



Your ref: A755704

5 October 2021

Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
Brisbane QLD 4000

Via email: SDRIC@parliament.qld.gov.au

Dear Committee Secretary

Re: The functions and performance of the Independent Assessor

The Office of the Independent Assessor (OIA) welcomes the opportunity to make this submission to the State Development and Regional Industries Committee (the Committee) on the functions of the Independent Assessor (IA) and performance for the 2020-21 financial year.

Background

The OIA was established on 3 December 2018 as recommended by the Solomon Review¹ which advocated for a centralised system for the assessment of councillor conduct complaints and the consistent application of standards state-wide.

During consultation the review panel received near unanimous support for the initial assessment of complaints to be removed from council chief executive officers (CEO). This change addressed the difficult position that CEOs were seen to occupy when assessing a complaint against a councillor, who was also effectively one of their employers. It was also considered to be a function that would be more objectively and independently performed by a centralised complaints body.

The review also recommended that this body investigate conduct complaints and be given adequate investigative powers to perform this task.

Since the OIA's establishment the costs of assessing complaints and investigating misconduct have shifted from individual councils to the OIA.

Oversight

Prior to the 2020 state general election, the OIA reported to the Minister for Local Government, Racing and Multicultural Affairs and was overseen by the Economics and Governance Committee.

As a result of machinery-of-government changes following the election, the OIA began reporting to the Deputy Premier and Minister for State Development, Infrastructure, Local Government and

¹ https://www.dlgrma.qld.gov.au/__data/assets/pdf_file/0025/44809/councillor-complaints-review-report.pdf

Planning, the Honourable Dr Stephen Miles, from 12 November 2020. Oversight of the OIA transferred to the State Development and Regional Industries Committee.

OIA functions

The Independent Assessor's (IA) functions/roles are set out in sections 150CU, 150AN, 150AY, 150AZ of the *Local Government Act 2009* (the LG Act).

The OIA:

1. receives and assesses complaints about inappropriate conduct, misconduct, and corrupt conduct by a councillor
2. refers inappropriate conduct to local government to investigate and resolve if, after a natural justice process, the complaint raises a reasonable satisfaction of inappropriate conduct
3. refers corrupt conduct to the Crime and Corruption Commission (CCC), unless it falls into a category of corrupt conduct which may be dealt with by the OIA, pursuant to an agreement with the CCC² and subject to the CCC's oversight
4. where appropriate, investigates allegations of misconduct or corrupt conduct. Corrupt conduct matters may be referred to the OIA by the CCC for investigation, or if received by the OIA may be investigated pursuant to the agreement with the CCC, referred to above
5. refers misconduct to the Councillor Conduct Tribunal (CCT) to be dealt with on a disciplinary basis and bears the onus of proof before the CCT
6. where councillors exercise their right of review of a CCT decision, the OIA also appears as a respondent before the Queensland Civil and Administrative Tribunal (QCAT)
7. prosecutes breaches of conduct provisions in the LG Act in the Magistrates Court according to the criminal standard of proof.

In 2020-21, the OIA also engaged in training and prevention activities that sought to educate and inform councillors and to prevent misconduct and inappropriate conduct. These activities, as detailed on pages 12-14, were conducted in accordance with a written directive issued in November 2018 by the Minister for Local Government, Racing and Multicultural Affairs. It required 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".*

² Agreement is made pursuant to section 40 of the [Crime and Corruption Act 2001](#)

Councillor conduct complaints framework review

In the first quarter of 2021, the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) undertook an analysis of the councillor conduct complaints framework as established in 2018.

The OIA was advised that this analysis found the framework is fundamentally sound and is achieving the Government's intent of an independent system for managing councillor conduct complaints.

The analysis contained some recommendations which included ceasing the ministerial directive that expanded the OIA's training and prevention functions. It is believed this measure will allow the OIA to maintain a strong focus on its core business and reduce workload pressures on OIA staff.

Going forward the OIA's training and capacity-building function will be as stated in section 150CU(b) of the LG Act, which requires the OIA to provide advice, training, and information about dealing with alleged or suspected conduct breaches. Other training and prevention activities will be conducted by DSILGP.

Other recommendations from the analysis included:

- Further investigation by DSDILGP into resourcing support for the OIA and CCT
- A memorandum of understanding between DSDILGP, the OIA and the CCT to clearly define respective roles and how the entities interact
- The establishment of a tripartite forum between the three entities that meets regularly to discuss and clarify issues and provides coordinated action on local governance.
- DSDILGP to explore a review of the LG Act with a particular focus on provisions relating to conflicts of interest, inappropriate conduct, misconduct, legal representation, and the right of appeal (QCAT)
- Consideration of minor legislative amendments to streamline delivery of the framework including ability to withdraw applications

The OIA's performance 2020-21

Staffing

The OIA had an establishment full-time equivalent staff (FTE) of 10 permanent staff members amid estimates it would deal with approximately 160 complaints a year, based on historical data. However, the OIA's workload has been significantly higher than expected with 2,928 complaints lodged between the OIA's inception on 3 December 2018 and 30 June 2021.

