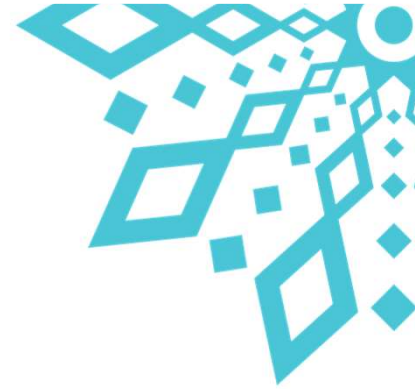




New Integrity Requirements for Councillors

Presenter: Jasmina Nuhovic, Director (Finance & Funding), Department of Local Government, Racing and Multicultural Affairs

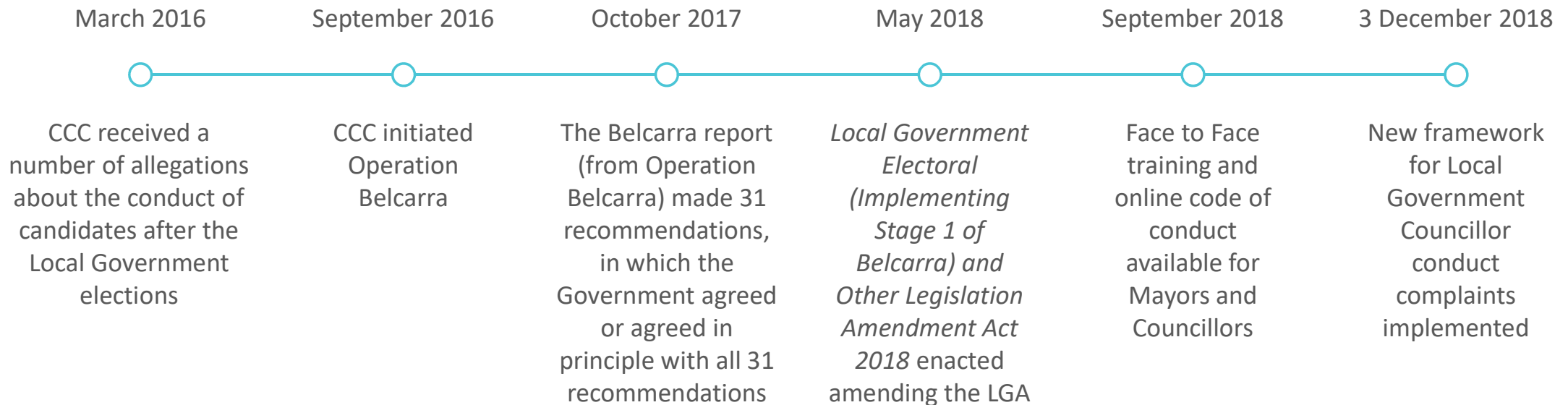
Date: 7 September 2018



Topics to be covered today...

- New integrity legislative amendments
- Strengthened requirements for dealing with material personal interests and conflicts of interest
- Proposed Councillor Complaints system
- Independent Assessor and Councillor Conduct Tribunal

