



# ***STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE***

## **Members present:**

Mr CG Whiting MP—Chair  
Mr MJ Hart MP  
Mr RI Katter MP (virtual)  
Mr JE Madden MP  
Mr JJ McDonald MP  
Mr TJ Smith MP

## **Staff present:**

Ms S Galbraith—Committee Secretary  
Dr A Beem—Inquiry Secretary

## **PUBLIC HEARING—INQUIRY INTO THE FUNCTIONS OF THE INDEPENDENT ASSESSOR AND PERFORMANCE OF THESE FUNCTIONS**

### **TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 6 DECEMBER 2021**

**Brisbane**

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The committee met at 1.01 pm.

**FYNES-CLINTON, Mr Tim, Executive Partner, King & Company Solicitors**

**SMITH, Ms Alison, Chief Executive Officer, Local Government Association Queensland**

**CHAIR:** I declare open this public hearing for the committee's inquiry into the functions of the Independent Assessor and the performance of those functions. I now welcome representatives from the Local Government Association of Queensland: Alison Smith, Chief Executive Officer; and Tim Fynes-Clinton, Executive Partner, King & Company Solicitors, who will be appearing today in his capacity as the LGAQ's governance adviser. Would you like to make an opening statement before we start our questions?

**Ms Smith:** Thank you, Chair, and good afternoon to all committee members. I firstly acknowledge the traditional owners of the land on which we gather and pay our respects to elders past, present and emerging.

My name is Alison Smith. I am here today as Chief Executive Officer of the LGAQ, which is the statewide peak body for local government across Queensland. We are a not-for-profit association set up to serve the state's 77 councils with their individual needs. We have been advising, supporting and representing local councils since 1896. Today I am joined by Tim Fynes-Clinton, Executive Partner of King & Company Solicitors, which works closely with the LGAQ.

On behalf of our member councils and, in particular, the elected representatives whom we represent across local government in Queensland, we sincerely thank the parliament for establishing this important inquiry and also the ongoing bipartisanship on this issue. We appreciate the opportunity to address you today on behalf of our sector and set the scene for this inquiry.

I should stress that, without pre-empting any submissions to the inquiry—which I note are due on 15 December—we are hoping that today's hearing will provide some background to the reasons this inquiry is so important for our sector of local government. We believe there needs to be an independent review of complaints but it needs to be effective. The LGAQ strongly believes that the system of local government should be accountable, democratic, efficient, sustainable and transparent and that local governments have a responsibility to comply with appropriate standards relating to applicable governance arrangements. We also believe that the governance arrangements that apply to local government should, where appropriate, be consistent with those applying to the state government—that the obligations placed on local government would generally not be higher or lower than those applying to the state government.

Today I would like to provide some historical context to the background of why the OIA was established and also the importance of conducting this inquiry. We would then like to highlight some of the specific concerns of our sector at a later date, once submissions have closed, and to speak to our submission to your inquiry. In doing so, we recognise the submission that the Queensland Council for Civil Liberties has made to the Deputy Premier. We note the council's concerns about the OIA potentially improperly exercising its powers, which are CCC-like powers, and we also recommend its general support for this inquiry.

To the background, it was a previous LGAQ annual conference resolution that called on the state government to establish an independent assessor. That call for an independent assessor was to replace council CEOs, mayors and the department in deciding whether a complaint about councillor conduct involves misconduct or inappropriate conduct or should be treated as frivolous, vexatious, lacking in substance or may even be about another matter.

In April 2016, the state government established an independent panel to review the councillor conduct and complaints policy and processes. That panel was chaired by former Queensland Integrity Commissioner David Solomon AM, with the assistance of former Noosa mayor and LGAQ president Noel Playford OAM and former long-term council CEO Gary Kellar PSM. That panel's report was provided to the then deputy premier and minister for local government, Jackie Trad, in January 2017.

The review panel's report provided for the establishment of the OIA to assess and investigate complaints about councillor conduct. The OIA was established on 3 December 2018 following amendments to the Local Government Act, giving the integrity agency the jurisdiction to investigate and prosecute complaints made against councillors from all local governments across Queensland. We note the terms of reference for this inquiry.

As we stated in our correspondence to the Deputy Premier in October this year—and a copy of that has been provided to the committee and made public—the LGAQ has concerns that the original strategic objectives set out by the independent review panel are not being met. Councillors and mayors are elected to represent their communities and be community leaders who champion critical issues of concern. When you look at decided case law, it is clear that Australian courts have accepted that the freedom of political communication implied in Australia's Constitution extends beyond the federal level to political communication at state and local government level. This right is an implied freedom to each and every member of the Australian community, councillors included. Impinging on an elected local government representative's right to freedom of political expression is overreach and it undermines the role of an elected representative in Queensland.

Our members are also concerned that the code of conduct for councillors in Queensland which the OIA seeks to enforce against councillors is partially to blame. Our members consider that the OIA is interpreting the code of conduct in a way that gives life to clearly vexatious or politically motivated complaints which realistically should be dismissed immediately. For instance, we are aware of numerous examples where the OIA has initiated action against elected members for blocking trolls on their Facebook pages. The OIA refers to the code of conduct and states the action of blocking a troll is a breach of the code's obligation to treat fellow councillors, council employees and members of the public with courtesy, honesty and fairness. The OIA also states that such action should be considered a breach of the Human Rights Act—presumably section 21, which is the right to freedom of expression.

