done, or omissions made, under the LGA or the *Local Government Electoral Act 2011*. The Bill amends section 235 to extend that immunity to the assessor, an investigator and commissioners of the remuneration commission as state administrators. Members of the new tribunal will be captured by current section 235.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification (LSA section 4(3)(h)).

The immunity from civil liability for the assessor, investigators, commissioners of the remuneration commission and members of the new tribunal is considered justified to ensure

that these persons are not exposed to liability and the accompanying financial risk for carrying out their duties. Current section 235(4) of the LGA provides that, where civil liability is prevented from attaching to a state administrator, it will attach instead to the state. This safeguard ensures that an aggrieved party will be able to seek relief from the state.

More than one process from single act or omission

Clause 12 (Insertion of new ch 5A)
- New section 150K (What is *inappropriate conduct*)
- New section 150L (What is *misconduct*)

The new definition of inappropriate conduct provides that conduct that is part of a course of conduct at local government meetings leading to orders for a councillor's unsuitable meeting conduct being made on 3 occasions within a period of 1 year will, taken together, be the inappropriate conduct.

Similarly, the new definition of misconduct provides that conduct that is part of a course of conduct leading to the local government taking action to discipline a councillor for inappropriate conduct on 3 occasions within a period of 1 year will, taken together, be the misconduct.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation subjects a person to more than one court or tribunal process arising out of a single act or omission without sufficient justification.

The Bill provides for three levels of conduct to be dealt with under the LGA – unsuitable meeting conduct, inappropriate conduct and misconduct. Where conduct at the two lower levels is repeated during a one year period, it is considered appropriate to deal with these ongoing issues at a higher level.

It is considered that this approach provides for a disciplinary order proportionate and commensurate to the seriousness of the conduct and is aimed at discouraging repeated instances of unsuitable meeting conduct or inappropriate conduct by councillors.

Review of councillor conduct decisions

Clause 12 (Insertion of new ch 5A)
- New section 150AT (Review by QCAT)

The Bill provides that the assessor and a councillor may apply to QCAT, as provided under the QCAT Act for a review of a decision made by the tribunal under new section 150AS about councillor misconduct. The Bill does not provide for a QCAT information notice to be given in relation to decisions made by the chairperson of a local government meeting about unsuitable meeting conduct or by a local government about inappropriate conduct.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the LSA).

Currently, the LGA section 176(9) provides that decisions under chapter 6, part 2 are not subject to appeal and section 244 provides that if a provision of the LGA declares a decision to be not subject to appeal that means the decision can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way, including under the *Judicial Review Act 1991*, for example and is not subject to any writ or order of a court on any ground. Under section 244 a decision includes conduct related to making the decision and a failure to make a decision and court includes a tribunal or another similar entity.

The Bill (clause 15) repeals chapter 6, part 2, division 2 in its entirety which includes section 176(9) thereby repealing the declaration that a decision is not subject to appeal.

It is considered appropriate that a review by QCAT is available for the most serious level of conduct but not available otherwise given the lower level of orders that may be made by the chairperson of a local government meeting about unsuitable meeting conduct or by a local government about inappropriate conduct.

The review rights to QCAT under new section 150AT and the repeal of the LGA chapter 6, part 2, division 2 in its entirety are considered to provide an appropriate balance between individuals' rights and ensuring the system of disciplinary hearings is simple and efficient to minimise disruption to council operations.

Criminal history report

Clause 28 (New section 260A (Criminal history report))

New section 260A will enable the Minister to ask the police commissioner for a written report about the criminal history of a person and a brief description of the circumstances of a conviction mentioned in the criminal history to decide if a person is qualified to hold, or to continue to hold, the office of the assessor, a member of the tribunal or a commissioner of the remuneration commission.

In relation to whether the provision may adversely affect the rights and liberties of the person, it is considered justified because the Minister may make the request only if the person has first given the Minister written consent for the request. The Bill includes a safeguard about the use of a person's criminal history by requiring the Minister to ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

Sufficient regard to the institution of Parliament

The fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament (LSA section 4(2)(b)). Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons (LSA section 4(4)(a)); and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (LSA section 4(4)(b)).

Delegation of legislative power – Code of Conduct, Model Procedures, Investigation Policy and Practice Directions

Clause 12 (Insertion of new ch 5A)

- New section 150D (Minister to make code of conduct)
- New section 150F (Department's chief executive to make model procedures)
- New section 150AE (Local government must adopt investigation policy)
- New section 150DV (Practice directions)

The Bill requires particular entities to make a code of conduct, model procedures, an investigation policy and practice directions. These documents will contain detailed information which would become unnecessarily complex to include in legislation.

The code of conduct will set out standards of behaviour for councillors in the performance of their official functions. A failure to comply with the standards of behaviour may amount to unsuitable meeting conduct, inappropriate conduct or misconduct, for which a councillor may be disciplined. The code of conduct will be developed by the LGLG, which will include senior representatives of key stakeholders including the LGAQ, LGMA and the CCC.

The code of conduct will not take effect until approved by a regulation. The approved code of conduct must then be tabled in the Legislative Assembly with the regulation approving the code and must be published on the department's website. These safeguards will ensure that this delegated legislative power is subject to the scrutiny of the Legislative Assembly.

The model procedures, investigation policy and practice directions set out procedural and administrative matters only which are not appropriate to deal with in legislation.

Local governments will be able to adopt alternative model procedures for the conduct of their meetings, provided these are not inconsistent with the model procedures. Each local government will make its own investigation policy which must be consistent with the principles of natural justice. This will provide flexibility for local governments to determine these procedural matters in a way which is appropriate to their size, location and administrative circumstances. The model procedures and investigation policy will be published on the department's website and the local government's website respectively.

The president of the tribunal may make appropriate practice directions on procedural matters such as how to adjourn a hearing. This power will be subject to any legislative requirements for conducting a hearing. The directions must be published on the department's website.

It is considered that these detailed matters are appropriate for delegation and that the delegation will be exercised by appropriate persons.

Delegation of legislative power – regulations

Clause 12 (Insertion of new ch 5A)
- New section 150BA (Appointment and qualifications)
- New section 150BB (Appointment conditions and limit on powers)
- New section 150CN (Compensation)
- New section 150DO (Qualifications for membership)

Clause 16 (New section 181 (Qualifications to be commissioner))
Clause 29 (Amendment of section 270 (Regulation-making power))

The Bill provides for a regulation to prescribe various matters. This may infringe the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament.

New sections 150BA, 150BB, 150DO and 181 will allow a regulation to prescribe matters relating to the appointment of persons as investigators, members of the tribunal and commissioners of the remuneration commission. This is consistent with current LGA provisions about appointment of members of the LGRDT (section 184), RCRPs (section 189), authorised persons (section 202) and authorised officers (section 204D).

New section 150CN(5) will allow a regulation to prescribe matters that may, or must, be taken into account by a court when considering whether it is just to order compensation for loss incurred because of the exercise of an investigator's power. This is consistent with the current LGA provision about compensation for damage or loss caused because of the exercise of an authorised person's power under chapter 5, part 2, division 1 (section 137).

The amendment to the regulation-making power will allow a regulation to be made about the processes of the remuneration commission, which are currently included in the regulation-making power as processes of the LGRDT (section 270(2)(a)).

It is appropriate to provide that these matters may be delegated to subordinate legislation to provide for flexibility in dealing with particular issues under the LGA. Further, a regulation when made, will sufficiently subject the exercise of the delegated legislative power to Parliamentary scrutiny.

Consultation

The preparation of the Councillor Complaints Report involved extensive consultation. The Review Panel undertook surveys and consultation with local governments, LGAQ, LGMA, other institutions and state agencies involved in the operation of the councillor complaints system and examined interstate systems and completed its own research. A discussion paper was released for public consultation from 17 August 2016-23 September 2016 and attracted 115 formal submissions.

A draft exposure Bill was provided for consultation with the LGAQ, LGMA, QCAT and the CCC.

The LGMA supported the amendments, in particular removing CEOs from the process of deciding councillor conduct complaints including meaningful penalties to deter poor behaviour.

The LGAQ supported the intent of the amendments, although it reserved its position about the definition and disciplinary process for unsuitable meeting conduct until the code of conduct and the model procedures are made. These documents will be drafted in consultation with the LGLG, of which the LGAQ is an integral part.

Local Government Liaison Group (LGLG)

The Councillor Complaints Report notes: *"…the Panel believes there would be considerable value in the creation of the LGLG (Local Government Liaison Group), with the Department, the CCC, the Ombudsman, the Auditor-General, the LGAQ and the LGMA all represented, to encourage good governance and ethical conduct by councillors, and to coordinate the provision of assistance to councillors in meeting their responsibilities under the LG Act. This would include providing information about declarations of interest, conflicts of interest, declarations of material personal interest, audit requirements and the interpretation of provisions in the legislation."*[18]

The Councillor Complaints Report recommendation 11.1 states: *"The Department establish the LGLG to coordinate the provision of advice for local government councillors on the interpretation of relevant legislative provisions, and to provide assistance and training in areas such as declarations of interests, declarations of material interests and conflicts of interest. The group should provide advice to the Minister, through the Department, on governance issues such as the proposed Code of Conduct. And it should include the CCC, the Ombudsman, the Auditor-General and the Independent Assessor, together with the LGAQ and the LGMA."*

The Government's response to recommendation 11.1 at page 16 *"…supports establishing the Local Government Liaison Group (LGLG) as an administrative action."*

To implement the Government's response, it is proposed that the LGLG will be established administratively to provide advice and recommendations on not only the code of conduct but also on the implementation and ongoing operation of the new councillor complaints system. The LGLG is to comprise senior representatives of the department, the CCC, the Queensland Ombudsman's office, the Queensland Audit Office, the LGAQ and the LGMA. The assessor, once appointed, will also be a member of the LGLG.

Consistency with legislation of other jurisdictions

The Bill is specific to the state of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

[18] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 12.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that, when enacted, the Bill may be cited as the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2017*.

Clause 2 Commencement

Clause 2 states that the Act commences on a day to be fixed by proclamation. Prospective commencement by proclamation is to allow for the development of the code of conduct, model procedures and other required standards; the training of councillors and local governments on the new councillor complaints system; the appointment of the Independent Assessor; and the necessary regulation amendments to be proposed.

Part 2 Amendment of Local Government Act 2009

Clause 3 Act Amended

Clause 3 states that this part amends the *Local Government Act 2009*.

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

Clause 4 clarifies that the new councillor complaints system will not apply to the Brisbane City Council. The *City of Brisbane Act 2010* continues to provide for the way complaints about councillors of the Brisbane City Council are dealt with.

Clause 5 Amendment of s 120 (Precondition to remedial action)

Clause 5 consequentially amends section 120(2)(b) to replace the reference to section 180 with a reference to section 150AR to provide that the tribunal has made a recommendation to the Minister under section 150AR to suspend or dismiss a councillor.

Clause 6 Amendment of s 122 (Removing a councillor)

Clause 6 consequentially amends section 122(1)(a) to replace the reference to section 180 with a reference to section 150AR to provide that if the tribunal recommends to the Minister under section 150AR that a councillor be suspended or dismissed, the Minister may under section 122(2) recommend that the Governor in Council suspend or dismiss the councillor.

Clause 7 Amendment of s 123 (Dissolving a local government)

Clause 7 consequentially amends section 123(1)(a) to replace the reference to section 180 with a reference to section 150AR to provide that if the tribunal recommends to the Minister under section 150AR that every councillor be suspended or dismissed, the Minister may under section 123(2) recommend that the Governor in Council dissolve the local government.

Clause 8 Amendment of s 148H (Referral to department)

Clause 8 amends section 148H(3) to clarify the reference to the *Crime and Corruption Act 2001* and the Crime and Corruption Commission.

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

Clause 9 amends section 149 heading and section 149 so that the section no longer applies to an 'official' but rather to a 'local government official'. Under amended section 149 a person must not obstruct a local government official, namely, a mayor, a chief executive officer of a local government or an authorised person, in the exercise of a power under this Act or a local law, unless the person has a reasonable excuse. A maximum penalty of 50 penalty units continues to apply.

Those persons that will no longer be captured by section 149 as an 'official', namely, the Minister, the department's chief executive, an authorised officer, and an investigator are included in the definition of 'State official' under new section 233A (Obstructing State officials) inserted by clause 22. Section 233A provides a person must not obstruct a State official exercising a power, or a person helping a State official exercise a power, unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies (the same maximum penalty as that under section 149).

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

Clause 10 amends section 150 heading and section 150 to apply the section to authorised persons only. An authorised officer will now be captured under new section 233B (Impersonating particular persons) inserted by clause 22.

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

Clause 11 consequentially omits the example from section 150A as it includes a reference to section 181A which is proposed for repeal.

Clause 12 Insertion of new ch 5A

Clause 12 inserts new chapter 5A (Councillor conduct) which consists of Part 1 to Part 6 and section 150B to section 150EC.

Chapter 5A Councillor conduct

Part 1 Preliminary

Division 1 Introductory matters

Section 150B Overview of chapter

Section 150B gives an overview of the new chapter and provides that the chapter is about:

- setting appropriate standards for the behaviour of councillors

- dealing with the conduct of councillors at local government meetings that does not meet the standards
- investigating and dealing with complaints about the conduct of councillors
- disciplinary action that may be taken against councillors who engage in inappropriate conduct or misconduct
- the entities that investigate and deal with complaints about the conduct of councillors.

The chapter provides 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
- complaints about the conduct of councillors are to be made or referred to the Independent Assessor for investigation
- the assessor, after investigating a councillor's conduct:
  - may refer the suspected inappropriate conduct of a councillor to the local government to be dealt with; or
  - may apply to the tribunal to decide whether the councillor engaged in misconduct and, if so, the action to be taken to discipline the councillor
- the assessor is to notify the Crime and Corruption Commission about suspected corrupt conduct as required under the *Crime and Corruption Act 2001*.