Councillor Integrity Reforms Overview



Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018

The Amendment Act was assented to on 21 May 2018



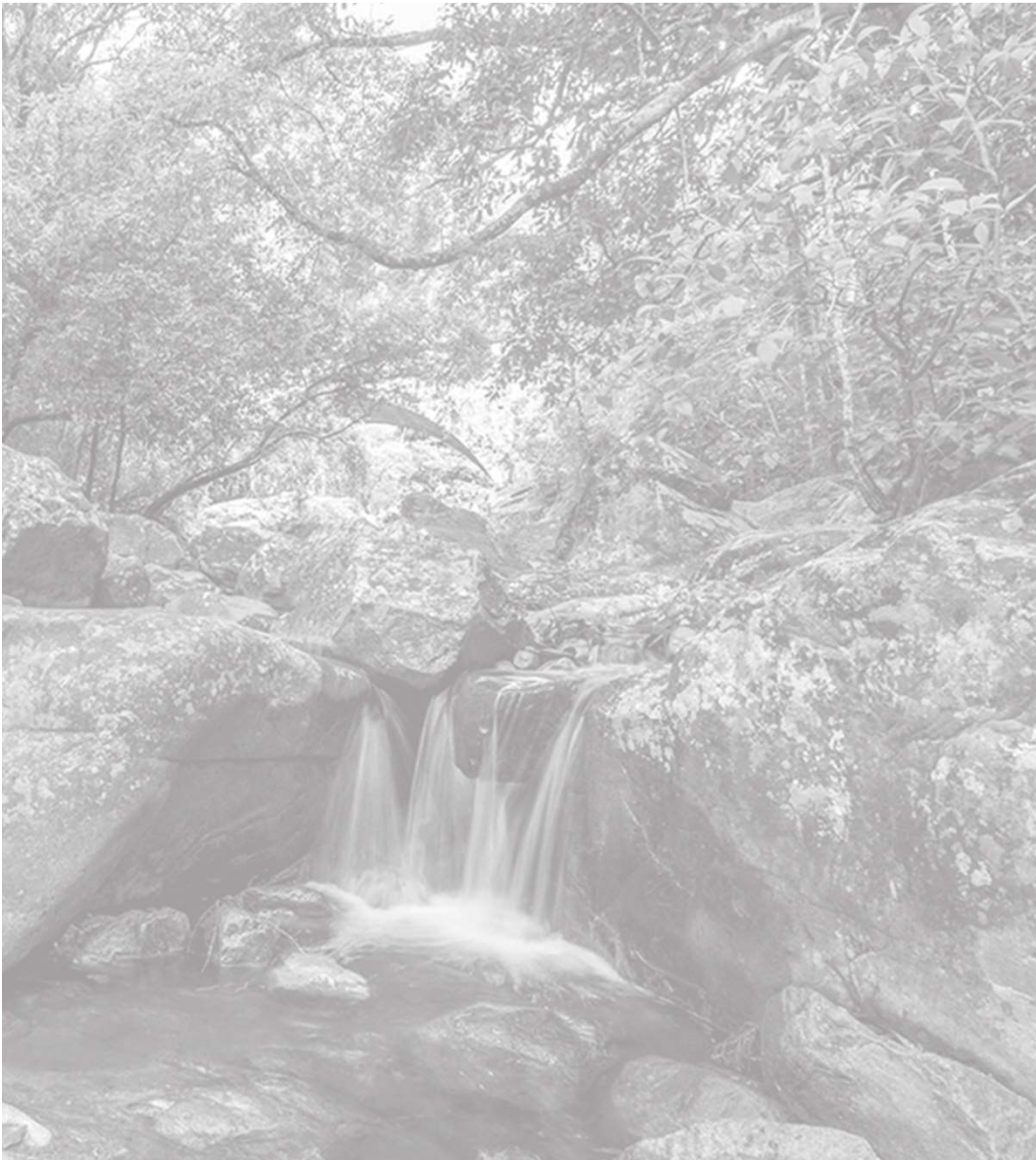
To reinforce integrity and
minimise corruption risk



Improve transparency and
accountability in State and Local
Government



Strengthen legislative
requirements for how a
Councillor must deal with a
Conflict of Interest or a
Material Personal Interest



Provisions proclaimed and in force

- Councillors' Personal Interests
 - Material Personal Interests (MPI),
 - Conflict of Interests (COI),
- Reporting suspected MPI or COI,
- Retaliatory action offence,
- Influence others offence,
- Records about MPI and COI,
- Automatic suspension of Councillors,

Material Personal Interest

A Councillor has an Material Personal Interest in a matter if the outcome of consideration may cause a benefit or a loss (directly or indirectly) to



the Councillor



a spouse, parent, child,
of sibling of the
Councillor



a person in partnership
with, or an employer (other
than a government entity)
of the Councillor



an entity (other than a
government entity) of
which the Councillor is a
member or an entity
prescribed by regulation

Conflicts of Interest

Conflict between personal interest in a matter and the public interest?