Due to these numbers, and the inclusion of all 77 Queensland councils within the OIA's jurisdiction, the OIA staff gradually increased between January 2019 and January 2021.

In the 2020-2021 year, the OIA conducted its operations with 11 FTE staff, seven temporary FTE, and one FTE provided by DSDILGP.

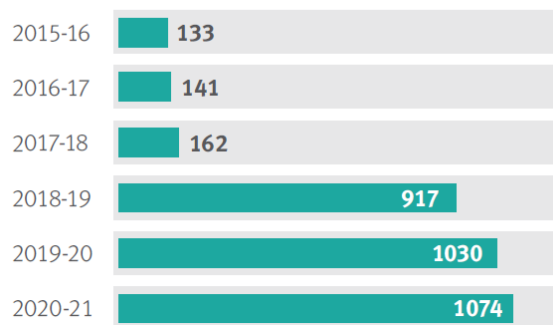
Complaints received

In the 2020—21 financial year, the OIA received 1,074 complaints containing 1,164 allegations in relation to 62 local governments. This represented a 4 per cent increase on the number of complaints received in the preceding year.

The higher number of complaints was not unexpected as 2020—21 was the first full financial year in which all 77 Queensland councils came within the councillor conduct framework. However, the size of the increase indicates that complaint numbers have started to stabilise.

The following graphs depicts the number of complaints lodged with the OIA and the Department of Local Government, Racing and Multicultural Affairs, which received complaints prior to the OIA's inception.

Historical complaints as of 30 June 2021



The high number of complaints lodged with the OIA is likely due to an increased confidence amongst complainants to report concerns to a body that is independent of councils, previous under-reporting, and an ongoing focus on integrity in local government in Queensland.

Complaint sources

In 2020-21, the local government sector lodged 53 per cent of complaints.³ This result was impacted by a high number of complaints from one council in relation to a single issue. It also reflected councillors' statutory legal obligation to notify the OIA should they become aware of information indicating another councillor may have engaged in misconduct or inappropriate conduct. A failure to report these concerns may constitute misconduct.

³ These notifications include information from, or complaints initiated by local government officials as well as complaints received by local government from other sources, such as members of public, and referred to the OIA.

Encouragingly the reporting by the local government sector included an increased number of self-referrals with 30 councillors reporting themselves to the OIA, up from 11 in 2019-20 and five in 2018-19.

In 2020-21, 37 per cent of complaints were directly lodged by members of the public, 4 per cent were referred by the CCC, 6 per cent came from other sources (i.e. other government departments).

Complaint assessments

The OIA assesses all complaints to determine whether they raise a reasonable suspicion of inappropriate conduct, misconduct, or corrupt conduct.

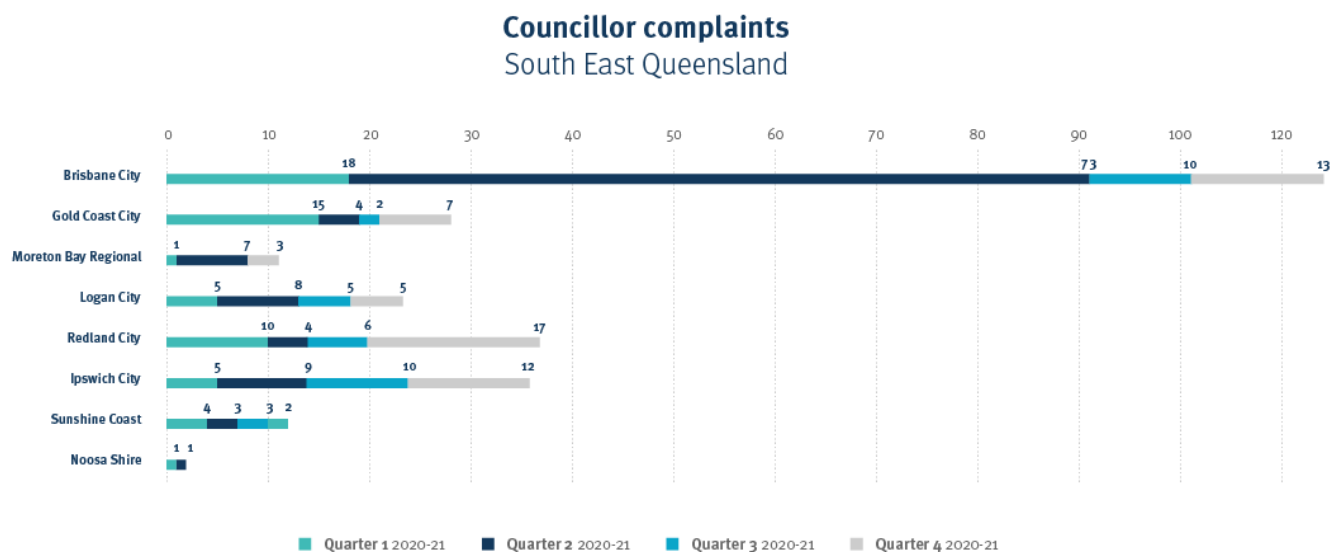
In 2020—21, the OIA assessed 89 per cent of complaints within 21 working days of lodgement. Some complaints involved multiple allegations:

