STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:
Mr CG Whiting MP—Chair
Mr MJ Hart MP
Mr RI Katter MP (virtual)
Mr JR Martin MP
Mr JJ McDonald MP
Mr TJ Smith MP

Member in attendance:
Ms A Leahy MP

Staff present:
Ms S Galbraith—Committee Secretary
Mr B Smith—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE FUNCTIONS OF THE INDEPENDENT ASSESSOR AND PERFORMANCE OF THOSE FUNCTIONS

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 22 MARCH 2022

Brisbane

CHAIR: Before we start our next witnesses, we will go through our declarations.

Mr MARTIN: I am a member of the United Workers Union and the Australian Workers' Union. I also used to work with Councillor Cassidy many years ago at the AWU. Also, for the benefit of the committee—I am not sure if it is relevant—I was a candidate for the Brisbane City Council elections in 2020.

CHAIR: I will declare that I was on the Caboolture council from 2000 to 2008 and the Moreton Bay council from 2008 to 2012.

Mr McDONALD: I was on Lockyer Valley Regional Council and previous to that Gatton Shire Council. My brother is the deputy mayor of Toowoomba.

Mr KATTER: I was a councillor from 2008 to 2012—Mount Isa City Council.

CASSIDY, Mr Jared, Councillor, Brisbane City Council

GRIFFITHS, Mr Steve, Councillor, Brisbane City Council

CHAIR: Thank you for appearing before the committee today. I invite you to make an opening statement, after which we will have some questions for you.

Mr Cassidy: I will give a brief overview of what we included in our submission on behalf of the Labor councillors from Brisbane City Council and then, because I have not been through any of the OIA processes personally and Councillor Griffiths has, I will ask him to spend the remainder of the first five minutes detailing some of those issues.

There were a number of key issues for us. At the outset, we obviously support a system that ensures the integrity and accountability of local government—absolutely—and we think that should be applied at all levels of government. We have a unique situation where in Brisbane City Council an ethics committee was set up. It was one of the three options to deal with matters referred back from the OIA: the ethics committee, the CEO or the Lord Mayor. We accepted the proposal from the administration and council to join that ethics committee, which was made up of three administration councillors with a casting vote and three non-administration councillors. Essentially, the administration had the deciding vote in the end on all ethics committee matters.

A decision that was not a requirement of the legislation—this was a decision made entirely by the administration of Brisbane City Council—was to exclude any councillors who had two or more findings against them from the OIA, which excluded Councillor Griffiths and myself, Councillor Sri from the Greens and Councillor Johnston, the Independent councillor. The only non-administration councillors who could participate were the other three Labor councillors, so we could not nominate to be on that committee.

Subsequently, as I have detailed in the submission, the concern we had at the outset—and also the concern that the administration clearly had as well, because I read their submission—was that there was a potential for this process to be politicised, particularly in Brisbane City Council. Given we are politically divided, the only council in Queensland that runs party tickets and are endorsed by the LNP, by the Greens and Labor, we had a situation where—and Labor councils always exercised a conscience vote on matters of ethics; we did not determine positions in a party room or a caucus meeting—those three members were able to read through the documents and form a view themselves. At the final meeting Labor councillors participated in there were differing votes. One of the Labor councillors voted alongside the three administration councillors and two did not. The Lord Mayor is not a member of this committee, but the next morning he talked to ABC Radio and 4BC radio and decided to attack the Labor councillors for not voting alongside the LNP councillors and the one Labor councillor. We explained that those matters were a matter of ethics and were above party politics, but it became very evident that those decisions of administration councillors were being made in the party room before they go into the ethics committee meeting.

So Labor councillors resigned from that committee and I do not believe it will be functioning now. If it does, it will have to be filled entirely with LNP councillors and we will have no representation of non-administration councillors on it. I think that is a big issue, particularly for a council like Brisbane that is politically divided. Perhaps how that would operate it is not considered in the legislation. I certainly think upon reflection that nether the Lord Mayor nor an ethics committee that is dominated by one party is a good solution for a council like Brisbane.

The investigative methods of the OIA were of some concern to us. We have had some examples where—and I am sure this has happened with other councils—one of the Labor councillors' staff was contacted by investigators of the OIA without the knowledge of the councillor or any prior notice that there was an investigation. A call was made to the ward office, and that investigator then

asked the ward office staff member to start detailing issues that were alleged but had not yet been presented before that councillor. That made them feel extremely uncomfortable. When an inquiry was made with the OIA what this was about, I think the day after or two days later, official notice was then given of the investigation and then an official request for the same information was made to the councillor's office. I just think that is probably not an appropriate way to conduct an investigation into something where the OIA obviously determined an investigation was warranted, so I think those processes need to be tightened up.

Social media accounts are a serious concern for us. The OIA has obviously determined—and has been very clear about this—that social media accounts of councillors are treated as official council channels now, particularly for a council like Brisbane that is politically divided. We are party political. We operate our social media accounts as extensions of us as Labor councillors or LNP councillors or Greens councillors, not official channels of the Brisbane City Council. They have their own. We have not yet had an example of a councillor being put through the process for content they put on their social media, but we have seen a councillor referred and investigated over comments that were made on their account.

A councillor put up a post that was not really related to Brisbane City Council. I think it is entirely their right to do so because it is their page. They own that page. Someone then made a comment on that page attacking that councillor. I think you would probably deem it racial vilification against that councillor. Then somebody subsequently made a complaint to the OIA that that comment was on that councillor's page, and then the councillor was being investigated for somebody else making comments about the councillor on their page. I am not sure how councillors in other regional councils operate in terms of their social media, whether they themselves deem their presence as official council business or not. I certainly do not. I make full disclosure on all of my accounts that I am here on Facebook, Instagram or Twitter as a Labor councillor. I happen to be a councillor, but these accounts are not authorised by the Brisbane City Council. I just think there needs to be come clarity about how the OIA treats what happens in that space. I think I have probably covered both of those points.

Finally I mention just the lack of resources, which I think Councillor Griffiths can touch on as well, in terms of how long these things are taking. From reading through the submissions of other councils as well, that is a big issue. I think what Councillor Griffiths will detail has been well over two years now. I know that Councillor Strunk has had one hanging over his head for over two years now as well, with no resolution and no update, and I know that Councillor Johnston, whom you will hear from later as well, has lots in that space. I think there is an issue around investigative methods around resourcing, which then I think flows on to the issue of these things being left to go for too long.

Finally, this is something that was not included explicitly but I think relates to a resourcing issue. This is just sort of a personal opinion, I suppose. We see some things being investigated versus some things that are dropped by the OIA, and it seems quite odd they would investigate one complaint but not the other. I get the sense that at the moment they have so much on their books, so much backlog, that things we are referring to the OIA 100 per cent of the time are being dismissed and not investigated, not taken past the first stage, in the last six to 12 months. Everything I have referred has mainly been about the conduct of councillors in council meetings and other important things like non-disclosure of pecuniary interests. We have had a few instances of that. The OIA have come back and said, 'Yes, this councillor didn't update their register of interests. They have now done it since it has been brought up in the media down the track, but because they have updated, even though it was late, we don't really have the time and resources to investigate this even though it was a breach under the code of conduct.' I just get the sense that they are sort of hamstrung now, essentially, from investigating all of these potentially frivolous things that they took on early and have not been able to work through. I will hand over to Councillor Griffiths to detail some of those now.

CHAIR: Is your issue still outstanding?

Mr Griffiths: Yes.

CHAIR: We do not intend to talk about the substance of the issue that is outstanding, but we will certainly ask you to talk about the process.

Mr Griffiths: That suits me; I would prefer that. I have been a councillor now for 19 years with Brisbane City Council, so I have been through iterations of this. I have been through it four times. I have been charged four times at the various points we have had this committee running. At one stage, when it first started off, the debate happened in the chamber about whether you committed a crime or not, and then it was a vote in the chamber and essentially you were always found guilty. My four charges have all been brought about by LNP councillors—never a member of the public and never a staff member. It has always been a political complaint. The way it is set up even now is that, basically,

the judgement process still depends on the majority in the chamber, so it still depends on the LNP. The Lord Mayor was very clear recently when he spoke that the LNP vote as a bloc in relation to their decisions about whether we are guilty or not guilty.

CHAIR: On the ethics committee?

Mr Griffiths: Yes. He has stated that in the chamber, which is a bit disturbing. It means that you are actually going to be found guilty anyway, or found innocent, but they have made that decision as a bloc. I suppose my feeling is that the complaints are so trivial and when the complaints are made they have to be investigated and the investigation just takes so long and takes so many resources. It obviously is a ploy by your opponents to tie you up. The other thing I have found is that it will then often be leaked into the media. It is not meant to be, but it goes to the media and suddenly it is out there that you are being investigated for such-and-such. It is a political strategy that is used by your opponents and has been used, I would say, very ineffectively by my opponents, but it has been used and it is a way of tying you up.

The most recent complaint that is under this committee was made two years and four months ago. It is one LNP councillor making a complaint based on her view that is then put up. I got four stat decs from people who observed the same interaction and yet that complaint is still going on. You sort of think, 'Is this real, that someone can make a complaint based on how they feel about a situation and then suddenly you are tied up for two years and four months in a quagmire, not going anywhere?' It is just such a waste of time. That would be my point there.

The other point is that I really do not think this follows due process in terms of: how can you have the people who are making the complaint about you also judging you? You should not have politicians making judgements about other politicians. It is not going to lead to a fair outcome. I would encourage the committee—and I do not know if you are able to, but it would be interesting—to look at all the complaints that have come from Brisbane City Council and find the number of times the Greens and the Independent and the Labor councillors have been found guilty and been charged, given that we only make up seven people in the chamber, and the number of times the LNP, with 19 people in the chamber, have been charged or not charged. There is a gross discrepancy there. It certainly shows, I believe, how the system is being misused. I think that is really all I have to say.

CHAIR: The issue you make of timeliness has been made very strongly by everyone who has made submissions. You have talked about a couple of ways to view that. If timeliness is addressed you have less stress for the councillor, less time and effort tied up and less chance of the complaint being used politically; would that be a fair summation?

Mr Cassidy: I do not know, on your last point, whether it would mean less political use of it—potentially more if these things are dealt with quite rapidly. I do not know. That is just a thought. I think in terms of dealing with things that should be dismissed and ultimately will be, dealing with them much more quickly would lessen that sort of stress that we hear and I have read about in all of those other submissions from regional councils as well around that. I do not know what the answer is, whether it is more investigative resources, more staff to do this or better processes. I sort of get the sense, hearing the Independent Assessor's comments at the LGAQ conference, basically that until this is all tested this is all a bit academic and they are just sort of going through what they can. It just did not seem to be clear enough around what should be investigated, what should not be investigated, what can be dismissed quickly and what cannot be and so things seem to be paralysed with the inability to make a decision on what should be very simple things.

Mr Griffiths: Can I add that it is also the breadth of what we can be charged with. It is so broad. It encompasses so many things. State members do not have it. Federal members had it. If you did have it you would be in the same situation we are in. I do not believe we are worse politicians or we are more evil. I just think it is so broad. It is almost too broad.

CHAIR: That comes down to the code of conduct, and we have talked about how there is an obligation to treat everyone fairly, justly and with respect. The member for Bundaberg is across this. That is what you mean about the breadth of things that can be captured by that?

Mr Griffiths: Yes. Anyone can make a complaint: 'I felt you spoke to me rudely.' Okay, so you are being investigated.

Mr Cassidy: In essence, that is what that complaint is about. We have a genuine issue about a councillor receiving $50,000 or $100,000 in the form of a donation to cover legal fees that was never disclosed. The OIA said that, even if it was disclosed two years late, that is all right.

CHAIR: On the issue of the ethics committee, I understand that issues of inappropriate behaviour are referred back to the ethics committee after the complaint has gone to the OIA; correct?

Mr Cassidy: Yes.

CHAIR: Are the deliberations of the ethics committee held in private or are the deliberations and the conduct of the committee in confidence?

Mr Cassidy: No. The ethics committee is a standing committee of council. We have included in this submission, at attachment A, the responsibilities and membership of the Councillor Ethics Committee. It is a standing committee of council. In Brisbane City Council all standing committees are open to the public, so all of the agendas and minutes and proceedings of the meeting are published online. However, they are not genuine minutes. It will say the meeting was opened, this matter was discussed and these councillors were present. It is not like *Hansard*. They are just sort of records of proceedings, I suppose. That is all open. The media can attend.

CHAIR: People can attend?

Mr Cassidy: The public can attend. You do not need to register.

CHAIR: A public meeting of the ethics committee?

Mr Cassidy: It is a public meeting, yes.

Mr Griffiths: And report on it.

Mr Cassidy: Whatever is said in that ethics committee meeting can be reported. Documents that are provided to councillors cannot be released, but if those documents and the charges against that councillor and what they were accused of is said out loud in that ethics committee meeting and there is a journalist or a member of the public in the room, that can all then be reported on because that is all public.

The other issue is that councillors are notified every time there is an investigation occurring by the Councillor Conduct Tribunal. Whenever that investigation is occurring, every single councillor is sent a package in the mail which details the allegation—'detail' is the wrong word. It says what the allegation is in a summarised version but none of the documents that are referred to are ever given to us. Then if we want to find out what a councillor is being accused of—because as councillors we are given the opportunity to, I suppose, before that happens, raise this with the OIA or even have it brought up in a full council meeting as well—we then have to go and ask for those documents and then if we are given those documents, which is a very backwards and forwards process, we are not allowed to share them with other councillors. Each councillor has to individually go and get them. There seems to be this strict, tight control around what is and is not alleged happening, but then when it comes to an ethics committee meeting it is all out in the open to be discussed and reported on.

Mr Griffiths: My experience has been on several occasions that that does not happen and the information gets released to the media and is used against you. That has happened two times. I know it happened once and we actually found out it was someone in Campbell Newman's office when he was mayor.

Mr McDONALD: With regard to costs, we are trying to get a picture of what this costs the ratepayers, whether it be independent legal advice or your own legal officers' time. I would like you to take it on notice and provide us information regarding that cost. Obviously there is also the personal cost to yourself and your family. If you could take that on notice, that would be appreciated. How do you propose to improve the OIA as opposed to the ethics committee that you talk about? Our charge is to make sure the OIA is aligned to the public interest. I would be interested to hear your comments about that.

Mr Cassidy: I think in terms of costs incurred by council, the administration, who I think are not appearing here, would be the best ones to answer that. We can certainly ask for that information to give to the committee about what those costs have been. We can request information. I am sure they might be able to provide it to you if you ask as well. We can certainly attempt to do that. There is certainly time that is spent by a councillor and their staff, which is all on ratepayers' time.

Mr Griffiths: I would say from my perspective that it would be about $2,000 to $3,000 per case personally paid. In the most recent case we were covered by Local Government Association insurance which we had not been told we were covered by.

Mr McDONALD: I do not think the inquiry has heard of a committee being set up by a council before.

Mr Cassidy: Brisbane is the first.

Mr McDONALD: It is interesting to hear that. How do you propose that that would be improved? I can share that we here have a committee where the chair can use a casting vote; our Ethics Committee can also use a casting vote if controlled by the government. How would you propose to improve it?

Mr Cassidy: I think that the Ethics Committee that is convened in the Queensland parliament is very different to the one that is a standing committee. Our ethics committee is a standing committee in the same sense that the public transport committee or the Community, Arts and Night Time Economy Committee is a committee in council. It is very different. If the way in which the matters were referred to the Ethics Committee here were done in council, it would probably be very different, I think. I just do not think it is an appropriate way to deal with these matters. I think it should be more independent.

There were three options—and I do not know what the administration will do now that there is no functioning ethics committee in Brisbane City Council. The other two options are to have the Lord Mayor determine the cases personally or have the CEO of the council do it. Out of those three, if we had to pick one it would have to be the CEO, I would think, but there are obviously issues around that because under the City of Brisbane Act the CEO can take direction from the Lord Mayor. The legislation applies a system Queensland-wide, but there is one council that stands out that is very different to any other council and that is Brisbane City Council. It is overtly political; it has operated for almost 100 years in having an administration, a government and an official opposition. The opposition leader and deputy opposition leader and shadow chairs of committees are recognised as legitimate positions within Brisbane. We always operated differently previously and that had lots of issues, obviously. I went through two of those myself in the previous system so I do not think that was a very good one. I think this system we have moved towards is better than what we had under Brisbane City Council, but there are still those elements that were applied to Brisbane that probably should not have been. They should have been slightly different, I think, given the political nature of the council we operate within.

In terms of what would make the OIA operate better, I think there should be some much clearer guidance particularly around the social media stuff, around what can be dismissed as frivolous. I think they might be a bit worried about dismissing some things and taking some things to full investigation. I think there should probably be more resources in terms of investigating things to speed up that process. I would take on board what the Independent Assessor said at the LGAQ which actually really cleared it up in that, until some of these things are challenged and there are court case findings, they do not really know how far they can push these things and what should be investigated and what should not. In the absence of that, there should be some amendments to the legislation that really codifies it and makes it very clear—I suppose that is the point of having this inquiry—to find out some of those things.

CHAIR: We will go to the member for Bundaberg and then we will open it up to other questions. Before we get to that, I just confirm that you said that you can access support for legal fees and the BCC can access the LGAQ scheme for those legal fees.

Mr Griffiths: We can.

CHAIR: Do you know how much?

Mr Griffiths: No, I do not know.

Mr Cassidy: I think you do not get reimbursed by your own council. They are provided by the LGAQ, I believe, if you need legal assistance in those matters.

Mr Griffiths: They cover it directly, so—

Mr Cassidy: I think it is covered by our membership of the LGAQ.

CHAIR: Yes, so we might ask the LGAQ for specific details about that later.

Mr SMITH: Chair, I might be overly cautious and declare that I used to be a branch member in the same branch as Peter Cummings, who is a member of the Brisbane City Council opposition. It just came to mind.