However, we submit to this inquiry that the OIA is failing to acknowledge section 25 of that same act, which provides every person with the right not to have their correspondence interfered with—in this case, such as the councillor's own Facebook post—and not to have their reputation unlawfully attacked. Blocking trolls is something every ordinary citizen not only has the right to do but also is encouraged to do. The act of blocking a troll is not restricting any right of freedom of expression as the person blocked can always express their views on their own social media or indeed other places. I am sure that members of this committee may have blocked people from their own social media following an abusive message or two.

Further, we submit that this is not the type of complaint envisaged to occupy the OIA's time when it was established or indeed the type of complaint that should cost the public twice: for the work of the OIA to investigate and then for the work of elected members to have to respond. Clearly the OIA process has become very costly. Figures from the Local Government Mutual Services—our members' insurance scheme—show that legal costs to respond to a complaint can vary from just over \$6,300 per matter to as much as \$100,000 for one particular matter that is still ongoing, so that is likely to climb even higher.

The process has also seen vastly different time lines being used. We have concerns about the significant delays that investigations can have and the stress and the distraction that this creates for elected members while they await an outcome. In one example an elected member endured two years and nine months while a matter was investigated. After such a long process, the councillor was asked to undertake a one-hour training module to address the matter. On the other hand, the time elected members are given to respond to an OIA notice is often inadequate. A good example of this is the recent high-profile case involving the Barcaldine mayor, Sean Dillon, and his right to freedom of political expression due to questions that he raised in a public council meeting. When the OIA notice was issued to Mayor Dillon, he was given just three days to provide a formal response.

However, the Mayor Dillon matter also goes to another concern that we have, and that is of the OIA wrongly involving itself in matters of public debate rather than in matters of councillor conduct. What I mean by this is that it was alleged in the case of Mayor Dillon's comments that he 'tended to unfairly undermine the public's view of the hospital and health service, the public health response and vaccination program'. Whether that allegation is correct or not, that is a matter of opinion, surely not a matter for investigation by the OIA and possible sanction by the Councillor Conduct Tribunal. Committee members, we urge you to agree that it was not the intent of this parliament for the OIA to intervene itself in matters of public and political debate such as, in the Mayor Dillon example, matters relating to the response by all levels of government to the COVID-19 pandemic—which is what he was talking about.

The other issue which I wish to briefly raise with you today is the power of the OIA to dismiss a complaint if dealing with it would not be in the public interest or would be an unjustifiable use of resources. This power is found in section 150X(c) of the act. It is our submission that the OIA is not applying this provision so as to reduce the number of matters it is actively dealing with. If it did, the OIA could better focus its energy on the most serious cases of alleged councillor misconduct. In our submission we will provide examples of the OIA's failure to apply this in actual decisions of the Councillor Conduct Tribunal.

In closing, the significance of having an independent reviewer of councillor conduct complaints cannot be understated. This is an important function and it should instil community confidence in the local government sector and act as an important check and balance throughout councils' four-year term. However, concerns have been raised by our members, and indeed in the community, that the OIA has increased the scrutiny of this sector and has not necessarily enhanced the integrity outcomes. By that I mean there is a general lack of confidence in how the OIA applies itself to the complaints it receives.

Again, I want to emphasise that the LGAQ supports the need for an independent review of complaints and one that is at arm's length of our member councils. We just want to make sure that it is doing the job it was established to do. With that opening statement, I am more than happy to take any questions from the committee.

**CHAIR:** Thank you very much, Ms Smith. I will start with a general question. We did this with the department when we chatted to them. In the system pre Belcarra, pre these reforms, the role of the CEO was clearly pivotal. We recounted or recalled instances where it was difficult because the mayor is effectively the employer of the CEO, hence the potential for conflict and the like. How would you characterise the flaws or the shortcomings of the system before these reforms?

**Mr Fynes-Clinton:** It clearly was difficult for a CEO to have to assess complaints against people whom he was ultimately responsible to. The CEO's role under the previous system was to do that assessment and then either refer it on to the department, as you have been informed, or refer it back to the mayor. That was the other component of the previous system—that inappropriate conduct was dealt with by the mayor, not by the council. Most mayors then lent back on CEOs to assist them through that process. It was a double whammy. There was a formal obligation to assess it and then not so much a formal obligation but the practical reality that the CEO was also assisting the mayor in the mayor determining how to deal with the allegation. The LGAQ certainly supported removing the CEO from that type of process.

**CHAIR:** Ms Smith, in terms of discussing the freedom of political expression issue, you said there had been a number of reports to the OIA from people who have been blocked. We have obviously talked about one that we are aware of. Can you expand on that? How many are we talking about? Is this common?

**Ms Smith:** Certainly there have been cases that have been actively reported in the media. The matter we referred to before relates to Mayor Sean Dillon from Barcaldine. There is another councillor from Gladstone. We would be happy to take that question on notice and make sure we incorporate some further substantial details in our submission. We are very happy to do that, because it is a problem that members have spoken to us about on a number of occasions.