Section 150C Definitions for chapter

Section 150C provides the following definitions for chapter 5A: 'assessor', 'behavioural standard', 'conduct', 'inappropriate conduct', 'investigation policy', 'local government meeting', 'misconduct', 'model procedures', 'referral notice' and 'unsuitable meeting conduct'.

Division 2 Code of conduct

Chapter 5A, part 1, division 2 implements the Government's response to recommendation 5.1 which supports the development of a code of conduct and recommendation 5.2 which supports in principle that the code should be prescribed by legislation (page 4).

The Councillor Complaints Report recommends that the code of conduct should be uniform and mandatory for local government councillors in Queensland.[19] The Government's response to recommendation 5.1 states that the Government will determine, during development of the code, whether it can be uniform across all councils.

The Bill provides for a uniform and mandatory code of conduct.

Section 150D Minister to make code of conduct

Section 150D provides that the Minister must make a code of conduct that sets out the standards of behaviour for councillors in performing their functions as councillors under the *Local Government Act 2009*. The code of conduct may also contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

[19] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 42.

Notes to section 150D refer readers to section 4 of the *Local Government Act 2009* which requires the Minister to make a code of conduct in a way that is consistent with, and provides results that are consistent with, the local government principles; and to the obligations imposed on councillors under the *Local Government Act 2009* chapter 6, part 2, division 5 which apply to councillors in performing their functions as councillors.

Section 150E Approval and publication of code of conduct

Section 150E provides that the code of conduct does not take effect until it is approved by a regulation. The approved code of conduct must be tabled in the Legislative Assembly with the regulation approving the code and published on the department's website.

The requirement for the code of conduct to be approved by regulation and tabled in the Legislative Assembly provides that the code of conduct is subject to the scrutiny of the Legislative Assembly.

Part 2 Conduct at local government meetings

Division 1 Requirement for meeting procedures

Chapter 5A, part 2, division 1 implements the Government's response to recommendations 5.4 and 5.5 which supports in principle the development of model meeting procedures and, to allow for flexibility for councils of different sizes and compositions, proposes that councils may either adopt the model meeting procedures, or adopt procedures that are consistent with them (page 5).

Section 150F Department's chief executive to make model procedures

Section 150F provides that the department's chief executive must make model procedures for the conduct of meetings of a local government and its committees.

The model procedures must state:

- how the chairperson of a local government meeting may deal with a councillor's unsuitable meeting conduct; and
- how the suspected inappropriate conduct of a councillor referred to the local government by the Independent Assessor must be dealt with at a local government meeting.

The department's chief executive must publish the model procedures on the department's website.

Section 150G Adopting meeting procedures

Section 150G provides that a local government must either adopt the model procedures or prepare and adopt other procedures for the conduct of its meetings and the meetings of its committees.

If the local government prepares and adopts other procedures they must not be inconsistent with the model procedures. If there is an inconsistency the local government is taken to have adopted the model procedures to the extent of the inconsistency.

Clause 30 inserts new section 322 to provide that if, immediately before the commencement, a local government has not adopted the model procedures or other procedures on the commencement, the local government is taken to have adopted the model procedures until such time as the local government adopts procedures under section 150G.

Division 2 Unsuitable meeting conduct

Section 150H What is *unsuitable meeting conduct*

Section 150H defines 'unsuitable meeting conduct' as the conduct of a councillor that happens during a local government meeting and contravenes a behavioural standard.

A behavioural standard for chapter 5A is defined in section 150C to mean a standard of behaviour for councillors set out in the code of conduct.

Under section 150D the code of conduct is to set out the standards of behaviour for councillors in performing their functions as councillors under the *Local Government Act 2009.*

Section 150I Chairperson may deal with unsuitable meeting conduct

Section 150I provides that if the chairperson of a local government meeting reasonably believes the conduct of a councillor during a meeting is unsuitable meeting conduct the chairperson may make 1 or more of the following orders:

- an order reprimanding the councillor for the conduct
- an order requiring the councillor to leave the place at which the meeting is being held and stay away from the place for the rest of the meeting
- if the councillor fails to comply with the order to leave and stay away from the place, an order that the councillor be removed from the place.

The chairperson must ensure details of any orders are recorded in the minutes of the meeting.

Section 150J Unsuitable meeting conduct that becomes inappropriate conduct

Section 150J provides that if the conduct of a councillor:

- 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
- 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,

the local government is not required to notify the Independent Assessor about the conduct and may deal with the conduct as inappropriate conduct under section 150AG.

Part 3 Dealing with inappropriate conduct, misconduct and corrupt conduct

Division 1 Preliminary

Chapter 5A, part 3, division 1 implements the Government's response to:

- recommendation 5.7 which supports that serious or repeated breaches of conduct in meetings be dealt with as inappropriate conduct (page 5)

- recommendation 5.8 which supports in principle changing the definition of 'inappropriate conduct' to include breaches of the code of conduct (page 6)
- recommendation 6.1 which supports in principle changing the definition of misconduct to allow for allegations of 'corrupt conduct' under the *Crime and Corruption Act 2001* that are referred by the Crime and Corruption Commission to the Independent Assessor to be dealt with as misconduct, if appropriate (page 10)
- recommendation 6.2 which partially supports that the definition of misconduct may be sufficient to include conduct potentially captured by particular offences, while supporting the Crime and Corruption Commission's jurisdiction over corrupt conduct being maintained (page 11)
- recommendation 6.3 which supports in principle amending the processes for dealing with complaints against former councillors (page 11).

Section 150K What is *inappropriate conduct*

Section 150K defines 'inappropriate conduct'. The conduct of a councillor is inappropriate conduct if the conduct contravenes a behavioural standard or policy, procedure or resolution of the local government.

A behavioural standard for chapter 5A is defined in section 150C to mean a standard of behaviour for councillors set out in the code of conduct.

Under section 150D the code of conduct is to set out the standards of behaviour for councillors in performing their functions as councillors under the *Local Government Act 2009*.

The following conduct of a councillor is also inappropriate conduct if:
- 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
- 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 (the conduct that led to the orders being made, taken together, is the inappropriate conduct).

Inappropriate conduct does not include conduct that is unsuitable meeting conduct, misconduct or corrupt conduct.

Section 150L What is *misconduct*

Section 150L clarifies and consolidates the definition of 'misconduct' currently provided for in sections 176(3) and 181(3) and 181(4) of the *Local Government Act 2009*.

Under section 150L the conduct of a councillor is misconduct if the conduct:
- involves or adversely affects, directly or indirectly, the honest and impartial performance of the councillor's functions, or the exercise of the councillor's powers
- is or involves –
  - a breach of trust placed in the councillor, either knowingly or recklessly
  - 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
- contravenes any of the following–

  - an order of the local government or the tribunal
  - the acceptable requests guidelines of the local government under section 170A of the *Local Government Act 2009*
  - a policy of the local government about the reimbursement of expenses
- contravenes the *Local Government Act 2009* section 150R (Local government official must notify assessor about particular conduct); section 170(2) (the mayor may give a direction to the local government chief executive officer or senior executive but no councillor, including the mayor, may give a direction to any other local government employee); section 171(3) (a councillor must not release information that the councillor knows, or should reasonably know is information that is confidential to the local government); section 173(4) (the councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way); or section 173(5) (the councillor must inform the meeting of the councillor's personal interest in the matter and if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest).

The conduct of a councillor is also misconduct if the conduct:
- is part of a course of conduct leading to the local government taking action to discipline the councillor for inappropriate conduct on 3 occasions within a period of 1 year (the conduct that led to the 3 occasions of disciplinary action, taken together, is the misconduct); or
- is of the same type stated in an order of the local government that if the councillor engages in the same type of conduct again, it will be dealt with as misconduct.

It does not matter if the conduct happened outside the state.

Section 150M Application to former councillors

Currently under the *Local Government Act 2009* section 176A the provisions dealing with complaints about the conduct and performance of councillors apply to a person who is no longer a councillor if the person was a councillor when the relevant conduct is alleged to have happened; and the complaint is made within 2 years after the person stopped being a councillor. The entity dealing with the complaint may decide to take no further action in relation to the complaint, despite any contrary requirement in chapter 6, part 2, division 6 of the *Local Government Act 2009*, if the entity considers the decision is in the public interest.

The Government's response to recommendation 6.3 (page 11) supports in principle amending the processes for dealing with complaints against former councillors. The Government does not support imposing a blanket time limitation on when a complaint may be made as complaints about serious conduct issues, such as misconduct or corrupt conduct, might warrant investigation even if they come to light sometime after the person ceases to be a councillor. However, the Independent Assessor should have the power to take no further action in relation to an allegation against a former councillor if it is not in the public interest or a justifiable use of public resources.

Section 150M provides that chapter 5A applies in relation to a person who was, but is no longer, a councillor if the person was a councillor when conduct the subject of a complaint or investigation is alleged to have happened. The assessor may dismiss a complaint under section 150X including if the assessor is satisfied dealing with the complaint would not be in the public interest or would be an unjustifiable use of resources.

Section 150N Duty to notify Crime and Corruption Commission about suspected corrupt conduct not affected

Section 150N provides that, to remove any doubt, it is declared that nothing in chapter 5A, part 3 limits the Independent Assessor's duty under section 38 of the *Crime and Corruption Act 2001* to notify the Crime and Corruption Commission about suspected corrupt conduct.

Section 38 of the *Crime and Corruption Act 2001* provides that a public official must notify the Crime and Corruption Commission of a complaint if the official reasonably suspects that it involves, or may involve, corrupt conduct.

Division 2 Complaints about councillor conduct

Currently, complaints about councillor conduct or performance may be made to the local government, the department's chief executive, the mayor or the chief executive officer of the local government.

Chapter 5A, part 3, division 2 implements the Government's response to:

- recommendation 4.3 which supports a standardised form that can be used for the making of written complaints (page 1)
- recommendation 4.4 which supports in principle that a complaint should provide a certain level of detail, however, it need not necessarily be made in a prescribed form (page 1)
- recommendation 4.5 which supports that anonymous complaints should be allowed (page 2)
- recommendation 4.12 which supports the Independent Assessor being a statutory office and broadly supports the proposed functions of the Independent Assessor (page 4).

Section 150O Complaints about councillor conduct

Section 150O provides that a person may make a complaint to the Independent Assessor about the conduct of councillor. Subsection (1) does not limit who a person can complain to about the conduct of a councillor, for example, a person may complain to the Crime and Corruption Commission or the department's chief executive about a councillor's conduct.

Section 150O provides that a complaint may be made to the assessor orally or in writing. The Government's response to recommendation 4.3 supports developing a standardised form, however, despite this, the Government wants to foster a culture that encourages complaints to be made and thereby wishes to ensure that the way a complaint can be made is consistent with the way the Crime and Corruption Commission and Ombudsman allow complaints to be made, including in writing, by phone, fax, email or in person (page 1).

The assessor may approve forms for use (section 150EC) under chapter 5A which may include an approved form for making a complaint about councillor conduct. However, the Bill does not require that complaints be made using an approved form.

Section 150P Complaints about councillor conduct must be referred to assessor

Section 150P provides that if a government entity, other than the Independent Assessor, receives a complaint about the conduct of a councillor, the government entity must refer the

complaint to the assessor and give the assessor all information held by the entity that relates to the complaint.

The assessor must, as soon as practicable after receiving the complaint, give the person who made the complaint a notice that states the assessor has received the complaint from the government entity and that the assessor will deal with it under chapter 5A.

For the purposes of this section a government entity includes:
- a local government
- a mayor
- a councillor
- the chief executive officer of a local government.

The requirement to refer a complaint to the assessor does not apply if the government entity who received the complaint has a duty to notify the Crime and Corruption Commission of the complaint under section 38 of the *Crime and Corruption Act 2001*. 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.

The requirement also does not apply if the government entity has the power to investigate the complaint or the councillor's conduct under another law and decides to investigate under that law, for example if the police service receives and investigates a complaint alleging a councillor engaged in fraud.

Section 150Q Further information about complaints

Section 150Q provides that if a complaint does not, in the Independent Assessor's opinion, include sufficient information for the assessor to properly investigate the conduct the assessor may give a notice to the person who made the complaint asking the person to give the assessor further information about the complaint within a stated reasonable period.

The assessor may decide not to investigate the conduct if:
- the person does not comply with the notice; or
- the person complies with the notice but in the assessor's opinion, there is still insufficient information to investigate the conduct.

If the assessor decides not to investigate the conduct, 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

Section 150R Local government official must notify assessor about particular conduct

Section 150R provides that 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 conduct mentioned in section 150J and by receiving a complaint to which section 150P applies, the local government official must give the Independent Assessor a notice about the councillor's conduct.

A local government official for section 150R means the following persons:
- a mayor
- a councillor
- a chief executive officer of a local government.

Section 150S Local government must notify assessor about misconduct

Section 150S provides a local government must give the Independent Assessor a notice about a councillor's conduct and all information held by the local government that relates to the conduct if the local government:
- in relation to a course of conduct by the councillor, takes action under section 150AG to discipline the councillor for inappropriate conduct on 3 occasions during a period of 1 year; or
- has previously made an order that a particular type of conduct engaged in by the councillor will be dealt with as misconduct and reasonably suspects the councillor has engaged in the same type of conduct again.

Division 4 Investigation of councillor conduct

Currently, a preliminary assessment of a complaint is conducted by the department's chief executive or the chief executive officer of a local government (each a 'complaints assessor') to decide whether the complaint is about a frivolous matter or was made vexatiously, is about inappropriate conduct, misconduct or corrupt conduct or is lacking in substance (section 176B). After conducting the preliminary assessment the complaints assessor may decide to take no further action or must refer the complaint to the appropriate entity to take disciplinary action (section 176C).