CHAIR: Yes.

Mr SMITH: Mr Cassidy, you spoke about the political overtness of the Brisbane City Council. Could you maybe reflect on how the culture within Brisbane City Council is different to those other local governments, especially across regional Queensland?

Mr Cassidy: In terms of the council as in the chamber or the council as in the organisation?

Mr SMITH: I would just highlight any sort of cultural differences that you have seen between the way that councillors can interact with each other in the public and how that may be different in a political environment to other councils around regional Queensland.

Mr Cassidy: Yes. It is certainly not collegiate and I feel like it is less now today, in 2022, than I have ever seen it, and I have only been there since 2015. It is certainly very politically charged. I would not say it is adversarial when we see each other at community events necessarily, but council

meetings can be very heated. We saw the police called last week to the council meeting. I have been escorted from the council chamber by the police before as well, so there is probably not a lot of love lost between Labor and LNP councillors these days. What I personally find—and Councillor Griffiths could add to this—is that, given the nature of the power that both the Lord Mayor and the chairs of those committees have, which operate in a very similar way to ministers, I suppose—they should not; I feel there are lots of breaches of the City of Brisbane Act and City of Brisbane Regulation in the way in which direction is given to council officers by LNP chairs of committees; they do not have that power—the way in which it is run there is a lot of power exercised.

We are increasingly also seeing council officers saying that they have been directed by the chair's office not to give us information, whether it is verbal or in writing. If we want anything, we need to write a letter or an email to the chair of that committee and they will then get the officer to provide them some advice and then they will give it to us, whereas a couple of years ago we could have picked up the phone to the manager of the north region of parks and asked a question about a project and got an answer and said, 'It's good to know that construction's on track.' Quite often that direction is given now that we are not allowed as councillors to do that. I do not know if that applies to LNP councillors or not, but it certainly applies to the—

Mr HART: It is like the LNP state members of parliament.

Mr SMITH: Please continue, Mr Cassidy.

Mr Cassidy: I would note, though, that the City of Brisbane Act and the City of Brisbane Regulation are very clear that it is illegal to do that.

Mr HART: You have the method with the Crime and Corruption Commission or the OIA to make those complaints.

Mr Cassidy: And they regularly dismiss them.

Mr SMITH: Point of order, Chair: I believe I have the call to ask questions.

CHAIR: Yes. Let's just focus—

Mr SMITH: I will let you finish.

Mr McDONALD: Could I—

CHAIR: Hang on a tick. The member for Bundaberg has his question. You wanted to make a point?

Mr McDONALD: I just would like to see information provided by the councillors. It is very convenient to make statements here, but if we could receive information about the complaints that would be good.

CHAIR: We can ask for further correspondence on that if need be.

Mr McDONALD: That would be appreciated.

CHAIR: What you want to know about is the system for requesting information from council officers, because that ties in—and I agree—with what we saw today in the paper in terms of the policies and how councillors can get information from officers. Member for Bundaberg—

Mr McDONALD: And the facts about some of these complaints, Chair, because it is convenient to make these statements without actually—

CHAIR: We can write and request information about the process for policy. That is the straightforward way of doing it. We are answering the member for Bundaberg's questions.

Mr SMITH: Thank you, Chair. I am very glad that I live in Bundaberg. On the code of conduct, and we will continue along this line of questioning, the code of conduct is the same for Brisbane City Council as it is for councillors all across Queensland; is that correct?

Mr Cassidy: Yes, it is now. It did not used to be. It was a Brisbane-specific code of conduct previously, but we now come under the same code of conduct post the 2020 council election.

Mr SMITH: In terms of what we would call intracouncil complaints, it sounds as though they are accepted as being of a political nature. Do you believe that there are elements of leniency between councillors in terms of not putting in complaints based on the political nature in that they understand that the opposition is going to have a go at the administration, the administration will have a go at the opposition and there are fewer complaints by councillors saying that a councillor has breached the code of conduct?

Mr Cassidy: From my perspective, I very rarely put complaints in. Where I have it has been about legitimately not following what is required in the code of conduct or not updating their register of interests or meeting conduct, so the chairing of council meetings. We did not have a quorum at a

recent meeting for much of the meeting, so the decisions of that meeting would not be legitimate because there were not enough councillors in the chamber—things like that. I have made referrals like that, but I have never made a complaint against another councillor based on interactions I have had, whether it be in the chamber or out in the community, but I know Councillor Griffiths has had complaints made against him like that.

Mr Griffiths: I have had complaints obviously made against me; I have never put a complaint in. Just to get back to your previous point, I think the chamber and council is very toxic and a bullying environment, particularly for an Independent councillor. That would be my experience. You would not accept it in any other workplace.

CHAIR: We have run out of time and we need to move on to Councillor Johnston in a moment. Do we have one more question?

Mr HART: I have questions.

CHAIR: Go for it.

Mr HART: Councillor Cassidy, how many complaints have you made in the last 12 months, out of interest?

Mr Cassidy: I could get back to you. I cannot remember off the top of my head. There have been two or three in the last six months, I believe. I would be happy to provide that.

Mr HART: Do you believe that—

CHAIR: Just before you continue, does that breach confidentiality by providing that?

Mr Cassidy: Not necessarily the detail. I could give you the number, I imagine. I am happy to do that.

CHAIR: Yes.

Mr HART: Just numbers.

Mr Cassidy: I will get some advice around that.

Mr HART: Just numbers.

CHAIR: Bear in mind that we have been trying to protect the confidentiality of complainants.

Mr HART: Given the politicisation of the Brisbane City Council, do you believe that the same rules should apply to councillors and state members? Obviously we are not under the same sort of scrutiny as a councillor, so would you agree that the same rules should apply?

Mr Cassidy: Yes. I think the nature of our roles is exactly the same as the nature of your roles as a state member, so a ward in the Brisbane City Council is the same size as a state electorate. We have the same sort of office—electorate office, a ward office. We operate in a very similar way in that there is a government and an opposition, so I think they would probably be more in line. Yes, I think we would be more in line with state members than councillors in, say, the Lockyer or Mount Isa regional councils I think, yes. That is my opinion.

Mr HART: Good; we agree on that. What about, then, the processes of the council versus the state government? As the member for Lockyer said, basically the Ethics Committee here is the same as your ethics committee, so would it not make sense then that your committee system—your processes for dealing with these sorts of things—match the same as the state government, because they appear to?

Mr Cassidy: I do not know enough about how your committees work. This is the first time I have ever seen one in action and I am not sure if this is how they normally operate either, so I do not know if I could actually—

Mr HART: This is how we normally operate.

Mr Cassidy: I do not know how—

Mr HART: And you—

Mr Cassidy: You get on a lot better. I can tell you: you get on a lot better than we do in committee meetings—

Mr HART: Sometimes.

Mr Cassidy:—in council. So I do not know if I can actually—

Mr HART: Our Ethics Committee is basically the same as yours except it is not open to the public, so we get the same results. The administration controls it, so the same thing applies there. Do you think councillors have an implied freedom of speech?

Mr Cassidy: As separate to anyone else?

Mr HART: Yes, or a lesser or higher level than, say, a state member or a federal member?

Mr Cassidy: In terms of how we are able to publish what we want and say what we want, particularly under the system of the OIA, I suspect we probably have less.

Mr HART: That would be my view too; agreed. That is it.

CHAIR: Thank you. The time for this session has expired. We do have some questions on notice, and we will send something through.

Mr Cassidy: Send something through, yes.

CHAIR: I will just go through those: Councillor Cassidy, number of complaints; Brisbane City Council, administration costs. We are also—and I want to add into this—requesting information or clarification or assistance from officers in terms of what is the process and what is the policy. We are going to ask that for BCC, but I also asked that for South Burnett, bearing in mind today's paper article. One thing I wanted, with the indulgence of the committee, is asking the BCC administration the role of the Councillor Conduct Tribunal, because we notice in the appendix here that their referrals come from the CCT to the ethics committee, so we need that clarified.

Mr Cassidy: Yes. So it is referred by the CEO to the—

CHAIR: CCT, Councillor Conduct Tribunal.

Mr Cassidy:—CCT and the CCT then refers back to council.

CHAIR: Yes.

Mr Cassidy: If it is the lower end, if it is the inappropriate conduct.

Mr HART: It is the same process, but then the CEO sends it to the ethics committee; is that right?

Mr Cassidy: It goes directly to the ethics committee because it is set up.

Mr HART: It goes direct to it?

CHAIR: But it goes through the CCT?

Mr Cassidy: Yes, so it goes up and then back, but the calling of those ethics committee meetings is entirely up to the chair and the administration. There have only ever been two or three ethics committee meetings. There has not been one now for I do not know how long—a year.

CHAIR: Yes, so we will ask for some specific clarification around how that works.

Mr Cassidy: I am not sure how many have come back to council awaiting a decision by either the ethics committee, the CEO or the Lord Mayor. I do not know what is sitting there.

CHAIR: Okay. That concludes this session. Thank you both very much for that. We ask that answers to questions on notice be returned to us by 1 April.

Mr Cassidy: Sorry; will that be communicated to us?

CHAIR: Yes, so we will give you a copy of the transcript but also we will be in direct contact with you about the questions that we need answered.

Mr Cassidy: If we are doing a request for information, we probably will not get it back by 1 April.

CHAIR: If that is the case, then let us know if those time frames are not suited to you.

Mr Cassidy: There is a 10-working-day turnaround.

CHAIR: Okay. Thank you both very much.

JOHNSTON, Ms Nicole, Councillor, Brisbane City Council

CHAIR: Nicole, we invite you to make an opening statement and then we will have some questions for you. Take your time.

Ms Johnston: Thank you. Good morning, committee. I am a Brisbane city councillor in my fourth term—three terms elected as an Independent, first term as a member of a political party and a very successful Independent since then. I made a submission to this process, as I have done with all other legislative changes to the City of Brisbane Act and councillor behaviour changes. I am probably the councillor in Brisbane City Council over my time who has had the most complaints about them. They all started after I became an Independent member of council. There were not any, but then it was when all the problems started, with Newman anyway. The process has become weaponised.

I want to talk specifically about the OIA, but there are many issues that were raised by the councillors prior to me that I would be happy to comment on as well. Firstly and most importantly, the biggest problem at this stage in my view is that the OIA is a failed agency. I say that with a very heavy heart, because I was extremely hopeful that an independent process would allow some fairness to come back into the process of monitoring the behaviour of councillors. The previous CCRP process run by Brisbane City Council was a political witch-hunt controlled by the LNP and used inappropriately, in my view.

The reason I say that the OIA has failed is based on the failure to resolve complaints in a timely way. That is a fundamental part of natural justice. For an organisation that is supposed to be oversighting the behaviour of elected officials to fail to do that in a timely, fair and transparent way is very problematic, and I will give you an example but without any details. Two years and five months ago, the CEO of Brisbane City Council made a complaint about me which I will eventually at some point in the next decade perhaps be able to refute. He did not act on it at the time he told me he made a complaint in December 2019. The day after the council elections in 2020 he referred it to the OIA. As we sit here, it is two years since the matter was referred to the OIA.

For the first year I asked some questions: 'What's happening? When am I going to be told what's going on?' There was just no response. After a year I got my solicitor involved because what is happening is a pretty serious complaint. The CEO of council has made a complaint against me. I would like it resolved. It is hanging over my head. It is unpleasant. It is stopping me from talking about a critically important issue in my electorate.

Another year has gone by with my solicitor advocating for me. It is only since this process this committee has started that we got a reply saying that they now believed it might be something they would refer on to the tribunal for investigation—so we have not even had an investigation yet—but their solicitors at the OIA are still reviewing whether or not they are going to take action on it. That is two years and five months after the complaint was made. I have not yet had the opportunity to fully respond to all of the allegations and for the matter to be properly assessed to determine whether it will be investigated. That is an assessment process 2½ years on. I know other councillors are at different stages in that process.

What I will say is a little bit different to Councillor Cassidy. A lot of complaints definitely have been made against me under the previous council process. There are only two under this OIA process. The other one is a technical one. Under the rules, if you are noted in the minutes for interjecting on three occasions in the space of a year, that automatically becomes a referral to the OIA, so one of those has happened to me.

CHAIR: Is that council policy?

Ms Johnston: That is in the legislation. That is very helpful—thank you very much, state government, for that one! If that happened to you guys, I cannot imagine how many times you would be up. I have been noted in the minutes more than any other councillor and on multiple times, so there is a technical breach that I will have to consider—again, probably at some point in the next decade. Timeliness, fairness and transparency are my most significant issues.

Secondly, I think there is an issue with the way in which the OIA has handled the substantive matter against me. There was an allegation by the CEO. I have never been given any evidence to support their allegation. Their allegation is unfounded, as far as I am concerned. I look forward to dealing with it in due course. All of this has been done and I have never been presented with any evidence to support the allegations. This is 2½ years into it. If I was a murderer, I would have more rights up at the Supreme Court than I have under this process that is currently unfolding.

I will take as many questions as you like, but I would also like to mention that the ethics committee of the Brisbane City Council is a complete failure. I have sat in and watched them because I would like to understand how that process would work. Technically, I would be eligible to sit on it because I have not had any complaints resolved against me and it was some years before the other ones. The ethics committee has completely failed.

I have not yet figured out what to do about this OIA process which is hanging over my head. I suspect we will end up in court. What I wanted to let you all know is that I have on three occasions taken Brisbane City Council to court. I am presuming this is reasonably well known within parts of the department of local government. On all three occasions we were successful: on the first occasion council and I agreed on an outcome; on the second occasion we won; and on the third occasion we also won. On all three occasions, I have been defending myself after a decision of the CCRP has been made. So I am not proactively doing this; I am defending myself when there is a bad process that has happened. Most recently that was in 2017-18, when I was unlawfully ejected from Brisbane City Council from a meeting. The Supreme Court judge was very clear that she did not see any grounds for my expulsion. Unfortunately, this happened again last Tuesday, and I suspect there are going to be formal complaints made against me and we are going to be going through a process for the next decade.

For my whole time as a Brisbane city councillor, this is what I have dealt with. I am very lucky in the sense that, even though I am a little bit emotional today—you have to excuse me; I have got nine flooded suburbs and 3,000 flooded residents so it is a pretty tricky time—I am a very robust person, I am a very capable person, and I give as good as I get. I am a former political staffer. I understand and use politics in a very substantive way, and I just want to make sure there is some fairness in the process. I think there are definitely some problems with the OIA.

I could provide you with some more information about communications issues and legal fees. I would just say to you that I disagree very strongly with Councillor Cassidy about the CEO of Brisbane City Council. He is a political appointee. He responds directly to the Lord Mayor. He wields enormous power in Brisbane City Council and in my view has acted inappropriately towards me through the restriction of information through the complaints process.

I absolutely would not support any removal of powers back to Brisbane City Council. There has to be an independent process and we have to find a better way to do that. I suspect that the OIA has become bogged down in its administrative processes. Whether or not it needs to be within a different department of the state government that has more of a legal mindset, I do not know what the answer will be to fixing this. I have seen some of the testimony from your previous hearings. You have thrown more resources at it. There are more people. These complaints are still sitting there and years later they are not addressed. I am not sure how you are going to find your way out of this one by just putting more resources into the existing process.

I am very happy to take any questions that you have. Do not worry if I get a bit teary. I am perfectly fine. If you would like, I can address the legal fee issue if it is useful for the committee.

CHAIR: We might come back to that one.

Mr SMITH: It fascinates me a bit around administration and opposition in council. Has this come through just a natural formulation of accepted politics within a large metropolitan area? The theory is that the council can still operate without a recognised administration; is that correct?

Ms Johnston: Brisbane City Council is not set up that way. The City of Brisbane Act recognises formal structures for the government, or the administration as it is called, and the opposition. When I became an Independent back in 2010, I was the first Independent since World War II, so it has been a highly politicised council for most of its life. We got our first Greens councillor in 2016, so there has been very little change between the political compact, and that was disrupted pretty significantly in 2010 by what happened to me at that time.

Up until 2010, for the first 18 months of my political life I was part of the administration. That act changed something fundamentally at Brisbane City Council and it has become an awful, awful place—an awful environment in which to operate. When you make a point of order and the police turn up to remove you, it is not pleasant—that kind of thing. It has become a very difficult place to operate because the politics of how the chamber is run and how the council is run is overtly political.

Mr SMITH: I suppose come election time that political nature accelerates, becomes heightened. Opposition are a lot more critical of administration and administration are a lot more critical of opposition. Would that be a fair comment?

Ms Johnston: Yes and no. I am not considered to be the opposition but this is what happens regularly. I am called the leader of the Labor Party down at the Brisbane City Council chamber, which is just rubbish. To be fair to the Labor opposition, they are very small so it is very hard for the Labor Party to campaign. I actually think that come election time the resources that the incumbent administration has—which are all the resources of the organisation and the resources of their political party and the overwhelming incumbency they have—makes its very difficult for anybody else to get a look-see. I am an experienced political operator and I knew what I was doing when I became an Independent, but if you were just starting off as an Independent today I doubt you would get elected to Brisbane City Council. I do not think it would be possible.

Mr SMITH: In the Code of Conduct, under 'Standards of behaviour', section 3.3 says that councillors should—

At all times strive to maintain and strengthen the public's trust and confidence in the integrity of Council and avoid any action which may diminish its standing, authority or dignity.

Can that standard actually be achieved in the Brisbane City Council that has now become so politicised?

Ms Johnston: No.

CHAIR: Member for Bundaberg, is that from the Code of Conduct?

Mr SMITH: It is from the Code of Conduct under 'Standards of behaviour' at section 3.3.

Mr McDONALD: I will ask the question about costs. Obviously, there is a personal cost to you and your family but there is also independent legal advice. Can you share those with us?

