

Your reference: qA19745

10 August 2020

Committee Secretary
Parliamentary Crime and Corruption Committee
Parliament House
George Street
Brisbane Qld 4000

By email: pccc@parliament.qld.gov.au

Dear Committee Secretary

Re: Five-year review of the Crime and Corruption Commission's activities

The Independent Assessor (IA) welcomes the opportunity to make this submission to the Parliamentary Crime and Corruption Commission Committee's (the Committee) five-yearly review of the activities of the Crime and Corruption Commission (CCC).

The Office of the Independent Assessor

The Office of the Independent Assessor (OIA) commenced on 3 December 2018 to deal with councillor conduct complaints.

The OIA:

1. Receives and assesses complaints about *inappropriate conduct* and *misconduct*.
2. Where appropriate, refers inappropriate conduct complaints to local government to resolve.
3. Where appropriate, investigates allegations of misconduct or corrupt conduct, if the latter is referred to the OIA by the CCC.
4. Refers misconduct to the Councillor Conduct Tribunal (CCT) to be dealt with on a disciplinary basis and bears the onus of proof.
5. Prosecutes criminal conduct offences against the *Local Government Act 2009* (the current Act) in the Magistrates Court.
6. Engages in prevention activities to inform and educate councillors around key misconduct risks.

The IA's functions/roles are set out in more detail in sections 150CU, 150AN, 150AY, 150AZ of the Act, and in a written direction provided to the IA by the Minister for Local Government Racing and Multicultural Affairs on 21 November 2018. The Minister directed the IA to "*provide advice, training and information to councillors, local government employees, local governments and other persons about alleged suspected inappropriate conduct, misconduct and corrupt conduct. This would allow the OIA to provide advice to councillors on matters relevant to the direction including:*

- *Recurring or high-risk areas of councillor conduct*
- *Strategies to manage more complex conduct issues*
- *Guiding principles on in what circumstances the OIA will prosecute categories of councillor misconduct*".

Between 3 December 2018- 30 June 2020, the OIA received 1854 councillor conduct complaints. Of these, 107 complaints were subsequently referred to CCC as possible corrupt conduct while the OIA received 228 referrals from the CCC. The latter are matters which the CCC either categorised as potential misconduct by a councillor or as possible corrupt conduct, but which were appropriate for the OIA to investigate and prosecute, if necessary.

The OIA also receives referrals from local governments and local government officials, members of the public or through government departments.

As at 30 June 2020, the OIA had completed 568 investigations into councillor conduct. Each investigation relates to a complaint or referral received. A single complaint may contain multiple allegations of misconduct or corrupt conduct (i.e. one matter raised about 70 such allegations). Conversely the OIA may receive multiple complaints about the same act/s of misconduct or corrupt conduct (i.e. following the appearance of a councillor on the Bachelorette reality television program, the OIA received 130 complaints about the same course of conduct).

As at 30 June 2020:

- (1) 26 complaint matters involving 13 councillors and 54 allegations were with the OIA legal team being prepared for or undergoing a natural justice process preparatory to possible referral of misconduct to the Councillor Conduct Tribunal (CCT).
- (2) 39 complaint matters involving 30 councillors and 66 allegations were before the CCT undergoing hearings or awaiting directions.
- (3) 36 complaint matters involving 20 councillors and 37 allegations had been decided by the CCT.

For matters which the IA may currently elect to deal with either as a disciplinary matter or as a prosecution of a statutory offence, the IA's policy is that a prosecution of a statutory offence will occur in three circumstances:

- Where the conduct is either very serious and or dishonest. For example, a councillor who fails to disclose a material personal interest and then participates in a council decision which directly results in the councillor or a related party receiving a significant benefit.
- Where there is repeat conduct of the same or similar nature and previous attempts to deal with the matter on a disciplinary basis have been unsuccessful in modifying the councillor's conduct.
- In any matter where a councillor has engaged in reprisal against another councillor or local government employee, as a result of a councillor conduct complaint being lodged by that person.

Applying the above policy, the OIA has not commenced any statutory prosecutions against councillors to date. Following the passage in June 2020 of the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020, which will commence on 12 October 2020, the circumstances in which the OIA may commence a statutory prosecution are reduced and/or will be subject to prior approval from the Director of Public Prosecutions.

The review

Section 292(f) of the *Crime and Corruption Act 2001* (CC Act) provides that the Committee must review the activities of the CCC and report to the Parliament by 30 June 2021 about any action that

should be taken in relation to the CC Act or the functions, powers and operations of the CCC.

In undertaking its review, the Committee is examining the CCC's overall performance over the past five years, considering its jurisdiction, responsibilities, functions and powers. In particular, and relevant to the CCC's engagement with the OIA, the Committee will examine the CCC's corruption function including:

- the application of the principles for performing its corruption functions, including the devolution principle,
- the CCC's handling of, and reporting on, complaints of corruption, and
- the CCC's corruption prevention function.