**CHAIR:** That would be appreciated. We can discuss how extensive the information provided to us is. We certainly want to see the size of this issue. There are a couple of specific issues that relate to some of the things that have been said previously. The issue of self-initiated investigations is always an issue. What is the stance of the LGAQ on the power to self-initiate investigations?

**Mr Fynes-Clinton:** When that legislation was proposed my recollection is that the LGAQ was not in favour of the OIA having the ability to initiate its own investigations. The LGAQ was looking for an independent assessor to look at other people's complaints, not necessarily empower the Independent Assessor to initiate their own complaints. I do not think the LGAQ's policy position on that has changed since that legislation emerged in late 2017, early 2018.

**CHAIR:** It raises interesting issues. If an issue is discovered during an investigation, is that referred to the CCC or dealt with internally? It is a problem, because once you are aware of an issue what happens with it? That reflects the code of conduct and that framework. If you become aware of a possible issue it must be referred on. It is information you cannot sit on. That poses a bit of a problem for you as well. If such a body becomes aware of an issue, what do they do with it?

**Mr Fynes-Clinton:** That is a fair point. I really cannot provide a response.

**CHAIR:** I thought of that yesterday.

**Mr Fynes-Clinton:** I accept that it cannot be ignored. It has to be dealt with.

**CHAIR:** It is a conundrum.

**Mr McDONALD:** We have been examining the whole complaints system of local government and looking at all the different players including the CEO, councillors and mayors in their own environment to understand what is going on through to the consequences of action for non-serious matters and trying to get through each of those things. What has come to light very clearly is that there is a lack of consistent understanding of conflict-of-interest provisions—conflict of interest as opposed to just an interest issue—and I think that goes to training. Does the LGAQ have a position on mandatory training for your member councils?

**Ms Smith:** I understand this was something that was raised this morning with the department. I do not think there is a need for mandatory training. Perhaps it would be beneficial for the training to be provided in a more coordinated way than is currently the case and that individual councils could opt in when they felt it was necessary for them. This is something that potentially could be coordinated by the department of local government.

Our sector faces the challenge of having new members every four years with the four-year term, and some of them are learning the ropes about what it is to be part of the local government level of government. Then we deal with the ongoing requirements of when there are changes to legislation and regulation. There has been a significant amount of that in recent years, so I think a more coordinated approach is something that we would recommend.

**Mr McDONALD:** A more coordinated approach between the department, yourself and the OIA? What do you mean by 'coordination'?

**Ms Smith:** We would be happy to talk to the department of local government about that. The coordination could clearly be something that picks up needs as there are changes in legislation, which happens from time to time. That may also reflect a new term with new members. That is something we would be happy to have a further discussion about offline.

**Mr McDONALD:** It has been my experience with councillors and potential councillors—maybe it is perceived, but reception is reality—that the consequences from all of these media reports and confusion over conflict-of-interest or interest issues is really a deterrent to good members of the community being involved in local government. Have you had any experience with that?

**Ms Smith:** I might say a few words and then pass to Tim for further comment. It absolutely is a key issue in terms of attracting those who may wish to put their hand up to be an elected member. Earlier this year we did a full call-out to Local Government Association of Queensland members to put in their submissions to us so we could coordinate a statewide approach on the need for some reforms to the legislation. The conflict-of-interest legislation has caused some issues around confusion. Members have told us that they have had difficulty interpreting some sections and that there is a lack of clarity in others. We gathered up a whole range of those concerns across our member base and put those through to the department of local government with the view that, as an evidence-led campaign or submission, we could flag where some of those pressure points are and where some simple, pragmatic changes could ensure the legislation was a lot more easily interpreted.

**Mr Fynes-Clinton:** I have been involved in some training sessions myself with newly elected councillors at the start of this term. I said to them that they have entered local government at a time when it has never been more highly regulated for councillors going about their business, particularly in relation to the conflict-of-interest regime. It is continually changing. The mandatory training that is required of councillors prior to standing—this is no criticism of the authors of that training—does not really reveal the depth of complexity around a councillor's obligations with respect to their interests and disclosure and things like that. It is not getting easier; it is certainly no simpler. Anything that can be achieved in this space to make it easier would obviously be welcomed.

**Mr MADDEN:** I am just interested in what training the LGAQ offers currently with regard to councillors. I am mindful of, effectively, orientation training. As you said, Ms Smith, every four years we have councils elected but also, in lawyer's terms, ongoing professional development. Can you outline what services the LGAQ currently provides to councils and just confirm that there is a fee for that?

**Ms Smith:** Some of your question I will answer; some of it we will make sure we factor into our submission so that you have a lot of detail in front of you on that particular point. It is certainly the case that there are a wide range of services the LGAQ provides. For example, after an election in a new term the LGAQ produces a councillors handbook and a mayoral handbook, and that is something that is shared with members. Whenever there are individual requests for assistance or guidance, we

provide that. All of those services are at no cost to our member base. There are many others that are delivered both by LGAQ and its subsidiary Peak Services, so on that particular point, if you do not mind, I will get more information and we will make sure that is fully fleshed out in our submission.