Ms Johnston: Firstly, I will say that I was not aware that we were covered by insurance. In the first two Supreme Court cases that I took to defend myself, I remortgaged my house to pay for them so it was expensive. I used all of my savings. It was not until I read a media article about the Logan council and the problems they had and I read that they were covered by insurance. So I wrote to the CEO of council and I asked him and I got a very short reply back which did not tell me I was covered by insurance. This is the CEO of council who did not tell me what I wanted to know. I went and did a file request and got hard copies of all of the insurance coverage for Brisbane city councillors, I read it and I found out I was covered. In the third Supreme Court action that I took, I was able to go through the process of having that covered by our council insurance.

My legal fees have been in the low $100,000s for these Supreme Court cases. I do not know how much Brisbane City Council's are but they would be quite significant. The Labor Party did see some cheques go through a few years ago, and they were quite high at that time. The three court cases would be hundreds of thousands of dollars. I do not want you to think that this is something proactive that I am doing. I have done all of these things because a decision has been made about me that has been an abuse of power, in my view, and I have gone to the court seeking relief from that abuse of power. I will say again that on all three occasions I have been successful.

There must be an appeal mechanism from this process if it is to continue. I know that the OIA have said that they do not think there should be. That is fundamentally wrong, in my view, and I strongly disagree. I was also very hopeful that QCAT would be a good option—a much lower cost and you might not need solicitors, barristers or all those things. I would just say to you that once we get to the Supreme Court it is enormously complex and expensive. It takes a year or longer and hundreds of thousands of dollars by both the councillor and the council to resolve the matter.

Mr McDONALD: Those three matters were not OIA matters, though?

Ms Johnston: They were under the previous scheme. I suspect we will probably test what happened on Tuesday. There is no doubt the LNP will make a complaint against me, it will go through a tribunal process and it may be that, at the end of the day, I will have to go to court—but that could be a decade or more away. I do not know.

Mr HART: Nicole, at any stage—and I do not want you to give specifics of what the issue is with the OIA—has the OIA ever advised you what the penalty could be at the end of the process so you could judge whether you needed legal advice or how much money you may spend on the process?

Ms Johnston: They are listed in the legislation and they can be quite significant. You can be removed as a councillor; you can be suspended; you can have monetary fines made against you. There is a whole range of things. They are listed in the legislation.

Mr HART: You assume it is the worst-case scenario?

Ms Johnston: Absolutely. There is no other option.

Mr HART: Would it be helpful if the OIA said, 'The penalty for this particular thing could be somewhere between here and there'? Would that assist?

Ms Johnston: You will have to excuse me, but the very first time that the previous process, the CCRP process, was used against me was when I was unlawfully ejected from the Brisbane City Council chamber. That was back in about 2011. The outcome of that process was—this was the very first time a complaint had ever been made against me—that I was fined the maximum penalty, $5,500, which I paid. Stupidly, I paid it. I was also ordered to apologise. Someone else wrote a set of words for me and I was told I had to read them out. As I was attempting to do so, the then chairman of council shut the meeting down so I could not speak. She then made a complaint that I had not made the apology, and that is what I appealed in the Supreme Court a couple of years later and was successful. The very first time a complaint was ever made against me I received the maximum penalty.

Mr HART: That did not come from the CCT; that came from council or—

Ms Johnston: I do not have any confidence that the OIA will act in any fairer kind of way. At this stage you have to presume that you will get the worst penalty possible, which could mean you are ejected or removed for advocating for your community. That is what we are doing here. I have not abused anyone. I have not sworn at anyone. I was talking about road projects in Annerley.

Mr McDONALD: With regard to the public interest and time delays—and you made some suggestions in your submission—how do time delays meet the public interest test?

Ms Johnston: It is not reasonable that elected officials are tied up with attending to these issues. It also prevents us from talking about matters. There is a really serious road project in my ward, in Annerley, where three people have died. Every time I even mention it I feel like someone is going to make a complaint about me; the CEO is going to come back and have another go at me. Meanwhile, there is this huge road issue that we cannot—

Mr HART: Sorry, you should not be talking specifics.

Ms Johnston: It is all in the public—

CHAIR: It is fine; it has been covered in the media.

Ms Johnston:—and it is in the public sphere. The biggest issue with all of this is that it prevents us from doing our job. It makes us concerned that if we say something that somebody else thinks is wrong then we will have to go through this process.

If you could just put yourself in my shoes and you were advocating on an issue of importance in Burleigh that the government might not like but you think is really important to your constituency and you say something they are not happy with and the next thing you know you have to go through this process, that is what it is like.

Mr HART: I understand.

Ms Johnston: It is the same the other way—and you guys are in opposition as well. In my view we really need to make sure that, if the OIA continues in the way that it is, it is evidence based complaints that are made. At the moment an allegation can be made without evidence. That is problematic in my view. If that evidence cannot be produced by the complainant within a short time frame—a month should be enough—then that complaint should be dismissed, because an unfounded allegation that is not supported is problematic. We are then boxing at clouds basically to try to say, 'No, that's not true.' There have to be some time frames around resolving matters. There have to be evidence based complaints. You have to get rid of some of this frivolous stuff that the OIA is dealing with.

There was actually an anonymous Twitter troll, presumably LNP—who knows? I responded to somebody on Facebook. It was not impolite or rude or anything, but they did not like it so they sent a complaint about me to the OIA. I wrote back to the OIA and said, 'Seriously, is this what you're here for?,' and they dismissed it because it was nothing. There definitely need to be some rules around social media. It is very clear that they are looking at things we say in a very political and robust environment. Certainly I think there needs to be some clarity around those rules as well.

I do not officially operate anything for Brisbane City Council. My Facebook page is paid for by myself. My Twitter feed does not cost anything. It is certainly where I conduct a lot of fairly robust political debate. It seems odd that they are trying to hold us to a standard of a public servant when we are not.

Mr McDONALD: That is a good segue to the next session.

CHAIR: The time for this session has now expired. Thank you very much. We do not have any questions on notice. Thank you very much for your time.

Ms Johnston: Good luck. We appreciate you looking at this. It is very important. I want to thank you for reading my submission and for letting me come along today. If you can help streamline this and make it more efficient it would be extremely valuable to all councillors. Thank you very much.

DILLON, Mr Sean, Mayor, Barcaldine Regional Council

CHAIR: We welcome to the table Ann Leahy. Sean, good morning. Thank you for coming all the way to appear before us today. Would you like to make an opening statement? After that we will have some questions for you.

Mr Dillon: Thank you very much. I must admit it is a little bit of a daunting experience, made all the more so by the fact that the member for Traeger was my first debating captain in high school. He ran a tight ship then and I am perhaps pleased he is a long way away today.

CHAIR: His eyes are still on you, though.

Mr Dillon: I am sure they are. Good morning to you all. Thank you for the opportunity to appear this morning. At the outset I would like to acknowledge the traditional owners of the land upon which we meet and also the traditional owners of the Barcaldine Regional Council area and their elders past, present and emerging. I do not intend to rehash my written submission. That is something I will gladly comment on if asked, though. I would like to use this statement to highlight some developments since that submission was composed and also to bring forward to you some solutions.

The Independent Assessor has, as you may be aware from their press release on the matter, decided on 15 February 2022 to dismiss the complaint against me that had been categorised as a possible misconduct. Some would say, 'Good thing. There was nothing to it, anyway. Common sense,' and so forth. However, a detailed look at the actual reasons for the dismissal reveal a far more sinister, cynical and concerning situation.

In my opinion, the IA was clearly looking to get my case off the books before this day arrived. Having had 10 months prior in which to deal with the matter only to place it on hold when this inquiry was convened, advise me of that, then restart the investigation without advising me and then use wishy-washy, highly irregular language and observations to move it on can only leave a set number of conclusions. The first unprofessional and administrative failing was the failure to notify me that the investigation had restarted when the written advice clearly stated that the matter was to be delayed until this committee completed its work. It was underhanded and incompetent administratively, given part of the genesis for this committee's work was this very case.

There is also a substantial failing and publicly demonstrated case of reckless administration demonstrated by Ms Florian as in her correspondence to me she stated, 'The investigation was re-enlivened on 3 February,' yet in her press release dated 15 February she stated that the investigation recommenced on 28 January. How can any sector or individual have confidence in an agency that makes such a publicly demonstrated attempt to mislead an individual with the truth around their investigation? Ms Florian does not appear to have been truthful with her advice either to myself or to the media. An office of integrity should clearly be above reproach on issues of truthfulness and public disclosure.

The second issue is the conclusion that the reason for my 'inappropriate statements' is the erroneous and 'incorrect' advice I received in the meeting. That statement was not only made in the letter to me outlining the reasons for the dismissal but also in the press release, which is a public and totally unjustifiable public humiliation of a senior member of my staff. The IA has formed an opinion relying on the lead agency's recollection of a conversation received almost 12 months after it occurred. Ms Florian has effectively scapegoated a senior council employee over whom she has no legal authority in order to use them as a shield for the OIA's administrative incompetence and legal deficiency, essentially claiming, 'I'm letting you off because your staff said the wrong thing.' In a western democracy elected officials must accept responsibility for their statements, decisions and actions, not hide behind staff, advisers or agency and departmental executives as cover.

For those of us who live in the central west, concerns about the relevant agency responsible for the management of the pandemic stretch back generationally and are compounded by daily occurrences that engender no confidence. My commentary was in very little way substantially influenced by my office's meeting and I accept full responsibility for my statements and actions, a behaviour Ms Florian would do well to appreciate.

The observation by Ms Florian in her letter that, notwithstanding my comments, the vaccine rollout appeared to have gone quite well is both ignorant of the reality and the facts as well as downright insulting. As far as I am aware, I was the first mayor and political leader in Queensland to receive my initial vaccination and my second and third jabs. I publicly promoted each of these occurrences and actively worked to promote the need for the vaccine, including introducing a rule insisting that all those who entered my council chamber be vaccinated, an act without precedent at the time in Australian elected bodies. I publicly called out those shaming vaccine recipients and

praised the overworked and dedicated staff who worked tirelessly without a break to vaccinate the west. I informed on several occasions the lead agency of local issues, yet not once did Ms Florian bother to actually ask me about any of that.

The IA also clearly stated in her press release that the OIA did not investigate me for voicing my opinion. Nothing could have been further from the truth, especially giving regard to Ms Florian's public comments to the 2021 LGAQ conference where she clearly articulated her view that councillors did not necessarily have a legal defence of implied freedom of political expression, even referencing a case which she believed to defend her position, as is outlined in my written submission. However, the point still stands. The transcript and video of the meeting clearly shows me stating my opinion. Any investigation had nothing else to investigate but whether or not I should or should not have voiced that opinion. It is misleading and disingenuous to suggest that the matter did not proceed because of any reason other than my stated opinion.

In her press release Ms Florian stated that the expression was not considered, yet in writing previously the OIA chose to escalate the incident from a matter of inappropriate conduct to misconduct purely on the basis that my council would not have the legal capacity to consider the issue through that lens. The IA's legal deficiency could not even iron out her press statements from the facts submitted in my submission under her own agency's cover and is a direct contravention of the facts in evidence.

I stated at the outset that I have some potential solutions. It is important also, though, to understand the administrative failings when considering these options. Councils are often given letters requesting further information when the OIA is considering a complaint. Invariably, we or our staff are asked, 'When was the councillor elected and have there been previous complaints?' One is an open source, discoverable question and the other can only be completely answered by the OIA itself as the agency responsible for the complaint or integrity process. This is a clear example of the administrative incompetency when they are requiring information either they already have or that can be sourced through publicly available means. We are expending time and resources, which equals dollars, to answer their questions.

There needs to be a dedicated framework developed internally to track complaints and report these to council, who are legally required to publish the number of complaints in our annual reports. The department of local government and the OIA should also develop joint information sharing on the profiles of councillors to remove the need for information gathering that should be inherently understood.

Councils across Queensland receive DAs, or development applications, which are subject to relevant provisions of the planning schemes. Commonly these schemes have three methods of development, each with statutory time frames. The more complex the application, the more detailed and prescribed the process. We are held to a standard that ensures certainty of outcome and provides for consumer sentiment to be satisfied by compliance, something alien to the OIA.

The introduction of statutory time frames would provide certainty of process for all involved, improve the timeliness for deliberating on matters and ensure that public resources are better spent. The government—well done—provided those additional resources to the IA in order to clear the backlog, yet the reverse occurred: a broadening of the case load. As a priority, the OIA needs to implement a system reflective of a planning scheme methodology to reverse the perception of the office's administrative incompetence and failure to adhere to due process.

I am sorry for that lengthy opening. I welcome your questions on this and also my previous submission. I perhaps would like to politely request whether it is possible to reconsider the publication of my submission given the advice from the OIA that the matter against me has been dismissed, advice that I am happy to table today.

CHAIR: We have had a number of requests in relation to releasing information and we do carefully consider all of them. At a time in the future, after the report, we may revisit many of these issues, but there are many reasons we have done that. We appreciate you making that request in such a respectful manner.

Mr McDONALD: You said that you received advice, Sean. Can we get that advice?

Mr Dillon: I do not know. I have advice from the OIA that the matter is dismissed, but I also have advice from the Clerk that I did provide to the secretariat around potential publication. If I have not, then I intend to.

CHAIR: I am pretty sure we have received that, but if you could give that to us it would be good. We will have a look at that before we table it. Just drilling down on the issue, looking back on where this all started, who complained and why?

Mr Dillon: That is a very good question. I do not know. It could have been broad. The journalist who printed the story in the online forum was a former mayoral candidate in the same race I was in. Also, there could have been some sensitivities from within either the Department of Health or the relevant HHS in this case. I could speculate forever.

CHAIR: In your mind, what were the actual issues that were at play?

Mr Dillon: I had been contacted and physically visited by a number of people who had concerns about, if they were unable to attend the designated day, what follow-up opportunity there would be and also for people who were mobility challenged and unable to attend. In a regional council setting we are responsible for those people's welfare. We undertake daily or multiple visits per week to their houses and work through the delivery of both state and federal government aid programs to them. Were we able to facilitate their attendance at a vaccination clinic? The time frames were one thing; physical attendance at the clinics was another issue.

The advice that I had around the very prescriptive nature—which was given in a public meeting—meant that some of those issues could have been problematic. I guess it was on top of the fact that for a very long period of time a lot of our residents have struggled to receive what in their mind is adequate access to health care, so they were building their observations on the basis of, 'This is the normal. How do we go about this?'

CHAIR: Things certainly changed once the issue of implied freedom of political expression became expressed as a defence or mitigation. What made you decide to adopt that as an argument against this particular complaint?

Mr Dillon: It was essentially because of the criticism that what I was perceived to have done against the lead agency was against a state government department. My understanding of what was put in front of me was: if we could only speak in positive terms about the decision of a government agency, we would not be displaying the high standards of leadership required of us under the code of conduct to engender confidence from the community; we are actually doing the reverse of what the OIA was saying. If we were to be muted on that front, then state and federal governments would only ever receive positive feedback from local governments, which I am sure any member of state or federal government from any political persuasion would see as a nonsensical situation they would never put themselves in.

CHAIR: Was there a decision made to go public with that defence?

Mr Dillon: I repeatedly requested of the OIA an update or a clarification of the decision. We asked for this in writing and it was not forthcoming. I did choose, yes, to place on the public record that there was an issue handicapping and muting the abilities of mayors and elected members in local government across Queensland from representing their communities not only on matters related to the health pandemic but at that time, especially because of that, a whole range of issues that our council chambers were being muted on because of the threat of the prospect of us not having that implied freedom of political expression.

Mr McDONALD: Sean, thank you very much for your submission and your courage in coming forward. The case study you have provided to us really started this process, so thank you very much. In terms of the public interest as one of the agenda items for us to consider in this inquiry, can you share with us the cost for your community and the Barcaldine council through the whole OIA process?

Mr Dillon: The cost financially was probably not as significant for us as for others, to be fair. I am aware of some pretty big horror stories. In fact, the councillor before me attested to Supreme Court battles. The financial cost for us was not substantial. There was some reputational harm through this matter being completely dragged out.

To be fair, I think the protracted nature of that discussion probably did as much harm for the HHS, if not more so, than it did for me, because broader community sentiment clearly supported the position I had taken. Continuing to drag this out actually left it not in the public interest. In fact, I think the OIA's failure to deal with this quickly and succinctly undermined the health response in a certain way—and certainly public credibility in that process—instead of dismissing it quickly. In fact, the minute it became public I noted both the Premier's and the Deputy Premier's public statements about how it is not an issue and that there had been all manner of discussions. The Premier herself attempted to put this to one side very quickly—not for political expediency but because she realised, 'What's the point of continuing to protract this?' That would be my assessment. I cannot understand why anyone would think it was in the public interest to pursue a mayor for representing elements of his community, especially the infirm or people who have to travel for work. It evidently has given rise to more considered public commentary that may not necessarily be as connected to what our public expect.

Mr McDONALD: With regard to this inquiry, we heard from Ms Florian that they take a very risk-averse approach to the assessment of inappropriate behaviour and misconduct. Were you aware that the assessment of Ms Florian was completely removing your political freedom of speech?

Mr Dillon: On legal advice I was concerned about it, but I am not really sure that I understand your question.

CHAIR: Can you clarify that question?

Mr Dillon: Please.

Mr McDONALD: Maybe I should rephrase it. Were you aware of just how risk-averse the Independent Assessor was in considering the assessment of these matters? When did you become aware of that?

Mr Dillon: No, I was not aware that there was a risk-averse process, but I was aware that it was obviously causing a great deal of consternation as to what to do with me. The trigger for that is when it was elevated from inappropriate conduct to misconduct. If it was inappropriate conduct, it would have been flicked back to council to go through a process. Our council has demonstrated an ability to do that. We have already dealt with the referral back on the lower scale. We dealt with that through an open, transparent process—again, a recorded meeting of council. We have a demonstrated ability to deal with that both quickly and succinctly. I think the Independent Assessor would have been aware of that. Elevating it to misconduct meant that it kept it in-house whilst the complex legal issues you referred to were considered.