Councillors need to determine whether their personal interest is in conflict with the public interest

If in doubt seek advice!

Material Personal Interest (MPI) and Conflict of Interest (COI)

Material Personal Interest (ss175B, 175C)	Conflict of Interest (ss175D, 175E)
<p>Where any of the following stand to directly, or indirectly, gain a benefit or suffer a loss depending on the outcome of a matter, there may be a MPI:</p> <ul style="list-style-type: none">• The councillor...<ul style="list-style-type: none">- &/or spouse- &/or parent, child, sibling• Person in a partnership with the councillor• An entity of which the councillor is a member (except for a government entity)• Another entity prescribed by regulation <p>That benefit or loss must be no greater than that of other persons in the local government area</p>	<p>Where a councillor's personal interests and the public interest may conflict, the public interest takes priority.</p> <p>A councillor does not have a conflict of interest in a matter merely because of –</p> <ul style="list-style-type: none">- An engagement with a community group, sporting club or similar organisation- Membership of a political party- Membership of a community group, sporting club or similar organization if the councillor is not an office holder- The councillor's religious beliefs- If the councillor has no greater personal interest in the matter than that of other persons in the local government area <p>Or the matter is an ordinary business matter.</p>

Managing a Conflict of Interest in meetings



Scenario

A Council is to consider an extension of a lease over Council land. Telstra leases the land for the siting of a mobile phone tower.

A Councillor holds 250 Telstra shares.

Q: Is there a Conflict of Interest or a Material Personal Interest?





Scenario

At a Council meeting, the next Agenda item is the discussion of sponsorship for the upcoming Arts Festival. Council sponsorship is crucial for the event to go ahead.

The Mayor's wife has been Chair of the Festival Committee for many years.

Q: Is there a Conflict of Interest or a Material Personal Interest?

Penalties

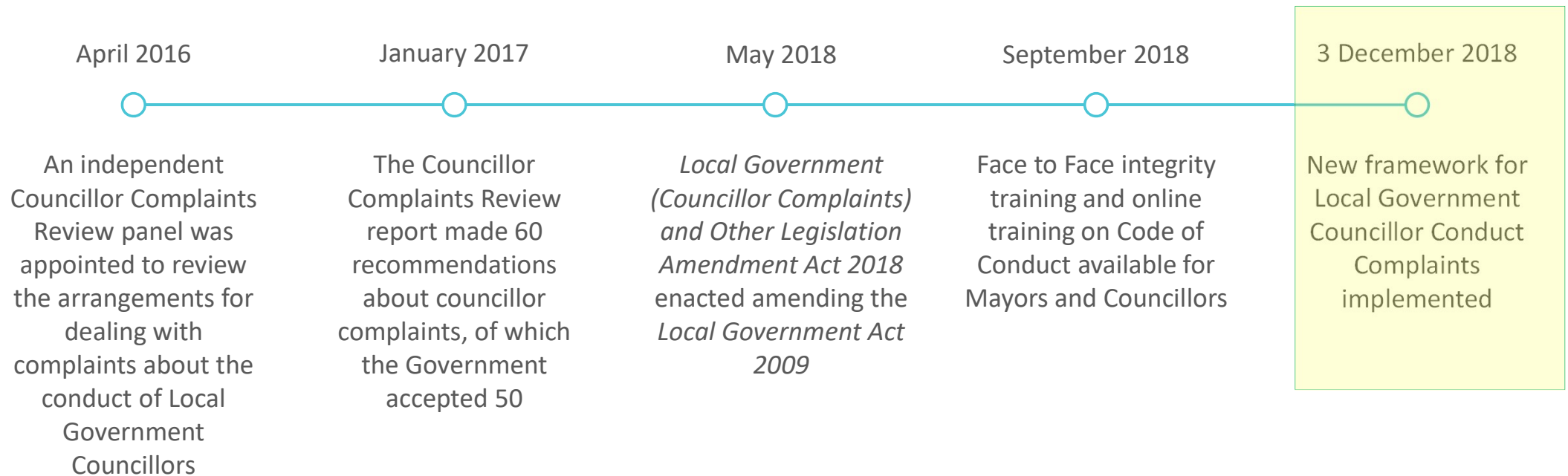
Issue	Penalty
<ul style="list-style-type: none">Duty to report a MPI at a meeting	If the councillor votes with an intention to gain a benefit or avoid a loss for self or other/s: <ul style="list-style-type: none">- 200 penalty units or 2 years imprisonment, or- 85 penalty units (inadvertent omission)
<ul style="list-style-type: none">Duty to report a COI at a meeting	100 penalty units or one year's imprisonment
<ul style="list-style-type: none">Duty to report another councillor's MPI or COI at a meeting	167 penalty units or two years imprisonment
<ul style="list-style-type: none">Influencing Councillors or Employees	200 penalty units or two years imprisonment
<ul style="list-style-type: none">Councillors engaging in Retaliatory behaviour	167 penalty units or two years imprisonment