- 54 per cent of allegations related to suspected misconduct
- 27 per cent related to suspected inappropriate conduct
- 12 per cent related to suspected corrupt conduct
- 7 per cent related to other matters

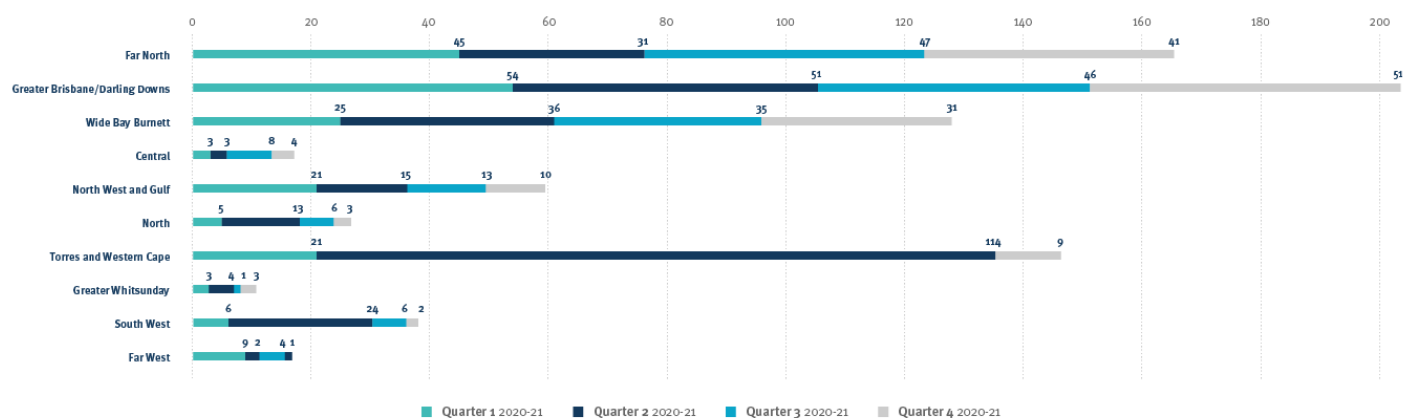
The most common categories of complaints were breaches of trust (33%), breaches of the Code of Conduct for Councillors in Queensland (24%) and conflicts of interest (16%).

Complaints by council or region

The following graphs show the number of complaints received by quarter.



Councillor complaints Regional Queensland



Annexure A lists the councils in each region.

Assessment outcomes

Corrupt conduct

In 2020—21, the OIA referred 34 matters involving suspected corrupt conduct matters to the CCC. Twelve of the 34 matters were received by the OIA in the preceding year.

A further 29 suspected corrupt conduct complaint files were reported to the CCC as part of an arrangement between the OIA and the CCC, pursuant to section 40 of the Crime and Corruption Act 2001 (CC Act). This arrangement improves efficiencies for both agencies by allowing the OIA to immediately commence investigating agreed categories of corrupt conduct without first referring the matter to the CCC. The CCC has oversight of these matters and can resume responsibility for a case at its discretion.

As a result of amendments to the LG Act which commenced on 12 October 2020, the number of matters that reach the threshold of corrupt conduct has reduced.

Misconduct

Complaints that raise a reasonable suspicion of misconduct are investigated by the OIA. In some more complex matters further investigation may be required to determine whether this threshold is met.

Thirty-seven per cent of all complaints assessed in 2020—21 became an OIA misconduct investigation. These are detailed on pages 7-8.

Inappropriate conduct

The OIA does not have the power to investigate suspected inappropriate conduct unless it is tied to alleged misconduct. Instead, these complaints must be referred to the relevant local government to investigate and resolve.