Mr McDONALD: What do you think the motivation was for that? Why was this matter not dismissed?

CHAIR: There is a fair bit of speculation in that question.

Mr Dillon: I honestly cannot tell you that. I do not know. I do not understand what it is that we are to do if it is not to advocate on behalf of our communities and those people within our communities who need that voice the most. I do not know what the role of local government is if it is not to do that.

Mr SMITH: The statements that you made were in a live stream of the council?

Mr Dillon: We do not actually have good enough internet to live stream, but it is recorded.

Mr SMITH: It is a matter of public record?

Mr Dillon: That is correct, yes.

Mr SMITH: There is a part here where you say, 'Brett and I will have to line up and get photos of us getting the needles to inject confidence. Anna's going to go last in case something happens to Brett and I.' Who were you referring to when you said 'Anna'?

Mr Dillon: Anna was the CEO of the regional council. Looking back, it is the one statement that I made in all of that that perhaps was going to be very difficult to understand if it had been a topic of water cooler conversation the afternoon before. Anna lined up the same day as I did and received it. It was a misspeak.

Mr SMITH: It was more tongue-in-cheek; would that be fair?

Mr Dillon: Correct.

Mr SMITH: I just wanted to clarify that. With the information the OIA has given to you and you mentioned in your opening statement, does it feel as though, in a sense, a councillor can be as critical as they like as long as they are right? Is that the precedent you believe the OIA has set in their communication to you?

CHAIR: There is speculation in that question.

Mr Dillon: It is an interesting observation, because the OIA is actually saying I was wrong but because someone else gave me that advice that cleared me. The OIA made an assessment based on one version of a recollection between officers 12 months after it happened and choose to believe one side. I do not know.

Mr SMITH: It is perplexing.

Mr Dillon: It is in writing that the Independent Assessor did not consider the implied freedom of speech, so I do not know that she has actually reached the conclusion that we are allowed to say it. Her advice to me is 'I didn't consider it,' even though I think we clearly understand that did not happen.

Mr SMITH: This brings me to a point of clarity. You do not dispute that the OIA was right to receive a complaint and you do not dispute that there should be an independent watchdog?

Mr Dillon: No. I fully support an independent process for this. I think it adds rigour to integrity in local government, from people who have to sit in judgement of their peers to people out there who wish to see an improved process. I also have full respect for the process where anyone can lodge a complaint. I have no problem with the individual who took issue with my comments, but it should not have passed first base when it comes to an assessment of that.

Mr SMITH: It is fair to say that your critique is of the process and the decision-making by the OIA along that process, from the complaint being received to where we are today? You are critical of some of the elements that the OIA made in terms of assessing the complaint made against you?

Mr Dillon: Correct. I am aware there were other complaints made against individuals on my council who have been waiting since September 2020 and have had no further correspondence other than an initial request for information. Yes, it goes to the process.

CHAIR: I am conscious we have not had a question from the member for Traeger. Robbie, do you have a question?

Mr KATTER: No, I am happy.

Mr HART: Sean, remind me: how long was the matter under investigation by the OIA before it was halted when this committee started our investigation?

Mr Dillon: I received the initial request for information when it was inappropriate conduct in March 2021, and I was advised it was halted in October 2021.

Mr HART: Seven months?

Mr Dillon: Correct.

Mr HART: How long did it take for the OIA to reach a decision after the case was restarted?

Mr Dillon: You will have to assume. Pick your date. The OIA tells me that the investigation restarted on the 3rd, but she has told the press it restarted on the 28th. I received final advice on the 15th, so it is essentially 12 days or 17 days.

Mr HART: Twelve or 17 days, but seven months of investigation right at the start. The question the OIA was looking at is whether you had the right to say what you did at a council meeting; is that correct?

Mr Dillon: Correct.

Mr HART: Was there ever a decision on whether or not you had the right to say that?

Mr Dillon: No, because the assessor in her final correspondence to me said that she did not consider that. She rather considered the validity of the advice that I received.

Mr McDONALD: Sean, you said the 3rd, 12th or 15th of—

Mr Dillon: Sorry, either 28 January it was recommenced or 3 February. I received final advice on 15 February.

Mr HART: Why do you think it was so quick after the case was recommenced?

CHAIR: Are you asking for an opinion? Do you have any evidence?

Mr HART: No, it is an opinion.

Mr McDONALD: Point of order, Chair: I think that is why Mayor Dillon got in trouble in the first place—from expressing an opinion. I think he is entitled to answer the question.

CHAIR: You have been waiting for that one, haven't you?

Mr McDONALD: I have!

CHAIR: Thank you very much for that suggestion, Deputy Chair. All I am suggesting is that, where we can, we avoid speculation as much as possible on other people's motives.

Mr HART: Avoid speculation, Sean, but answer the question.

CHAIR: Thank you, member for Burleigh. I've got this. Sean, over to you.

Mr Dillon: It is an interesting observation. I probably would have got in serious trouble for that in my chamber from the OIA. It clearly needed to be dealt with. It was clearly an issue that was vexing public confidence and indeed perhaps even the confidence of political masters—your colleagues—in the OIA to do its job. The quicker the matter was resolved, it may have gone some way towards restoring confidence. I am not going to speculate that it is anything to do with today's hearing, but I did actually make that statement in my opening statement.

Mr HART: Do you have any clarity as to whether you can say something similar ever again?

Mr Dillon: I intend not to stop now that further action was not taken in considering.

CHAIR: The decision to elevate this to misconduct raises the stakes for you and other councillors, doesn't it, bearing in mind the potential outcome of that investigation?

Mr Dillon: Substantially, yes.

CHAIR: Do you think that drives a lot of the reaction from councillors once they realised, 'This is misconduct and these are potential outcomes that I could facespending X amount of dollars on legal defence, engaging lawyers and other actions that councillors may take?

Mr Dillon: Definitely. I note with interest the observation of councillors here today. As leaders of our respective chambers, especially in non-politicised councils, which the vast majority clearly are, I think it is imperative that mayors set a standard that they expect others to follow. I believe there are precedents within the state of other mayors who either fell on their sword or took drastic action as a result of a negative finding of misconduct. I am not suggesting that that is necessarily a precedent that all mayors would follow in that situation, but it is a clear precedent. It was extremely personally troubling to me that, after having given a commitment to my community to do my very best to represent them and lead them, I could have been found guilty or found to have breached the code of conduct around displaying a high standard of leadership. Was I critical? Did I have an observation that perhaps could have been tongue-in-cheek? Yes, I did. Was I failing to display the high standard of leadership required? In fact, I think it was the reverse.

CHAIR: Thank you for that. You have been very clear that that fear of potential consequences drives a lot of the reaction from mayors such as yourself when placed in this position.

Mr Dillon: I do not mean to demean or lower the impact that it has on individual councillors, but I just wish to point out that it is particularly pertinent for mayors who find themselves in that situation.

CHAIR: You have said today that you were faced with a timeliness issue and part of your frustration is to talk about issues that you think were important, to perhaps release some information. Once again, it was the timeliness issue led to that frustration and hence that course of action; would that be correct?

Mr Dillon: Definitely. I understand that really complex, involved investigations take a long time, the same as an impact assessable DA does, but for really simplistic ones where there was no dispute—a lot of these complaints that end up in front of the OIA become a he-said, she-said type of thing. Everything that was in consideration here was on public record. Literally for everything I said there was a full transcript provided, not just the piecemeal one that the journalist chose to represent, as well as the actual physical transcript. If there is an open-and-shut case—if I am guilty, find guilt. If I am not, find so and leave the time then to free up the resources to investigate the more complex matters in front of the OIA.

Ms LEAHY: Thank you, Councillor Dillon, for coming all the way down to Brisbane. In your opening statement you mentioned that the OIA had written to you saying the vaccine rollout went well?

Mr Dillon: That is correct—'notwithstanding my comments it went well'.

Ms LEAHY: How would the OIA be qualified to make an opinion in relation to the vaccine rollout in the Central West?

Mr Dillon: The only basis that I could conclude for that is that, in the very last page of her letter to me, senior officers from Central West Health advised that 'we fully cooperated and assisted with the vaccine rollout and described our assistance as "exceptional"'. That is the only basis on which she could find, because she is an integrity commissioner, not a health commissioner.

Ms LEAHY: She is basically giving you an expression of an opinion which was similar to what you were investigated for, because you were investigated for expressing an opinion in relation to the vaccine rollout?

Mr Dillon: I had not considered it through that lens but, in effect, yes.

Ms LEAHY: Given your opinion was a negative opinion at the time in relation to the rollout—and there were considerable issues across regional Queensland at that time about the rollout—do you think there was a bit of a political pursuit going on, rather than actually raising the integrity in local government? Do you think there is a blurring of the lines here?

CHAIR: I would certainly caution.

Mr Dillon: If you, by defining politics, take 'Labor' and 'LNP' labels out of it and look at the politics of local individuals—as in not my leanings left or right; there is the fact that local mayors were responsible at certain stages for elements of disaster management—then perhaps there was some—

I was asked a question here earlier this morning about what would be the genesis or what motive someone would have to complain. Perhaps there was a legitimate concern, and that is the politics at play within the HHS around someone in my position making commentary that might be deemed to be not supporting the rollout. In that lens, politically, maybe, but I have absolutely no thought—it has not entered my head at any stage; in fact, to the complete contrary—that there is any Labor left v right type politics in this. In fact, I would suggest the reverse. I have been heartened by the support I have received from politicians right across the spectrum at all levels of government over this. I guess the *Courier-Mail* views politics as Labor v LNP but, if you look at it on a local context, then perhaps that is a possibility.

Ms LEAHY: In relation to the changing of your complaint from inappropriate conduct to misconduct, were you advised as to how that threshold was moved?

Mr Dillon: Yes. I think I referenced this in my submission. I was provided advice that, due to the complex legal nature and the need—I am paraphrasing—to get more detailed assessment, it had been elevated rather than being referred back to the council. I can take that on notice and provide the exact wording if you would like, Chair, from the OIA to me in the advice that I received. I am also very confident that that advice would be contained within my obviously confidential submission.

CHAIR: Thank you.

Mr MARTIN: I have a follow-up question about the differences between inappropriate conduct and misconduct. You mentioned that the Barcaldine Regional Council has processes in place to deal with inappropriate conduct that is referred back to the council. Can you explain to the committee what those processes are? Can you also let us know what would have happened if this complaint had just been referred back to the Barcaldine Regional Council?

Mr Dillon: We use the legislation and particularly the regulations, which have very detailed prescriptive elements that dictate how councils do it. They can choose to do it either via committee or via the council as a whole. In the one case we have had, we have chosen to do it as a council as a whole. The councillor was required to effectively enter a plea. The councillor attested to the facts and did not dispute them. This is a matter of public record. The councillor then retired from the room. The range of penalties was then discussed. We gave effect to that. The councillor actually retained legal advice. We provided our findings. The councillor agreed to that and came back into the chamber. We put our findings. The councillor in question apologised for his actions, as was required.

I am quite confident that the process went seamlessly, with officer support. It was actually complex because it dealt with abuse of a series of council officers. It was a complex and politically driven—pardon the pun again. Council dealt with it extremely professionally. I am confident that a similar format would have been used. Obviously I would have been excluded from that. The deputy mayor would have had to chair that process.

At one point in this process I had offered to stand aside as mayor. I convened a meeting of my deputy mayor, councillors and deputy CEO and offered, due to the potential for conflict or all manner of public opinions, to stand aside in April when I was aware of the complaint. I was told in very uncertain terms not to do so. I elected to stay on but obviously would have had to completely stand aside from any matter dealing with it if it had come back.

The legislation is very good when it comes to how to deal with that. It spells it out in black and white. We do not need to develop an in-house strategy, notwithstanding obviously Brisbane City has an ethics committee. For the other 76 it is very good. It is not our systems that need review; it is the internal systems of the OIA, I believe, because we dealt with it within days of it being sent back.

Mr McDONALD: You raised a really great point when you referred to disaster management. I thought it important to put on the record the timing of you expressing your opinion. The mayor obviously is the spokesperson of council, but you also have a role in the disaster management framework, and a pandemic is a disaster that falls under that. Am I correct to say that your opinion was expressed before the vaccination rollout actually occurred?

Mr Dillon: For us, yes. It had commenced in other areas. Aged-care homes had started to receive the vaccine at that point. What would have been in the big cities known as stage 1a I think had commenced but in regional centres, no, it had not at that point commenced, to the best of my knowledge.

Mr McDONALD: Chair, before we end this session I would like to move that we table the submission the mayor has offered to table.

CHAIR: We can do that during the break. We have a look at the documents here and then we can come back and decide to table that at any time.

Mr HART: It is important, Chair, that it is on the public record, given that some of the questions asked today directly refer to the submission.

CHAIR: I understand that.

Mr HART: For clarity purposes, we need to have this tabled.

CHAIR: You guys are very keen to have this tabled.

Mr HART: We are now; we were not before.

CHAIR: I am very keen to have a look in that case. We will have a look at that and we will decide in the meeting whether that will be tabled and if it remains confidential or not.

Mr SMITH: This is separate to the matter with the OIA. You were a councillor between 2016 and 2020; is that correct?

Mr Dillon: Correct.

Mr SMITH: Then you ran for mayor in 2020. What were some of the difficulties or challenges you found in being a political opponent to a sitting mayor, whilst being a sitting councillor, navigating the code of conduct and trying to be politically critical without crossing the line of the code of conduct? What were some of the difficulties there?

Mr Dillon: It is a very good question and one that I think the majority of people who are in my shoes handle quite well. There is quite often collegiate respect between mayoral candidates in regional centres. I am aware that is not exclusively the case. I was very careful—and it was very late in the term when I clearly indicated and followed the appropriate processes as a potential mayoral candidate—to clearly distinguish between what was my personal opinion and what was the policy of council. I rebuffed all manner of media interviews, because I knew that they were going to request a comment about council policy.

I actually like it. I liked it then, because it ensures our local communities do not receive mixed messaging. As you would all attest, it is pretty easy to switch on the six o'clock news and get an opinion from the Premier and an opinion from the opposition leader. You have to land somewhere to support it and look at where government policy is really going—the spin that they refer to. That is very much contained or constrained within a local government setting. Even those of us who at one point may seek political expediency over our opponent respect the process, that that individual is the spokesperson for council. We are not muted. We can comment but we have to very clearly delineate what is our personal opinion and respect the process that we go through.

In hindsight, I am now very grateful for your question. It is challenging but it forces a heightened awareness, especially if we have come through that process rather than being directly elected as mayor for the first time. We have a heightened awareness of the impact of our words and the repercussions that can happen if we make ill-considered statements—not considering the one about the CEO. Those of us who have been through that process respect the impact of our words and we are grateful when we are given a platform to use it, to the best of our ability, for our community's benefit. We are trying to show our council in a good light, rather than seeing dragged through Media Monitors for the wrong reason.

Mr McDONALD: Chair, the mayor referred to advice from the Clerk. Is he able to table that advice?

Mr Dillon: I can provide it.

CHAIR: He certainly can provide it to us. We will have a meeting and we will have a look at that.

Mr HART: No, we would like to table the advice.

CHAIR: You have to have consent; it has to be agreed.

Mr HART: That is for the open meeting. If the mayor would like to table it—

CHAIR: Thank you, but the mayor has indicated that this could be tabled. We will have a look at it and we will decide what to do with it, as we have done with previous committees.

Mr HART: The normal process is to vote in public on that.

CHAIR: No. It is if it is so agreed. It is not agreed until we have a look at it.

Mr HART: Well I agree to table it.

Mr McDONALD: Did you accept my motion?

CHAIR: No. You know that we do not vote in in open session.

Mr HART: We always ask if the tabling of a document—

CHAIR: If it is all agreed.

Mr SMITH: All members have a right to see the document before it is agreed to. That is the standing order.

Mr HART: In normal cases we would see it now.

CHAIR: Yes, and then accept it. If it is so, it is so tabled. If we need to examine it and there needs to be something moved, then we can do that.

Mr HART: This is not being open and transparent, Chair.

CHAIR: It is what we always do. It is what we have done in every—

Mr HART: No, it is not.

CHAIR: You have been in estimates for quite a while.

Mr HART: I have been—numerous times.

CHAIR: You are not going to convince us on this. We are going to have a look at this and then we will decide what to do with it.

Ms LEAHY: You might need to get the witness to table it first.

CHAIR: We can get a copy of it, as normally happens.

Mr Dillon: Chair, if I may help you, I think I alluded that I could, but I am very confident that the question I was asked was answered in one of the appendices to my original submission.

CHAIR: Yes, this is one of the things that we will check out. If that is the case then that is fine. Thank you very much for coming down and appearing before us today. We do not have any questions on notice. A transcript will be sent to you in due course.

Proceedings suspended from 11.18 am to 1.01 pm.

BRODNIK, Ms Kate, Senior Policy Solicitor, Queensland Law Society (via videoconference)

GNECH, Mr Calvin, Chair, Occupational Discipline Law Committee, Queensland Law Society

CHAIR: Thank you for appearing before the committee today. I invite you to make an opening statement. After that we will have some questions for you.

Ms Brodnik: Good afternoon, everyone, and thank you for inviting the Queensland Law Society to appear at this public hearing today. We would like to respectfully recognise the traditional owners and custodians of the land on which this hearing is taking place. We recognise the country north and south of the Brisbane River as the home of the Turrbal and Jagera nations and pay deep respects to elders past, present and future.

The QLS appreciates the opportunity to raise a number of procedural and structural issues with regard to the Office of the Independent Assessor and the Councillor Complaints Tribunal, which in our opinion unfortunately undermine the effectiveness and intent of Queensland's local government complaints system. Some of these concerns are outlined in our written submission, and we would be happy to speak to these.