1 penalty unit = \$130.55



Reference: Tasmanian Integrity Commission 2014

Councillor Conduct Complaints System



Councillor Conduct Framework



Establishing a uniform mandatory Code of Conduct



Categorisation of Councillor Conduct



Establishing the Office of the Independent Assessor



Establishing a dedicated Councillor Conduct Tribunal



Introducing protection from Reprisal



Revised offences, penalty increases



Establishing Model Meeting Procedures



Introducing review and appeal rights



Establishing the Local Government Remuneration Commission

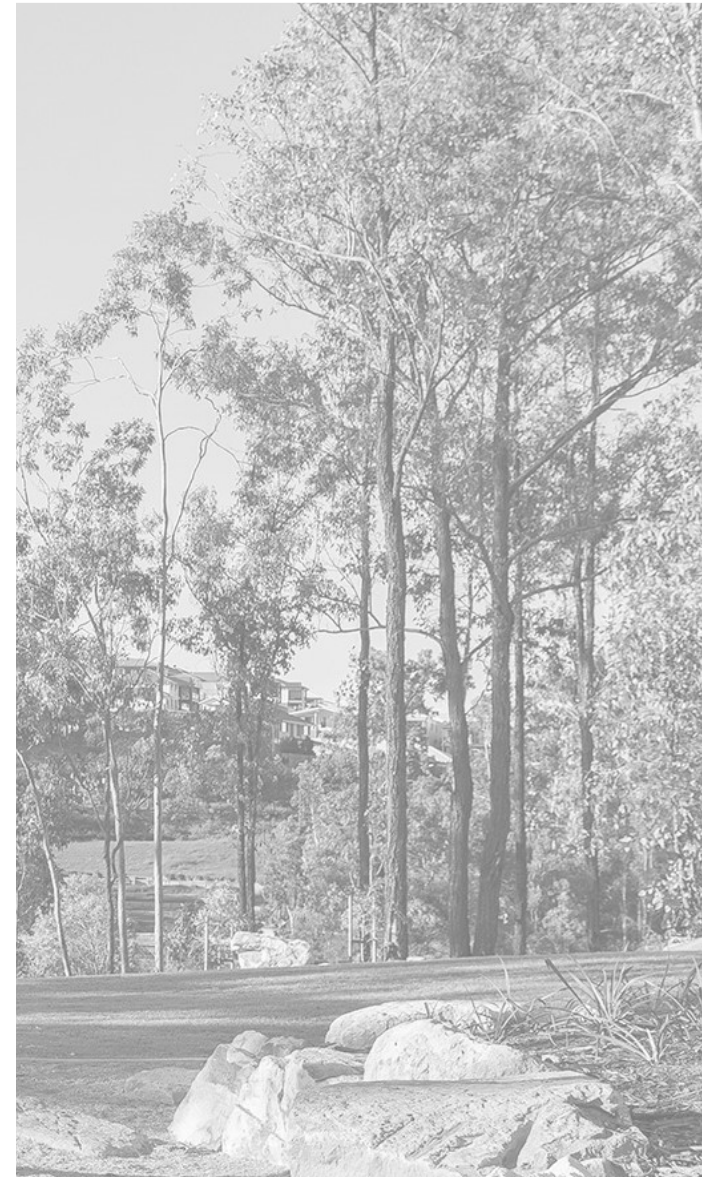
Categories of Councillor Conduct

Categories of complaint:

- **Unsuitable Meeting Conduct** (new category) * - handled by the council in the meeting
- **Inappropriate conduct**** - handled by Council under a new Investigation policy
- **Misconduct** – handled by the Independent Assessor
- **Corrupt Conduct** – handled by the Crime and Corruption Commission

*Orders for a Councillor's Unsuitable Meeting Conduct three (3) times in a year is dealt with as Inappropriate Conduct