Chapter 5A, part 3, division 4 implements the Government's response to:
- recommendation 4.8 which supports in principle the council being informed of a complaint at the appropriate time (page 3)
- recommendation 4.9 which provides that the Department of Infrastructure, Local Government and Planning will investigate methods of ensuring that the Independent Assessor has sufficient investigative powers to carry out its functions (page 3)
- recommendation 4.10 which supports the Independent Assessor having the power to initiate an investigation or make a preliminary assessment without having received a formal complaint (page 3)
- recommendation 5.9 which supports in principle that complaints about inappropriate conduct (other than conduct within a meeting) be determined by council (page 7).

Section 150T Assessor must investigate conduct of councillor

Section 150T provides that the Independent Assessor must investigate the conduct of a councillor if the conduct is the subject of a complaint made or referred to the assessor under chapter 5A, part 3, division 2; a notice given to the assessor under chapter 5A, part 3, division 3; information given to the assessor under section 150AF(5); or a complaint referred to the assessor by the Crime and Corruption Commission, unless the assessor decided under section 150Q(3) not to investigate the conduct.

Section 150U Assessor may initiate investigation

The Government's response to recommendation 4.10 (page 3) supports the Independent Assessor having the power to initiate an investigation or make a preliminary assessment without having received a formal complaint.

Section 150U provides that the assessor may, on the assessor's own initiative, investigate the conduct of a councillor if:

- the assessor is aware of information indicating the councillor may have engaged in conduct that would be inappropriate conduct or misconduct; and
- the assessor has not received a complaint about the conduct; and
- the assessor reasonably believes it is in the public interest to investigate the information and the conduct is not likely to involve corrupt conduct.

For example, if, while investigating a councillor for alleged misconduct the assessor receives information that indicates another councillor has engaged in the same conduct, the assessor may initiate an investigation without having received a complaint.

After initiating an investigation, the assessor may decide under section 150Y to take no further action about a councillor's conduct if the assessor is satisfied the conduct does not constitute inappropriate conduct or misconduct; or 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 taking further action would be an unjustifiable use of resources.

Section 150V Investigative powers

Section 150V provides that the Independent Assessor may exercise the assessor's powers as an investigator under chapter 5A, part 4 for an investigation under section 150T or section 150U. Subject to part 4, the assessor may conduct the investigation in the way the assessor considers appropriate and may make any inquiries that the assessor considers appropriate.

However, the assessor must conduct the investigation in a way that ensures the investigation is kept confidential to the extent practicable.

Section 150W Decision about conduct

Section 150W provides that, after the Independent Assessor has investigated the conduct of a councillor, the assessor may decide to:

- if the conduct was the subject of a complaint made or referred to the assessor under chapter 5A, part 3, division 2-dismiss the complaint about the conduct under section 150X; or
- if the assessor reasonably suspects the councillor's conduct is inappropriate conduct-refer the conduct to the local government to deal with; or
- if the assessor is reasonably satisfied that the councillor's conduct is misconduct-make an application to the tribunal about the conduct; or
- take no further action in relation to the conduct under section 150Y.

Section 150W provides that the assessor refer conduct to a local government when the assessor reasonably suspects a councillor has engaged in inappropriate conduct. Under chapter 5A, part 3, division 5 the local government must investigate the councillor's conduct and decide how it should be dealt with.

However, in relation to misconduct, the assessor must fully investigate the conduct and be reasonably satisfied a councillor has engaged in misconduct before making an application to the tribunal. This higher threshold is appropriate because, under section 150AN, the assessor bears the onus of proof to prove the misconduct at the hearing before the tribunal.

Section 150X Decision to dismiss complaint

Section 150X provides the Independent Assessor with the flexibility to dismiss a complaint about the conduct of a councillor if the assessor is satisfied that:

- the conduct has already been or is being dealt with by another entity or does not constitute inappropriate conduct or misconduct; or
- the complaint is frivolous or vexatious; or
- the complaint was not made in good faith; or
- the complaint lacks substance or credibility; or
- dealing with the complaint would not be in the public interest; or
- dealing with the complaint would be an unjustifiable use of resources.

For example, it may be appropriate for the assessor to dismiss a complaint because it is not in the public interest or would be an unjustifiable use of resources to deal with it if the complaint is against a former councillor. The Government's response to recommendation 6.3 does not support imposing a blanket time limitation on when a complaint against a former councillor may be made, however states that the assessor should have the power to take no further action in relation to an allegation against a former councillor if it is not in the public interest or is an unjustifiable use of resources (page 11).

Section 150Y Decision to take no further action

Section 150Y provides that the Independent Assessor may decide to take no further action about the conduct of a councillor (provided the conduct was not the subject of a complaint made or referred to the assessor under chapter 5A, part 3, division 2), if the assessor is satisfied:

- the conduct does not constitute inappropriate conduct or misconduct; or
- 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
- taking further action would be an unjustifiable use of resources.

Other than conduct the subject of a complaint made or referred to the assessor under chapter 5A, part 3, division 2, the assessor must (under section 150T) investigate a councillor's conduct the subject of a notice given to the assessor under chapter 5A, part 3, division 3; information given to the assessor under section 150AF(5); or a complaint referred to the assessor by the Crime and Corruption Commission. Also, under section 150U the assessor may, on the assessor's own initiative, investigate the conduct of a councillor.

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

Section 150Z provides that, if, after investigating the conduct of a councillor the Independent Assessor decides to dismiss a complaint about the conduct under section 150X, the assessor must give a notice about the decision to the person who made the complaint (if the assessor has the person's contact details), the councillor and the local government. Further, section 150Z provides that if the assessor decides to take no further action in relation to a councillor's

conduct under section 150Y (conduct not the subject of a complaint), the assessor must give a notice about the decision to the councillor and the local government.

The notice must:
- for a decision to dismiss a complaint-state the date the complaint was made; and
- briefly summarise the conduct; and
- briefly state the decision and the reasons for the decision; and
- for a complaint dismissed because it is about a frivolous matter-advise the person who made the complaint that, if the person makes the same or substantially the same complaint again, the person commits an offence punishable by a fine of up to 85 penalty units.

Section 150AA Notice and opportunity for councillor to respond

Section 150AA provides that if, under section 150W, the Independent Assessor is considering making a decision to refer a councillor's conduct to a local government to be dealt with or make an application to the tribunal to decide whether a councillor's conduct is misconduct, the assessor must give a notice to the councillor before making the decision that:
- 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
- describes the nature of the conduct; and
- states the assessor is considering making a decision to refer the conduct to the local government to be dealt with or make an application to the tribunal to decide whether the conduct is misconduct; and
- states that the councillor may give a statement or information to the assessor about the conduct and why the assessor should not make the decision; and
- states the reasonable period in which the councillor may provide the statement or information.

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

Chapter 5A, part 3, division 5 implements the Government's response to:
- recommendation 5.9 which supports in principle that complaints about inappropriate conduct should be determined by the local government (page 7)
- recommendation 5.10 which supports in principle that the council be able to make orders in responding to inappropriate conduct (page 8)
- recommendation 5.12(2) which supports that councils should develop and comply with a process for dealing with inappropriate conduct (page 9)
- recommendation 5.13 which supports the Independent Assessor being able to advise council on how a matter should be dealt with and that the council should follow this advice, or specify in its resolution about the decision, why the advice was not followed (page 9).

Section 150AB Application of division

Section 150AB provides that chapter 5A, part 3, division 5 applies if the Independent Assessor reasonably suspects a councillor has engaged in appropriate conduct and decides, under section 150W(b), to refer the conduct to the local government to deal with under division 5.

Currently, inappropriate conduct complaints are referred to the mayor or the department's chief executive to take disciplinary action against a councillor (section 181 of the *Local Government Act 2009*).

Section 150AC Referral of suspected inappropriate conduct

Section 150AC provides that the Independent Assessor refers a councillor's conduct to the local government to deal with by giving notice (a referral notice) to the local government. The referral notice must:

- include details of the conduct and any complaint received about the conduct; and
- state why the assessor reasonably suspects the councillor has engaged in inappropriate conduct; and
- include information about the facts and circumstances forming the basis for the assessor's reasonable suspicion.

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:

- the conduct should be referred to another entity for consideration; or
- additional information is required about the conduct; or
- the conduct should be dealt with by mediation.

A recommendation from the assessor may be inconsistent with the local government's investigation policy.

Section 150AD Notice about referral

Section 150AD provides that the Independent Assessor must as soon as practicable after referring a councillor's conduct to the local government, give the councillor a notice that:

- states the assessor has referred the councillor's conduct to the local government to deal; and
- attaches a copy of the referral notice.

Section 150AE Local Government must adopt investigation policy

Section 150AE provides that 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 Independent Assessor, to the local government to be dealt with.

The policy must:

- include a procedure for investigating the suspected inappropriate conduct of councillors; and
- state the circumstances in which another entity may investigate the conduct; and
- be consistent with the principles of natural justice; and
- require councillors and persons who make complaints about councillors' conduct to be given notice about the outcome of investigations.

The policy may allow for a local government to ask the president of the tribunal to investigate the conduct of a councillor and make recommendations to the local government about dealing with the conduct.

The policy must be published on the local government's website.

Section 150AF Investigating suspected inappropriate conduct

Section 150AF provides that a local government must investigate a councillor's conduct. The local government may decide, by resolution, the way the investigation into the councillor's conduct will be conducted. The resolution must state the process for investigating the conduct decided by the local government and the reasons for the decision.

If the local government does not make a resolution, the local government must investigate the councillor's conduct in a way that is consistent with any recommendation of the Independent Assessor made under section 150AC(3) and its investigation policy, other than to the extent a recommendation of the assessor is inconsistent with the policy.

If in investigating the conduct, the local government obtains information indicating that the councillor may have engaged in misconduct, the local government must give the information to the assessor for further investigation and take no further action in relation to the conduct.

Section 150AG Decision about inappropriate conduct

Section 150AG provides that after conducting an investigation, a local government must decide whether or not a councillor has engaged in inappropriate conduct. If the local government decides the councillor has engaged in inappropriate conduct, the local government must decide what action it will take under section 150AH to discipline the councillor.

In deciding what action to take, the local government may consider any previous inappropriate conduct of the councillor and any allegation made in the investigation that was admitted, or not challenged, that the local government is reasonably satisfied is true.

Under section 257 of the *Local Government Act 2009*, a local government may, by resolution, delegate a power under that Act or another Act to the mayor, the chief executive officer, a standing committee or joint standing committee of the local government, the chairperson of a standing committee or joint standing committee of the local government or another local government for the purposes of a joint local government activity.

The Government's response to recommendation 5.9 supports the council being able to resolve to delegate its decision-making powers about inappropriate conduct to the mayor or an appropriate committee of the council (page 7).

To implement the Government's response, clause 27 amends current section 257 to limit the delegation of a local government's power to make decisions under section 150AG about a councillor's conduct to the mayor or a standing committee of the local government.

Section 150AH Disciplinary action against councillor

Section 150AH states the disciplinary action (orders) a local government may take against a councillor for section 150AG(1)(b). The local government may order that no action be taken against the councillor or may make 1 or more of the following orders:

- an order that the councillor make a public admission that the councillor has engaged in inappropriate conduct
- an order reprimanding the councillor for the conduct
- an order that the councillor attend training or counselling to address the councillor's conduct, including at the councillor's expense
- an order that the councillor be excluded from a stated local government meeting
- an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor
- an order that if the councillor engages in the same type of the conduct again, it will be treated as misconduct
- an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's inappropriate conduct.

However, the local government may not make the following orders in relation to a person who is no longer a councillor:

- an order that the councillor attend training or counselling to address the councillor's conduct, including at the councillor's expense
- an order that the councillor be excluded from a stated local government meeting
- an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor
- an order that if the councillor engages in the same type of the conduct again, it will be treated as misconduct.

Division 6 Application to tribunal about misconduct

Currently, a Regional Conduct Review Panel or the Local Government Remuneration and Discipline Tribunal hears and decides complaints of misconduct against a councillor and makes disciplinary orders if it is decided that the councillor engaged in misconduct (sections 179 and 180 of the *Local Government Act 2009*).

Chapter 5A, part 3, division 6 implements the Government's response to:

- recommendation 6.4 which supports in principle providing for a range of penalties for breaches of conduct that amount to misconduct (page 12)
- recommendation 10.3 which supports retaining section 179(5) of the *Local Government Act 2009* which establishes that the standard of proof in misconduct hearings is the balance of probabilities (page 15)
- recommendation 10.4 which supports in principle requiring the Councillor Conduct Tribunal to keep reasons for its decision (page 15)
- recommendation 10.5 which supports in principle allowing for an appeal against a decision of the Councillor Conduct Tribunal and supports that an appeal should also be permitted on the merits of the matter and not just on a question of law or jurisdictional error (page 16)

- recommendation 12.1 which supports reconstituting the Local Government Remuneration and Discipline Tribunal as the tribunal and removing the need for the regional conduct review panels (page 16)
- recommendation 12.10 which supports in principle the publication of the Councillor Conduct Tribunal decisions (page 18).

Section 150AI Application of division

Section 150AI provides that chapter 5A, part 3, division 6 applies if the Independent Assessor is reasonably satisfied a councillor has engaged in misconduct.

Section 150AJ Application to tribunal about alleged misconduct

Section 150AJ provides that the Independent Assessor may apply to the tribunal to decide whether a councillor has engaged in misconduct. The application must be in writing and include details of alleged misconduct and any complaint received about the misconduct, state why the assessor is reasonably satisfied the councillor has engaged in misconduct, and include information about the facts and circumstances forming the basis for the assessor's reasonable satisfaction.

Section 150AK Copy of application must be given to councillor

Section 150AK provides that the Independent Assessor must write on a copy of the application the day, time and place of the hearing and give a copy of the application to the councillor.