We would also like to draw your attention to some other issues that have arisen during the course of this inquiry. Firstly, we oppose recommendation 11 of the Independent Assessor's submission to amend the Local Government Act to remove the right of review of a misconduct finding and replace it with a right of appeal on a point of law only. We note that the department has also not supported this submission and acknowledged there is a resourcing issue. The QLS agrees that the resourcing issue is a matter of priority, and we call on the government to ensure that particularly QCAT and also the Independent Assessor and the tribunal are appropriately funded to carry out their functions.

Secondly, we dispute the tribunal's assertion in its submission that legal representation negatively impacts their function. We consider that their submission that it would make the process more inquisitorial and that legal representation adds to the adversarial nature of the process to be erroneous. We would say that issues with timeliness, lack of appropriate direction and the ability to determine whether the correct process has in fact been followed in each matter would be undermined if legal representation was restricted. We see this as primarily a resourcing issue when it comes to timeliness, delay and the ability to follow proper processes.

As you know, I am joined today by Calvin Gnech, the chair of our Occupational Discipline Law Committee. Calvin acts in this jurisdiction and other disciplinary jurisdictions across Queensland. We would be happy to answer the committee's questions.

CHAIR: Did you have anything to add, Calvin?

Mr Gnech: I just want to add: something that should not be overlooked is the unique jurisdiction with regard to local councillors. It is unlike any other disciplinary jurisdiction that committees like this or the Law Society would deal with, on the basis that their continued employment is based on the public vote and not the decision of an employer. For that reason, we propose that there needs to be serious consideration given to two particular pieces of reform. There must be the insertion of a public interest test into the scheme both at the OIA level with regard to continuing with a prosecution or continuing with a proceeding against a councillor but also before the Councillor Conduct Tribunal itself. The tribunal is that independent mind, bringing to the proceeding whether it is in the public interest to pursue such a matter. That becomes relevant because in the QLS submission you will see there has been an analysis of the decisions handed down by the tribunal over a period, and a majority of those decisions result in very minor penalties being imposed. In our submission, that was never the intention of bringing in this scheme. Operation Belcarra was to address serious corruption and systemic issues; not matters that resulted in apologies and $200 fines.

The second aspect of protection we propose is that because of the unique aspect of local councillors there must be reform with regard to non-publication. Because of the fact that the continued employment of a councillor rests with public opinion, there should be no publication of any decision until misconduct is actually proven. Coupled with the public interest test, we say that is a protective scheme that allows the reputation of local councillors to be protected.

If I could raise one other aspect from the outset, Mr Chair. There is an assertion in the submissions from the OIA and the Councillor Conduct Tribunal that proceedings of this nature would be too adversarial. With all due respect, the moment a councillor is accused of something the

proceedings are adversarial, not inquisitorial. That leads to another concerning factor. The relationship between the OIA and the Councillor Conduct Tribunal, in the experience of members of the QLS, is quite concerning. That relationship should be entirely segregated by independence. Local councillors should turn up at a proceeding before the Councillor Conduct Tribunal assured and confident that they are going to be heard and have a fair hearing. Unfortunately, that relationship, either at a perceived level or a real level, does not exist at this point in time because that relationship is too close, in our submission. I am happy to take any questions.

CHAIR: Kate, you talked about a lack of direction on the need for practice directions. That is in the QLS submission. We have seen where it has been reported that the OIA is looking at case law for direction. Can you expand on why practice directions are a good idea and exactly how that would operate?

Ms Brodnik: Calvin can probably speak to this as well. Generally, practice directions are welcome in many jurisdictions as a supplement to the rules and governing legislation to help parties navigate what they need to do and what processes they need to follow to allow the efficient running of proceedings. That is sometimes coupled with individual directions and individual directions orders. I cannot point to the exact page, I am sorry, but I believe the Independent Assessor also said in one of its submissions that it would welcome some further direction from the tribunal. I think that, because this is a fairly new tribunal as well, processes do develop as cases develop and, as you say, there are precedents and jurisprudence. I think we can all learn from the matters that have gone before the tribunal to date and see what can be done better and what needs to be set down in a practice direction or something similar.

Mr Gnech: Practice directions are flexible rules that do not require formal amendments through parliament to allow all the stakeholders to have a complete understanding of expectations moving forward in a proceeding. It is not a matter where, in our submission, there needs to be a reinventing of the wheel. QCAT is the main tribunal here in Queensland. They have many practice directions that could simply be applied.

Mr Chair, you raised the issue of timeliness. Timeliness comes back to, in our submission, the types of matters that are being referred to the tribunal. If matters of a less serious nature are not taking up the time and resources of the OIA and the tribunal, matters can proceed in a timelier manner.

CHAIR: On the issue of practice directions, who issues them and what standing do they have in legal practice?

Mr Gnech: Practice directions are usually handed down by the head of jurisdictions. In QCAT, it is the president of QCAT; in the Councillor Conduct Tribunal, the power rests with the president of the tribunal to make those practice directions. The standing of those—from a practitioner's point of view, at least—is that they are binding rules that practitioners representing clients must comply with; further, that persons appearing before the tribunal must comply with. There are sanctions or consequences within the proceedings with regard to the filing of material, material being able to be used in the proceedings, if those directions are not complied with.

CHAIR: The other issue you talked about was the public interest test being inserted at stages within the tribunal and the Independent Assessor. Can you expand on that a bit more? The public interest test is already mentioned there. What additional promotion of the public interest test are you suggesting?

Mr Gnech: If I could use the example of the Legal Profession Act, which is a regulated disciplinary scheme as well. I describe the way the legislation is currently formulated for local councillors. It is a discretionary statement to say it must be a consideration by the OIA in deciding whether to commence proceedings. No-one has recourse about in what manner or how that decision is made. Under the Legal Profession Act, it is actually a test that applies. If the Legal Services Commissioner commences proceedings before QCAT you can bring an application to say, 'This is an application that doesn't meet the threshold for the public interest test,' and the proceedings can be dismissed at that point in time.

That has been a very successful scheme. Again, if I can say, there is no need to reinvent the wheel. That would allow both the statement about the public interest test to hold some force in the way that the Office of the Independent Assessor decides to commence proceedings, and then if there is a grievance with regard to how that test has been applied by that office there would be an ability to apply to the tribunal to say that threshold has not been met right from the outset of the proceedings. That test, in our submission, is a really good threshold test to address a number of facets that are being considered by this committee, particularly delay and resources.

CHAIR: We have talked about the threshold of reasonable suspicion, and this is a threshold that is addressed similar to that.

Mr McDONALD: In your original submission, you noted the 13 recommendations for reform suggested by the OIA and said you did not have enough time to consider them at that stage. You talked about three of those recommendations. Are there any others that you have considered since?

Mr Gnech: There are a number. I will let Kate address this as well. I think I have had the opportunity to talk to the committee about the main ones I wanted to—particularly around, as Kate raised, the proposed change in the legislation to move away from a review jurisdiction. In our submission, review jurisdictions are the protection clause to make sure there are no unjust outcomes. To change it to an appeal where it is by point of law only would only, in our submission, open the door for injustices to start to occur. I will hand over to Kate to address any further detail.

Ms Brodnik: Two other recommendations that we mentioned in our submission actually do relate to the public interest test Calvin was speaking about—that is, recommendations 5 and 9. I would point out that they are in relation to the tribunal having the ability to withdraw a matter and also a matter that has been discontinued or where no finding has been made to not be put on the public register. I note the department has agreed at least in principle with those recommendations so we would like to see those go through. As Calvin said, that would help a number of issues that we raised. As for the 13 recommendations, there are some in there that are not really within Queensland Law Society purview to answer and are really a matter for councillors, for example. As for recommendation 7, to improve efficiency, and having statistics and whatnot recorded in an annual report, we would support those but some of them are really outside what the QLS could speak on.

Mr McDONALD: In your submission you talk about additional resources for the OIA and CCT. We have heard from the department and they said there are sufficient resources there. If the department is right that there are sufficient resources, what do you think the problem is?

Mr Gnech: I come back to what I said earlier. The problem is that there is not a proper assessment of the complaints when they are first received, and too much time and resources are being spent on complaints that were never the intention of this scheme—meaning they are at such a low level that they should be dealt with via the council themselves so that OIA resources and Councillor Conduct Tribunal resources are being focused on the real issues, what the real recommendations out of Operation Belcarra were.

Mr McDONALD: During the inquiry, we have discovered that the CCT are actually only dealing with complaints now that were made in June 2020.

Mr Gnech: Yes.

Mr McDONALD: How does that make you feel?

Mr Gnech: I do not know whether I have a proper answer for that, with all due respect. It is an impossible situation to deal with in an effective regulated system. The purpose of what is in effect a discipline system is they must be timely. To respond to that, a councillor who has shortcomings in (a), (b) and (c) is only being dealt with two years later. That means that for the last two years those shortcomings in (a), (b) and (c) have not been addressed. The whole process of an effective disciplinary regulated system is based upon timeliness and effectiveness. That just should not be allowed to occur.

Mr McDONALD: The president of the CCT told us that between 200 and 300 hours is being spent on investigations for the CCT, including the time of three members.

CHAIR: Was that investigation or deliberation?

Mr McDONALD: Investigation and deliberation. Finalising the matters is taking 200 to 300 hours, and that is three members of the CCT. Does the Law Society have any thoughts in regards to the necessity of having three members to make those determinations, or would one practised and properly qualified person be sufficient?

Mr Gnech: I think that question has a number of aspects to it. The members are part time so they have a practice to run. They are not like full-time QCAT members where that is their full-time employment. That is the first issue. If we are operating a tribunal that is part time, we need more members. But 300 hours—if we have a look at the analysis the QLS did in regards to the matters they were taking on, I do not want to put a number on it but maybe 10 per cent of them were genuinely matters that should have reached the Councillor Conduct Tribunal, and that type of resourcing or that type of work that you are talking about would not be necessary.

Mr SMITH: Just on that point, you are saying if there was a greater level of assessment by the OIA then less time would need to be spent by tribunal members?

Mr Gnech: That is right. What I am saying is a proper assessment to weed out all of those lower level matters and then a threshold of the seriousness of matters that need to be dealt with by the tribunal. A lot of other jurisdictions are moving away. You will read amongst the submissions about education and training. That should not require the resources of the OIA to conduct a full investigation and then the tribunal to conduct a full hearing to arrive at an outcome where training is the outcome. The purpose of that tribunal was to address serious and systemic corruption issues.

Mr SMITH: In a previous hearing, the member for Capalaba raised the point about why there is a need for three, and the member for Lockyer just suggested that. Is there a reason within the Law Society why you would potentially be supportive or not supportive of the tribunal being presided over by a single member?

Mr Gnech: There is no negative reason for it to be presided over by a single member other than you do not get a flavour of decision-makers. You get one person basically being, for want of another term, a messiah in that space. You do not get any reflection of society across the decisions being made. However, there are other advantages because if you appointed a single member, particularly full time, their sole focus would be in regards to that. I think the answer to that question comes back to the theory behind part-time members—that is, that the calibre of the members is higher because they are continuing their practice and they do this on a part-time basis, as opposed to having a full-time member who might not have the type of practice that those part-time members have.

Mr SMITH: With that, could there be a time where it is perceivable that enough matters have gone through the CCT to establish a sufficient array of precedents so we could eventually go to one tribunal member falling back on previous precedents?

Mr Gnech: I do not know whether that would save any work. I must say that it is not an overly attractive statement to say that we need precedent in this jurisdiction. I say that for this reason: what ends up happening is local members—the respondents in these proceedings—end up being guinea pigs for the purpose of just simply getting precedent, rather than engaging the jurisdiction for the true purpose of what it was created for. I do not see there would be a great deal of assistance by a great body of precedent. It is discipline jurisdiction. In other jurisdictions, there is great precedent in regards to how the purposes of discipline should be established. With the greatest of respect to the OIA, that statement just does not make any sense in our submission.

Mr SMITH: In the submission, there is a discussion around the inconsistencies with natural justice. Could you expand on that a bit further, especially when we talk about from receiving the complaint through to the matter being resolved?

Mr Gnech: My personal experience with the OIA is that procedural fairness with them is quite rigorous. I do not have any direct criticisms of the way they engage in regards to procedural fairness in that regard. Where I think that submission comes from is jumping back to the lack of practice directions. Depending on what staff are assisting the tribunal at any one given time or what member is presiding over it, they are conducting the proceedings in the best way they see fit, and that develops an inconsistency because there is no guidance with practice directions.

Mr HART: Calvin, just being mindful of any suggestions the committee may make to change things, do you think it would assist the process if there was a triaging of the OIA's initial investigation by, say, having a set time frame that the OIA needs to decide if it is in the public interest or it is deemed a rejection?

Mr Gnech: I think it would. Whether resourcing is an issue or not, once rules get put in place—and not, in that regard, practice directions; legislative reform with consequences—departments and regulators always find a way. I use the example of the police discipline system. About three years ago, it was reformed with set statutory time frames that had never previously been met for two or three decades. Upon there being statutory time frames, the QPS worked out a way to meet those time frames. So, yes, I would support 100 per cent if there are time frames to be introduced they should be introduced within the act.

Mr HART: Has your society put its mind to whether there would be any benefit to advice being available to councillors that could be used as a defence—as in Integrity Commissioner's advice at the moment around conflict of interest?

Mr Gnech: I will go first and then Kate can add to it. We are certainly supportive of that role. It is the case, with all due respect to local councillors, that sometimes they are not highly educated and they are not receiving any training. They put their hand up to take up a position and they win that

through the public vote without any training or support. Further, when they do win their election, they do not have a lot of resources and support around them when they are operating. In light of that, you can infer from the tribunal that a lot of them are really not about laziness but an inability to get everything done, and that is when mistakes are made. I am sure my colleagues behind me from the association will address that further. I agree 100 per cent that the more support and resources that can be added should reduce not the complaints but the need for those complaints to be investigated thoroughly.

Mr HART: Kate, who would be best placed to provide that advice?

Ms Brodnik: I note that has been a role of the Integrity Commissioner. I also note in some submissions there was maybe criticism of the indemnity insurance that councillors are able to access and there is some assertion that that might be driving up complaints or defending complaints seeking further reviews and seeking appeals. In our experience, legal advice and representation helps to give some certainty and give some advice to people who otherwise do not know their rights. We have always found that it actually helps with a more efficient and effective process, instead of someone pursuing a matter which has no merit, instead of someone pursuing a matter when they have a misunderstanding of the law.

Advice should be provided. I do not know if we have a view as to who should be providing that advice, but it should be legally qualified advice by a legally qualified person and it should be available so that matters are resolved prior to them going further down the process and expending the resources that we keep talking about.

Mr HART: Calvin, in your submission, you said that publication should not be made of these complaints until a decision is made. How is that best enforced?

Mr Gnech: That would have to be enforced by legislative amendment to the scheme. The basis of that submission is that, as I said at the beginning, it is a very unique jurisdiction where you do not have the protection of an employer assessing a matter to say, 'Okay, that matter wasn't proven.' It is just the sensationalism of the complaint and the investigation being made to the public and the voters acting on incorrect information. It is a danger for that information to be released when it has not been tested and there has been no proven allegations, in our submission.

Mr HART: Will that take some of the politics out of it?

Mr Gnech: Yes. The word sometimes used is that the complaints are 'weaponised'.

Mr POWER: You brought up Belcarra. You said that only serious systemic corruption issues should be the ones examined. Belcarra examined a creeping code of practice that led to greater corruption issues. Obviously a serious systemic corruption issue is referred to the CCC and the police almost immediately. Is it difficult to make that broad sweeping statement when we saw that smaller issues led to a problematic culture within councils?

Mr Gnech: You raise a valid point. What we are proposing is not that the complaints are not investigated but that they are assessed. The OIA should have the resources to assess to say, 'We have received X number of complaints on this particular issue over the last year and no action has been taken because on their individual basis they are minor in nature.' They should have something equivalent to the research department that is at the CCC to assess and evaluate all of those issues. That should inform what we were talking about—training and education—and address those issues in that way.

Those systemic issues should still proceed with a full investigation, but they have to be identified as systemic issues before they are dealt with in that way. The majority of the matters, as we keep seeing, are matters that are not of a serious nature and they are isolated. Perhaps one example that is relevant to your question is the use of social media. That seems to be something that is popping up all the time. That should be identified and dealt with in a collective and informative way.

Mr POWER: Are you suggesting that only systemic issues be dealt with—that something that is a one-off but may be serious in nature should not be dealt with over something that comes up repeatedly?

Mr Gnech: No. What we are saying is that serious matters should be dealt with in an appropriate way. Systemic matters do not necessarily have to be serious matters—just regular matters that are creating a culture and those concerning aspects of it. One-off isolated conduct that does not have those concerning features should be dealt with in an expedient way that does not impact significantly on resources.

CHAIR: On the issue of inserting those capabilities to dismiss issues in the public interest, I note in section 150XC the OIA can do that. In terms of the CCT, I cannot see anything there on my brief synopsis of the act. Are you talking about inserting a public interest capability—which is what people have talked about, including the LGAQ—somewhere around sections 150DO, DQ, DU, DL? You are talking about inserting that into the appropriate place?

Mr Gnech: That is exactly right. The provision for the OIA means they have a closed decision to make, if I could describe it that way, that no-one can ever review, that no-one can ever question. They still hold that power. If that decision is not believed to be correct, by inserting it into the functions and powers of the tribunal, that allows for an application to be brought at an early stage to say, 'The OIA has this wrong. It has not met the threshold. Consider whether it meets the public interest.'

CHAIR: Or new information becomes available.

Mr Gnech: That is right.

Ms LEAHY: Your suggestion is that the Councillor Conduct Tribunal should be able to review those decisions of the Office of the Independent Assessor, but what we heard from the Councillor Conduct Tribunal is that they are about two years behind. Wouldn't that end up adding to their workload?