**Mr Fynes-Clinton:** I can add a couple of things. At the start of every term, when the LGAQ does its annual elected member update, there is a significant focus on making councillors aware of all of these complicated issues we are talking about today, so that certainly happens at the start of each term. The LGAQ also has on its website a commentary on the Local Government Act which is available to all councils—that is, councillors and council staff. There is also a legal opinion service on the LGAQ website which covers many things—all sorts of different local government related issues—including issues relating to councillor conduct, governance and things like that. There are certainly some permanent resources available for members of the LGAQ, and when I refer to that I mean the councils and the people who work on those councils.

**Mr MADDEN:** I presume you offer a service whereby if somebody needs some advice they can contact the LGAQ?

**Ms Smith:** We have a help desk for members. That could be anything from a governance issue to a HR issue to a disaster management issue. It is all part of the service that we offer and how we can triage those requests to get the right information.

**Mr MADDEN:** I presume you also covered this area with speakers at the annual conference?

**Ms Smith:** We actually had a session with the OIA at the annual conference this year.

**CHAIR:** Just adding to and clarifying what the member for Ipswich West said, we have talked a lot about training. It is becoming clearer that there is no lack of training opportunities, but the integration and the coordination across all bodies is an issue. It is certainly good to hear about the training you offer. That ties in with what the department was saying about their role as building capacity, so I think it is good to put them in the central role in directing how training goes.

**Mr HART:** This morning the department told us they did an internal review into the OIA in March. That will be on our website soon. The OIA has also made a submission. In the department's review they expressed an opinion that maybe some of the decisions coming out of the OIA were not meeting the intent of the legislation, yet the OIA says they understand the intent completely. How do you go about providing legal advice to your councillors when it appears the intent of the legislation is not clearly understood by anyone, and do you tell your councillors that they can rely on that legal advice?

**CHAIR:** Just clarifying, member for Burleigh, it will be—you will see this—the executive summary and the summary of recommendations from the submission.

**Mr Fynes-Clinton:** I will take that question, Mr Hart. In terms of the intent, I was going to say—I got a bit distracted with the second part of your question—we do not consider that the intent has properly been applied by the OIA. There are reported decisions of the Councillor Conduct Tribunal on their website publicly available to all. I can identify for you today two decisions that I would suggest clearly do not reflect the appropriate intent. As I said, these are public documents. One of them relates to Councillor McLaughlin, where it was discovered well after the event that she had failed to record on her register her interest in shares in a family company. That family company owned a property in Cairns. That is all that company ever did. It never did anything else. It built a property, eventually sold it, and the company was deregistered. After all of that had occurred, it was brought to the OIA's attention that the councillor had failed to disclose it on her register. I will just reiterate: the company never, ever did any trade in the Burdekin shire. It had nothing to do with the Burdekin shire. It was a technical breach, but in my opinion it was not in the public interest for the councillor to have been put through the process which ended up in the tribunal.

In the same complaint there was also another issue about her agreeing to be a director of a not-for-profit company set up to assist Palm Island and its economic development. She agreed to be a director of that company many years ago. The board of that company never met and, again, she resigned from the board. It was only after she resigned that the fact she had failed to record that on her register was brought to her attention via a complaint to the OIA. It is a matter of history; it was a technical breach. Again, the board never met and never had any business to do with the Burdekin shire. We do not consider that is what the OIA should be focusing its energies on.

There is another decision there. It is simply described as 'Councillor, Cairns Regional Council' because the matter was not successful before the tribunal; however, that was referring to an alleged failure to declare conflicts of interest between 2012 and 2014. That is some considerable period of time ago. We would say that, whether the councillor should or should not have declared that interest,

clearly our position is that there was no interest to declare. Leaving that aside, even if there was an interest to declare, it is a matter of such history that we could not see where there was any public interest in that matter proceeding. For completeness, I will inform you that the OIA is seeking to have that decision of the tribunal reviewed by QCAT, but that is months away from going anywhere. That was my response to the first half of your question. Now I have forgotten the second half, I am sorry.

**Mr HART:** Legal advice.

**Mr Fynes-Clinton:** Maybe I will just put on another hat here, as a lawyer who works in my firm. We do represent councillors individually responding to these complaints and, from time to time, councillors will ask us for advice about whether or not they have an interest to declare. There is yet to be a really clear set of tribunal decisions drawing that line between what is and is not a declarable conflict of interest. It would be very fair to say that what I believe is not a declarable conflict of interest the OIA and others would say is. A conflict of interest is, by its very nature, a very nebulous concept.

**Mr HART:** This morning the department basically told us that the only advice someone could rely on that might withstand any sort of court action is from the Integrity Commissioner, but the Integrity Commissioner does not provide that advice anymore. Is that something the LGAQ would like to see return to the Integrity Commissioner? Would it work, in fact?

**Mr Fynes-Clinton:** My recollection is that the Integrity Commissioner stopped providing advice to councillors when the COVID pandemic commenced. That was an administrative decision. Again, this may be a question for the Independent Assessor tomorrow. My recollection is that if a councillor has obtained legal advice before making a decision about whether or not to declare—I stand to be corrected—whether the OIA agrees with that advice or not, I understand her practice will be not to progress the matter beyond that point, because the councillor has made an effort to fully inform himself or herself.