Submission

The OIA has significant engagement with the CCC in the performance of our respective statutory functions related to local government councillors. The OIA deals exclusively with the CCC's corruption function. As such the OIA's submission is confined to those matters which are relevant to the OIA's jurisdiction and interaction with the CCC.

As a new statutory authority, the OIA had a number of meetings with the CCC in its establishment phase to put in place effective communication and processes.

In particular the two agencies entered into a section 40 of the CC Act arrangement to provide clarity around the matters that the OIA would immediately refer to the CCC pursuant to section 38 of the CC Act, and the matters which, while falling within the definition of corrupt conduct, were considered appropriate for the OIA to commence an investigation. The latter are reported to the CCC in an agreed format at the end of each month, providing the CCC with appropriate oversight of those matters.

The section 40 arrangement between CCC and the OIA allows matters to be dealt with expeditiously and strikes a sensible balance between a level of devolvement of complaint and investigation handling, whilst ensuring that the CCC retains active oversight and can resume matters if necessary.

Based on the OIA's experience, it supports the CCC's application of the principles for performance of its corruption function, including the devolution principle.

Since the OIA's establishment on 3 December 2018, the OIA has briefed the CCC on two matters whereby more serious allegations of corrupt conduct have arisen in circumstances where the timely investigation of those matters was beyond the resources of the OIA. In both instances the CCC, following internal assessment processes, accepted and progressed the matters.

Similarly, the OIA has no issues with how the CCC categorises matters referred to the OIA or the actions required of the OIA.

The format of the Matters Assessed Report (MAR) produced by the CCC on referral of a matter is not as clear as it could be, particularly where multiple allegations are referred to with different decision outcomes. It is understood that this is a product of the limitations of the existing case management system used by the CCC, which is in the process of being replaced.

The OIA also works collaboratively with the CCC, and other relevant stakeholders, on proactive measures that aim to prevent corruption, misconduct and inappropriate conduct. The shared

commitment to this objective is illustrated in the joint projects undertaken before and after the March 2020 local government elections, a key period in Queensland's democracy.

In the lead-up to the statewide polls, the CCC worked with the OIA, the Electoral Commission of Queensland (ECQ) and the Queensland Integrity Commission (QIC) on a campaign that sought to ensure the local government elections were conducted honestly, transparently and fairly. This involved a joint media event which was supplemented by an email to all sitting councillors and as many candidates as possible outlining some key legal obligations and encouraging compliance with all relevant legislation.

Soon after the elections were finalised, the OIA again partnered with the CCC and QIC to conduct a webinar on 20 May 2020, that informed newly-elected and returning local government councillors across Queensland about the agencies' roles and functions. Councillors' legal obligations were also highlighted along with key misconduct and corruption risks.

During the webinar, the CCC outlined past investigations into Queensland local governments, reminding attendees of the criminal charges that had been laid against councillors and council staff in the previous term. These reminders were seen to present a strong deterrent to corrupt conduct and a timely warning at the outset of the current council term.

A few weeks later on 17 June 2020 the OIA the CCC, the Auditor-General and the Queensland Ombudsman, took part in the LGAQ's Civic Leaders Summit, an event which is described as an introduction to local government in Queensland for mayors, deputy mayors and council Chief Executive Officers (CEO). The four agencies took part in the session called *Meet the watchdogs and Regulators*, which involved informative presentations followed by a question-and-answer session.

At the time of this submission, the CCC is working with the OIA and the Department of Local Government Racing and Multicultural Affairs (DLGRMA) to develop training for councillors on new legislation governing conflicts of interest, which comes into effect in October 2020. Conflicts of interest often generate allegations of misconduct or corruption and this important training is due to be rolled out to local governments throughout the state with the OIA and the CCC likely to take part in its delivery.

Like the OIA, the CCC also takes a proactive approach to corruption prevention via its ongoing media and communication activities. Publications including newsletters, reports into CCC investigations and operations provide valuable insights into corruption risks and corrupt activities, and may also serve as a deterrent. The CCC's corruption allegations data dashboard highlights activities in various sectors, including local government.

The OIA supports the CCC's production of resources that can assist elected representative to abide by their legal obligations. An example of these resources is *Council records: a guideline for mayors, councillors, CEOs and government employees*, which was produced in conjunction with Queensland State Archives (QSA).

I trust this submission is of assistance to the Committee in considering the CCC's activities. Should the Committee require further information please contact the OIA Director of Media and Engagement, Nicole Butler, by [REDACTED].

Yours sincerely



Kathleen Florian
Independent Assessor
Office of the Independent Assessor