Mr Gnech: No, I do not think it would because then the decision to apply the public interest test becomes very prominent for the OIA, knowing that it is not a closed decision and they need to apply some very thoughtful and proper thinking to that decision before they commence proceedings. What we say is the insertion of a public interest provision such as that would put in some protective clauses to ensure that only matters that are worthy of actual discipline rather than the informal sanctions that are being imposed or the low sanctions that are being imposed would reduce the work for the Councillor Conduct Tribunal in due course.

Ms LEAHY: In your opening statement you talked about the reputational damage and ways to reduce that. Could you recap on that?

Mr Gnech: Reputational damage to the individual councillors themselves?

Ms LEAHY: Yes.

Mr Gnech: That is in regard to the protective clauses. We say that the use of the public interest test would go part of the way, coupled with a scheme of confidentiality until misconduct or wrongdoing is actually proven on the evidence. That would protect there being unnecessary reputational damage to councillors for two reasons. They would not be subject to proceedings before the tribunal themselves from matters of a minor nature, a one-off nature, bringing adverse reputational damage to them. They would not suffer adverse reputational damage for going through the proceedings but to be found not guilty but have sustained all of that reputational damage through the media.

Ms LEAHY: Would that mean there would have to be some amendments to legislation in relation to if a complainant then made a complaint public—the weaponising of complaints?

Mr Gnech: That perhaps takes it to a completely different level. The only way that you would ensure protection from unnecessary negative reputational harm is to ensure that all aspects of the complaint and the proceedings are confidential until the tribunal, on a proper assessment of the evidence, determines that it is proven and there has been wrongdoing by the councillor.

CHAIR: The time allocated for this session has expired. We do not have any questions on notice. Thank you very much. Thank you, Kate, for appearing via videoconference today. Thank you, Calvin, for appearing today.

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

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

CHAIR: I welcome our witnesses from the LGAQ, Ms Alison Smith and Mr Tim Fynes-Clinton. Good afternoon and thank you for appearing before us again. I invite you to make an opening statement, after which we will have some questions for you.

Ms Smith: Good afternoon. It is great to be back with you after seeing you in December. It is terrific that you have had the opportunity to travel around the state and hear from every corner of the local government experience in dealing with the OIA. I would like to firstly acknowledge the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging.

My name is Alison Smith. I am CEO of the Local Government Association of Queensland. We are the peak statewide body for the 77 councils across Queensland. We were set up in 1896, and ever since then we have been advising, supporting and representing the local government sector. I am joined today by Tim Fynes-Clinton, Executive Partner of King & Company Solicitors who work very closely with the LGAQ.

As I said in December when I appeared before you, on behalf of our member councils, particularly those elected representatives, we again want to thank the parliament for undertaking this important inquiry and for your ongoing bipartisan approach. Thank you to the committee for your regional hearings. It has certainly taken you to interesting and diverse pockets of the state—and I understand the first parliamentary committee hearing in Karumba.

It has been important for our members to tell you their stories. This is a really significant inquiry and a really significant opportunity for positive change for our sector. In December I sat here and gave you some background and context into why the LGAQ had wanted a review into the OIA and then the following week we provided our written submission. Today what I would like to do is run through some of the key highlights of those 18 recommendations for change that we put forward in our submission and touch on some of the proposed solutions that we believe will lead to an improvement in the operations of the OIA.

Our position remains clear: we need a robust, independent, and effective and efficient councillor conduct regime. That is critical for the local government sector. However, what we are working with is in parts broken. Its operation is hampering the ability of elected members to do their job, and that is what their local communities have elected them to do. Local government is concerned that the council complaints process that was established under the OIA is not functioning as it could. In fact, many of our members are fearful, intimidated and, to a degree, battle weary from their dealings with the OIA.

Councillors, as we know, are elected to serve their community. They put their hand up. They love their community and they want to make a difference. Many of the councillors across Queensland are doing so in a part-time capacity. The OIA and the CCT are designed to prevent misconduct and corruption. They have been established to ensure the sector is open and transparent—and that is a good thing. They exist to deal with those who are doing the wrong thing—the minority. They were not designed to make things harder for the majority of elected members who are trying to do the right thing, yet that is how our members feel, and you have heard that in your travels. That feeling also came out in an LGAQ survey that we did just after the last elections in March 2020. In that survey both councillors and CEOs indicated that the integrity reforms were having a negative impact on their confidence and capacity to effectively do their job.

Further, of those elected members who took part in the survey, 59 per cent of them who had said that they were unlikely to stand for re-election said that it was because they were being impacted by integrity reforms. Then when they were asked directly about the OIA in that survey, only two out of five said that they felt it was efficient and gave them a fair go. That survey was early in 2020. I would hazard a guess that the sentiment of our members has not changed much and may have, indeed, worsened.

I do want to restate to the committee that the majority of our members used an LGAQ conference process—a resolution to their conference—to call on the state government to establish an independent assessor to handle complaints about inappropriate conduct and misconduct. They asked for it because they truly believe an independent assessor should make for a more accountable and transparent alternative, instead of going back to the old regime of asking council CEOs or mayors or the department to assess complaints. From the perspective of the LGAQ and our members, that is the part where it is broken, where the OIA seems to be focused more on generating complaints instead of improving councillor conduct.

We feel the OIA has increased the scrutiny of the local government sector in a way that is leading more to the quantity of cases being investigated rather than the quality of outcomes. We do not see that as enhancing integrity outcomes. Councillors making complaints about one another shows how the system is being weaponised. Some are abusing the system by registering frequent complaints about the same councillor on petty and frivolous matters over and over—one vexatious issue at a time, tying up that same councillor with repeated 150AA letters and the stress of long and ongoing investigations. It is wasting time, money and resources, and it is really stressful for those who are experiencing that. This was highlighted by Mayor Jack Dempsey from Bundaberg when your committee was in Bundaberg recently, when he said—

I have no doubt, based on my experience, that there is collusion between people to put forward complaints. In fact, I am certain that nearly all of the 30 or so complaints against me are connected in some way. The same individuals are involved either directly or indirectly by also using proxies and making anonymous complaints. I have provided evidence to the OIA about collusion, but this appears to be something that they do not consider or deem relevant.

In addition to that, we have many high-profile cases that are showing overreach by the OIA in its determinations and use of power. One such example of that was before you this morning, that of Barcaldine Mayor Sean Dillon, when he was raising concerns about the logistics of the planned vaccination rollout in his community. His case highlights the concern with how the OIA is applying the framework to handle councillor complaints.

Then today's *Courier-Mail* is another example where a South Burnett councillor tried, after hours, to help the local pastor access a church that had been locked so that he could deliver a service to his community on the Sunday. That article also said the very same councillor had also been forced to spend $3,000 in legal fees to defend against another complaint of her for asking whether the council park gardens would be ready in time for Remembrance Day.

Again, these are really insignificant, trivial matters. They are tying up taxpayers' money, tying up ratepayers' money, not to mention time spent by elected members to deal with silly and petty issues. I am sure in both cases further complaints would have come if the church had been left locked or if the gardens had not been up to scratch. Sadly, these examples are just the tip of the iceberg. You have heard many more in your regional hearings and we say that they show now the need for a reset of the OIA, and that is the focus of the LGAQ's submission. It is not to get rid of the OIA; it is just to have some reform and have the OIA return to the strategic objectives that the 2016 Solomon review panel had intended that it meet.

If I may, I would like to very briefly run through just a few of our recommendations—not all 18, just a few. Recommendation 1 is where we recommend an independent review mechanism is retained. Recommendation 4 is where we recommend that the OIA uses a more thorough matrix to assess whether a complaint is frivolous or vexatious. We heard just before from the Queensland Law Society on that matter. From a LGAQ perspective, we want an assessment agency that is independent of local government, provides that important check and balance on councillor conduct, specifically allegations of misconduct, and we want it to be consistent in its assessment of what should be investigated and what should not be. But we want it focused on the serious matters that require investigation, not about forgotten keys to a church or whether flowers should have been planted in a garden bed.

We are deeply concerned about how the system has been overrun by these frivolous and vexatious complaints and how, in turn, that is then impacting our members, councillors and mayors, and their operation of the councils. The only winners are the lawyers. It has become a litigious goldmine. Let us not forget that last year the Queensland Auditor-General found that some 25 councils were at serious risk of becoming financially unsustainable. That is a third of councils. How can they, and indeed why should they, afford these huge legal bills to defend insignificant complaints or minor technical breaches?

The LGAQ believes a reset of the OIA to dismiss the trivial complaints, focus on the significant issues and have a thorough decision matrix to enable it to do so will ensure that priority matters are dealt with faster and that there is value in how ratepayers' money is being spent, and that also there can be a focus on deterring those trivial complaints. In recommendation 5 we say that anonymous complaints should be automatically rejected. Again ,this would help remove or diminish the political weaponisation that has occurred. This is, in fact, a regular motion that our members put up each year at annual conference.

Recommendation 10 is that the code of conduct be amended to not impugn the constitutional right of councillors to freedom of political expression. Recommendation 11 is about giving councillors the express ability to block social media trolls for inappropriate, defamatory or offensive material. Again, last year we saw councillors who blocked trolls pursued by the OIA as either a potential case

of inappropriate behaviour or potential misconduct. The code of conduct is really broad and so we think that it should be specific in areas like this. As well, the code of conduct to be regularly reviewed and to be fairer, because why should the current regulation about social media only apply to local government and not to state and federal government representatives who can moderate their own social media content?

Recommendation 13 is for the OIA to set investigation time frame targets and publicly report on these and for deemed misconduct complaints to be finalised each year in their annual report. We say that because, as you have heard in your travels, the delay in the general investigation process is a really big issue for many of our members. Further to that, I understand that delays at the Councillor Conduct Tribunal have also been a significant issue raised throughout this inquiry and some of these have taken more than two years to deal with, as we heard from the person before us.

Since the new system was established in December 2018, there has been, on average, five complaints made per councillor in Queensland in just two and a half years. That is just until mid-2021. We are yet to see how this current year will fare. Our final recommendation, 18, is about no longer publishing matters that are dismissed or not actioned in the councillor conduct register. While currently the names of councillors are redacted from the register, when you are in those small rural and remote communities it does not take much to work out which councillor is being referred to. The complaint as listed stays there on the public record for perpetuity. If the balance is not restored to the system then good people will continue to be lost from local government and it is those communities of Queensland that will be the ones to suffer.

Thank you very much for the opportunity to address you today and make an opening statement. Both Tim and I are very happy to take your questions. Thank you.

CHAIR: On the issue of training, you may have seen from the transcripts that we focus very much on the training that is available or not available to councillors on code of conduct and also conflict of interest issues, especially conflicts of interest in western and regional councils. I know that the LGAQ has Peak Services that provide training. How could the LGAQ help out with that training, making sure there is ongoing professional development of councillors?

Ms Smith: Thank you for the question. We do have Peak Services that provide training. We also have, as a broader part of LGAQ, training that is delivered through elected member updates through visits. We will always reserve the right to be able to provide training as and when it is needed. Certainly as issues arise, as trends emerge, we will quickly respond and work with those councils to provide training as relevant. I do not necessarily see that there is a need for mandatory training. We certainly get a lot of value out of when we go in to provide that training to those newly elected councillors and mayors as we do. To your point, Chair, we would be very happy to speak with the department to see if there is a way of perhaps formalising the training that LGAQ can provide.

CHAIR: I am glad you mentioned weaponising. There have been a lot of complaints by mayors and councillors about abusing the system, but it is becoming clearer that the main instigators of that weaponising are mayors and councillors. Your clients are using that same system against each other. How do you deal with that?

Ms Smith: We do make some recommendations; recommendation 9 of our 18-point submission goes to the issue of vexatious complaints, which goes to the issue of having a triaged system, a proper decision-making matrix, to identify what is trivial or petty and what warrants further investigation. We believe that that would significantly help. I have also spoken at length about Mayor Dempsey in Bundaberg and what he has said in terms of, I guess, the collusion of multiple complainants putting issues through. We have also suggested in our submission strong penalties to deter those continuous frivolous complaints and having increased reporting on the number of complaints dismissed each year. I can hand over to Tim for some further words on that.

Mr Fynes-Clinton: I just want to add, in relation to that very question, the LGAQ's submission it sets out on page 16 a request that what was originally suggested by the review panel back in 2016-17 be included in the legislation. The key words in that paragraph are about making it an offence for a person to (a) make repeated complaints about a councillor et cetera. The legislation as presently written does not go that far. It more focuses on the subject matter of the complaint rather than the identity of the complainant. That is why it appears at the moment that you are getting multiple complaints and you are getting them from councillor-on-councillor and on more than one occasion. That is a suggestion to perhaps try and rein that in to some extent.

CHAIR: Recommendation 10 talks about the code of conduct and clarification regards implied freedom of political speech. Isn't recommendation 11—and you have addressed this issue of making sure that you can manage social media better and block people—a slight contradiction of 10 because

you are talking about potentially limiting freedom of speech of people who are trying to get on social media? It is only a minor point. That area of implied freedom of speech is tricky. It works for you and against you, does it not?

Ms Smith: I might defer to Tim on this because there have been some recent discussions on it. That came about late last year, particularly after a couple of very high-profile cases we had: a councillor in Gladstone and the mayor from Barcaldine, as you have seen.

CHAIR: In general, social media is incredibly tricky. It works both ways.

Mr Fynes-Clinton: I suppose the point of the LGAQ's recommendations are that it should be open to councillors to moderate social media without fear of the OIA saying, 'Well, that particular action is in breach of the code of conduct.' The recommendation is more aimed at, I would suggest, saying it is not a breach of the code of conduct to take your own action to moderate social media. That is, I think, the point that we are trying to make. The other recommendation is simply trying to make it clear that the code of conduct is not to be interpreted in any way as impinging upon the implied right of freedom of political communication.

Mr McDONALD: Thank you very much for being before us again today. Thank you also for providing the response in regards to the costs that we asked for in the first meeting. Of course it is confidential but it is very important. That is not to remove the importance of the personal cost to people and their families from stress. I will not go to the costs because we have that from you. I do want to go past the question of training and get to the point of truth. We have seen inconsistencies between what is interpreted from what the department says and what is interpreted from the LGAQ. How do you propose that in the future we have a point of truth for councillors to rely on?

Ms Smith: I might start and Tim may well wish to add in. Councillors need to feel that they have a variety of help lines. LGAQ prides itself on being a very strong source of truth. As I said, we have a particular program that we run out annually, but then in and around that we tailor and make bespoke training available as it is needed. We tend to call that our pastoral care focus from LGAQ. When a need arises we will swoop in to provide what is needed. As you would know from local government, things happen a lot in different corners of the state. Every community is unique. Therefore, it is quite difficult to map out an entire year of where you would need to be providing different services, but we do provide a very extensive range of governance and compliance and general advice to our members.

Going back to your question, I guess we would be very happy to talk with the state, with the department, further about how we could formalise something. We feel that what we do offer is extensive, hits the need, but, as I said, local government has an extraordinary prevalence of issues that arise all the time.

Mr Fynes-Clinton: You will have to remind me what the question was, sorry.

Mr McDONALD: It was in terms of the point of truth. My next question might be more important for you with regard to your legal background. Let us assume we get a point of truth and that is given in training to people. If councillors follow that training or seek further advice from the LGAQ or the department and they follow that advice, surely the councillor or mayor would be able to rely on that advice as a defence.

Mr Fynes-Clinton: That is a matter initially for the Independent Assessor to determine whether or not what the councillor has done is appropriate. We would say clearly that if a councillor has gone and sought that advice and got it, even if the advice is incorrect, they have made their best effort to try to do the right thing. To me that is an element of a matter where the Independent Assessor should say it is not in the public interest to take that matter further because the councillor gave it their best shot. Then you have the fallback position, which has been talked about in the previous session—and it has been raised by the CCT itself—that if it fails at that hurdle the tribunal has an early mechanism to prevent the matter going to a full hearing. 'It is not in the public interest. The councillor tried. They might have got it wrong but they did everything they reasonably could.'

Mr McDONALD: I am really concerned that the Office of the Independent Assessor does not actually understand local government. As I said this morning, the Dillon matter is a really great example of that. How do you propose that a mechanism might occur so that the Office of the Independent Assessor actually understands local government and the standards of community?

Ms Smith: I think it has been said in some of the evidence you have had in your hearings that perhaps there is a lack of actual local government expertise within the ranks of the OIA. That could be a particular opportunity. Certainly for our members we have in the past had a variety of different programs, including former mayors as mentors and helping to provide that training. That could be an opportunity.

Mr McDONALD: Your recommendation 15 is that the membership of the local government liaison group be expanded to include more local government people. Surely a local government liaison group has local government experience.

Ms Smith: I would have to take that question on notice, if you do not mind.

Mr SMITH: My line of questioning might be a little bit more for you, Tim. King & Company have come up quite a lot in our travels, as I am sure you can imagine—in a good way. I want to dive a little bit more into the inconsistencies of natural justice and so forth that the Law Society brought up previously. When a councillor receives a letter from the OIA to begin with, that letter just says, 'We're performing an assessment on either inappropriate conduct or misconduct,' but they do not give details as to what the allegation actually is; is that correct?

Mr Fynes-Clinton: I do not believe that is correct, no. The allegation is identified in that letter. It is a technical thing, though, and some councillors may not fully appreciate that.

Mr SMITH: That is one of the things that has come out from some witnesses. They have read the letter and were not aware of the situation or what the scenario was. You are saying that the OIA does provide the scenario?

Mr Fynes-Clinton: Yes.

Mr SMITH: In terms of the maximum fee—we had a particular witness in the public hearing talk about how they spent $9,000 or $10,000 on legal fees for a matter that ultimately became a $250 fine and an apology. At what point are councillors aware of what the maximum penalty is likely to be?