**Mr HART:** Alison, you said before that councillors should not be impacted by any conditions that an MP does not. What impacts a councillor more than an MP? What sorts of examples can you give us in that area?

**Ms Smith:** We have a policy statement on behalf of LGAQ which is refreshed usually annually, and that is a key component of the statement and is available publicly. You could certainly have a look at it. It comes to us many times about how councillors working within the current system experience what they perceive to be as unfairness in how the application is made. It is fair to say that when this inquiry was announced we were inundated with council members saying that this was so welcome, this was a great thing, because they hoped that it would bring to the fore a few issues that they have been struggling with. It has certainly been a very hot topic across the local government sector since the inquiry was announced. Fundamentally, it goes to the heart of our members wanting to ensure that they are treated fairly, that the balance is right and that there is a balance which is an equal application no matter what sector of government you are.

At the end of the day, our community is electing local government members to represent them and they expect that they are in every capacity able to do so. Our members have told us that they feel that the current system is stacked against them. As their association, we feel that there is cause for concern about what we are hearing. One of you made the point earlier today about the real risk of people of high calibre not putting their hands up to be elected members when there is that feel, that sensation, that there is an unfair system that they are working within.

**CHAIR:** Just following up on something that Mr Fynes-Clinton said in terms of needing tribunal decisions to set a precedent with regard to declarable conflict, this morning we heard that declarable conflict of interest is specified in legislation or regulation.

**Mr Fynes-Clinton:** In the act, yes, it is defined.

**CHAIR:** I think it is 150CK, or something like that.

**Mr Fynes-Clinton:** A lot of letters.

**CHAIR:** Yes, a lot of letters were used in this legislation. That is interesting. You say that we need some precedents set on that but, at the same time, we have it set out in black and white in legislation.

**Mr Fynes-Clinton:** I might clarify that first statement. I do not think any councillor should be the test case to determine whether a particular set of circumstances does or does not constitute a breach of that obligation. If it is unclear or uncertain, the councillor should be given the benefit of the doubt and the matter not proceeded with. That is the fundamental position that the LGAQ would certainly agree with.

**CHAIR:** It is certainly about setting the precedent. As you said, nobody wants to be the precedent. We have that set out in legislation. Obviously you would prefer that the legislation for declarable conflict of interest be the be-all and end-all, the standard?

**Mr Fynes-Clinton:** The definition has not really changed that much. It is a conflict between a personal interest of a councillor and the public interest which might lead to the councillor making a decision in conflict with the public interest. That is a very subjective assessment. What has changed, certainly in the last tranche of the legislation, is that there are certain exceptions that are applied to that, including one relating to whether or not the interest is the same as a significant proportion of other residents of the local government area. Again, 'significant proportion' is subjective. It is impossible to draw the line, unfortunately, in a black-and-white way. I just go back to what I said at the start; that is, if there is ambiguity, why should a councillor be subject to that test, for want of a better description?

**CHAIR:** I appreciate that.

**Mr SMITH:** Since the OIA has come in, we have seen complaints go up by a quite large number. That is in its last audit report. I ask you the same question I asked the department: is there a belief that there is that sense of, 'Well, there is faith in government now because there is a more independent body,' or is this a bit of a reaction to maybe some fears or a shock, positive or negative, coming out of Belcarra?

**Ms Smith:** Our members feel that the system is being weaponised and used against elected representatives, because too many of these frivolous matters are being pushed through the assessment process. When you look at how the OIA reports on its work throughout each year, it has a benchmark target that is set that it publishes in its annual report. That means it has a time frame to measure assessments. It is a 21-day process. In terms of where our members come from, the focus is on the wrong way. There is a time frame for launching an investigation but there is no time frame for the length of that investigation. I mentioned in my opening statement that there is one case that we are aware of that we will include in our submission where there was a two-year-nine-month time before there was a conclusion to that. We feel that a thorough triage process could actually help to reduce the need to investigate some complaints and not have members therefore feeling the way that you alluded to in your question. That would also help to reduce the time it takes to investigate a matter.

**Mr Fynes-Clinton:** I certainly think the appointment of an independent body to assess these complaints empowered a lot of people to not be shy about making complaints about councillors. I imagine the OIA's data will show you that the number of complaints made by fellow councillors, opponents from recent council elections and those types of people has increased regarding their level of activity in terms of making complaints. Particularly for a councillor or a political opponent, they would know that the CEO was likely to be a little more robust in turning matters around. That might well be at least a partial explanation as to the increase in numbers.

**Mr SMITH:** Thank you for that. I might jump ahead to vexatious complaints. As the association representing councillors, the feedback from councillors is that they believe this has been weaponised. What is their belief in terms of how the OIA is dealing with orchestrated campaigns from a number of people against them? Do they feel as though the OIA is actually taking in a wider scope of evidence to rule these out, or is it only focusing on that one allegation and that is causing frustration for councillors?

