



Our Ref: OUT24/834

21 February 2024

Mr Chris Whiting MP  
Member for Bancroft  
Chair  
Housing, Big Build and Manufacturing Committee  
By email: hbbmc@parliament.qld.gov.au

Dear Chair

It has now been three months since assent of the Local Government (Councillor Complaints) and Other Legislation Amendment Act 2023 (Amendment Act) and I thought it useful to provide the Committee with an update on the operations of the Office of the Independent Assessor (OIA) in this period.

### **Reassessment of Matters**

Since assent of the Bill on 22 November 2023, the OIA reassessed all matters with the OIA, in either the investigation or natural justice phase, and all matters referred to the Councillor Conduct Tribunal which were still undetermined. As a result of these reassessments:

- 18 investigations were dismissed;
- 15 matters undergoing natural justice were dismissed; and
- 26 matters awaiting determination by the Councillor Conduct Tribunal were withdrawn.

The predominant reasons for the dismissal or withdrawal of these matters were:

- the matter involved a former councillor;
- the conduct was of a personal nature, with no connection to the councillor's role;
- the passage of time since the conduct occurred;
- the matter was relatively low-level in terms of severity; and
- the councillor has since received subsequent training and there is no continuing breach.

All councillors were provided with an update on the completion of the reassessment process on 15 December 2023, with the OIA specifically noting that a withdrawal does not mean the Assessor has a view of whether or not the conduct breached a councillor's responsibilities. It is possible that a Councillor did indeed breach their legislative responsibilities but there were other public interest reasons supporting the dismissal or withdrawal of a matter.

In light of the upcoming local government quadrennial election on 16 March 2024, the OIA will continue to reassess matters to determine if further matters should or must be withdrawn.

## Stakeholder Engagement

Since assent of the Bill, there has been consideration of how the OIA can better engage with key stakeholders such as the Local Government Association of Queensland (LGAQ), the Local Government Managers Association (LGMA) and the Department of Housing, Local Government, Planning and Public Works (Department).

The OIA has been meeting with key stakeholders on a regular basis and has begun consultations to develop a stakeholder engagement plan which will address:

- how the OIA can better communicate with stakeholders;
- what information stakeholders would like from the OIA; and
- how the OIA can better collaborate with stakeholders to support them in their capacity building roles.

This work will lead to a renewed Strategic Plan for the OIA, focusing on how the OIA can support agencies to drive capability uplift in the local government sector. Ideally the OIA wishes to see less complaints being received and a greater level of capacity amongst councillors in terms of how they handle their statutory responsibilities. There are multiple stakeholders who all play a role in seeing that occur.

On 16 February 2024 the Acting Independent Assessor and Deputy Independent Assessor briefed the LGAQ policy executive on the work of the OIA over the past three months and the OIA's strategic priorities and approach moving forward. This was an important stepping stone in collaboration between the OIA, the LGAQ and its executive.

On 7 February 2024, the OIA, the Department and the Councillor Conduct Tribunal (CCT) met to refresh the terms of reference for the tripartite forum and to commit to regular meetings. The tripartite forum will be an important part of communications focused on reducing the CCT backlog and in building sector capacity.

A key part of the OIA's approach with stakeholders will be transparency in terms of how the OIA assesses complaints and data about its operations. The OIA has produced a dashboard (**Attachment A**) which it intends to publish monthly which shows the status of matters dealt with by the OIA and key trends. In due course, it is also intended that this dashboard will provide regular updates regarding the time taken by the OIA to assess and investigate complaints. **Attachment A** is provided for your information only at this stage. It includes data up until 31 December 2023. From March 2024, it is proposed to provide this information monthly to the Committee and other stakeholders.

The OIA is also working to publish a document which shows how we assess complaints and the types of public interest considerations we assess to direct our resources to more serious complaints. This document will be provided to the Committee once available.

## Inquiry into the Independent Assessor and councillor conduct complaints system

The OIA is conscious of its role in implementing many of the recommendations from the Committee's report resulting from the Inquiry into the Independent Assessor and councillor conduct complaints system.

**Attachment B** is attached to provide you with an update of the OIA's progress in implementing those report recommendations relevant to it. The OIA is conscious of its role in driving an efficient councillor conduct framework and in ensuring matters are assessed and investigated quickly. To that end, the OIA is committed to working with the CCT to remove the CCT backlog and to ensuring that resources are used in a manner that prioritises serious instances of misconduct. The OIA anticipates investigating less complaints but is expecting that the complaints investigated will be those which are more complex and more serious.