In 2020—21, the OIA received 290 inappropriate conduct complaints which accounted for 27 per cent of complaints. Fifty-four of these matters were referred to 26 local governments. Of the 54 matters, 18 were sustained, six were not sustained, five were resolved by alternate dispute resolution, 25 were ongoing as of 30 June 2021 or the OIA was yet to be advised of an outcome.

As such 53 per cent of inappropriate conduct matters were finalised, representing a significant improvement on 2019-20 when 15 per cent of matters were finalised by councils. This result follows the introduction of initiatives by the OIA to assist councils to deal with inappropriate conduct allegations fairly, effectively, and consistently. These are detailed on pages 12-13.

Dismissal/no further action

A decision to dismiss a complaint or take no further action can be made during the assessment phase or after an investigation. Altogether the OIA dismissed or took no further action on 572 complaints which represented 51 per cent of all matters assessed in 2020—21.

A request for an internal review of a decision to dismiss a complaint or take no further action following assessment can be made within two months of the case being closed, consistent with best-practice complaints management. In 2020—21, 11 requests for review were received and 10 reviews were completed. In all cases the original decisions were upheld.

Improper complaints

The OIA uses a three-step escalation process to identify, manage and deter vexatious and other improper complaints. At step one a warning is issued to the complainant, at step two the complaint is dismissed as vexatious and an offence warning is issued, at step three the OIA commences an investigation ahead of a possible prosecution where a fine of more than \$11,000 may apply.

Statistics show this process is effective in relation to the early identification of potentially improper complaints and in deterring such behaviour. In 2020-21, 34 complainants were escalated to step two, while two complainants were escalated to step three.

OIA investigations

In 2020—21, 297 new investigations were commenced, including two investigations raised by the OIA into potentially vexatious complainants. The OIA finalised 187 investigations⁴, some of which started prior to 2020—21. It had 225 active investigations as of 30 June 2021.

Investigations involved 46 of the state's 77 councils and the top three categories of alleged misconduct investigated by the OIA were:

1. Breaching the trust placed in a councillor [breach of local government principles/councillor responsibilities] (145)
2. Failure to declare a conflict of interest (67)
3. Influencing/attempting to influence a decision-maker when a councillor has a conflict of interest (21)

⁴ One investigation involved 106 complaints in relation to a single councillor and a single issue.

In order to address the number of complaints requiring investigation, within resource capacity, the OIA used a formal case prioritisation model. Matters were prioritised when referred by the Crime and Corruption Commission (CCC) and where the allegations were particularly serious and/or impacted on a council's ability to function. Otherwise, investigations are conducted in date order.

The Solomon Review which recommended the establishment of the OIA, called for the OIA to have appropriate powers to investigate councillor conduct allegations. Chapter 5A, Part 4 of the LG Act provides the OIA with investigation and enforcement powers.

In 2020—21:

- The OIA exercised powers under section 150CH of the LG Act on 119 occasions. This provision allows investigators to request information that is reasonably necessary to investigate a councillor's conduct or a breach of a conduct provision.
- Fourteen notices were issued under section 150CJ of the LG Act requiring the attendance of a person at an interview with investigators.
- Twenty-eight confidentiality notices were issued under section 150CK of the LG Act, stating that the person's attendance at an interview or the information the person provided is confidential, as is the notice itself. These are issued when it is reasonably believed to be necessary to ensure the investigation is carried out confidentially or to prevent the commission of an offence.
- No search warrants were obtained.

If an investigation does not support an allegation the matter will be dismissed or subject to no further action (NFA). In 2020-21, 54 matters were subject to no further action following investigations while 62 matters were dismissed at this stage.⁵ These are important outcomes as both the councillor and the complainant are notified of the decision and the reasons.

Disciplinary matters

When an investigation supports a reasonable satisfaction that a councillor has engaged in misconduct, the matter is referred to the OIA legal team to undertake a natural justice process ahead of a possible referral to the Councillor Conduct Tribunal (CCT).

At this point the OIA legal team issues a notice, pursuant to section 150AA of the LG Act and provides the councillor with an opportunity to respond to the allegation/s. Any submission by the councillor or a legal representative must be considered by the Independent Assessor (IA).

In 2020—21, 67 matters involving 31 current or former councillors and 72 allegations moved from investigations to the OIA legal team. As of 30 June 2021, 33 matters involving 17 councillors or former councillors and 49 separate allegations were being prepared for or were undergoing a natural justice process.

⁵ One matter included 106 complaints about one councillor and a single issue, which were dealt with in one investigation.