**Mr Fynes-Clinton:** In the OIA's defence, the legislation does not really permit them to apply a broader netting process. In fact, one of the recommendations of that report we referred to earlier was not taken up by the government—that is, not only should there be a process for vexatious complaints but also there should be a process for vexatious complainants. I made some notes of that because that recommendation was that the legislation allow the Independent Assessor to declare complainants as vexatious if they make repeated complaints vexatiously, not in good faith, primarily for a mischievous purpose, recklessly or maliciously. That does not exist. I would suggest that, if that were there, that would certainly empower the Independent Assessor to turn a few more complaints around before putting them through the process.

**Ms Smith:** We would welcome that part to be implemented because we believe it would provide a stronger disincentive to those who fit that category. As Tim has outlined, we absolutely think that recommendation would ensure that a person would not be able to make a complaint about the conduct of a councillor if that complaint is substantially the same as a complaint the person has already made and the person has perhaps been warned not to repeat and yet has done so.



**Mr SMITH:** Would councillors like an opportunity when replying to an allegation to be able to put in that wider scope of evidence—say, evidence from a Facebook group where clearly the person has made the complaint as part of a wider group that has also brought complaints against them? I know of councillors around Queensland who have had 60 or 70 complaints made by a group of people who obviously have a campaign behind them as to why, so would councillors like to be able to provide a wider scope of evidence against a vexatious complaint?

**Mr Fynes-Clinton:** Councillors are free to do that now. Again, the problem for the Independent Assessor is that the Independent Assessor does not have any ability to do much about that. If there is a complaint before their office, subject to other matters, yes, they have to deal with it. They do not have that ability to say, 'This is part of an orchestrated campaign.' Regardless of the merits of one of those 60 complaints in terms of pushing them all away, that power does not exist at the moment.

**Mr SMITH:** My next question goes to feedback from councillors with regard to the Councillor Conduct Register and their confidentiality. When the OIA is putting information up on the conduct register, do councillors feel as though the confidentiality is enough or would they like to see some stricter provisions around that?

**Ms Smith:** Can I take that one on notice and make sure we inform our submission with a clear answer on that one? We do have a particular position around anonymous complaints, in case you were wanting to ask about that.

**Mr SMITH:** I will leave that for my colleagues. Lastly, just around the social media rules that you touched on before, there has been an LGAQ and OIA impressum put on to Facebook pages. What was the process in working with the OIA on that? Did you review what parts of the code of conduct you believed it ticked off on? At the end of the day, were LGAQ happy with that outcome or do you feel as though there is still some uncertainty around that process that was done with the OIA?

**Ms Smith:** I am not in a position to answer that because it happened before my time at LGAQ. All I am aware of is that we became aware that the OIA had been asked to take that down and we had the same document on our member services section of the website and we took that down as well. If that is something that you would like us to detail more of, we can do so in our submission.

**Mr SMITH:** That would be excellent.

**Mr Fynes-Clinton:** I would just add one thing briefly about that. I think the impressum talks about giving a user two or three opportunities to behave themselves or they will be removed. With the benefit of hindsight, I do not think the LGAQ would have supported that in that particular document because if councillors are getting hammered, for want of a better word, they want to be able to just deal with it straightaway. That is one comment I would make about that particular document.

**CHAIR:** You said before that through your professional indemnity you fund, say, solicitors or barristers to appear in these matters in the OIA on behalf of others. Do both councillors and mayors get access to that funding?

**Mr Fynes-Clinton:** Yes. There is a policy of insurance in place which most councils in Queensland have taken up. It is a directors and officers liability insurance and it is for all elected reps and all employees. It covers investigations by statutory bodies, so this type of subject matter we are talking about falls within that cover. There is an excess payable, so the insurer only starts actually paying once costs exceed \$15,000.

**CHAIR:** Here is an interesting question for you once again because there have been a couple of comments about it—that is, the system becoming overly legalistic and lawyer heavy, as it were. Is that something that your scheme here is perhaps unknowingly contributing to in terms of building up that lawyering-up of situations?

**Mr Fynes-Clinton:** Do I have a conflict of interest to declare in answering that question?

**CHAIR:** That is quite topical.

**Mr Fynes-Clinton:** Yes, quite possibly.

**CHAIR:** It was meant to be a challenging question.

**Ms Smith:** It is, but I go back to a response I gave earlier that sometimes there is an inadequate amount of time offered to elected members to respond to an OIA complaint. In one of the cases I mentioned earlier, the mayor was given three days. If you are a mayor and you have council meetings and you have all sorts of other meetings and you have travel and you have different responsibilities, in three days how do you put together an entirely sufficient submission that covers everything? In three days you would have to seek help to be able to put that together, and that is one of the problems that we have within the system.

**Mr McDONALD:** Why would it be only three days, Alison?

**Ms Smith:** I cannot answer that.

**Mr McDONALD:** That has come from the office?

**Ms Smith:** From the OIA, yes.

**CHAIR:** We heard about that issue earlier, so I appreciate that.

**Mr Fynes-Clinton:** I suppose the other thing is that the process is very legalistic. I know that is words, but a councillor gets a very sternly written letter saying, 'Here's the allegation. Here's what it breaches.' It reeks, for want of a better word, of legalese and most councillors read it and go, 'I don't know how to deal with this,' so they go looking for help. That is just the way it has evolved since its inception three years ago.