The last three months have been a particularly busy time for the OIA but also a time of great change. I am available at any point should the Committee wish to seek further information.

Yours sincerely



**Bronwyn Blagoev**  
Acting Independent Assessor  
Office of the Independent Assessor



**Queensland**  
Government

# Office of the Independent Assessor

Performance snapshot 1 July – 31 December 2023



**392**

Complaints received

30% decrease from same period last year



**279**

complaints dismissed or No Further Action on assessment

72% of all complaints received



**11**

complaints referred to local government as inappropriate conduct/conduct breach

3% of complaints assessed



**87%**

of complaints assessed and the outcome communicated within 21 working days

5% decrease from same period last year



Referred **2** councils and **5** councillors for training or intervention



**41**

active investigations

as at 31 December 2023



**37**

investigations completed

including complaints from previous financial year



**12**

complaints in legal process

as at 31 December 2023



**4.37**

average time for complaints to be referred to the CCT\* or dismissed



**29**

applications before the Councillor Conduct Tribunal (CCT)\*

as at 31 December 2023



**10**

applications decided by the CCT

Represents 13 complaints, 9 councillors and 45 allegations



**7**

applications sustained in whole/part by the CCT



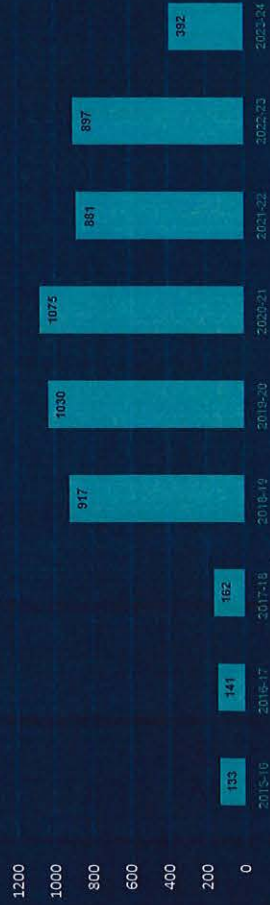
*Strengthening the community's trust in councillors and the local government sector*

\* Note: New legislative requirements from 22 November 2023 resulted in existing complaints being reassessed and new complaints assessed in accordance with the new legislative requirements. As a result, 26 CCT applications were reassessed and withdrawn.

# Office of the Independent Assessor

Trends since establishment (3 December 2018)

Historical complaints received as at 31 December 2023



Complaints received by month



## 5,145

Complaints received (to 31 January 2024)

### Common complaints made to the OIA:

- misuse of information or material acquired while a councillor
- giving directions to local government employees
- releasing confidential information
- failure to properly declare or manage a conflict of interest
- failure to record particulars of an interest in a register of interest
- influencing or attempting to influence a council decision-maker where a councillor has a conflict of interest.

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Notes: 2015-2018 complaints framework managed by the department. Legislation which commenced on 3 December 2018 introduced mandatory reporting of councillor conduct by local government officials and required all complaints to be referred to the OIA for assessment.



## ATTACHMENT B

Committee Recommendation	OIA Implementation Notes
<p><b><u>Recommendation 1</u></b></p> <p>That the following target timeframes be applied to the complaints framework by the Office of the Independent Assessor and the Councillor Conduct Tribunal for all but the most complex or serious of cases:</p> <ul style="list-style-type: none"> <li>• initial assessment or ‘triage’ of complaint completed by Office of the Independent Assessor within 7 days of receipt</li> <li>• misconduct investigations including natural justice processes completed by Office of the Independent Assessor within 60 days of initial assessment</li> <li>• determination of conduct matters completed by Councillor Conduct Tribunal within 3 months of the date of referral, unless the subject councillor requests an extension under the <i>Local Government Act 2009</i></li> <li>• adoption of a statute of limitation, to be determined by the Queensland Government with advice from the tripartite forum (Recommendation 38), to accept complaints unless they involve matters to be referred to the Crime and Corruption Commission.</li> </ul>	<p>The Amendment Act does not prescribe target timeframes for the Independent Assessor (IA) to undertake particular actions.</p> <p>The Amendment Act specifies a new preliminary assessment process that must be undertaken before progressing a matter and timeframes for when complaints, notices and information about councillor conduct must be made.</p> <p>Irrespective, the OIA is keen to implement clear target timeframes which are reported regularly through the OIA’s performance dashboard and then annually through the Annual Report.</p> <p>The OIA is currently upgrading its complaints system to allow for accurate reporting of time taken to undertake the assessment, investigation and natural justice phase of each complaint. The timeframes to which the OIA will work will reflect an “Other Party Pause” function, noting the considerable time it can take other parties to provide the OIA with information to further progress a matter.</p> <p>The matter of timeframes is still under consideration, with a view to this being finalised for the 2024/2025 financial year and reporting to begin at that point. It is noted that the OIA is investing considerable time in working to clear the CCT backlog and that may impact on timeframes early in the 2024/2025 financial year. However, once the backlog is cleared the OIA is confident of its ability to more accurately specify aspirational target timeframes for 2025/2026 providing even greater certainty to stakeholders.</p>
<p><b><u>Recommendation 2</u></b></p> <p>That the Office of the Independent Assessor publish its performance measured against the target timeframes in its annual report, and the Department of State Development, Infrastructure, Local Government and Planning publish the Councillor Conduct Tribunal’s performance measured against the target timeframes in its annual report.</p>	<p>Performance will be reported in the OIA’s annual report.</p>