Mr Fynes-Clinton: I saw the end of Councillor Johnston's evidence this morning. She correctly stated that the penalties are in the legislation. It ranges from no further action up to a recommendation to the minister. That is there in the legislation. The final penalty is a matter for the tribunal. If you have examined some of those decisions, which I am sure you have, the vast majority of those penalties have been at the very lower end of the scale of options listed in the act. You cannot say with 100 per cent confidence what the penalty is going to be, but you can certainly advise the councillor that the likely penalty is going to be reprimand, training or $150; that seems to be fairly consistent.

Mr SMITH: Is that quite a common occurrence with your legal advice? You give that advice as to what is most likely?

Mr Fynes-Clinton: We certainly tell them this is the likely outcome, yes.

Mr SMITH: In relation to my question to the Law Society about the number of members on the tribunal and how many are to preside, do you have any concerns if the CCT went to a single member presiding over a matter?

Mr Fynes-Clinton: I listened to that question. I have thought about that. This is clearly more of a personal view than the LGAQ's view. If it means matters get dealt with quicker, I do not have a problem with single members dealing with these things. Again, to date they have been largely technical or insignificant matters and you still have a right of review if a single member gets it 100 per cent wrong.

Ms Smith: While we do not have a position for the LGAQ on a single-member CCT, I would like to bring up something that the CCT has made in its own recommendations to this committee, which is to consider an amendment to section 150AL of the Local Government Act to give the CCT a discretion to summarily dismiss or discontinue matters in the public interest or for other exceptional circumstances. That is certainly something we would support.

Mr SMITH: Alison, I might ask you this one. Recommendation 10 talks about the code of conduct. Could you provide some specific examples of your concerns or even some of the wording in the code of conduct that the LGAQ has issues with?

Ms Smith: Our recommendations go to the operation of the code of conduct and I guess its application on the ground. The interpretation is very broad and it is very subjective. Probably the best example comes from the case that you heard this morning from the mayor from Barcaldine. For us, one of the key things about the code of conduct that we would like to propose as a solution is that it does not impugn the rights of elected local government representatives to freedom of political expression.

Mr SMITH: Are there any particular dot points or key phrases that the LGAQ has concerns with and would recommend amendment to?

Ms Smith: I would happily take that on notice and bring that back to you.

Mr SMITH: I think that is important.

CHAIR: Are you looking at more specific points?

Mr SMITH: Specific dot points or key phrases that the LGAQ feel could perhaps be reworded to provide more of a black-and-white, straightforward code of conduct.

CHAIR: In terms of a code of conduct not impinging on implied freedom of political expression?

Mr SMITH: And rights of elected officials.

Mr HART: On that question, would the LGAQ have liked to have seen a decision made on the Sean Dillon case around the freedom of political expression rather than it be dismissed for other reasons?

Ms Smith: To be truthful, we would prefer that it had never arisen in the first place. We just do not see how that was possibly something that the OIA would wade into.

Mr HART: The OIA keeps telling us that they need to have a legal precedent in order to set some of these things in stone. In that case, might it have been better to have actually had a decision that you could then rely on? I understand your point. I just want to see whether it is possible to go that way.

Ms Smith: I will ask Tim to add to this because, in our view, there was no need to even set a precedent because it is covered in other areas of law.

Mr Fynes-Clinton: Just to expand upon that, the implied right of freedom of political communication has been determined by the High Court of Australia. The LGAQ's position is—and it is a position I would expect that the department supports as well—whatever the code of conduct does say, it is never to be interpreted as impinging upon that implied right of communication. The matter, as Alison has already said, should never have been the subject of—someone can make a complaint, and that's fine, but it should have been dismissed at the gate. It should never have got to Councillor Dillon in the first place.

Mr HART: Do you have any feedback from any of your councillors or mayors that the OIA may have suggested to them they need to cut down the number of complaints they are making because they are taking the legislation too cautiously?

Ms Smith: I have not heard that, no.

Mr Fynes-Clinton: No.

Mr HART: You may be surprised to know that that could be the case. On page 16 you mentioned that you want the review panel to put in place a stronger disincentive to the making of repeated complaints by the same person. Have you considered whether that should apply to councillors?

Mr Fynes-Clinton: Our submission is that it applies to all complainants, councillors or otherwise—any complainant.

Mr HART: You heard the question earlier about the appropriateness of getting some advice that can be used as a legal defence. Legal services said that should be a legally qualified person. Do you agree with that? Maybe I should not ask the lawyer!

Ms Smith: If an elected member of ours is after legal advice then we get them legal advice. You need to know precisely what you are dealing with. Let's not forget that when councillors get one of these 150AA letters—and hopefully you have seen your fair share of those through the course of the hearings—if you are not from that world it is terrifying. It is so highly litigious; it causes stress just reading the letter, let alone the consequences of having to respond to it. Some of the items we have in our submission relate to having extensions of time to respond. We have had circumstances where councillors have been given all of three days to turn around a really quick formal response to address the issues in a very legalistic letter they have received. That is why we have seen the increase in the use of lawyers because that is what they feel they are having to respond with.

Mr HART: I am sure you are across the transcript from Mount Isa. What are your thoughts on the concept of municipal monitors?

Ms Smith: I would need to take that one on notice.

CHAIR: We can write to you and ask that. We should write to the department as well.

Mr HART: On the issue of the councillor complaints register, if a complaint made against a councillor is made public by the complainant, as tends to happen in a politically charged situation, is it not a good thing to have the register there as a form of defence to say at the end of the day, 'I've been investigated and I was cleared'?

Ms Smith: I might leave Tim to answer that one.

Mr Fynes-Clinton: I suppose the response to that is to allow it to be voluntary for the subject councillor to have a dismissed complaint put on the register. At the moment it is mandatory. You do not name the councillor, but it must be recorded that a complaint was made, it was investigated and the outcome was no. That is the current system. Your suggestion is possible so long as it remains voluntary in the hands of the subject councillor themselves, not mandatory.

Mr HART: I am sure that would work though.

Mr Fynes-Clinton: They would get a letter and they would then go to the CEO and say, 'I would like this to be put on the register,' because of the scenario you described where they have been the subject of public disgrace over it prior to that.

Mr POWER: You spoke earlier about other councillors, members of the LGAQ, making multiple complaints. Are you suggesting there should be a penalty put in place for councillors who make too many complaints or misunderstand the nature of complaints? Is that the position of the LGAQ?

Ms Smith: Thanks for the question. My answer was really more talking about the vexatious, trivial, petty complaints that come forward and finding ways to better educate and better deter. At the moment we do not feel that the system is actually targeted in that way.

Mr POWER: Should there be a limit, though, on the number of complaints councillors make? For instance, if they are limited to, say, five complaints and the sixth is a serious one, is there a concern that we are limiting their role?

Mr Fynes-Clinton: The suggestion is that if it is a number of unsubstantiated complaints—if there is merit in them—

Mr POWER: How many councillors would you suggest have made a number of unsubstantiated complaints to the point of vexatious and would be therefore struck off?

Mr Fynes-Clinton: You would have to ask the Independent Assessor that. Their evidence earlier on was that they received thousands of complaints and we only see the very top end. This all goes back to the filter that gets applied to the receipt of these complaints. What we are suggesting is that if a set number of unsubstantiated complaints comes from the same person, councillor or otherwise, then they should be basically barred from making the next one.

Mr POWER: It is difficult when the next one could be the one that is actually of extreme public interest.

Mr Fynes-Clinton: I accept that, but there has to be something to discourage the trivial ones, for want of a better description.

Mr POWER: We talked about the implied freedom of speech. As Mayor Dempsey alluded to, there is a group that is politically against Mayor Dempsey and they are colluding. That is the suggestion. I have no knowledge or evidence of that. I am not familiar with Bundaberg politics. They are fundamentally involved in political expression, ill-advised as it may be. Is it difficult to limit free expression with the legislation we are putting forward? Free expression is not absolute within the Constitution, is it?

Mr Fynes-Clinton: It is implied in the Constitution by the High Court. I am sure Mayor Dempsey has no problem with his political opponents voicing their views about his performance in the usual platforms.

Mr POWER: I have heaps of problems with people criticising me, but I understand it.

Mr Fynes-Clinton: Exactly. His issue is that the same people are also, in his opinion, repeatedly making complaints to the Independent Assessor. He has no problem with freedom of expression in the usual media outlets et cetera; it is the fact that he is getting multiple complaints as well. That is his issue. He does not have a problem with people talking about him, as you have just said yourself; it is using this system to burden him with responding to upwards of 30-odd complaints.

Mr POWER: I am not subjective at all, but I find that the compliments people give me are all correct and the criticisms the member for Burleigh makes are all incorrect.

Ms LEAHY: Obviously the LGAQ has looked at this whole situation in relation to costs. There are legal costs, there are also costs in relation to staff time at councils when it takes them away from their day-to-day job: looking after ratepayers. What would the LGAQ see as being the quickest, most effective way to reduce legal costs and the impost on staff time? I will use an example. Woorabinda said to me they had to pay for $45,000 worth of legal advice to resolve an issue that was sent back

to them. That is quite a job in a community like Woorabinda. What are the things that you see? Surely there may be some trends that would force down those legal costs, either by the amendment of legislation or triaging vexatious complaints.

Ms Smith: At the risk of oversimplifying it, we have a submission that has 18 different proposed recommendations that we see as solutions. At the heart of it, it is about how you have a reset of this review mechanism so that those cases that are not in the public interest or appear as an unjustifiable use of resources can be instantly dismissed. Then you are cutting through so many cases that would otherwise be coming through, going to councillors and requiring them to engage legal representation to deal with it. I think that is at the very heart of it and that comes to the whole triaging proposal that we have spoken to about: having a decision-making framework that can very easily sort out the trivial and petty from those that need to be pursued.

Ms LEAHY: We have some full-time councillors but a lot are part time across Queensland. I am wondering about the time delays that we are seeing with the assessment of cases through the OIA and the CCT. Are you seeing whether that has any impact on the mental health of elected representatives?

Ms Smith: I can only speak anecdotally. It is not something we have formally sought to measure. Yes, absolutely. We have elected members contacting us seeking pastoral care. Sometimes they are not even looking for a particular solution; they just want a shoulder to cry on because of the stress they are dealing with because they have had a case that has been hanging over them for years. It is an incredible source of stress. That therefore makes for an incredible source of distraction from the role they have been elected to do.

Ms LEAHY: My understanding is that once cases have gone to the Councillor Conduct Tribunal they can be appealed to QCAT. Have there been any appeals that have been heard and finalised through QCAT that you are aware of?

Ms Smith: I am not in a position to answer that. I would have to take that on notice, unless Tim can respond.

Mr Fynes-Clinton: Whilst I am aware of a number of appeals, I am not aware of any appeal actually having concluded. Appeal is the wrong word; it is a review. But it is a full review. I am not aware of any review having yet been concluded.

CHAIR: We have talked about using a decision matrix by the OIA. We are also reading through this. Can't they take action directly? You have 150X and 150Y where they can dismiss complaints. In terms of frivolous and vexatious complaints, you have 150AU and 150AV. The powers are there. How complex does the matrix have to be when the powers are spelled out in the act?

Ms Smith: I will simply start by saying that, yes, the powers are there. Our proposal is: why can't they be applied in that manner? If it would be helpful, is it something that for the system more generally we might need to have provided a specific public interest definition inserted into the legislation?

Mr Fynes-Clinton: The power is there. If further direction is required for the Independent Assessor, that could be achieved by amending the act or amending the regulation to put something in the regulation. As you know, a regulation can be changed a bit more easily than the act.

Mr McDONALD: Coming back to the point of truth, when this inquiry started in October we were informed that the first time the department, the OIA and the president of the CCT actually met was in November of last year after the start of this inquiry. Do you think that more regular meetings with the department and the OIA and CCT earlier—remembering this started on 3 December 2018—might have given a better insight into local government, and does the LGAQ see themselves playing a role in that?

Ms Smith: I am not quite sure how to answer that. I do not know how to answer that.

Mr Fynes-Clinton: I will take up something the Law Society said, and that is that the CCT and the Independent Assessor should not be too close because the Independent Assessor is an investigatory body that is preparing cases against councillors for the tribunal to determine. I do not know whether what you are describing is necessarily going to be of benefit in the long term. There was something else I was going to say, but I have forgotten.

Mr McDONALD: On a number of points the department has said they believe the legislation is sound; it is just the interpretation of that legislation. That is my interest in getting to the point of truth, otherwise this inquiry will be completely futile.

Mr Fynes-Clinton: That is what I was going to get to. The department, I think, has a role to play with the Independent Assessor; however, having said that, the Independent Assessor is supposed to be independent. If the Independent Assessor is not dealing with the system in the way that the department and the government intended, then the legislation will need to redirect the Independent Assessor.

Ms Smith: I think that goes to the absolute heart of our desire to have consistency of application. That is a very strong call from our members so they understand what they are dealing with and it is not a surprise that one matter might be treated separately to another when they are both quite similar.

Mr HART: Do you know whether any of our councils has a policy—or are they able to have a policy—that allows councillors to access any OIA complaints they become aware of that their bureaucracy may know about?

Ms Smith: Not to my knowledge. My understanding is that they are confidential.

Mr Fynes-Clinton: You do not need a policy under the Local Government Act. Under 170A you can make a request to the CEO to access information. There are some limitations to that. Does someone have that section open? You do not need to have a policy for it, but there are limitations. Off the top of my head, I cannot recall whether this type of information is prohibited or not. I know it is in the subsection. We could provide that to you.

Mr HART: Is that something you could take on notice?

Mr Fynes-Clinton: Yes, absolutely. But in general terms I do not think you need a policy to access information. The act provides for it. In fact, there are acceptable request guidelines that are required by that section that set out the framework for accessing information.

CHAIR: We have that here. It is quite specific. At the same time, it is broad as well.

Mr Fynes-Clinton: It is very broad, other than there are four items that you cannot access. That is in about subsection (4) or (5).

CHAIR: It includes 'record of the conduct tribunal ... record of a former conduct review body ... disclosure of the information ... would be contrary to an order of the court or a tribunal ... or that would be privileged' in a legal proceeding. Interesting.

Mr POWER: The chair put to you that the Independent Assessor already has the ability to dismiss if they are not in the public interest. Further, we have had long discussions about frivolous and vexatious. Section 150X(b) also says the assessor may decide to dismiss a complaint that: '(i) is frivolous or vexatious; (ii) was made other than in good faith; or (iii) lacks substance or credibility'. How much more does the act need to say to address those concerns? It has been made relatively clear, hasn't it?

Mr Fynes-Clinton: It has followed the 2017 report to about 85 per cent, but the one point of difference is the previous report talked about repeated conduct of individuals. That is not in what you have just read out. That is focusing on the complaint, not on repeated conduct. It is difficult. I have had to look at it myself a few times.

Mr POWER: It is reasonably complex if someone is trying to point out a systemic problematic issue and that may be repeated in their complaints.

Mr Fynes-Clinton: Again I want to reiterate that it is about repeated complaints that are—

Mr POWER: Frivolous and vexatious.

Mr Fynes-Clinton: Or of no substance or—

Mr POWER: That is already defined. How much more do we have to do in the act?

CHAIR: Are we looking at 150AV?

Mr POWER: We are looking at 150X.

CHAIR: We also have 150AU and 150AV

Mr POWER: That is exactly right.

CHAIR: Are there any other questions? The time for this session has now expired. We have a number of things to chase up as questions on notice. Deputy Chair, you wanted to know about the local government liaison group. Can you remind me?

Mr McDONALD: Recommendation 15 of the LGAQ says that it should include people with local government experience, in summary. I think it is CEOs or mayors.

CHAIR: The question from the member for Bundaberg was on your dot points on suggestions in terms of directions, changes or additions to the code of conduct. Is that a question on notice, member for Burleigh?

Mr HART: I do not think we need that anymore if the member for Bundaberg has that.

CHAIR: No, your question is about municipal monitors.

Mr HART: Sorry. Yes, okay.

CHAIR: What was it that you wanted to know?

Mr HART: Just the opinion.

CHAIR: We refer you to the CEO of Mount Isa, David Keenan. We will chase up the acceptable request guidelines with the Brisbane City Council and also the South Burnett Regional Council. Please provide any answers to questions taken on notice by 1 April 2022. We will be in contact with you to clarify those and we will send you a transcript of the hearing today. Thank you very much for your time.

HANDLEY, Ms Elizabeth, Brisbane Residents United

WALKER, Mr Chris, President, SEQ Community Alliance

CHAIR: Good afternoon and thank you for appearing before the committee today. I invite you each to make an opening statement and then we will have some questions for you.

Mr Walker: Good afternoon, Chair and committee members. Thank you for the invitation to appear before this committee. I am Chris Walker, President of the SEQ Community Alliance and Elizabeth is from Brisbane Residents United. The SEQ Community Alliance is an umbrella association for several organisations that speak on behalf of communities in South-East Queensland, including: Brisbane Residents United, Gecko, Logan Ratepayers Association OSCAR, QLGRA and Redlands2030. Unlike other organisations that represent vested interests, we advocate for the public interest. Elizabeth and I are here to discuss matters of concern that have been raised by the SEQ Community Alliance and some of its member organisations, including submissions from BRU, OSCAR, QLGRA and Redlands2030.

First, I will speak to expectations of local government. The community's expectations of local councils and councillors are set out in the five local government principles, which appear as section 4 of the Local Government Act. If these principles were 100 per cent complied with, we would always have good, transparent and democratic governance of local councils by elected officials who always acted legally and ethically. Local communities expect nothing less but we are often disappointed. If elected officials misbehave, we want this to be investigated promptly, properly and impartially. We expect the findings and the consequences to be made public. We believe that doing these things would increase public trust in local government.

