



STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr MJ Hart MP
Mr RI Katter MP
Mr JE Madden MP
Mr JJ McDonald MP
Mr TJ Smith 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 THE PERFORMANCE OF THOSE FUNCTIONS

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 18 MARCH 2022

Toowoomba

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The committee met at 10.07 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the functions of the Independent Assessor and the performance of those functions. My name is Chris Whiting. I am the chair of the committee and the member for Bancroft. I respectfully acknowledge the traditional owners and custodians of the land on which we meet today and pay our respects to elders past, present and emerging. We are fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all share.

With me today is Mr Jim McDonald, the deputy chair and member for Lockyer. I acknowledge we are in Jim's part of the world here.

Mr McDONALD: Getting close. It is about a kilometre away.

CHAIR: Also present is Mr Jim Madden, the member for Ipswich West. At a stretch, this is near the patch he represents as well.

Mr MADDEN: Not too far away.

CHAIR: We also have present: Mr Michael Hart, the member for Burleigh; Mr Tom Smith, the member for Bundaberg; and Mr Robbie Katter, the member for Traeger. This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. Please turn your mobile phones off or onto silent mode.

PENNISI, Mr Vic, Mayor, Southern Downs Regional Council

CHAIR: I welcome Mayor Vic Pennisi from the Southern Downs Regional Council. Thank you for coming along and having a chat to us.

Mr Pennisi: Thank you, Chris. I acknowledge all of the members who are here today. We truly appreciate this opportunity to voice our view and opinion on what we think desperately needs a review.

CHAIR: I invite you to make an opening statement and then we will have a few questions for you.

Mr Pennisi: I have put together some dot points. Half an hour is not a lot of time so I will run through the dot points outlining some of the things that I think need to be reviewed. I am happy to answer questions after that if that is okay. Does that suit everybody?

CHAIR: Yes.

Mr Pennisi: The interpretation of the act by local government employees, elected members, the public and the legal fraternity does not align with the intent of the act as intended by the department of local government. There is a huge discrepancy in the interpretation. That is the first thing. There is no ability to identify those who use this as a weapon and are repeat offenders. There is no opportunity for those of us who receive these things—and, let me tell you, I am well versed in this having probably scored pretty close to a half century of them and not many of them sticking—to understanding who your enemy is.

The office and the interpretation of the act is being used as a weapon against councillors. Consequently, councillors are guilty and are forced to seek legal advice, often at considerable personal cost. In other words, we are guilty until we prove ourselves innocent in relation to some of these issues. Councillors are not provided access to the details of the allegations and are not given the right of reply when an investigation takes place. Consequently, evidence via statements given by those who lodge complaints during the investigation process have been known to be false and untrue and councillors are being judged by their peers on false evidence. I am happy to expand on that at some stage.

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It is also pointless asking advice from the Integrity Commissioner as it always comes back with a disclaimer suggesting that you should seek legal advice. We may as well seek legal advice in the first instance, which comes at a personal cost to individuals. If I write to the OIA and say, 'This is an explanation of what you might be receiving soon,' that can be taken as lodging a complaint. If that happens, that councillor will be removed during the consideration of what penalty will apply after an investigation and recommendations made to council. I do not know whether that is clear, but that is the case.

Councillors weaponise investigation reports. They use those reports to weaponise and undermine their colleagues, which is terribly sad. No process is available to break the deadlock when deciding if a conflict of interest exists during a meeting process. If you are sitting around the table and your colleagues have to vote and it is a four-all vote, there is no process to break the deadlock. If you cannot get past the line then you are kicked out. I think that certainly needs review. When does a councillor influence? That is open to interpretation and should have some clarity around it.

The other thing that I think needs to be seriously clarified is what an ordinary business item of council is. There are two or three things that are ordinary business items of council, but do not tell me that providing water to our constituents is not an ordinary business item of council. For four years I was removed from council decision-making on water issues. That certainly needs to have an amount of rigour put around it and an adjustment made.