**CHAIR:** That is a good point. Thank you for that.

**Mr McDONALD:** I am pleased you mentioned the 21-day reporting time frame, Alison, and I asked a question before of the department. I am concerned that the Office of the Independent Assessor are measuring themselves on something that only applies to themselves, and going from 75 per cent to 98 per cent in terms of achieving assessment within 21 days does not mean anything to people who are waiting two years or two years and nine months to have it resolved. What sorts of KPIs do you think would be recommended for the Office of the Independent Assessor? Maybe that is something you can take on notice and include in the submission, but certainly in my mind it should be about the finalising of the investigation, not just having it assessed.

**Ms Smith:** No, I would agree with that. Why is there 21 days? If the matter is complex and if it had a little bit more time to be considered so as to actually reach a conclusion that perhaps it was something vexatious and not worth pursuing, I do not see why there would be a problem in having more time to establish that at the outset. Certainly in terms of our thinking and what we will be putting into our submission, we will be suggesting that as part of this inquiry some of the things that are looked at include the timeliness of investigations of complaint and whether indeed KPIs should be set and reported on each year.

**Mr McDONALD:** The Solomon review talked about the cost of an investigation being \$30,000 to councils; the Office of the Independent Assessor reports a cost of \$2,700-odd per investigation that they undertake, and you mentioned the Dillon matter at the start. I think that is probably a good case study to have a look at the specifics of or the way that happened, because I am sure that mayors who make statements would be protected by the council and have legal costs met when they are acting in their role and yet they are being subject to reporting, albeit for their freedom of speech. Is there any work, firstly, that the LGAQ has done in terms of the costs to the councils from OIA decisions and also anything you can outline to us regarding the specifics of the Dillon matter that would be of interest?

**Ms Smith:** I mentioned earlier that cases were generally reaching about \$6,300 and that there was one that was currently ongoing that was \$100,000 but it has not concluded, so the likelihood is that that will go significantly higher than that. I note your interest in the Mayor Dillon case and it is certainly one that we will be including in our submission so we can go into some more detail that way.

**Mr McDONALD:** We might have to bring these guys back for another two hours.

**CHAIR:** Yes. I flag that after we receive your submission in January we will be inviting you to come back and explore these issues further.

**Mr McDONALD:** That would be great, Mr Chairman.

**CHAIR:** We will flag that now.

**Mr Fynes-Clinton:** I assisted Councillor Dillon in that response to the OIA, but I am probably bound by issues of confidentiality about answering directly issues of costs and things like that, so I would have to talk to him first before providing you with that answer. I will just for the record let you know that that matter is in abeyance pending the outcome of this inquiry, so it is not over but it is not going ahead. It is not going forward, either.

**CHAIR:** No pressure.

**Mr MADDEN:** Mr Fynes-Clinton, are there many decisions coming out of the tribunal? I am wondering about precedent law here.

**Mr Fynes-Clinton:** There are about 20 or so, maybe a few more.

**Mr MADDEN:** Currently before?

**Mr Fynes-Clinton:** So that is 20 decided matters by the tribunal since it was reconstituted at the end of 2018.

**Mr MADDEN:** Has that provided any enlightenment with regard to precedent law?

**Mr Fynes-Clinton:** I was alluding to that a bit before: a little, not a lot. A lot of the cases decided matters relate to quite historic matters. I do not want to mislead you, but I would say the vast majority are not in relation to the legislation as it presently stands today. They are still working through older matters. I will just say now that there is even a legal issue about whether some of those matters should even be dealt with by the tribunal because of their age, but that is another matter. That is a matter we will be putting in writing and you will see the argument about that.

**Mr MADDEN:** Would you accept the proposition that the lack of decisions of the tribunal causes problems with regard to people like yourself giving advice?

**Mr Fynes-Clinton:** The short answer to that would be yes.

**Mr MADDEN:** Yes, that is what I am presuming. Without any comment, it is just the nature of things.

**Mr Fynes-Clinton:** Yes, and I will give you an example. There is an example where the exception in the old legislation is about the interest being no greater than a significant proportion—and I am paraphrasing, so do not take me word for word on that. There is one decision where a councillor was found not to have failed to declare a conflict because the particular council policy covered X part of the region and there is another decision where the councillor did fail to declare a conflict for what appeared to be a very similar set of facts and a similar effect of a policy. What we are seeing is not entirely consistent.

**Mr MADDEN:** It appears that, while we have a lot of complaints, we do not have a lot of matters being heard.

**Mr Fynes-Clinton:** No, correct. I agree with that 100 per cent, and that all comes back to whether we have too many complaints that are alive.

**Mr MADDEN:** Yes.

**Mr Fynes-Clinton:** One of the objects of this inquiry might be to find ways to reduce the number of live complaints at any given time so that we are focused on the truly significant matters of misconduct that need to be dealt with.

**Mr MADDEN:** Thanks for clarifying.

**CHAIR:** Certainly those are issues that have been raised by all stakeholders. Before we go to the member for Traeger, the member for Burleigh has a question.

**Mr HART:** I have a number of questions.

**CHAIR:** Save them, but can you find a brief one?

**Mr HART:** Following on from the member for Ipswich West, with regard to the tribunal decisions you just talked about—the two results from the one tribunal—is that the one set of members of a tribunal or different tribunal members?