In 2020—21:

- the IA took no further action on seven matters involving seven councillors and seven allegations after considering councillors' submissions
- the IA referred 49 matters involving 21 current or former councillors and 75 allegations to the CCT
- the CCT decided 16 matters involving 12 councillors, including three matters that had been referred to the CCT in 2018—19 and 13 matters that had been referred in 2019—20. Allegations against 10 councillors were sustained, while allegations against two councillors were not sustained.
- As of 30 June 2021, 71 matters, involving 37 councillors and 105 separate allegations, were before the CCT.

Given the consistently high volume of councillor conduct complaints, there are some delays in finalising investigations, referring completed investigations to the CCT, and progressing matters through the CCT.

QCAT reviews

CCT decisions may be reviewed to the Queensland Civil and Administrative Tribunal (QCAT).

During 2020—21, six councillors reviewed a CCT decision to QCAT and the IA reviewed one CCT decision. One matter, which was reviewed by a councillor in 2019—20, was before QCAT.

Judicial reviews

In August 2020, the Supreme Court of Queensland conducted a hearing into a judicial review which was commenced by the IA in May 2020. The review was undertaken to seek clarity on whether the IA has the power to revoke or rescind a referral to the CCT in circumstances where public interest considerations in pursuing a matter had changed since the matter was referred. A ruling was delivered on 16 October 2020 stating that while the OIA did not have the power to formally revoke or rescind an application to the CCT, it may apply to the CCT to do so.

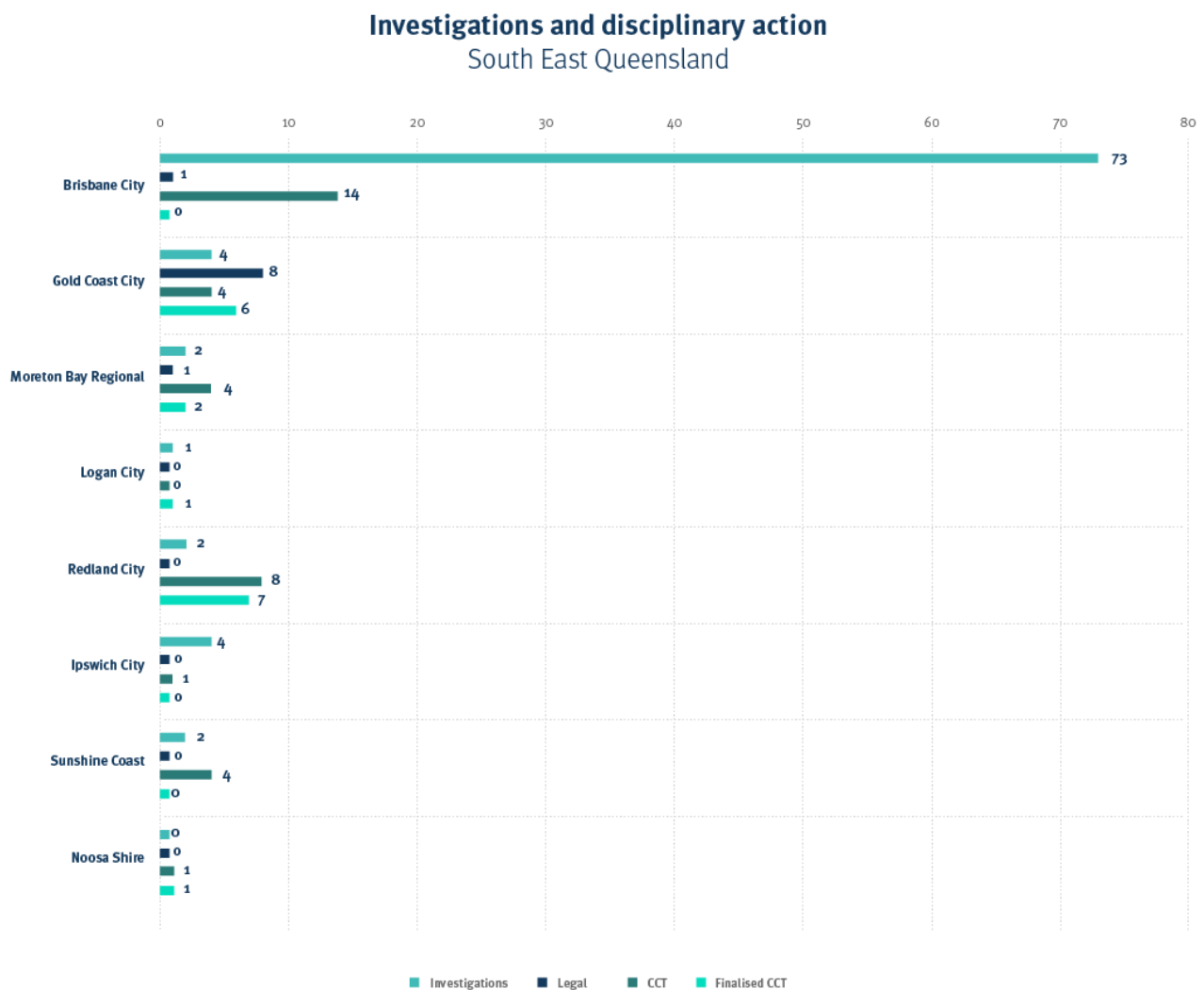
In October 2020, a former councillor applied to the Supreme Court of Queensland for a dismissal or permanent stay of CCT proceedings. The proceedings related to an IA referral to the CCT in October 2019, to decide an allegation of misconduct against the councillor. The CCT issued directions for this matter in June 2020.