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. 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.

Section 150AL Tribunal must conduct hearing

Section 150AL provides that the tribunal must conduct a hearing about an alleged misconduct application.

Section 150AM Constitution of tribunal

Section 150AM provides that the tribunal is to be constituted by the president or not more than 3 members of the tribunal chosen by the president.

Section 150AN Role of the assessor

Section 150AN clarifies that the Independent Assessor is a party to a tribunal hearing and the onus of proof is on the assessor to prove a councillor engaged in misconduct.

Section 150AO Respondent

Section 150AO provides the councillor is the respondent to the application and a party to the tribunal hearing.

Section 150AP Conduct of hearing

Section 150AP provides that a tribunal hearing must be conducted in the way set out in chapter 7, part 1 of the *Local Government Act 2009*. The tribunal may conduct the hearing from the documents brought before the tribunal, without parties or witnesses appearing, if the tribunal considers it appropriate in all the circumstances or the parties agree.

The hearing may be about the conduct of more than 1 councillor, unless the tribunal is satisfied doing so may prejudice the defence of any of the councillors.

The standard of proof in the hearing is the balance of probabilities.

The tribunal must keep a written record of the hearing in which it records the statements of the councillor and all witnesses and any reports relating to the councillor that are tendered at the hearing.

Section 150AQ Deciding about misconduct

Section 150AQ provides that, after conducting a hearing, the tribunal must decide whether or not the councillor has engaged in misconduct and, if the tribunal decides the councillor has engaged in misconduct, what action the tribunal will take under section 150AR to discipline the councillor for the misconduct.

In deciding what action to take, the tribunal may consider any previous misconduct of the councillor and any allegation made in the hearing that was admitted, or not challenged, that the tribunal is reasonably satisfied is true.

Section 150AR Disciplinary action against councillor

Section 150AR states the disciplinary action (orders and recommendations) the tribunal may take against a councillor for section 150AQ(1)(b). The tribunal may decide that no action be taken against the councillor or to make 1 or more of the following orders or recommendations:

- an order that the councillor make a public admission that the councillor has engaged in misconduct
- an order reprimanding the councillor for the conduct
- an order that the councillor attend training or counselling to address the councillor's conduct, including at the expense of the councillor
- an order that the councillor pay to the local government an amount that is not more than the monetary value of 50 penalty units
- an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's misconduct
- 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
- an order that the councillor is not to attend a stated number of local government meetings, up to a maximum of 3 meetings
- an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor
- an order that the councillor forfeit an allowance, benefit, payment or privilege paid or provided to the councillor by the local government

- 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
- a recommendation to the Minister that the councillor be suspended from office for a stated period or from performing particular functions of the office
- a recommendation to the Minister that the councillor be dismissed from office.

A recommendation that the councillor be suspended from office may include a recommendation about the details of the suspension, including, for example, whether the councillor should be remunerated during the period of suspension.

However, the tribunal may not make the following orders or recommendations in relation to a person who is no longer a councillor:

- an order that the councillor attend training or counselling to address the councillor's conduct, including at the expense of the councillor
- 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
- an order that the councillor is not to attend a stated number of local government meetings, up to a maximum of 3 meetings
- an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor
- an order that the councillor forfeit an allowance, benefit, payment or privilege paid or provided to the councillor by the local government
- 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
- a recommendation to the Minister that the councillor be suspended from office for a stated period or from performing particular functions of the office
- a recommendation to the Minister that the councillor be dismissed from office.

Section 150AS Notices and publication of decisions and orders

Section 150AS states that for a decision made by the tribunal under section 150AQ(1)(a) about whether or not a councillor has engaged in misconduct or for a decision made by the tribunal to take action under section 150AR(1)(b) to discipline a councillor for misconduct, the tribunal must:

- keep a written record of the decision and the reasons for the decision
- give a notice that states the decision and briefly states the reasons for the decision to the Independent Assessor, the councillor, the local government and to the person who made the complaint (if the tribunal's decision relates to the conduct of a councillor that was the subject of a complaint)
- 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.

Further, section 150AS provides that a notice about a decision, other than a decision to recommend a councillor's suspension or dismissal, given to the assessor or councillor must be a QCAT information notice for the decision. A notice about a decision given to a local government must include the information about the decision that is required to be included in the councillor conduct register under section 150DY.

Also, the tribunal must not:

- 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
- 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:
  - the name of the person who made the complaint; or
  - information that could reasonably be expected to result in identification of the person.

Section 150AT Review by QCAT

Section 150AT provides that a person who is entitled under section 150AS(3) to be given a QCAT information notice for a decision of the tribunal may apply to QCAT, as provided under the *Queensland Civil and Administrative Tribunal Act 2009,* for a review of the decision.

The Government's response to recommendation 10.5 stated that an appropriate body to conduct reviews and appeals of decisions of the tribunal would be identified (page 16). Following consultation with the Department of Justice and Attorney-General, it was determined that QCAT is the appropriate body to review these decisions.

Division 7 Offences

Chapter 5A, part 3, division 7 implements the Government's response to recommendations 4.6 and 4.7 which supports in principle strengthening the processes and penalties for dealing with frivolous or vexatious complaints (page 2).

Section 150AU Frivolous complaint

Section 150AU applies if the Independent Assessor dismisses a complaint because it is about a frivolous matter and gives the person who made the complaint a notice under section 150Z advising that if the person makes the same or substantially the same complaint to the assessor again the person commits an offence.

Section 150AU provides that the person must not make the same or substantially the same complaint to the assessor again, unless the person has a reasonable excuse. The maximum penalty that may be imposed for this offence is 85 penalty units.

Currently, section 176C(8) provides that a person must not make a complaint about the conduct or performance of a councillor if the complaint is substantially the same as a complaint that the person has previously made and the complaints assessor has given the person a notice advising that the complaint was dismissed because it was about a frivolous matter, was made vexatiously or was lacking in substance. The maximum penalty for the current offence is 10 penalty units.

The Government's response to recommendations 4.6 and 4.7 supports in principle strengthening the processes and penalties for dealing with frivolous complaints.

The offence under section 150AU is modelled on the offence in the *Crime and Corruption Act 2001* relating to frivolous complaints (section 216). The proposed maximum penalty is higher

than that recommended in the Councillor Complaints Report[20] but is equivalent to the maximum monetary penalty under the *Crime and Corruption Act 2001.*

In this section, 'make' a complaint to the assessor means:
- make a complaint to the assessor under section 150O
- make a complaint to a government entity that is required under section 150P to refer the complaint to the assessor
- cause a complaint to be referred to the assessor.

Section 150AV Other improper complaints

Section 150AV provides that a person must not make, or counsel or procure another person to make, a complaint about the conduct of a councillor to the Independent Assessor vexatiously or not in good faith. Examples of complaints made not in good faith are complaints made for a mischievous purpose, recklessly or maliciously.

The maximum penalty that may be imposed for this offence is 85 penalty units. This offence will apply whether the complaint is repeated or not.

Currently, section 176C(8) provides that a person must not make a complaint about the conduct or performance of a councillor if the complaint is substantially the same as a complaint that the person has previously made and the complaints assessor has given the person a notice advising that the complaint was dismissed because it was about a frivolous matter, was made vexatiously or was lacking in substance. The maximum penalty for the current offence is 10 penalty units.

The Government's response to recommendations 4.6 and 4.7 supports in principle strengthening the processes and penalties for dealing with vexatious complaints. The offence under section 150AV is modelled on the offence in the *Crime and Corruption Act 2001* relating to improper complaints (section 216A). The proposed maximum penalty is higher than that recommended in the Councillor Complaints Report[21] but is equivalent to the maximum monetary penalty under the *Crime and Corruption Act 2010*.

In this section, 'make' a complaint to the assessor means:
- make a complaint to the assessor under section 150O
- make a complaint to a government entity that is required under section 150P to refer the complaint to the assessor
- cause a complaint to be referred to the assessor.

Section 150AW Protection from reprisal

Section 150AW(1) provides that a councillor must not take detrimental action in reprisal against a protected person for a complaint or notification about the councillor's conduct. A protected person is a local government employee and another councillor. The maximum penalty that may be imposed for this offence is 167 penalty units or 2 years imprisonment.

[20] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 36.
[21] *Councillor Complaints Review: A fair, effective and efficient framework* (the Councillor Complaints Report), page 36.

A councillor takes detrimental action in reprisal if:

- the councillor takes, threatens or attempts to take the action because a protected person has made, or intends to make, or the councillor believes the protected person has made, or intends to make, a complaint or notification about the councillor's conduct to the Independent Assessor;
- the councillor incites, conspires with, or permits another person to take or threaten to take the action for these reasons.

It does not matter whether these reasons are the only or main reason for taking the detrimental action in reprisal, as long as it is a substantial reason.

An offence against subsection (1) is an indictable offence.

In this section a 'notification' about a councillor's conduct, means a notice about the conduct given under section 150R.

This offence is similar to the offence in section 41 of the *Public Interest Disclosure Act 2010* which protects a person making a public interest disclosure under that Act and the same maximum penalties apply.

Clause 13 amends section 153 of the *Local Government Act 2009* to prescribe this offence as an *integrity offence* under that section. A person convicted of an integrity offence is disqualified from being a councillor for 4 years from the conviction.

Part 4 Investigation and enforcement powers

Chapter 5A, part 4 implements the Government's response to:

- recommendation 4.9 which states that the Department of Infrastructure, Local Government and Planning will investigate methods of ensuring that the Independent Assessor has sufficient investigative powers to carry out its functions, which are aligned with the investigatory powers of other investigators (page 3)
- recommendation 4.12 which broadly supports the proposed functions of the Independent Assessor, including that the assessor investigate allegations of inappropriate conduct and misconduct, being armed with appropriate powers to do so (page 4).

Division 1 General provisions about investigators

Subdivision 1 Appointment

Section 150AX Investigators

Section 150AX states that chapter 5A, part 4 provides for the appointment of investigators, and gives investigators particular powers. The purpose of part 4 is to ensure the Independent Assessor has appropriately qualified persons available to help the assessor perform the assessor's functions under chapter 5A.

Section 150AY Functions of investigators

Section 150AY provides that investigators have the following functions:

- to investigate the conduct of councillors as directed by the Independent Assessor under chapter 5A, part 3
- 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 the president or a casual member of the tribunal
  - section 234 to the extent that the offence involves giving information to the assessor, a staff member of the Office of the Independent Assessor, an investigator or the president or a casual member of the tribunal
- to enforce compliance with the conduct provisions
- to investigate whether an occasion has arisen for the exercise of powers in relation to a conduct provision.

Section 150AZ Assessor is an investigator

Section 150AZ clarifies that the Independent Assessor is an investigator for chapter 5A, part 4, however sections 150BB and 150BC do not apply to the assessor.

Sections 150BB and 150BC deal with appointment conditions and limits on powers of investigators and when the office of a person as an investigator ends. Chapter 5A, part 5, division 1 deals with the equivalent matters for the assessor.

Section 150BA Appointment and qualifications

Section 150BA provides that the Independent Assessor may, by instrument in writing, appoint any of the following persons as investigators:
- a person who is a staff member of the Office of the Independent Assessor;
- a public service employee;
- another person prescribed in a regulation.

However, the assessor may appoint a person as an investigator only if the assessor is satisfied that the person is appropriately qualified.

Section 150BB Appointment conditions and limit on powers

Section 150BB provides that an investigator holds office on the conditions stated in:
- the investigator's instrument of appointment; or
- a signed notice given to the investigator; or
- a regulation.

The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers.

For section 150BB, 'signed notice' means a notice signed by the Independent Assessor.

Section 150BC When office ends

Section 150BC(1) provides that the office of a person as an investigator ends if:
- the term of office stated in a condition of office ends; or
- under another condition of office, the office ends; or
- the investigator resigns by signed notice given to the Independent Assessor.

Subsection (1) does not limit the ways the office of person as an investigator ends.

For section 150BC, *condition of office* means a condition under which the investigator holds office.

Subdivision 2 Identity cards

Section 150BD Issue of identity cards

Section 150BD provides that the Independent Assessor must issue an identity card to each investigator.

The identity card must contain a recent photo of the investigator, a copy of the investigator's signature, identify the person as an investigator under this chapter and state the expiry date of the card.

Section 150BD does not limit the issue of a single identity card to a person for this chapter and other purposes.

Section 150BE Production or display of identity card

Section 150BE provides that in exercising a power in relation to a person in the person's presence, an investigator must produce the investigator's identity card for the person's inspection before exercising the power or have the identity card displayed so it is clearly visible to the person when exercising the power.

However, if is not practicable to comply with this requirement the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.

For section 150BE(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).

Section 150BI(1)(b) provides that an investigator may enter a place if it is a public place and the entry is made when the place is open to the public.

Section 150BF Return of identity card

Section 150BF provides that if the office of a person as an investigator ends, the person must return the person's identity card to the Independent Assessor within 21 days after the office ends, unless the person has a reasonable excuse. The maximum penalty is 10 penalty units.

Equivalent offences, with the same maximum penalty, currently apply under the *Local Government Act 2009* to local government workers (section 138A), authorised persons (section 204) and authorised officers (section 204F).

Subdivision 3 Miscellaneous provisions

Section 150BG References to exercise of powers

Section 150BG applies if a provision of chapter 5A refers to the exercise of a power by an investigator and there is no reference to a specific power.

The reference is to the exercise of all or any investigators' powers under chapter 5A, part 4 or a warrant, to the extent the powers are relevant.

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

Section 150BH provides that a reference to a document in chapter 5A, part 4 includes a reference to an image or writing produced from an electronic document, or 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

Section 150BI General power to enter places

Section 150BI provides that an investigator may enter a place if:

- an occupier at the place consents under subdivision 2 to the entry and section 150BL has been complied with for the occupier; or
- it is a public place and the entry is made when the place is open to the public; or
- 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.