The current process is better than what has happened before. The community groups are largely supportive of the local government reforms and the OIA's performance. The increased number of complaints being made shows that the new process meets a public need. In public council meetings, elected councillors are now careful to discuss conflicts of interest. This is a welcome improvement in local councillors' behaviour.

Timeliness is a concern. The OIA's preliminary assessments are dealt with expeditiously but two years is too long for alleged misconduct to be investigated and dealt with by the OIA and the tribunal. It appears that the resourcing of the Councillor Conduct Tribunal has been a problem that could and should be dealt with by the state government. We think that QCAT appeals should be limited to errors in law, as recommended by the OIA.

On the subject of visibility, the OIA used to issue media releases about decisions of the Councillor Conduct Tribunal. We think that the state government should allow the OIA to resume this practice, which serves the public interest. We think that the current practice where dismissed complaints are published in the local council's complaints register should continue. This shows how quickly most complaints are dismissed. The current annual report requirements for local councils should be retained but, in addition, councils should be required to disclose their costs of dealing with councillor complaints.

On the subject of anonymous complaints, we think that the OIA should be able to receive and investigate anonymous complaints at its discretion. People close to local councillors, such as council employees, should be able to make complaints to the OIA without fear of reprisal. As far as inappropriate conduct is concerned, we really question why inappropriate conduct should go back to local councils to deal with. As far as vexatious complaints are concerned, we think that vexatious and frivolous complaints are being dealt with adequately by the OIA at present. That concludes my opening remarks.

CHAIR: Thank you, Chris. Elizabeth, over to you.

Ms Handley: Chair and committee members, thank you for this opportunity to present to your committee. I represent Brisbane Residents United, Brisbane's peak body for community resident action groups. I have worked in local community groups for over 20 years. Recent events have proved once again the value of local and state governments that govern in the best interests of their constituents. They have also revealed the dangers to a community when they do not. As a result of the amalgamation of councils, councillors now have greater access to power and assets. Local councils must be, and be seen as, acting in their residents' best interest. A councillor is an elected official, representing and answerable to their constituents. We consider that an effective councillor complaints process is a vital component of a suite of measures that ensure that local government operates in the public interest. The Office of the Independent Assessor must be utilised to ensure maximum benefit to the community.

Despite a disturbing trend to the opposite, transparency and accountability are vital at all levels of government. Councillors need to be trained about conflict of interest, as do the public. We support the important role that the OIA plays in this education, including the publication of the results of its investigations, both positive and negative. Many councils have factions. In Brisbane, they are clearly party political. It has been disappointing to observe how dominant factions feel entitled to disregard elected councillors of the minor parties or factions and seek to impose inappropriate restraints on them. It is disappointing that the OIA has not been a positive influence on this behaviour and, indeed, has seen its processes weaponised.

We support the OIA's proposal to create a central, inappropriate conduct scheme to remove duplication, improve consistency and potentially deliver cost savings. It would prevent biased decisions based on a voting bloc or lack of impartiality by a mayor or a CEO. BRU does not support a mayor, CEO or any other delegated person within council being the sole arbiter determining inappropriate councillor conduct. The current display of the misuse of this power is destructive to both good governing and the public's faith in our democracy.

Since BRU's original submission, we have become aware of the issues with timeliness and its unintended consequences. We are concerned that, due to financial restraints, decisions have been made to dismiss complaints that may merit further investigation. The community has limited avenues available to it to judge conflicts of interest, and a councillor's register of interests is one of the remaining few. The OIA needs to be adequately funded to perform its legislated role in a timely and effective fashion.

We support parliamentary oversight of the OIA. The parliamentary committee process is an open and transparent one.

CHAIR: Hear, hear!

Ms Handley: Yes.

Ms LEAHY: Questionable!

Mr McDONALD: Misleading parliament.

Ms LEAHY: Careful!

Ms Handley: All legislation is only as good as its compliance procedures and the funding provided to ensure that those procedures are followed. The Queensland government must ensure that Queensland has state and local governments that inspire confidence and certainty in all stakeholders and empowers our communities to participate fully. Thank you for hearing me.

CHAIR: Thank you very much, Elizabeth. It is really important to have you both here today. Throughout the months we have been doing this, we have heard nearly exclusively from elected officials—mayors, councillors, CEOs and industry representatives. It is vitally important that we hear from community organisations that are also involved in this process. We truly value what you have said and who you are representing. Just to clarify, have either of you personally made a complaint to the OIA?

Ms Handley: No.

CHAIR: About a councillor?

Mr Walker: Yes.

CHAIR: I suggest that we do not talk about that issue specifically, but just the process.

Mr Walker: That is why I did not mention it.

CHAIR: Good, okay. Chris, you suggested that meeting conduct be also extended to the more informal meetings, workshops and committee meetings. Can you talk a little bit more about that and whether you have become aware of informal decision-making at those meetings?

Mr Walker: For some years now, whilst we have been scrutinising the behaviour of some local councils that cover the areas that we live in, we are concerned about the increasing lack of transparency as matters get drawn into non-public workshops or non-public meetings, rather than being discussed openly in formal meetings that are subject to the provisions of the Local Government Act. We know that that is happening. There is plenty of evidence that that is happening. To the extent that decisions get made in those non-public meetings, where is the evidence? We get anecdotal evidence that that is happening, but it is not evidence that we can do anything with. Even so, we still think that, for example, if a councillor is discussing a particular development application in a workshop and they have a conflict of interest, that should always have been declared rather than waiting for the matter to be presented for final rubber stamping at a formal council meeting.

The current arrangements now put more pressure on councillors to comply with that principle, which is a good thing. What we said in my opening statement was that we think the reforms that have been implemented are improving the standard of behaviour. Prior to that, councillors who had interests could still participate in the workshops, shape the nature of a decision that was going to be made, and then perhaps declare an interest and not participate in the final decision. But quite a lot of the thinking had already taken place and that particular councillor may have been participating in that discourse.

CHAIR: Elizabeth, one of the issues that you mentioned specifically—and you were the only ones to talk about this—is an incorporated body being able to put an issue to the OIA. Can you talk about how important that is?

Ms Handley: For example, as I said, I have been dealing with planning issues. I am not a planner. I am not a lawyer. As a member of the community, I have been dealing with planning issues for the past 20 years, but if I put in a complaint I put it in as an individual. A lot of the time, if I put in a complaint or I put in a submission, or we put in a submission as Brisbane Residents United, we do that with a number of people looking at it before we actually take action. What we put forward we consider very carefully. We would hope that when we do put something like that forward there is a little bit of weight given to that, just as there are to submissions made by an organisations like the Local Government Association.

Mr McDONALD: I endorse the chair's comments in that it is great to have you both here. In terms of this inquiry, we have discovered that the Councillor Conduct Tribunal is now dealing with matters that were complained about in June 2020. It is a very big delay. How does that make you feel?

Ms Handley: Justice delayed is justice denied. I have run a legal case myself to do with the Milton tennis court site. The amount of pressure that is on you when you are running a case like that! I think about that pressure being applied to somebody as a councillor for over a two-year period, when in some ways you do not even know what you are being investigated for. To me, that is not a process that is working properly. It needs to be done in a little bit more of a timely fashion. If it is about the costs of doing that, it needs to be properly funded. I am sorry: there is no point in having a policeman on the beat, if you like, if you are not prepared to pay for them to walk the beat.

Mr McDONALD: Good analogy.

Mr Walker: I can make similar observations, but perhaps with a case example. Our council conduct register recently recorded that a particular councillor's misconduct had been determined by the tribunal in early February. The complaint was made in early December 2019. The local government elections were held at the end of March 2020, about four months after that complaint had been made. In my view, the electors of that division should have been made aware of how that matter had been dealt with before they voted. To take another two years is unacceptable. It was a matter that I would consider pretty straightforward—one instance of foolishness—and the evidence was pretty clear. In the submission we made I used an analogy that sporting codes manage to deal with disciplinary matters before the next game usually. There is a benchmark there that I think the committee could consider aspiring to.

CHAIR: After the tribunal on a Monday night!

Mr McDONALD: Yes. Chris, you just raised the issue of registers. This is actually from the BRU submission regarding disagreeing with the recommendation from the OIA, that if a matter has been dismissed or is subject to no further action then it would not have to be recorded. I think you were here when Mr Fynes-Clinton made mention of that in terms of giving a voluntary opportunity for the councillor to record or not. Have you any thoughts about that?

Ms Handley: The more open and transparent you are with processes, the better off you are. There is as much to be gained from knowing why they did not proceed with something as there is to be gained from knowing why they did. Just to give you another analogy: I have always thought that the Environmental Defenders Office was actually one that the state government should have been very happy to fund because of the number of people they talked out of proceeding with matters, because they are very honest about what your chances are of being able to get a good outcome. That is what you get when you publish both wins and losses. It gives you a very clear indication of whether it is worthwhile proceeding.

Mr McDONALD: Did you have any thoughts on that, Chris?

Mr Walker: I agree that they should continue with the practice. If I look at the one for Redlands City Council, which is the council close to me, at the moment they are clocking up about 30 complaints a year on the register, which are nearly all dismissed and they are all being dismissed fairly promptly.

That tells me two things. The process is flicking out all these complaints very quickly. You would hope that people might start to learn from that and maybe not make the sorts of complaints that get dismissed so easily. That evidence is useful to have there. We could consider maybe just making the description of the matters perhaps slightly briefer, if that is a concern. If it is considered that it is making people in the community aware of what the matter was, I can think of at least one example where I could read what was in the register and I knew exactly which matter it was. It was nothing to do with me, but the facts are fairly clear. That could be dealt with as a matter of improved administration.

Mr SMITH: I will continue along this line: I do not understand how it has an educational value to the community, especially if you are then going to make it briefer. In what way is this going to stop people making complaints? Are you suggesting that before they make a complaint they go and read the register?

Ms Handley: When I was writing a submission to this committee, for example, I had a look through what other people had put in. I also had a look at various bits and pieces of information around. If you were serious about doing something, that is the process that you go through. Looking at past complaints to see what has been successful and what has not been successful to me would just be simple research that you would undertake. It takes hours to put this information together. For most people it is not something that you would do just off the bat if they were making a complaint that they would consider to be a serious complaint.

Mr SMITH: Why would previous complaints be relevant to the current complaint?

Ms Handley: Just to see what sort of complaints they have dismissed in the past. That is why I think it is worthwhile looking at what has been looked at in the past. For example, I was rather surprised to hear that they had dismissed out of hand something about information that was not put on a councillor's register of interest. I would have thought that would be something that should have been pursued rather than dismissed out of hand. Maybe the way that particular complaint was phrased or maybe they did not give information, or whatever it was, meant that that was dismissed out of hand. That is the type of information that I would like to be able to access and to have a look through and say, 'This is'—

Mr SMITH: That would not stop you making a similar complaint if you believe that a councillor did not put something on that register because you do not get the finer details of the written complaint.

Ms Handley: You do get the fact that they dismissed that. I believe that there are supposed to be reasons published as to why they have dismissed that.

Mr SMITH: Do you think it could perhaps be unfair if a councillor is targeted by frivolous or vexatious complaints—that this continues to go on the register and builds up a sense of this councillor is continuously doing the wrong thing when actually they have been subject to unsubstantiated complaints?

Ms Handley: In fact, I think that becomes clearer. It becomes very clear if there is a continuing barrage of ineffective complaints about a councillor. What that says to me is that somebody has an axe to grind.

Mr SMITH: Do they have the right to keep that private though, if they choose, if they wanted to?

Ms Handley: The only example I can give you is that I have watched with increasing alarm the way that Nicole Johnston is treated by the Brisbane City Council. If you look at the way that she is treated by the council and you looked at the past history, you would go, 'There is something wrong here.' This is a pattern of behaviour by an organisation against a particular person which, quite frankly, if it were done outside of council chambers, would be seen as bullying and would be treated as such.

Mr SMITH: I appreciate what both of your groups are putting forward; I just cannot agree with it at this time. Thank you anyway for your submission.

Mr HART: Chris, out of interest, how many complaints have you made since the OIA was established?

Mr Walker: I think it is about one—exactly one.

Mr HART: That is a very specific number.

Mr Walker: I am waiting for that one to be resolved before I bother doing any more.

Ms LEAHY: How long has he been waiting?

Mr HART: How long have you been waiting? There is a good question.

Mr Walker: I think from memory it was lodged in September 2019.

Mr HART: You would have heard before the LGAQ talk about triaging complaints that may not be in the public interest. Do you have anything to add on that? I suspect that you probably do.

Mr Walker: We did not catch the full context of that discussion, so it is a bid hard to comment.

Mr HART: Would you be happy if the OIA were able to dismiss a charge right up front because in their opinion it was not in the public interest to pursuit it?

Mr Walker: My perception is that they are pretty much doing that already. A lot of complaints are going in and they are being flicked out within a couple of weeks. It is an unjustifiable use of resources. I think that is almost the same as it is not in the public interest to pursue it. Matters that are trivial are not worth pursuing. I am not sure what the real difference is in saying that there is another reason for doing it. I think the essence of it should be: if it is a matter that is not particularly important then, yes, do not pursue it.

Ms Handley: If you are going to do that sort of triaging, you have to have very clear definitions of what is in the public interest. As with all legal things, the devil, as we know, is in the detail. That is the comment that I would make on that. Also, if somebody very strongly feels that their complaint has been dismissed out of hand, there should be some process that says, 'I would like you to relook at this.' To me, that is part of the whole process of natural justice.

Mr HART: We have travelled around a fair bit and talked to a lot of people. You are the first community groups we have spoken to. Mostly it has been councillors. I would have to say that the majority of councillors are really upset with the process that they go through and some of them are in tears caused by what I personally think are vexatious complaints. How do you feel about councillors just not wanting to be councillors anymore because of this? They have lost interest in participating in the process because of what is happening to them in this process.

Mr Walker: Obviously politics is a rough sport.

Mr HART: It is.

Mr Walker: We have seen that playing out at the federal level quite recently. People going into local politics should be going in with eyes wide open, but it is politics. As far as the process is concerned, if people are making vexatious or frivolous complaints then that should be dealt with by the OIA. If a person puts in one, two or three complaints, there is some pretty clear form being displayed there. Some of them are anonymous and that can distort the OIA's understanding of what is going on, but I think they are reasonably wise to some of that too. It is one of these things where you solve the problem at that end of the process. You resolve that there is a pattern of vexatious or frivolous complaints.

Mr POWER: In the state parliament we have an Ethics Committee process. Even on the panel here, there are members who have been before the Ethics Committee. I do not think any MP would ever say that the Ethics Committee process makes us not want to participate in state government. People have expectations. They knew that the election would be rough. It is serious when they feel like they do not want to contribute to public life anymore because of that process. Isn't that serious? Or is that just something you have to suffer?

Ms Handley: No. I think it is a very serious issue where you are dealing with that sort of complaint. The other side of that—and this is something that I think sometimes we lose sight of—is corruption in our society. Australia has gone down the corruption scale; it has not gone up. That is something that every member of parliament and every person in government should hang their heads in shame about. Anything that we can do to reverse that process we should be doing. I am sorry if your feelings get a little bit hurt in the process, but we need to do something to reverse this.

People now almost expect that their local councillor is not going to be acting in their best interests. That is not a good way to be. I have had experience of both country and Brisbane councils. It used to be in the country that the deal was once the fellow got bitumen to his front gate he would be off the council. That was a perception of what was happening in the country. I do not think that is a good thing for anybody. Corruption costs everybody. It is not a good thing for an economy and it is not a good thing for a society. That is what we are fighting here. I am sorry but, yes, you are going to have a few hurt feelings about that, but we are looking at the greater good and that is what we have to continue to look at.

CHAIR: The crux of the issue comes down to what Belcarra was all about: engendering greater faith in public administration. Having an effective complaints system in councils is crucial to that. Am I correct?

Ms Handley: It is absolutely crucial. Can I just say to you that this is a process that is three years old. In the scheme of government that is a very young process and it is going to have thorns that need to be taken away from it. It is going to have to be refined. I am very pleased that that is the process that I see that you have undertaken here. You are looking to refine that process to make it one that works increasingly for everybody. Once again, it is when you first put in a process that you get the hardest bit of the rough and tumble. Once it becomes bedded down and a little bit smoother and a little more obvious and people become more familiar with the way it works then it becomes a little less rough on all concerned.

Mr HART: The rules that apply to councillors appear to me to be far more strict than the rules that apply to me as a state member. For instance, if I block someone on my Facebook page I do not get into trouble, whereas a councillor does. Do we have too many rules for our councillors or not enough rules for me?

Ms Handley: I would honestly say to you that if you are applying the rules to the councillors you need to be applying the rules to yourself. The number of people who are represented by a ward in the Brisbane City Council is almost identical to the number of people who are represented by their state member. I personally think that means that that council is a failed council, but that is an argument for another day and I am not going to bore you with it. What I am going to say is that if you undertake to represent that number of people then those standards should be exactly the same for both.

Mr Walker: If we take the example of laws about political donations and property developers, the state parliament decided to apply those laws equally to parliamentarians and to local councillors. That was a good example of aligning the processes so that they apply the same at both levels.

As far as blocking people on Facebook is concerned, I administer Facebook pages and some people should be blocked. If councillors are being pinged with misconduct for doing that then I would question that. Again, it gets back to let's have a look at the details of that particular issue and maybe clarify guidelines for how a particular officer, whether it is a parliamentarian or a councillor, should be managing a Facebook page. There are some people who definitely should never be allowed to touch a keyboard.

CHAIR: The time allocated for this public hearing has expired. Thank you very much, Chris and Elizabeth, for coming in today. We have no questions on notice. Thank you to everyone who has participated today. Thank you to our Hansard reporters. Thank you to our secretariat. A transcript of the public proceedings will be available on the committee's webpage in due course. I declare the public hearing closed.

The committee adjourned at 3.14 pm.