**Mr Fynes-Clinton:** I think they are different but I cannot be sure. I would have to check.

**Mr HART:** Alison, in its submission the OIA has suggested a number of reforms to the current system. Could the LGAQ respond to those suggested reforms in your submission or maybe the next time you are here? I understand if you cannot answer this straightaway and you may have to take it on notice. One of the suggested reforms is to review the code of conduct for councillors in Queensland and for the LGA to consider whether the implied right to freedom of political expression might operate as a limitation on legislative power. Could you possibly talk to that? If you cannot answer that straightaway, maybe you could answer it in the case of Mayor Dillon.

**Mr Fynes-Clinton:** The implied right of freedom of political expression—

**Mr HART:**—might operate as a limitation on legislative power.

**Mr Fynes-Clinton:** It does.

**CHAIR:** I can say that we have decided to publish that.

**Mr Fynes-Clinton:** No code of conduct can be applied so that it has a potential to create a punishment for a councillor who speaks his or her mind on a political issue.

**Mr HART:** Tim, keep in mind that this is a recommendation coming from the Office of the Independent Assessor. They are saying that things should be changed, so they think it is the other way.

**Mr Fynes-Clinton:** No. We would, with respect, disagree with that. We would say that that implied right exists and the code of conduct should be interpreted keeping that in mind, thereby allowing councillors to speak—I am going to get on my soapbox here, Mr Chairman.

**Mr McDONALD:** Protection of parliamentary privilege.

**CHAIR:** Do not encourage people, member for Lockyer. I was just about to say, Mr Fynes-Clinton, that you will get a chance to examine that in detail and charge the LGAQ accordingly.

**Mr HART:** Had you finished with that one?

**Mr Fynes-Clinton:** I will say very briefly that any politician—state, federal or local—is entitled to criticise other politicians and the bureaucracy. That is what the implied right of freedom of political communication provides.

**Mr HART:** Alison, does the LGAQ have a view as to whether anybody should be able to make a complaint about a councillor?

**CHAIR:** That is a bit broad.

**Mr HART:** Should be it limited to certain people or be open to anybody?

**Ms Smith:** No, our issue is more around the frivolous and vexatious, and the treatment of that. That is a significant area where we believe there should be improvement. As you would expect, we will be bringing forward a list of recommendations and that is at the heart.

**CHAIR:** Member for Traeger, thank you for being very patient. Robbie, do you have a question of the LGAQ?

**Mr KATTER:** I am going to keep asking the same question that I have asked before. My concern with all this is that there are rules put in place for the council to operate under. The cultural influence is hard to quantify, but it is impacting on their ability to express themselves adequately. From the responses that we have heard so far today, as I have interpreted them, there are adequate systems there but they need training to adjust to that—obviously not in all cases, but there seems to me to be some dysfunction with these new laws. Councillors have implied that there is an undue pressure on them that is setting a culture towards them in regards to having their say on things or removing themselves from a room or involving themselves properly. I welcome your comment on that.

Another part to that is that I think it has gone a step further now. In some cases it is inviting more input from operational staff when there is an absence of input from councillors and direction on policy and asserting different points of view. I am seeing activity by operational staff getting involved in policy matters because, according to the law of equilibrium, where there is a deficit someone else will move in. I see that as an issue and a problem. From all of the comments so far to that question, I do not see how it is being addressed appropriately. I would welcome your comments on that. I know it is not a very precise question.

**CHAIR:** Is it more about the culture, member for Traeger?

**Mr KATTER:** Yes. The biggest point that I want to make is the developing culture.

**CHAIR:** It is about the culture, certainly from what you have experienced, in terms of elected officials and employed staff and how they interact; is that correct?

**Mr KATTER:** To get any sort of direct answer, I would be most interested to see if there is a perceived problem. We always say that a council has to stay in its lane, but my view is that some of the operational staff are not staying in their lanes now. Perhaps that is because there is an absence of councillors assuming positions. I think it is a very real thing where operational staff, CEOs and the like are becoming more actively involved in policy-making decisions because there is not as much grunt coming from the councillors. Do you see that as a problem, where operational staff are not staying in their lanes?

**Ms Smith:** I will comment only insofar as: what we see as being really important coming out of this inquiry is preserving the independent review mechanism that the OIA presents. Our issue is more around the effectiveness of it because, when you go back in time, local government asked to have this particular body so that it was actually removing that decision-making from CEOs and others. CEOs are not elected members and there will always be issues in relation to that.

It goes back to the question around training as well and our suggestion that there should be more coordinated training. We are aware that there are a variety of different mechanisms of training that are prepared. We would like to be part of that conversation around how that could be done more effectively.

**Mr MADDEN:** It is very important.

**CHAIR:** That concludes today's hearing. Thank you for your participation today. Some questions have been taken on notice and the responses are required by Thursday, 16 December, if we can. There were a few questions and we will send those through to you. I think Thursday, 6 December is also when your submission is coming through. Thank you, again, to the secretariat and the Hansard reporters. A transcript of the proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

**The committee adjourned at 2.08 pm.**