Section 150BL provides that before asking for the consent, the investigator must give a reasonable explanation to the occupier about the purpose of the entry, including the powers intended to be exercised. The investigator must tell the occupier that the occupier is not required to consent and the consent may be given subject to conditions and may be withdrawn at any time.

Section 150BS applies if an investigator named in a warrant issued under subdivision 3 for a place is intending to enter the place under the warrant. Before entering the place, the investigator must do or make a reasonable attempt to do particular things including identifying himself or herself to a person who is an occupier of the place and giving the person a copy of the warrant.

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 consent is withdrawn.

If the power to enter is under a warrant, the power is subject to the terms of that warrant.

For section 150BI, a *public place* means a place or part of the place 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 (for example a beach, a park or a road); or
- the occupier of which allows, whether or not on payment of money, members of the public to enter (for example a saleyard or a showground).

Subdivision 2 Entry by consent

Section 150BJ Application of subdivision

Section 150BJ states that the 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).

Section 150BI(1)(a) provides that an investigator may enter a place if an occupier of the place consents to the entry under subdivision 2 and section 150BL has been complied with for the occupier.

Section 150BK Incidental entry to ask for access

Section 150BK provides that for the purpose of asking the occupier for the consent, an investigator may, without the occupier's consent or a warrant, enter land around premises at the place to the extent that it is reasonable to contact the occupier or 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 a place.

Section 150BL Matters investigator must tell occupier

Section 150BL provides that before asking for the consent, the investigator must:
- give a reasonable explanation to the occupier about the purpose of entry, including the powers intended to be exercised;
- tell the occupier that:
  - the occupier is not required to consent; and
  - the consent may be given subject to conditions and may be withdrawn at any time.

Section 150BM Consent acknowledgement

Section 150BM provides that if consent is given, the investigator may ask the occupier to sign an acknowledgement of the consent.

The acknowledgement must state:
- the purpose of entry, including the powers to be exercised; and
- the following has been explained to the occupier:
  - the purpose of entry, including the powers intended to be exercised
  - that the occupier is not required to consent
  - that the consent may be given subject to conditions and may be withdrawn at any time; and

- the occupier gives the investigator or another investigator consent to enter the place and exercise those powers; and
- the time and day the consent was given; and
- any conditions of that consent.

If the occupier signs the acknowledgement, the investigator must immediately give a copy to the occupier.

If an issue arises in a proceeding about whether the occupier consented to entry, and a signed acknowledgement complying with section 150BM(2) for the entry is not produced as evidence, the onus of proof is on the person relying on the lawfulness of entry to prove the occupier consented.

Subdivision 3 Entry under warrant

Section 150BN Application for warrant

Section 150BN provides that an investigator may apply to a magistrate for a warrant for a place.

The investigator must prepare a written application that states the grounds on which the warrant is sought. The written application must be sworn.

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.

Section 150BO Issue of warrant

Section 150BO outlines the conditions where a magistrate may issue the warrant for an investigator to enter a place. The magistrate may issue the warrant for the place only if the magistrate is satisfied that there are reasonable grounds for suspecting that there is at the place or will be at the place, within the next 7 days, a particular thing or activity that may provide evidence of an offence against a conduct provision.

The warrant must state:

- the place to which the warrant applies
- that a stated investigator may with necessary and reasonable help and force
  - enter the place and any other place necessary for entry to the place
  - exercise the investigator's powers
- the particulars of the offence that the magistrate considers appropriate
- 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
- the evidence that may be seized under the warrant
- the hours of the day or night the place may be entered
- the magistrate's name
- the day and time of the warrants issue
- the day within 14 days after the warrants issue the warrant ends.

Section 150BP Electronic application

Section 150BP provides that an application for a warrant made under section 150BN may be made by phone, fax, email, radio or videoconferencing or another form of electronic communication if the investigator reasonably considers it necessary, because of urgent circumstances or other special circumstances.

The application may not be made before the investigator prepares the written application under section 150BN(2), but may be made before the written application is sworn.

Section 150BQ Additional procedure if electronic application

Section 150BQ provides that for an application made under section 150BP (electronic application), the magistrate may issue the warrant (original warrant) only if the magistrate is satisfied it was necessary to make the application under section 150BP and the way the application was made under section 150BP was appropriate.

After a magistrate issues the official warrant, if there is a reasonably practicable way of immediately giving a copy 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. Otherwise, the magistrate must tell the investigator the information mentioned in section 150BO(2) and the investigator must complete a form of warrant.

The copy of the warrant (section 150BQ(2)(a)) or the form of warrant (section 150BQ(2)(b)) (in either case the duplicate warrant) is a duplicate of, and is effectual as the original warrant. At the first reasonable opportunity the investigator must send the magistrate the written application (complying with section 150BN(2) and (3)) and if the investigator completed a form of warrant, the completed form of warrant.

Despite section 150BQ(3), if an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under section 150BQ and 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 provide that a warrant authorised the exercise of that power.

The section does not limit section 150BN.

Section 150BR Defect in relation to a warrant

Section 150BR provides that a warrant is not invalidated by a defect in the warrant or a defect in compliance with this subdivision, unless the defect affects the substance of the warrant in a material particular. In this section ‘warrant’ includes a duplicate warrant mentioned in section 150BQ(3).

Section 150BS Entry procedure

Section 150BS applies if an investigator named in a warrant issued under subdivision 3 for a place is intending to enter the place under the warrant. Before entering the place, the investigator must do or make a reasonable attempt to:

- 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
- give the person a copy of the warrant
- tell the person the investigator is permitted by a warrant to enter the place
- give the person an opportunity to allow the investigator immediate entry to the place without using force.

The investigator need not comply if the investigator believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

Division 3 General powers of investigators after entering places

Section 150BT Application of division

Section 150BT provides that the powers under this division may be exercised if an investigator enters a place under section 150BI(1). 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.

Section 150BU General powers

Section 150BU provides that the investigator may do any of the following (each a general power):

- search any part of the place
- inspect examine or film any part of the place or anything at the place
- take for examination a thing or sample from a thing at the place
- place an identifying mark in or on anything at the place
- take an extract from, or copy, a document at the place or take the document to another place to copy
- produce an image or writing at the place from an electronic document or to the extent that it is not practicable, take a thing containing an electronic document to another place to produce an image or writing
- take to, into or onto a place and use any person, equipment and materials the investigator reasonably requires for exercising the investigator's powers under this chapter
- remain at the place for the time necessary to achieve the purpose of entry.

The investigator may take a necessary step to allow the exercise of a general power.

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. 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 as soon as practicable. 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.

Section 150BV Power to require reasonable help

Section 150BV provides that 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. When making the help requirement, the investigator must give the person an offence warning for the requirement.

Section 150BW Offence to contravene help requirement

Section 150BW provides that a person of whom a help requirement has been made, must comply with the requirement, unless the person has a reasonable excuse. The maximum penalty is 50 penalty units. 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.

This offence is similar to other offences for failing to comply with a help requirement in the *Local Government Act 2009* (section 135(4)) and the *Legal Profession Act 2007* (section 553(3)). The maximum penalty is higher than that applying under the *Local Government Act 2009* but lower than that applying under the *Legal Profession Act 2007*. All offences in the Bill relating to non-compliance with a requirement of an investigator will have maximum penalties of 50 penalty units.

Division 4 Seizure by investigators

Subdivision 1 Power to seize

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

Section 150BX applies if an investigator is authorised to enter a place only with the consent of an occupier of the place or a warrant, and the investigator enters the place after obtaining the consent or under a warrant.

If an investigator enters the place with the occupier's consent, the investigator may seize a thing at the place only if:

- the investigator reasonably believes that the thing is evidence of an offence against a conduct provision; and
- seizure of the thing is consistent with the purpose of entry which was explained to the occupier when asking for the occupier's consent.

If an investigator enters the place under a warrant, the investigator may seize the evidence for which the warrant was issued.

The investigator may also seize anything else at the place if the investigator reasonably believes the thing is evidence of an offence against a conduct provision and the seizure is necessary to prevent the thing being hidden, lost or destroyed.

Section 150BY Seizure of property subject to security

Section 150BY provides that 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. 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

Section 150BZ Power to secure a seized thing

Section 150BZ provides that having seized a thing under division 4 an investigator may leave it at the place where it was seized (the 'place of seizure') and take reasonable action to restrict access to it or move it from the place of seizure.

For the purposes of section 150BZ(1)(a), the investigator may, for example:

- seal the thing or the entrance to the place of seizure and mark the thing or place to show access to the thing is restricted; or
- for equipment, make it inoperable; or
- require a person the investigator reasonably believes is in control of the place or thing to do an act mentioned in section 150BZ(2)(a) or 150BZ(2)(b) or anything else an investigator could do under section 150BZ(1)(a).

When making a requirement of a person under section 150BZ(2)(c) the investigator must give the person an offence warning for the requirement.

Section 150CA Offence to contravene seizure requirement

Section 150CA provides that a person must comply with a requirement made of the person under section 150BZ(2)(c) unless the person has a reasonable excuse. The maximum penalty is 50 penalty units.

This offence is similar to the offence of failing to comply with a seizure requirement in the *Legal Profession Act 2007*(section 557(4)). The maximum penalty is lower than that applying under the *Legal Profession Act 2007*. All offences in the Bill relating to non-compliance with a requirement of an investigator will have maximum penalties of 50 penalty units.

Section 150CB Offence to interfere

Section 150CB(1) provides that if access to a seized thing is restricted under section 150BZ a person must not tamper with the thing or anything used to restrict access to a thing without an investigator's approval or a reasonable excuse. The maximum penalty is 50 penalty units.

This offence is similar to the offence of tampering with a seized thing in the *Legal Profession Act 2007* (section 556). The maximum penalty is lower than that applying under the *Legal Profession Act 2007.* All offences in the Bill relating to non-compliance with a requirement of an investigator have maximum penalties of 50 penalty units.

Section 150CB(2) provides that 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 an investigator's approval or a reasonable excuse. The maximum penalty is 50 penalty units.

This offence supports an investigator's power to restrict access to a place for the purpose of securing a seized thing. It is similar to the offence in subsection (1) which applies in relation to the seized thing. All offences in the Bill relating to non-compliance with a requirement of an investigator have maximum penalties of 50 penalty units.

Subdivision 3 Safeguards for seized things

Section 150CC Receipt and information notice for seized thing

Section 150CC applies if an investigator seizes anything under division 4, unless the investigator reasonably believes there is no-one apparently in possession of the thing or it has been abandoned or, because of the condition, nature and value of the thing it would be unreasonable to require the investigator to comply with this section, 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 receipt for the thing that generally describes its condition and an information notice about the decision to seize it.

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.

The receipt and information notice may be given in the same document and relate to more than 1 seized thing.

An investigator may delay giving a receipt or information notice if the investigator reasonably suspects that giving them an information notice may frustrate or otherwise hinder an investigation by the investigator under this chapter. The delay may be only for so long as the investigator continues to have a reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep the thing under observation.

Section 150CD Access to seized thing

Section 150CD provides that until a seized thing is returned, the investigator must allow an owner of the thing to inspect it at a reasonable time or from time to time and if it is a document to copy it, unless it is impracticable or it would be unreasonable to allow the inspection or copying. The inspection or copying must be allowed free of charge.

Section 150CE Return of seized thing

Section 150CE provides that if a seized thing is not forfeited under subdivision 4 the Independent Assessor must return the thing to its owner as soon as the assessor stops being satisfied there are reasonable grounds for retaining the thing. If the thing is not returned to the owner within 3 months of it being seized the owner has the option to apply to the assessor for its return. Within 30 days of receiving the application the assessor must, if satisfied there are reasonable grounds for retaining the thing, give the owner a notice of the decision including the grounds for retaining the thing, or otherwise return the thing to the owner.

An investigator has reasonable grounds for retaining a seized thing if:

- the thing is being or is likely to be examined
- the thing is needed for the purposes of a proceeding for an offence against a conduct provision that is likely to be started or has been started or an appeal from a decision for an offence against a conduct provision
- it is not lawful for the owner to possess the thing.

Nothing in this section affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

Section 150CF Forfeiture by assessor decision

Section 150CF provides for the Independent Assessor to decide a seized thing is forfeited to the State if an investigator after making reasonable inquiries, can not find an owner or after making reasonable efforts, can not return it to an owner.

The investigator is not required to make inquiries if it would be unreasonable to make inquiries to find an owner or make efforts if it would be unreasonable to make efforts to return the thing to an owner.

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

Section 150CG Dealing with property forfeited to State

Section 150CG provides that a thing becomes the property of the State if the thing is forfeited to the State under section 150CF(1). The Independent 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

Section 150CH Power to require information

Section 150CH provides that if an investigator reasonably believes 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 a person has information reasonably necessary for the investigator to investigate conduct of a councillor, the investigator may, by notice given to a person require the person to give the investigator the information by a stated reasonable time (the investigator must give the person an offence warning for the requirement).

Section 150CI Offence to contravene information requirement

Section150CI provides that a person of whom a requirement is made under section 150CH(2) must comply with the requirement unless the person has a reasonable excuse. The maximum penalty is 50 penalty units. 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.

This offence is similar to offences for failing to provide information as required under the *Local Government Act 2009* (sections 148D(4) and 148G(4)) and the *Crime and Corruption Act 2001* (sections 72(4) and 75(3)). The proposed maximum penalty is higher than the penalties applying under the *Local Government Act 2009* but lower than those applying under the *Crime and Corruption Act 2001*. All offences in the Bill relating to non-compliance with a requirement of an investigator have maximum penalties of 50 penalty units.

Section 150CJ Power to require attendance

Section 150CJ provides that an investigator may require a person to attend a meeting at a stated reasonable time and place and answer questions asked by the investigator related to an investigation of the conduct of a councillor or an offence against a conduct provision. When making a requirement under this section, the investigator must give the person an offence warning for the requirement.