A hearing into the former councillor's request for a dismissal/permanent stay was set down for one day in February 2021 but proceeded for an additional two days in May 2021. A decision was reserved.

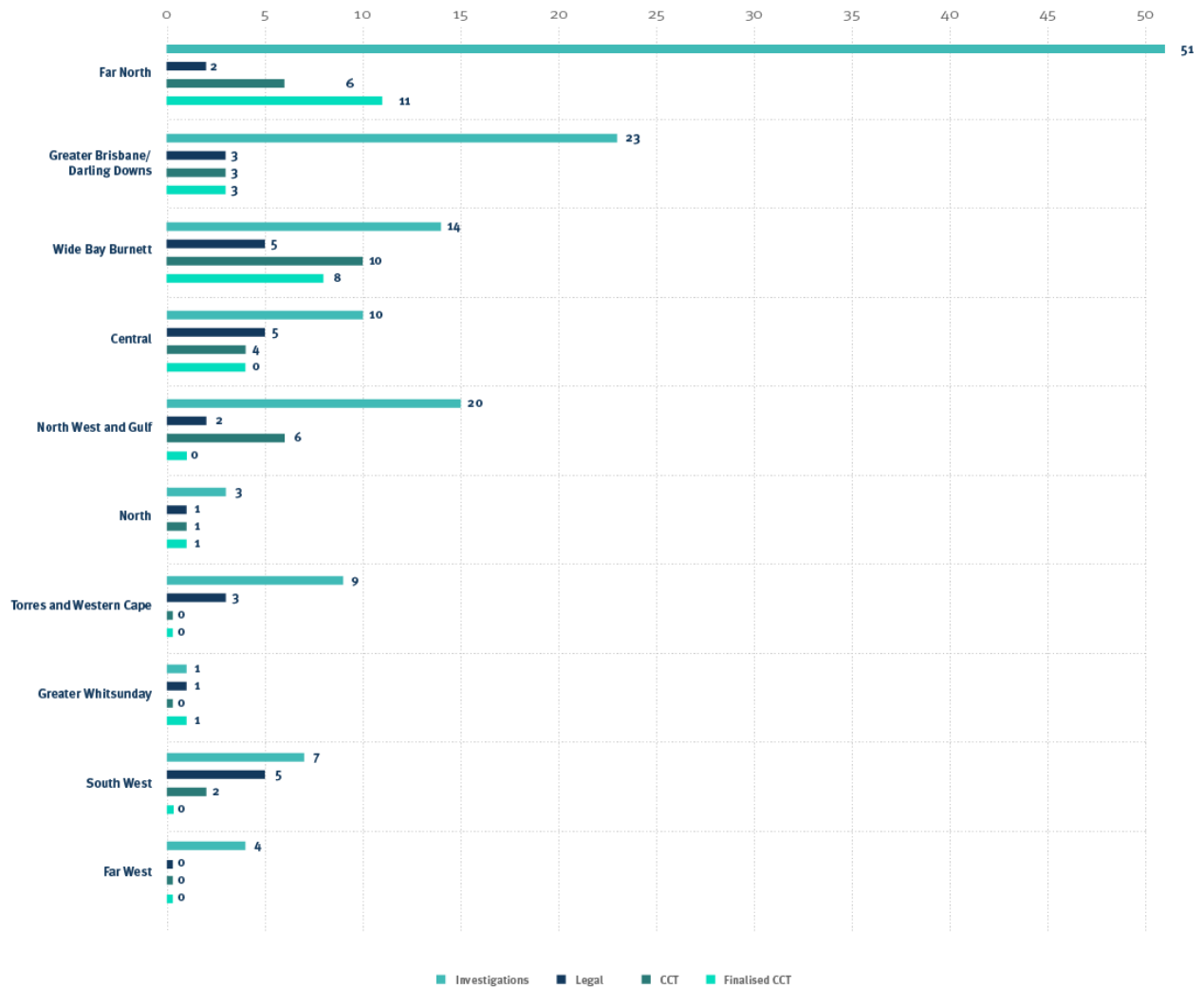
Investigations/disciplinary action per council or region

The following graphs shows by council or by region, as of 30 June 2021:

- the number of active investigations into the conduct of councillors
- the number of matters with the OIA legal team undergoing a natural justice process
- matters before the Councillor Conduct Tribunal (CCT)
- matters already decided by the CCT



Investigations and disciplinary action Regional Queensland



Annexure A lists the councils in each region.