Mr HART: Why was that?

Mr Pennisi: Because I was chair of a community water group. It had been endorsed by council. Given my position as chair of an irrigation group, every time water issues came up I would declare the conflict and ask my colleagues to make a decision. I was removed from the room time and time again. In my view, urban water is an ordinary business item of council.

What is the personal benefit for me in providing better water supply to our residents; I think that is the question. Where is the gain for me personally? When we campaign, those advocacies that we campaign are now considered conflicts of interest, so if you campaign on painting the town hall pink instead of purple, if you say that is what I am going to advocate, we are getting complaints when that decision comes to council that you have a conflict, which is madness. We also have provided a submission from council that I have here and I am happy to leave with you, Mr Chair. Obviously, you are aware of the one from the LGAQ, and I have that with me as well. I am happy to answer some questions.

CHAIR: We have talked to regional and western councils regarding the councillor conduct system. Conflict of interest has always been one of the biggest issues they deal with. One of the things we have asked about is preparation for dealing with conflict of interest and getting trained in the system. Can you outline what your council has done in terms of training and getting your councillors up to speed with how to deal with the system?

Mr Pennisi: We have done a significant amount of training. We have had training by the department. We have had training by the Independent Assessor herself. She came up and did training. We had training with the LGAQ several times, not just one time. It still comes down to that very first statement. We have had training from our legal people. In fact, I would estimate—and my CEOs here could probably answer the question—the amount of money that we have spent on training is crazy, crazy stuff.

It always comes down to interpretation. I have had the department say, 'Yes, water is an ordinary business item of council,' and legal people having a different view to that, the department having a different view to that, the LGAQ having a different view to that—I mean, not the Department of Local Government but the LGAQ. It is confusing. It is very confusing for us to understand even conflicts of interest. You ask your colleague at the table, 'Do you have a conflict of interest?' From my point of view if I am asking you, 'Do you have a conflict of interest?' and you say, 'No, I don't,' you are taking the risk and that should be the end for me.

I was in a situation where there was a complaint lodged against a councillor that I was made aware of, and consequently my obligation was at the meeting to suggest or to ask, 'Do you have a conflict of interest?' For my penance I had complaints lodged against me. In fact, the whole council got complaints lodged against them and it just became a farce. The simple answer from that particular councillor would have been, 'No, I don't have a conflict.' That would have resolved the whole thing. There is a fair bit of grey in that respect.

CHAIR: I note in the submission you talk about there being differing opinions on what constitutes a conflict of interest. Can you highlight or go into some more depth about those differing opinions?

Mr Pennisi: From a personal point of view, if we go back to the water situation as an example, what is my personal gain in water? I do not need water. I am not a farmer; I do not irrigate. I think individual values are judging what might or might not be a conflict. I think it comes down to being as simple as that. What also comes into it is whether they want to win the debate or not. Councillors use the opportunity to weaponise it and remove you from the debate; those sorts of things. I cannot control what our councillors say or how they think. That is not my role. People put them there so they have every right to be there, but then so do their colleagues.

CHAIR: You have differing opinions amongst councillors about what constitutes a conflict of interest, and you said something about differing opinions between the government body, the LGAQ or the OIA.

Mr Pennisi: Yes, there is a huge difference in relation to councillors' opinions on what is a conflict of interest. As I alluded to, what is influence? When is a councillor influencing? There is a big difference of opinion amongst councillors.

CHAIR: You said before that you talked to the Integrity Commissioner and the advice you got was to seek legal advice. Can you expand on that?

Mr Pennisi: I see the Integrity Commissioner as someone you would visit to ask an opinion of. I get back 20 pages of legal jargon and the overriding theme is, 'We're not responsible for any of this advice. Go and seek a legal opinion.' I am paraphrasing here. I am happy to show you some of that if you wish.

CHAIR: If you could, that would be appreciated.