A person must comply with the requirement unless a person has a reasonable excuse. The maximum penalty is 50 penalty units. It is a reasonable excuse for an individual not to answer a question if the question will lead to self-incrimination or expose the individual to a penalty.

This offence is similar to the offence for failing to attend a hearing as required under the *Crime and Corruption Act 2001* (section 82(5)). The proposed maximum penalty is significantly lower than that applying under the *Crime and Corruption Act 2001* which is appropriate as the offence in section 150CJ applies to a meeting, rather than a hearing. All offences in the Bill relating to non-compliance with a requirement of an investigator have maximum penalties of 50 penalty units.

Section 150CK Notice about confidentiality

Section 150CK provides that if an investigator intends to exercise or exercises a power requiring a person to give information under section 150CH or attend a place and answer questions under section 150CJ, the Independent 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.

The assessor may only give a notice to a person if the assessor reasonably believes that the notice is necessary to prevent the commission of an offence or to ensure the investigation of a councillor's conduct is kept confidential.

If a person has been provided with a confidentiality notice the person must not disclose the information to anyone else unless the disclosure is permitted under subsection (5) or the person has a reasonable excuse. The maximum penalty that may be ordered for disclosure is 85 penalty units.

Section 150CK(5) provides that the person may disclose the confidential information if:

- the disclosure was made before the person received the notice; or
- the disclosure is made to:
  - obtain legal advice
  - obtain information to comply with the investigator's requirement
  - comply with another lawful obligation to disclose the information.

A disclosure by a person under section 150CK(5)(b)(ii) to obtain information to comply with the investigator's requirement is permitted only if the discloser informs another person to whom the disclosure is made that the information is confidential information.

The purpose of this provision is to preserve the confidentiality of an investigation. The offence is similar to an offence in the *Crime and Corruption Act 2010* (section 84) which allows the chairperson of the Crime and Corruption Commission to specify that particular notices are confidential documents. This offence has a maximum penalty of 85 penalty units or 1 years imprisonment.

Division 6 Miscellaneous provisions relating to investigators

Section 150CL Duty to avoid inconvenience and minimise damage

Section 150CL provides that an investigator in exercising a power must take all reasonable steps to cause as little inconvenience, and do as little damage as possible.

Section 150CM Notice about damage

Section 150CM provides that if an investigator damages something when exercising or purporting to exercise a power or if a person acting under the direction or authority of an investigator damages something, the investigator must give a notice about the damage to a person who appears to be an owner or in control of the thing.

However, this section does not apply to damage that the investigator reasonably considers is trivial or if the investigator reasonably believes that there is no-one apparently in possession of the thing or it has been abandoned.

If for any reason it is not practicable to give a notice to the person an investigator must leave the notice at the place at which the damage happened and ensure it is in a conspicuous position in a reasonably secure way.

The investigator may delay giving a notice only if the investigator reasonably suspects that giving the notice may frustrate or otherwise hinder an investigation. The delay may only be for so long as the investigator continues to have a reasonable suspicion and remains in the vicinity of the place at which the damage happened.

The notice must state the particulars of the damage and that the person who has suffered the damage may claim compensation from the state. If the investigator believes that the damage was caused by a latent defect in the thing or other circumstances beyond the control of the investigator or the assistant then the investigator may state the belief of the notice.

Section 150CN Compensation

Section 150CN provides that a person may claim compensation from the State if the person incurs a loss or damage because of the exercise or purported exercise of a power by or for an investigator.

The compensation may be claimed and ordered in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation or for an offence against a conduct

provision or another offence relating to the conduct of a councillor, the investigation of which gave rise to a claim of compensation. A court may order a payment of compensation only if it is satisfied that it is just to make the order in the circumstances of the particular case.

In considering whether to make an order of compensation, the court must have regard to:
- any relevant offence that has been committed by the claimant; and
- whether the loss arose from a lawful seizure or a lawful forfeiture.

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.

Section 150CL does not provide a statutory right to compensation other than as provided by this section.

Division 7 Review

Subdivision 1 Internal review

Section 150CO Who may apply for review

Section 150CO 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*). If the person is dissatisfied with the decision, the person may apply to the Independent Assessor for a review (an *internal review*) of the decision.

Section 150CP Application for review

Under section 150CP an application for review must be made if the person is given an information notice about the decision—within 30 days after the person is given the information notice, or otherwise—within 30 days after the person otherwise becomes aware of the decision. The Independent Assessor may extend the time for making the application if, within the 30 day period the person asks the assessor to extend the time. The application must be in writing and supported by enough information to enable the assessor to decide the application.

Section 150CQ Review decision

Section 150CQ provides that unless the Independent Assessor made the original decision personally, the assessor must ensure the application is not dealt with by—the person who made the original decision; or a person in a less senior office in the Office of the Independent Assessor than the person who made the original decision. Within 90 days after the making of the application, the assessor must review the original decision and make a decision (the *review decision*)—
- confirming the original decision
- amending the original decision
- substituting another decision for the original decision.

The assessor must make the review decision on the material that led to the original decision and any other material the assessor considers relevant. The assessor must, as soon as practicable after making the review decision, give the applicant notice of the review decision.

If the review decision is not the decision sought by the applicant, the notice must comply with the *Queensland Civil and Administrative Tribunal Act 2009*, section 157(2).

Subdivision 2 External review

Section 150CR External review by QCAT

Section 150CR provides that if the applicant is dissatisfied with a review decision made by the Independent Assessor, the applicant may apply, as provided under the *Queensland Civil and Administrative Tribunal Act 2009*, to QCAT for a review of the review decision.

Section 150CS No power to stay decision

Section 150CS provides that if a person applies to QCAT for a review of a review decision, QCAT may not stay the operation of the review decision or grant an injunction in the proceeding for the review.

Part 5 Administration

Division 1 Independent Assessor and Office of the Independent Assessor

Chapter 5A, part 5, division 1 implements the Government's response to:

- recommendation 4.1 which supports the establishment of a statutory Independent Assessor to assess complaints and carry out investigations (page 1)
- recommendation 4.12 which supports the Independent Assessor being a statutory office, which reports directly to the relevant Minister and broadly supports the proposed functions of the Independent Assessor (page 4)
- recommendation 7.1 which supports that the interaction of the Crime and Corruption Commission with councillor complaints be through the Independent Assessor and not the Director-General of the Department of Infrastructure Local Government and Planning (page 13)
- recommendation 7.2 which supports the Independent Assessor being the public official who works with the Crime and Corruption Commission on councillor complaints and not the Director-General of the Department of Infrastructure Local Government and Planning (page 13)
- recommendation 12.3 which supports in principle the creation of a statutory role for the Independent Assessor, reporting directly to the relevant Minister (page 17)
- recommendation 12.5 which supports the appointment of the Independent Assessor as a statutory appointment, approved by the Governor in Council (page 17).

Subdivision 1 Independent Assessor

Section 150CT Establishment

Section 150CT states that there is to be an Independent Assessor.

Section 150CU Functions

Section 150CU provides that the functions of the Independent Assessor are:

- 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
- 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
- to prosecute offences against the conduct provisions; and
- to investigate other matters decided by the Minister; and
- another function related to a function mentioned in section 150CU(1)(a), (b), (c), (d) or (f) directed, in writing, by the Minister; and
- any other function given to the assessor under this Act.

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*.

Section 150CV Appointment

Section 150CV provides that the Governor in Council may appoint a qualified person to be the Independent Assessor. The assessor is appointed under this Act and not the *Public Service Act 2008*.

Section 150CW Qualifications for appointment

Section 150CW provides a person is qualified to hold office as the Independent Assessor if the person has extensive knowledge of and experience in any of the following areas:
- local government
- investigations
- law
- public administration
- public sector ethics.

A person is disqualified from holding the office of the assessor if the person:
- has a conviction of an indictable offence; or
- is insolvent under administration; or
- is guilty of misconduct of a type that could warrant dismissal form the public service if the assessor were an officer of the public service.

Section 150CX Term of office

Section 150CX provides that, subject to this division, the Independent Assessor holds office of a term of not more than 5 years, stated in the assessor's instrument of appointment.

Section 150CY Conditions of appointment

Section 150CY provides that the Independent Assessor is to be paid the remuneration and allowances decided by the Governor in Council and holds office on the terms and conditions decided by the Governor in Council, to the extent that the terms and conditions are not provided for by the *Local Government Act 2009*.

Section 150CZ Preservation of rights

Section 150CZ provides that if a public service officer is appointed as the Independent Assessor the person keeps all the rights accrued as a public service officer, as if it were a continuation of service in a like position. At the end of the person's term, the person's service is taken to be of a like nature for deciding the person's rights as a public service officer.

Section 150DA Restriction on local government employment etc.

Section 150DA provides that the Independent 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.

Section 150DB Conflict of interest

Section 150DB provides that if the Independent Assessor has an interest that may conflict with a fair and impartial investigation into the conduct of a councillor, the assessor must not take part, or take further part, in consideration of the matter. The maximum penalty that may be imposed is 35 penalty units.

As soon as practicable after the assessor becomes aware of a conflict of interest the assessor must give a notice about the matter to the Minister. The maximum penalty that may be imposed for a failure to inform the Minister is 35 penalty units.

If the assessor gives a notice to the Minister about a conflict of interest, the Minister must nominate a person to act as the assessor under section 150DD.

The offences, and the maximum penalties for the offences, under this section are consistent with the offences in relation to conflicts of interest of members of the Local Government Remuneration and Discipline Tribunal and the Regional Conduct Review Panels respectively (sections 187 and 192 of the *Local Government Act 2009*).

Section 150DC Vacancy of office

Section 150DC provides that the office of the Independent Assessor becomes vacant if the person holding the office:

- completes a term of office and is not reappointed
- is not qualified under section 150CW(2) to hold the office
- is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity
- resigns from the office by a signed notice given to the Minister.

Section 150DD Acting assessor

Section 150DD provides that the Minister may appoint a person to act as the Independent Assessor during a vacancy in the office of the assessor or a period when the assessor is absent or can not perform the duties of the office for any reason.

A person can not be appointed for more than 6 months in a 12-month period. However, the person can not be appointed if the person would be disqualified from being the assessor under section 150CW(2).

Section 150DE Assessor not subject to outside direction

Section 150DE provides that the Independent Assessor is not subject to direction by another person about the way the assessor's powers in relation to an investigation under this Act are to be exercised or the priority given to investigations.

Section 150DF Delegation

Section 150DF provides that the Independent Assessor may delegate any of the assessor's functions to an appropriately qualified staff member of the Office of the Independent Assessor. However, the assessor may not delegate the assessor's power to give a notice under section 150CK.

Subdivision 2 Office of the Independent Assessor

Section 150DG Establishment

Section 150DG establishes the Office of the Independent Assessor that consists of the Independent Assessor and the staff of the office.

Section 150DH Function

Section 150DH provides that the office's function is to help the Independent Assessor perform the assessor's functions.

Section 150DI Staff

Section 150DI provides that staff of the office are employed under the *Public Service Act 2008.*

Section 150DJ Control of office

Section 150DJ provides that the Independent Assessor controls the office but that this 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

Chapter 5A, part 5, division 2 implements the Government's response to:

- recommendation 5.14 which supports that council pays the costs of using the services of a Councillor Conduct Tribunal member in investigating and considering inappropriate conduct (page 9)
- recommendation 10.1 which partially supports the recommendation as it supports retaining section 213(1) of the *Local Government Act 2009* and considers that the president of the Councillor Conduct Tribunal should have discretion as to how and when he/she considers recommending to the relevant Minister that procedural rules be prescribed (page 15)

- recommendation 12.1 which supports reconstituting the Local Government Remuneration and Discipline Tribunal as the Councillor Conduct Tribunal and removing the need for the regional conduct review panels (page 16)
- recommendation 12.2 which supports in principle the reconstitution of the Local Government Remuneration and Discipline Tribunal as the Councillor Conduct Tribunal, although the creation of a new statutory authority is not required to achieve this objective (page 17)
- recommendation 12.4 which supports the responsibility for deciding remuneration being separated from the disciplinary function of the Councillor Conduct Tribunal (page 17)
- recommendation 12.5 which supports the appointment of Councillor Conduct Tribunal members as statutory appointments approved by the Governor in Council (page 17)
- recommendation 12.6 which supports the requirement for certain qualifications for Councillor Conduct Tribunal members (page 18)
- recommendation 12.7 which supports the publication of practice directions to govern how Councillor Conduct Tribunal hearings are conducted (page 18).

Section 150DK Establishment

Section 150DK states that the Councillor Conduct Tribunal is established.

Section 150DL Functions

Section 150DL provides that the Councillor Conduct Tribunal has the following functions:

- at the request of a local government:
  - investigating the suspected inappropriate conduct of a councillor referred to the local government by the Independent Assessor to be dealt with by the local government; and
  - making recommendations to the local government about dealing with the conduct; and
- another function related to a function mentioned in section 150DL(1)(a) or (c) directed, in writing, by the Minister; and
- any other functions given to the tribunal under the *Local Government Act 2009*.

For example, other functions given to the tribunal under the *Local Government Act 2009* include conducting a hearing to determine whether a councillor has engaged in misconduct and what, if any, disciplinary action should be taken (sections 150AP, 150AQ and 150AR).

Section 150DM Membership of tribunal

Section 150DM provides that the tribunal is made up of:
- the president; and
- the casual members.

Section 150DN Appointment of president and casual members

Section 150DN provides that the Governor in Council may appoint a person to be the president of the tribunal and the Governor in Council may appoint the number of casual members that the Governor in Council considers appropriate.

The Minister may recommend the appointment of a person as a member of the tribunal only if the person is qualified under section 150DO to be a member.