** Conduct leading to the Local Government taking action to discipline a councillor for Inappropriate Conduct on three (3) occasions in a year is Misconduct



Activity

How to identify Councillor category of conduct

A Councillor engages in Retaliatory or Reprisal activity in relation to a complaint about conduct of the Councillor

A Councillor fails to report the meeting of a suspected personal interest of another Councillor

A Councillor attends a workshop while intoxicated

A Councillor behaves in an offensive or disorderly manner at a Council meeting

A Councillor fails to declare a Material Personal Interest or Conflict of Interest in a Council meeting



Independent Assessor



Provide impartial
assessment



Investigate and
deal with the
conduct of
Councillors



Provide advice,
training and
information about
dealing with alleged
or suspected
inappropriate
conduct,
misconduct or
corrupt conduct



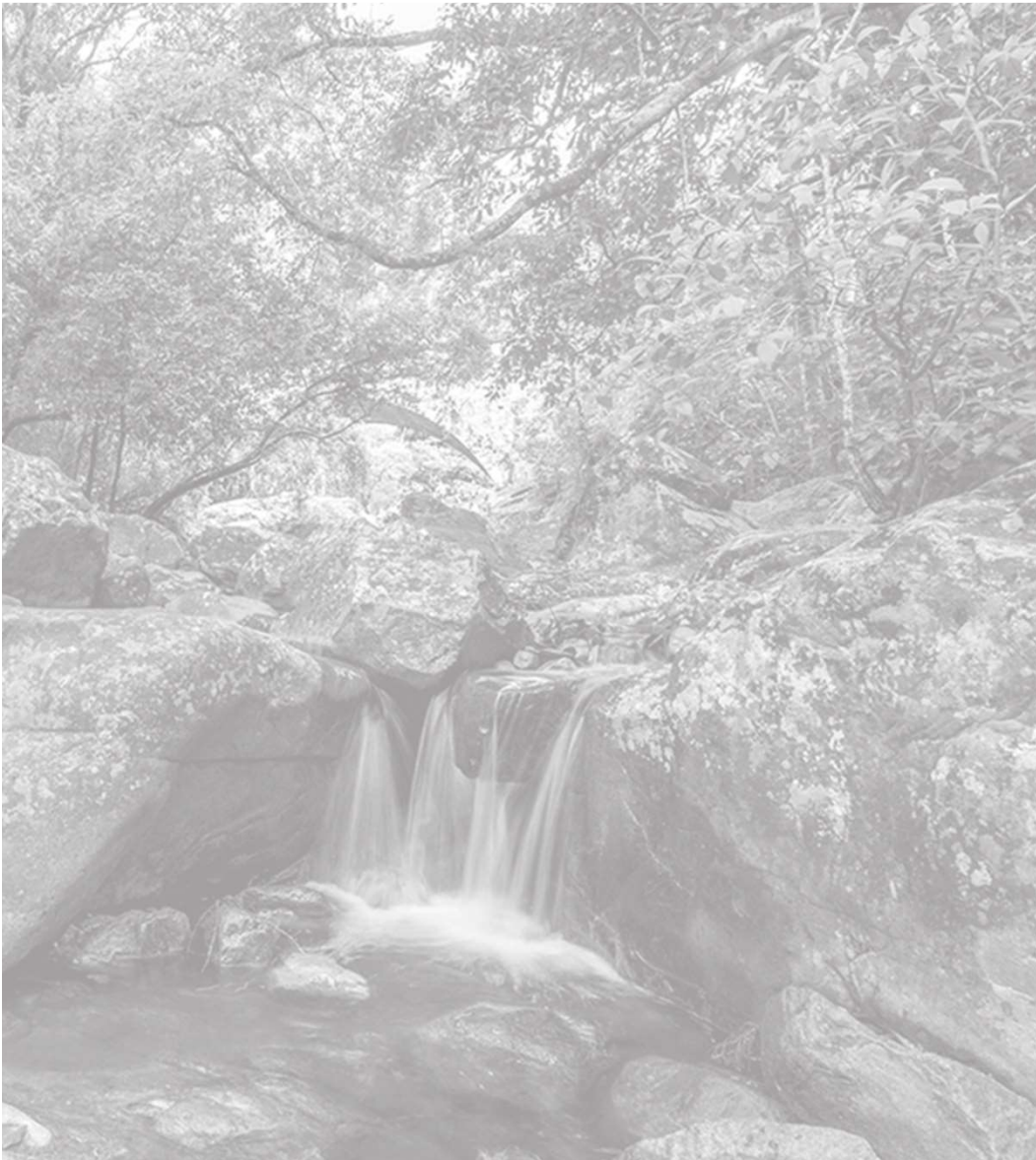
Prosecute
offences against
the conduct
provisions