Prevention activities

The OIA's prevention strategies sought to inform councillors of their legal obligations and encourage compliance while highlighting conduct risks and the standards being applied by the CCT.

Major projects:

Conflict of Interest 'App'

Conflicts of interest (COI) pose a major misconduct risk in local government and new COI laws commenced on 12 October 2020 which significantly altered the previous framework. To help councillors comply with new legislation the OIA collaborated with the Local Government Association of Queensland (LGAQ) to develop a Conflict-of-Interest 'App'.

This innovative online tool helps councillors to determine whether they have a prescribed or declarable COI and when and how to make declarations. It also allows them to email an outcome report to their CEO to assist with the management of issues.

The 'app' was launched in October 2020, prior to the commencement of the new laws. It was subsequently updated, making it easier to navigate. The streamlined version was released in June 2021.

Conflict of interest guide: duty to report

The OIA worked with the Queensland Integrity Commissioner to produce a guide that outlined a councillor's legal obligation to report another councillor's suspected (undeclared) conflict of interest (COI). This was developed in October 2020 to coincide with the commencement new COI laws.

Example policy and guidance: councillors' interactions with property developers:

After significant consultation, the OIA developed an example policy and supporting guidance in relation to councillors' interactions with property developers, lobbyists, and other submitters to council (submitters).

This initiative aimed to give councillors the confidence to engage with developers, when appropriate, in the interests of their communities, while also highlighting the misconduct risks associated with these interactions.

The example policy was not mandatory but was developed to assist councils seeking to implement or update a policy in what can be a complex area to navigate.

Strategies to improve management of inappropriate conduct complaints by local governments.

Over time the OIA observed challenges being experienced by councils in dealing fairly and effectively with inappropriate conduct matters, resulting in a lack of consistency across the sector. In response, the OIA identified a panel of external investigators who could assist councils by quickly and independently investigating inappropriate conduct allegations. The OIA conducted a

workshop with the investigators to facilitate a uniform approach and a template investigation report was agreed.

In September 2020, the OIA provided all council chief executive officers (CEOs) with details of the investigators. It also supplied a decision-making matrix, developed in collaboration with the interim Logan City Council, to help councils to determine a suitable sanction when required.

Telephone trial for councillors in Indigenous local governments

To help councillors to overcome difficulties in reliably accessing the internet and/or computers the OIA launched a 'telephone trial' in the 17 Indigenous local government areas in Queensland. From 1 March 2021, councillors who became the subject of an inappropriate conduct complaint could choose to respond to an OIA notice/request for information by phone, rather than in writing, which is the normal course.

The trial was due to end on 1 September 2021 but will continue at least until the end of December 2021.

Unsuitable meeting conduct video

Mayors and other meeting chairs are required to deal with unsuitable meeting conduct by councillors as it occurs, and a failure to do so may constitute misconduct.

The IA worked with the LGAQ and King and Company Solicitors to produce a training video for '*Mayors and Chairs*', to upskill them in relation to handling unsuitable meeting conduct. It was made available in August 2020 via the LGAQ website

Amnesty for first-time councillors post-2020 quadrennial local government elections

From 5 May-5 August 2020 the OIA provided an amnesty for first-time councillors who became the subject of a conduct complaint, except where the matter was serious. Instead of taking further investigative action, the OIA provided detailed feedback to councillors about their legal obligations and standards required of them.

This initiative aimed to build the capacity of newly elected councillors and was in recognition of the steep learning curve in local government coinciding with the challenges associated with the COVID-19 pandemic.

Training

The OIA delivered tailored training to four councils where emerging, repeat, or systemic issues were observed. These sessions predominantly focused on identifying and managing conflicts of interest.

Events & presentations:

The OIA took part in several stakeholder events including presentations to the Corruption Prevention Network, an 'Ethics and Integrity' webinar conducted by the Institute of Public Administration Australia, the Queensland Law Society's Disciplinary Law Conference, the Queensland Local Government Reform Alliance's annual conference, and the LGAQ's Indigenous Leaders Forum. The OIA also participated in the Local Government Liaison meeting which is used to discuss prevention strategies and to develop a multi-agency response to topical issues.