Section 150DO Qualifications for membership

Section 150DO provides that a person is qualified to be a member of the tribunal only if the person has extensive knowledge of, or experience in any of the following:

- local government
- investigations
- law
- public administration
- public sector ethics.

However, a person is not qualified to be a member if the person:

- is a councillor; or
- is a nominee for election as a councillor; or
- accepts an appointment as a councillor; or
- is an employee of local government; or
- is a contractor of local government; or
- is a consultant engaged by a local government; or
- is a member of Australian Parliament; or
- is a nominee for election as a member of an Australian Parliament; or
- is a member of a political party; or
- has a conviction of an indictable offence other than a spent conviction; or
- is an insolvent under administration; or
- is a person prescribed by regulation for this subsection.

Section 150DP Term of office

Section 150DP provides that a member holds office for the term of not more than 4 years stated in the member's instrument of appointment.

Section 150DQ Conditions of appointment

Section 150DQ provides that a member is entitled to be paid the remuneration and allowances decided by the Governor in Council and 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 the *Local Government Act 2009*.

Section 150DR Vacancy of office

Section 150DR provides that the office of a member becomes vacant if the person holding the office:

- completes a term of office and is not reappointed; or
- is disqualified from holding the office under section 150DO; or
- is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity; or
- resigns by signed notice given to the Minister.

Section 150DS Acting president

Section 150DS provides that the Minister may appoint a casual member to act as the president during a vacancy in the office of the president or 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. The casual member can not be appointed for more than 3 months in a 12-month period.

Section 150DT Conflict of interest

Section 150DT provides that if a member of the Councillor Conduct Tribunal has an interest that may conflict with a fair and impartial hearing about the conduct of a councillor, the member must not take part, or take further part, in consideration of the matter. The maximum penalty that may be imposed is 35 penalty units.

As soon as practicable after a member becomes aware of a conflict of interest the member must give a notice about the matter to the president, or, if the member is the president, to the Minister. The maximum penalty that may be imposed for a failure to inform the president or the Minister is 35 penalty units.

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 for that matter under section 150DS.

The offences, and the maximum penalties for the offences, under this section are consistent with the offences in relation to conflicts of interest of members of the Local Government Remuneration and Discipline Tribunal and the Regional Conduct Review Panels respectively (sections 187 and 192 of the *Local Government Act 2009*).

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

Section 150DU provides that a local government must pay the costs of the tribunal in relation to the tribunal:

- conducting a hearing about misconduct of a councillor under part 3, division 6
- 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.

The costs of the tribunal include the remuneration and allowances and expenses paid to a member of the tribunal conducting a hearing or investigation or making the recommendations.

Section 150DV Practice directions

Section 150DV provides that the president may issue practice directions for conducting a hearing. A practice direction must not be inconsistent with this Act or any requirements prescribed by regulation about procedures for a hearing and must be published on the department's website.

Section 150DW Assistance from departmental staff

Section 150DW provides that the department's chief executive must make available to the Councillor Conduct Tribunal the help from public service employees employed in the department that the tribunal needs to effectively perform its functions.

Part 6 Miscellaneous

Division 1 Councillor conduct register

Chapter 5A, part 6, division 1 implements the Government's response to:

- recommendation 12.8 which supports in principle publication of decisions subject to appropriate protections (page 18)
- recommendation 12.9 which supports in principle the publication of decisions (page 18)
- recommendation 12.10 which supports in principle the publication of the Councillor Conduct Tribunal decisions (page 18).

Section 150DX Local governments to keep and publish register

Section 150DX provides that a local government must keep an up-to-date councillor conduct register about the following matters for local government:

- orders made about unsuitable meeting conduct of councillors at its local government meetings
- decisions about suspected inappropriate conduct of councillors referred to the local government under part 3, division 5
- decisions about whether or not a councillor has engaged in misconduct made by the tribunal part 3 division 6
- complaints about the conduct of its councillors dismissed by the Independent Assessor
- decisions to take no further action in relation to the conduct of councillors investigated by the assessor.

The local government must publish the councillor conduct register on the local government's website and ensure that the public may inspect or purchase a copy of entry in the register at the local government's public office. However, this does not apply to information recorded in the register that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*.

Section 150DY Content of register – decisions

Section 150DY provides that the section applies to each of the following decisions:

- 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
- a decision by a local government about the suspected inappropriate conduct of a councillor referred to the local government under chapter 5A, part 3, division 5 and any action taken to discipline the councillor
- a decision about the misconduct of a councillor made by the tribunal under chapter 5A, part 3, division 6 and any action taken to discipline the councillor
- a decision by the Independent Assessor to take no further action in relation to the conduct of a councillor after conducting an investigation.

The councillor conduct register must include the following details for the decision:
- a summary of the decision and the reasons for the decision
- the name of the councillor about whom the decision was made
- the date of the decision.

Section 150DY(3) provides that 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:
- the local government or tribunal decided the councillor engaged in inappropriate conduct or misconduct; or
- the councillor agrees to the councillor's name being included.

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 the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person.

Section 150DZ Content of the register – dismissed complaints

Section 150DZ provides that the councillor conduct register must include the following particulars for each complaint about the conduct of a councillor and dismissed by the Independent Assessor:
- the date the complaint was made
- a summary of the complaint
- a statement about why the complaint was dismissed.

The name of the councillor against whom the complaint was made is not to be included in the entry, in the register for the complaint, unless the councillor agrees to the councillor's name being included.

A summary of the complaint included in the register must not include:
- the name of the person who made the complaint
- information that could reasonably be expected to result in identification of the person.

Division 2 Other provisions

Chapter 5A, part 6, division 2 implements the Government's response to:
- recommendation 4.3 which supports a standardised form that can be used for the making of written complaints (page 1)
- recommendation 4.12 which supports the Independent Assessor being a statutory office, which reports directly to the relevant Minister (page 4).

Section 150EA Secrecy

Section 150EA provides that it is an offence for a person who is, or has been, the Independent Assessor, an investigator or a staff member in the Office of the Independent Assessor who obtains confidential information in the course of performing, or because of, the person's functions under the *Local Government Act 2009* to:
- make a record of the confidential information; or
- directly or indirectly disclose the confidential information to another person; or

- use the confidential information to benefit a person or cause detriment to a person.

The maximum penalty that may be imposed for this offence is 100 penalty units.

However, a person does not commit an offence if the record is made or the confidential information is disclosed or used:

- in the performance of the person's functions under the *Local Government Act 2009*; or
- with the consent of the person to whom the information relates; or
- as otherwise required or permitted by law.

Confidential information is information, other than information that is publicly available about a person's personal affairs or reputation or that would be likely to damage the commercial activities of a person to whom the information relates.

This offence will ensure the confidentiality of investigations undertaken by the assessor. Similar offences apply under Queensland legislation to restrict the disclosure of information a person obtains because of the person's functions under an Act (see for example, section 705 of the *Legal Profession Act 2007*). The maximum penalty of 100 penalty units is the same as other offences in the *Local Government Act 2009* relating to the use and release of information acquired by councillors (section 171) and local government employees (section 200).

Section 150EB Annual report

Section 150EB provides that as soon as practicable after the end of the financial year, but no later than 3 months after the end of the financial year, the Independent Assessor must give to the Minister a written report about the operation of the Office of the Independent Assessor during the year.

The report must include:

- a description of the following matters for the year:
  - complaints made or referred to the assessor about the conduct of councillors
  - complaints dismissed by the assessor
  - investigations conducted by the office
  - decisions made by the assessor to take no further action after conducting an investigation
  - suspected corrupt conduct notified to the Crime and Corruption Commission
  - suspected inappropriate conduct referred by the assessor to the local governments to be dealt with
  - decisions about whether councillors engaged in misconduct made by the tribunal; and
- details about the number of times each power under part 4 has been exercised by the assessor or investigators during the year; and
- details of any other functions performed by the assessor during the year.

The report must be prepared in a way that does not disclose the identity of the person being investigated and the Minister must ensure that a copy of the report is tabled in the Legislative Assembly as soon as practicable after the report is given to the Minister.

Section 150EC Approved forms

Section 150EC provides that the Independent Assessor may approve forms for use under chapter 5A.

Clause 13 Amendment of s 153 (Disqualification for certain offences)

Clause 13 amends section 153(5)(a) to insert a reference to section 150AW to prescribe the reprisal offence as an *integrity offence* under the *Local Government Act 2009*.

A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction (section 153(1)(d) of the *Local Government Act 2009*). The offence of taking a reprisal is considered to be equivalent in seriousness to the offences currently prescribed as integrity offences.

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

Clause 14 omits section 162(1)(e) to insert a new subsection (1)(e) to provide that a councillor's office becomes vacant if the councillor is absent from 2 or more consecutive ordinary meetings of the local government over a period of at last 2 months, unless the councillor is absent:

- in compliance with an order made by the chairperson of a meeting of the local government or a committee of the local government, the local government or the tribunal; or
- with the local government's leave.

Clause 14 clarifies that the absence of a councillor from 2 or more meetings of a council in compliance with an order of the chairperson, the local government, tribunal or with the local government's leave does not qualify as an absence that would lead to a vacancy of office under section 162(1) of the *Local Government Act 2009*. This amendment implements the Government's response to recommendation 6.4 which supports the recommendation that an order for exclusion of a councillor should not trigger a vacancy under section 162(1)(e) of the *Local Government Act 2009* (page 12).

Clause 15 Omission of ch 6, pt 2, div 6

Clause 15 omits chapter 6, part 2, division 6.

Previously, chapter 6, part 2, division 6 dealt with the assessment of councillor conduct complaints. However, this division is no longer required as the Bill inserts a new chapter 5A, which provides for the processes and entities to deal with complaints about the conduct of councillors.

Clause 16 Replacement of ch 6, pts 3 and 4

Clause 16 replaces chapter 6, parts 3 and 4 with a new part 3 to establish the Local Government Remuneration Commission.

Clause 16 implements the Government's response to recommendation 12.4 which partially supports the recommendation as it supports the responsibility for deciding remuneration being separated from the disciplinary function of the Councillor Conduct Tribunal (page 17).

Part 3 Local Government Remuneration Commission

Section 176 Establishment

Section 176 establishes the Local Government Remuneration Commission (remuneration commission).

Section 177 Functions

Section 177 provides that the functions of the remuneration are to:
- establish the categories of local governments
- decide to which category each local government belongs
- decide the maximum amount of remuneration payable to the councillors in each of the categories
- another function directed in writing by the Minister.

Section 178 Membership of the remuneration commission

Section 178 provides that the commissioners of the remuneration commission are the chairperson and the casual commissioners.

Section 179 Constitution of the remuneration commission

Section 179 provides that the remuneration commission is constituted for a matter by the chairperson or no more than 3 commissioners chosen by the chairperson for the matter.

Section 180 Appointment of chairperson and casual commissioners

Section 180 provides that Governor in Council may appoint a person to be the chairperson of the remuneration commission and may also appoint a person to be a casual commissioner of the remuneration commission and the number of casual commissioners the Governor in Council considers appropriate.

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.

Section 181 Qualifications to be a commissioner

Section 181 provides that a person is qualified to be a commissioner only if the person has extensive knowledge of, and experience in any of the following:
- local government
- community affairs
- industrial relations
- public administration
- public finance

has any other knowledge and experience the Governor in Council considers appropriate.

However, a person is not qualified to be a commissioner if the person:
- is a councillor; or

- is a nominee for election as a councillor; or
- accepts an appointment as a councillor; or
- is an employee of local government; or
- is a contractor of a local government is a consultant engaged by a local government; or
- is a consultant engaged by the local government; or
- is a member of an Australian Parliament; or
- is a nominee for election as a member of Australian Parliament; or
- is a member of a political party; or
- has a conviction for an indictable offence other than a spent conviction; or
- is an insolvent under administration; or
- is a person prescribed under a regulation.

Section 182 Term of office

Section 182 provides that a commissioner holds office for the term of not more than 4 years stated in the commissioner's instrument of appointment.

Section 183 Conditions of appointment

Section 183 provides that a commissioner is to be paid the remuneration and allowances decided by the Governor in Council and 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 the *Local Government Act 2009*.

Section 184 Vacancy of office

Section 184 provides that the office of a commissioner becomes vacant if the person holding the office:

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

Section 185 Assistance from departmental staff

Section 185 provides that 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.

Clause 17 Amendment of s 212 (What this part is about)

Clause 17 consequently amends section 212(2) to replace the term 'investigator' with 'decision-maker,' to provide that the person or other entity that is conducting the hearing is called a 'decision-maker,' (the tribunal) under chapter 7, part 1. Clause 17 is a consequential amendment required as a result of the introduction of the defined term 'investigator' in chapter 5A, part 4.

Clause 18 Amendment of s 213 (Procedures at hearing)

Clause 18 consequently amends section 213 to replace the term 'investigator' with 'decision-maker,' to provide that the hearing procedures under chapter 7, part 1 apply to a decision-maker (the tribunal). Clause 18(1) is a consequential amendment required as a result of the introduction of the defined term 'investigator' in chapter 5A, part 4.

Subclause (2) replaces the term 'rules' in section 213(3) with, 'requirements prescribed by a regulation.'

Clause 19 Amendment of s 214 (Witnesses at hearings)

Clause 19 consequently amends section 214 to replace references to an 'investigator,' with a 'decision-maker,' to provide that a decision-maker (the tribunal) may require a witness to attend a hearing to give evidence or produce documents. Clause 19 is a consequential amendment required as a result of the introduction of the defined term 'investigator' in chapter 5A, part 4.

Clause 20 Amendment of s 215 (Contempt at hearing)

Clause 20 consequently amends section 215 to replace references to an 'investigator' with a 'decision-maker' to provide that a person must not:

- insult the decision-maker in a hearing
- deliberately interrupt a hearing
- take part in a disturbance in or near a place where a decision-maker is conducting a hearing
- do anything that would be a contempt of court if the decision-maker where a court.