Investigate other
matters decided
by the Minister



Other functions
related to,
mentioned or
directed in
writing by the
Minister or given
to the assessor
under the Local
Government Act



Councillor Conduct Tribunal

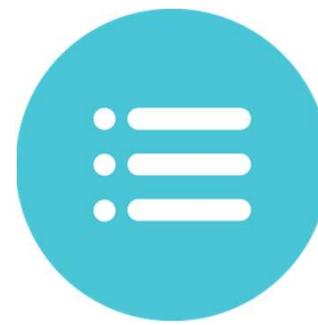
- Conducts hearings of alleged misconduct following investigation by IA
- Councillor Conduct Tribunal must conduct a hearing about the application
- Onus of proof is on the Independent Assessor to prove the Councillor engaged in misconduct
- Independent Assessor and respondent Councillor are both parties to the hearing
- Hearing to be conducted as set out in the legislation
- Tribunal must keep a written record of the hearing

What disciplinary action can the Councillor Conduct Tribunal take?

If the Councillor Conduct Tribunal decides that a councillor has engaged in Misconduct, disciplinary action can include



No action



Make one or more orders

Reviews and appeals

- Under section 150AS(3) a person entitled to be given a Queensland Civil and Administrative Tribunal notice for a decision of the Councillor Conduct Tribunal, may apply to the Queensland Civil and Administrative Tribunal for a review of the decision
- Prohibition on appeals will be repealed
- A Councillor can apply for Judicial Review or to the Ombudsman for review of a decision related to inappropriate conduct of that Councillor



Summary



- The Belcarra Stage 1 Amendments do not change the definitions of Material Personal Interest and Conflict of Interest, they change how these are handled and increase penalties
- The Councillor complaints system establishes a mandatory Code of Conduct and an Independent Assessor to investigate complaints
- Councils will manage unsuitable meeting conduct and make decisions about inappropriate conduct, and investigate complaints of inappropriate conduct referred by the Independent Assessor
- A new Councillor Conduct Tribunal will hear complaints about Misconduct while the Crime and Corruption Commission will continue to investigate complaints about corrupt conduct

Thank you!

Questions?