Topics covered at these events included:

- Councillor conduct complaints of relevance to council finance staff
- Conflicts of interests in First Nations councils
- The OIA's jurisdiction and councillor misconduct
- Corruption risks and 'blind spots' in detecting and managing conflicts of interests
- The interrelationship of workplace bullying and corruption

Publications

The complaint landscape in Indigenous councils. This report provides a snapshot of the complaints received by the OIA in relation to councillors in Queensland's 17 First Nations local government areas.

The analysis was undertaken to facilitate a better understanding of some of the unique and complex issues arising in First Nations communities. It may be used to inform training/capacity-building measures. The report was published on the OIA website in February 2021.

Insight. The OIA publishes a quarterly report, *Insight*, which details complaint volumes, trend analysis, emerging issues and themes, prevention advice and acts to inform broader prevention priorities and opportunities.

Sector publications. The OIA contributed to local government sector publications by the LGAQ and Local Government Managers Australia (LGMA). These columns generally focused on recurring or high-risk areas of councillor conduct and strategies to manage more complex conduct issues.

Public statements. The Independent Assessor routinely issues public statements in relation to determinations made by the Councillor Conduct Tribunal (CCT). They explain how the CCT is applying standards so that councillors can apply this information to their own circumstances.

Website updates: In 2020-21 resources for councillors were made available on the OIA website as they became available.

Conclusion

The OIA was established with strong sector support to bring a fair, objective, and consistent approach to the management of councillor conduct complaints. Having a centralised regulatory body has eased the financial and other pressures on councils and CEOs however, the current framework has also delivered a new level of oversight which has required a cultural adjustment that continues in some areas.

Effectively dealing with disciplinary matters works to strengthen the integrity in local government and operates as a barrier to escalating conduct. Halting inappropriate conduct can prevent an escalation to misconduct and halting misconduct can deter corrupt conduct. These are important outcomes for the sector and Queensland communities and require ongoing focus.

Ongoing oversight also help to ensure that councillors act in the public interest throughout the four-year term, while the transparent reporting of conduct issues ensures the public is well-informed when electing community leaders.

Going forward, and with complaint numbers expected to continue to stabilise, the OIA will be directing its energies into improving the timeliness of investigations and referrals to the CCT, where appropriate.

I welcome the opportunity to discuss this submission and the OIA's performance.

Yours sincerely,

A handwritten signature in blue ink that reads "Kathleen Florian".

Kathleen Florian
Independent Assessor

Annexure A: Councils per region

Greater Brisbane / Downs regions

- Goondiwindi Regional
- Toowoomba Regional
- Western Downs Regional
- Southern Downs Regional
- Lockyer Valley Regional
- Somerset Regional
- Scenic Rim Regional

Wide Bay Burnett

- Bundaberg Regional
- Fraser Coast Regional
- Gympie Regional
- North Burnett Regional
- Cherbourg Aboriginal Shire
- South Burnett Regional

Central Queensland

- Rockhampton Regional
- Livingstone Shire
- Gladstone Regional
- Banana Shire
- Central Highlands Regional
- Woorabinda Aboriginal Shire

Far North Queensland

- Cairns Regional
- Cassowary Coast Regional
- Cook Shire
- Douglas Shire
- Mareeba Shire
- Hope Vale Aboriginal Shire
- Lockhart River Aboriginal Shire Council
- Tablelands Regional
- Yarrabah Aboriginal Shire
- Wujal Wujal Aboriginal Shire

North Queensland

- Burdekin Shire
- Charters Towers Regional
- Hinchinbrook Shire
- Palm Island Aboriginal Shire
- Townsville City

Greater Whitsunday

- Isaac Regional
- Mackay Regional
- Whitsunday Regional

Far West

- Barcaldine Regional
- Barcoo Shire
- Blackall-Tambo Regional
- Boulia Shire
- Diamantina Shire
- Longreach Regional
- Winton Shire

South West

- Balonne Shire Council
- Maranoa Regional Council
- Murweh Shire Council
- Paroo Shire Council
- Bulloo Shire Council
- Quilpie Shire Council

North West and Gulf

- Burke Shire
- Carpentaria Shire
- Cloncurry Shire
- Croydon Shire
- Doomadgee Aboriginal Shire
- Etheridge Shire
- Flinders Shire
- McKinlay Shire
- Mornington Shire
- Mount Isa City
- Richmond Shire

Torres and Western Cape

- Aurukun Shire Council
- Kowanyama Aboriginal Shire Council
- Mapoon Aboriginal Shire Council
- Northern Peninsula Area Regional Council
- Napranum Aboriginal Shire Council
- Pormpuraaw Aboriginal Shire Council
- Torres Shire Council
- Torres Strait Island Regional Council