The maximum penalty that may be imposed is 50 penalty units. Clause 20 is a consequential amendment required as a result of the introduction of the defined term 'investigator' in chapter 5A, part 4.

Clause 21 Amendment of ch 7, pt 4, hdg (Legal provisions)

Clause 21 consequentially amends the heading of chapter 7, part 4 to refer to 'Legal and offence provisions', to provide for the inclusion of offences relating to obstructing State officials and impersonating authorised officers.

Clause 22 Insertion of new ch7, pt 4, div 1

Clause 22 amends chapter 7, part 4 to insert a new chapter 7, part 4, division 1 to provide for offences relating to the obstruction of State officials and impersonating authorised officers.

Division 1 Offences relating to State officials

Section 233A Obstructing State officials

Section 233A provides that a person must not obstruct a State official exercising a power under the *Local Government Act 2009*, or a person helping a State official exercise a power, unless the person has a reasonable excuse. The maximum penalty that may be imposed is 50 penalty units.

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:

- it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- the official considers the person's conduct is an obstruction.

This offence, and the maximum penalty, is equivalent to that in current section 149 which is amended by clause 9 of the Bill so that it applies only to 'local government officials'. A 'State official' under section 233A includes those persons that will no longer be captured by amended section 149 as an 'official' as well as other persons, namely, the Minister, the department's chief executive, an authorised officer, the Independent Assessor, an investigator, the president or a casual member of the tribunal and a member of the change commission.

Section 233B Impersonating particular persons

Section 233B provides that a person must not impersonate an authorised officer, the Independent Assessor or an investigator. The maximum penalty that may be imposed is 50 penalty units.

This offence, and the maximum penalty, is equivalent to section 150 which is amended by clause 10 to apply only to authorised persons. Section 233B applies to authorised officers who were previously included in section 150, and also to the assessor and an investigator.

Clause 23 Amendment of s 234 (False or misleading information)

Clause 23 extends section 234 to provide that it is an offence for a person to give information for the *Local Government Act 2009* to the Independent Assessor, staff of the Office of the Independent Assessor, an investigator and the remuneration commission if the person knows the information is false or misleading in a material particular.

The Local Government Remuneration and Discipline Tribunal is currently included in this offence as 'the tribunal' (section 234(1)(g)). The change to the defined term 'tribunal' in clause 31 will apply this offence to the tribunal without further amendment to section 234. The clause will also omit the reference to regional conduct review panels in section 234.

This amendment will implement the Government's response to recommendation 8.2 which supports in principle changing the offence of giving false or misleading information to refer to the Independent Assessor.

The current maximum penalty that may be imposed for this offence (100 penalty units) will not be amended.

Clause 24 Insertion of new ch7, pt5, div hdg

Clause 24 inserts a new heading to provide for 'Division 2, Legal matters'.

Clause 25 Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability)

Clause 25 consequentially amends and renumbers section 235 to remove the reference to 'a regional conduct review panel' and insert references to 'the assessor', an 'investigator' and 'a commissioner of the remuneration commission'. This section currently applies to members of the Local Government Remuneration and Discipline Tribunal as 'a member of the tribunal' (section 235(2)(g)). The newly defined term 'tribunal' (new chapter 5A, section 150DK and clause 31) will apply this section to members of the tribunal without further amendment to section 235.

The amendments provide that the Independent Assessor, an investigator, a member of the tribunal and a commissioner of the remuneration commission are state administrators who are not civilly liable for an act done under the *Local Government Act 2009* or the *Local Government Electoral Act 2011*, honestly and without negligence.

Clause 26 Replacement of s 242 (Types of offences under this Act)

Clause 26 inserts a new section 242 to provide for proceedings for indictable offences under the *Local Government Act 2009.*

Section 242 Proceedings for indictable offences

Section 242 provides that a charge of an indictable offence against the *Local Government Act 2009* must be heard and decided summarily.

A Magistrates Court must not deal summarily with an indictable offence if satisfied, on an application made by the prosecution or the defence, that because of exceptional circumstances the case should not be heard and decided summarily.

If the Magistrates Court decides that the case should not be heard and decided summarily:

- 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
- the defendant's plea at the start of the hearing must be disregarded; and
- the evidence already heard by the court must be taken as evidence in the committal proceeding; and
- to avoid any doubt, it is declared that *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

Clause 27 Amendment of s 257 (Delegation of local government powers)

Clause 27 amends section 257 to provide that a local government may only delegate a power to make a decision about a councillor's conduct under section 150AG to the mayor or a standing committee of the local government.

This amendment implements the Government's response to recommendation 5.9 which supports the council being able to resolve to delegate its decision-making powers about inappropriate conduct to the mayor or an appropriate committee of the council (page 7).

A decision under section 150AG is a decision about whether the councillor has engaged in inappropriate conduct.

Clause 28 Insertion of new ss 260A and 260B

Clause 28 inserts new sections 260A and 260B to provide that:

- the Minister may request a criminal history report from the police commissioner to determine whether a person is qualified to be or continue to hold office of the Independent Assessor, a member of the tribunal or a commissioner of the remuneration commission; and
- the assessor, a member of tribunal or a commissioner of the remuneration commission must give a notice to the Minister if convicted of an indictable offence during the term of appointment.

Section 260A Criminal history report

Section 260A provides that if the Minister is deciding whether a person is qualified to hold, or to continue to hold, the office of the Independent Assessor, a member of the tribunal or a commissioner of the remuneration commission 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 conviction mentioned in the criminal history.

However, the Minister may make the request only if the person has given the Minister written consent for the request.

The police commissioner must comply with the request, however the duty to comply applies only to information that is in the police commissioner's possession or to which the police commissioner has access.

The Minister must ensure that the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

Section 260B New convictions must be disclosed

Section 260B provides that, if a person who holds the office of the Independent Assessor, a member of the tribunal or a commissioner of the remuneration commission is convicted of an indictable offence during the term of their appointment, they must, immediately give the Minister a notice about the conviction unless they have a reasonable excuse. The maximum penalty for failing to give the Minister notice is 100 penalty units. This offence, and the maximum penalty, is consistent with section 55 of the *Building Queensland Act 2015*.

The notice must include the following information:

- the existence of the conviction
- when the offence was committed
- sufficient details to identity the offence
- the sentence that is imposed on the person.

Clause 29 Insertion of s 270 (Regulation-making power)

Clause 29 amends section 270(2)(a) to extend the regulation making power to apply to the remuneration commission. This provides that the Governor in Council may make a regulation about the process of the tribunal or the remuneration commission.

Clause 30 Insertion of ch 9, pt 11

Clause 30 inserts a new chapter 9, part 11 to provide for the transition to the new system.

Part 11 Transitional provisions for Local Government (Councillor Complaints) and Other Legislation Amendment Act 2017

Section 315 Definitions for pt 11

Section 315 inserts definitions for part 11, including 'assessed', 'existing complaint', 'former' and 'local government official'.

Section 316 Existing complaints not assessed

Section 316 applies if, immediately before the commencement, an existing complaint about a councillor's conduct had not been assessed. An 'existing complaint' is a complaint about the conduct or performance of a councillor made before commencement to the local government, the department's chief executive, the mayor or chief executive officer of the local government.

A complaint is 'assessed' if a preliminary assessment of the complaint was conducted under former section 176B or if the department's chief executive decided, under former section 177, that the complaint is about inappropriate conduct or misconduct.

If section 316 applies, the Independent 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. This will allow complaints made before commencement but which are at a very early stage of consideration to be dealt with under the new provisions.

An entity holding information relating to the existing complaint must, as soon as practicable after the commencement, give the information to the assessor. The section is subject to section 321.

Section 317 Existing inappropriate conduct complaints

Section 317 provides that the section applies if, immediately before the commencement, an existing complaint was assessed to be about inappropriate conduct and a final decision dealing with the complaint had not been made.

Former chapter 6, part 2, division 6 continues to apply to these existing complaints as if those provisions had not been repealed by the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2017*. This will allow the Director-General of the Department of Infrastructure, Local Government and Planning, the mayor or chief executive officer of the local government to continue dealing with the existing complaint under the former provisions.

This section applies despite section 321.

Section 318 Existing misconduct complaints

Section 318 provides that the section applies if, immediately before the commencement, an existing complaint about a councillor was assessed to be about misconduct and a final decision dealing with the complaint has not been made.

The Independent 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. This is necessary because the entities dealing with a misconduct complaint under the former provisions – the Local Government Remuneration and Discipline Tribunal and the Regional Conduct Review Panels – will no longer exist under the new councillor complaints system. Under chapter 5A the assessor is required to provide a councillor with an opportunity to respond if the assessor intends to refer the complaint to the local government or the tribunal.

An entity holding relevant information relating to the existing complaint must, as soon as practicable after commencement, give the information to the assessor. This section is subject to section 321.

Section 319 Existing orders taken into account

Section 319 provides that the section applies if, before the commencement, an order was made against a councillor under section 180 or 181 as in force from time to time before the commencement and the order is substantially the same as an order that may be made under chapter 5A.

The order may be taken into account after commencement for the following purposes:

- the local government or a local government official deciding whether to notify the Independent Assessor about the councillor's conduct under chapter 5A, part 3, division 3 or to give information about the councillor's conduct to the assessor under section 150AF
- the assessor deciding how to deal with the conduct of the councillor or a complaint about the conduct of the councillor under section 150W
- the local government or tribunal deciding what action to take in relation to any inappropriate conduct or misconduct of the councillor.

This section may apply if, for example, an order for inappropriate conduct made about a councillor before commencement is, taken together with 2 further orders for inappropriate conduct made after commencement and within 1 year of the first order, to be misconduct under section 150L(2).

Section 320 Existing recommendations continue

Section 320 provides that if before commencement, the Local Government Remuneration and Discipline Tribunal had recommended to the Minister that a councillor be dismissed or suspended from office under former section 180 and immediately before the commencement the Minister had not considered or made a decision in relation to the recommendation, the recommendation is taken to be a recommendation of the tribunal made under section 150AR.

This section ensures that the recommendation is still in force and may be acted on by the Minister.

Section 321 Dealing with particular pre-commencement complaints or conduct

Section 321(1) provides the 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 316(1) or 318(1).

In deciding how to deal with the conduct, the Independent Assessor, a local government official, the local government and the tribunal must apply the former conduct definitions to the conduct and if the conduct is referred to the local government or tribunal only make an order that is substantially the same as an order that could have been made under former sections 181 and 180 respectively.

To remove any doubt, chapter 5A otherwise applies in relation to an order mentioned in subsection (2). This will ensure that orders mentioned in subsection (2) are taken to be orders under chapter 5A, despite the conduct being assessed under former conduct definitions and only orders under former section 181 and 180 being made.

Section 322 Model procedures apply until procedures adopted

Section 322 provides that if, immediately before the commencement, a local government has not adopted the model procedures or other procedures, the local government is taken to have adopted the model procedures on the commencement. This will ensure that meeting procedures apply to all local governments on commencement.

The local government is taken to have adopted the model procedures only until the local government adopts either the model procedures or other procedures under section 150G.

Section 323 Process if no investigation policy

Section 323 provides that if, on or after the commencement, a local government is required to deal with the inappropriate conduct of a councillor but has not yet adopted an investigation policy, the local government must decide, by resolution, the procedure for investigating the conduct.

However, if the Independent Assessor has recommended under section 150AC(3) how the conduct may be dealt with, the local government must follow that recommendation or decide, by resolution, to deal with the complaint in another way. The local government must state the reasons for its decision in the resolution.

Clause 31 Amendment of sch 4 (Dictionary)

Clause 31 amends schedule 4 definitions to:

- omit the definitions of ‘approved form’, ‘CCC’, ‘Crime and Corruption Act’, ‘identity card’, ‘inappropriate conduct’, ‘investigator’, ‘misconduct’, ‘occupier’, ‘preliminary assessment’, ‘regional conduct review panel’ and ‘tribunal’; and

- insert new definitions for 'approved form', 'assessor', 'behavioural standard', 'casual commissioner', 'casual member', 'chairperson', 'commissioner', 'conduct', 'conduct provision', 'corrupt conduct', 'councillor conduct register', 'decision-maker', 'deputy chairperson', 'electronic document', 'general power', 'help requirement', 'identity card', 'inappropriate conduct', 'information notice', 'insolvent under administration', 'investigation policy', 'investigator', 'local government meeting', 'member', 'misconduct', 'model procedures', 'notice', 'occupier', 'of, a place', 'offence warning', 'owner', 'place', 'premises', 'president', 'QCAT information notice', 'reasonably believes', 'reasonably satisfied', 'reasonably suspects', 'referral notice', 'remuneration commission', 'tribunal' and 'unsuitable meeting conduct'.

Clause 32 Amendment of various sections

Clause 32 consequentially amends sections 16(b), 62(7), 68(2), 68(7), 70(3)(b), 70(5), 71(1), 77(1), 77(3)(a), 78(4), 85(4), 85(5), 85(6), 120(2), 133(3), 133(4), 136(2), 138AA(1), 138AA(3), 142(6), 142(8), 165(4), 166(7), 166(8), 202(5)(b), 204D(2)(b), 214(1), 216B(1)(b), 216B(3), 216C(b), 219(2), 219A(1), 222(2) and 269(1) to replace references to 'written notice' with 'notice,' as notice is now defined in schedule 4 to mean a written notice.

Part 3 Amendment of the Public Service Act 2008

Clause 33 Act amended

Clause 33 states that this part amends the *Public Service Act 2008.*

Clause 34 Amendment of sch 1 (Public service offices and their heads)

Clause 34 consequentially amends schedule 1 of the *Public Service Act 2008* to provide that the Office of the Independent Assessor, under the *Local Government Act 2009* is a public service office and the head of the office is the Independent Assessor.