<p><b><u>Recommendation 3</u></b></p> <p>That the Queensland Government commit to allocating levels of funding provided in the 2022-23 Budget to the Office of the Independent Assessor on an ongoing basis so as to support the appointment of permanent positions and longer-term contracts for employees of the Office of the Independent Assessor.</p>	<p>The OIA believes it has an appropriate level of establishment funding. OIA establishment levels will be continually assessed, as against any change in its operations resulting from passage of the Local Government (Councillor Complaints) and Other Legislation Amendment Act 2023 (Amendment Act).</p>
<p><b><u>Recommendation 16</u></b></p> <p>That the Independent Assessor publish information on the number of matters referred to local government for resolution, the number reported back to the Independent Assessor by the local government as being resolved by local governments, and the number of matters that are currently unresolved or not reported.</p>	<p>The OIA have, and will continue to, report these statistics in its annual report.</p> <p>The Amendment Act requires the publication of additional particulars in the OIA's annual report, including a description of decisions to refer matters to local governments to deal with, suspected conduct breach matters decided by local governments and suspected conduct breach matters not yet decided by local governments.</p>
<p><b><u>Recommendation 22</u></b></p> <p>That the Office of the Independent Assessor, Councillor Conduct Tribunal and other parties inform relevant councillors of the potential penalties of a finding of misconduct as early as possible in the process.</p>	<p>The OIA provides this information to subject councillors as a matter of course.</p>
<p><b><u>Recommendation 28</u></b></p> <p>That all stakeholders involved in the councillor conduct process use a consistent definition of vexatious and frivolous complaints and complainants, and the Office of the Independent Assessor continue to report annually on actions taken on these complainants.</p>	<p>The Amendment Act establishes an administrative process where the IA may declare, in certain circumstances, that a person is a vexatious complainant for a period of not more than four years.</p> <p>The IA must be satisfied a person has repeatedly made complaints and that at least three of the complaints have been dismissed by the IA as being frivolous or vexatious, or have been made other than in good faith.</p> <p>The OIA is very conscious of the need to appropriately manage vexatious and frivolous complaints and this is a consideration at the forefront of all assessments.</p> <p>The IA has recently commenced a prosecution against a complainant for causing the making of a vexatious complaint by a third party. This matter is currently before the courts.</p>

<p><b><u>Recommendation 31</u></b></p> <p>That the Office of the Independent Assessor continue to publish the number of complaints dismissed or deemed to require no further action in its annual report.</p>	<p>The IA currently reports this information and will continue to report this information in its annual report.</p>
<p><b><u>Recommendation 32</u></b></p> <p>That the Office of the Independent Assessor consider recruitment of experienced former local government managers to provide a broader range of skills and outlook in the councillor complaint assessment process.</p>	<p>The OIA includes experience in local government as a skill which is highly regarded as part of its recruitment processes.</p>
<p><b><u>Recommendation 38</u></b></p> <p>That the recently established tripartite forum, chaired by the Department of State Development, Infrastructure, Local Government and Planning and with representation from the Office of the Independent Assessor and the Councillor Conduct Tribunal, continue to meet on a regular basis and develop a formalised terms of reference and publish directions as appropriate.</p>	<p>The terms of reference for the tri-partite forum have been refreshed, with a focus on ensuring the efficient handling of complaints and capability uplift in the local government sector.</p> <p>The forum has agreed to meet monthly at this point in time.</p>