Mr Pennisi: I do not have it with me, but if you give me the details I will send it on. I have spent personally about \$40,000 defending myself from these claims. It is a huge amount of money. You sit there and you do not know what the complaint is. I can give you examples of having had a penalty issued, but I have not read it; I do not know what I am defending until the point the penalty is delivered. It is those sorts of things. You go to the Integrity Commission for advice. Whatever was the LGAQ prior to this you would ring up and say, 'How do I deal with this? Do you have any advice?' You would get the advice in two seconds over the phone without this legal implication that exists there. It has become more complex than it needs to be, in my view.

CHAIR: Do you think that such a service, if offered by the LGAQ, would be very useful to councils or councillors?

Mr Pennisi: My personal view is that the service the LGAQ provided was far superior to the Office of the Integrity Commissioner. I met the Integrity Commissioner and she is a lovely person. I have no complaints about that, other than the process that we now have to enter into is complex. If I need legal advice, I will just go straight to legal advice. In fact, I have not used the Office of the Integrity Commissioner now for probably two or three years for that reason. If I am going to be told to get legal advice, I will just go and get legal advice.

Mr McDONALD: Vic, thanks very much for being here and thanks for the leadership you provide to Southern Downs. Thank you for sharing your stories with us. Could I ask you to take this on notice, perhaps, and provide us with advice regarding the cost of these things for yourself and the council? You mentioned personal training, and obviously there are legal costs and independent legal advice. It would be great to get that. We are trying to paint a picture of what this costs individuals as well as councils as a whole, because the ratepayers pay for that.

Mr Pennisi: I am happy to take that on board and make that available when I get where I have to send it to.

CHAIR: We will be in contact with you.

Mr McDONALD: Thanks, Vic. Have you experienced delays with this legalistic process?

Mr Pennisi: In 2019, two weeks before Christmas, I received notification that I had 14 complaints lodged against me. It was all on the one form, but there were 14 of them. Thirteen of them have been finalised and one has been moved to the Councillor Conduct Tribunal. I hope there is no retribution in relation to this hearing, but that particular one still sits in the office and it has been elevated. It is failing to declare a conflict of interest when we received a report. With regard to receiving a report, if you ask the department they will tell you there is no conflict to declare. That is the training: there is no conflict to declare. For some reason it has been moved up, and that was in 2019 for something that happened in June, from memory, 2019, and remains outstanding.

CHAIR: I would emphasise that we do not need to talk about that issue. We have talked about timeliness and we should probably concentrate on that particular aspect.

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Mr McDONALD: Sure. Vic, in terms of delays, we have discovered through this process that the Councillor Conduct Tribunal is only now investigating matters and determining matters that were complained about in June 2020. How does that make you feel?

Mr Pennisi: I will put it to you this way: more often than not it will be inappropriate conduct and you have to apologise. The sooner you get to that point, the better. Having these things hanging over your head, keeping your solicitors on call and monitoring those things—I mean, it is just absolute madness. Why are we doing this? I think this is the question we need to ask ourselves: why are we doing this? It is obviously as a result of what happened at Ipswich; however, weren't they discovered under a different act? That act must have worked if these people were discovered under that act. Now we have this regime where if you sneeze you cop a complaint against you. I know there would be probably seven or eight complaints that exist in our council right now that are being investigated. Often you do not know until such time as 'you have been found to have engaged in inappropriate conduct and here is your penalty'. But what was the allegation? Why don't you tell me what the allegation was so I can defend myself?

Mr McDONALD: Chair, I am happy to hand to the member for Burleigh for a question.

CHAIR: We will go to the member for Ipswich West first.

Mr MADDEN: Thanks for coming in today. I want to get this clear. You have not made a written submission, but your CEO has made a written submission.

Mr Pennisi: Our council made a submission when submissions were opened, and I have it with me. It has been approved by our council.

Mr MADDEN: That is all I wanted to confirm. It does not say that in the written submission. It says it is by him personally. I just want to confirm that you support that and the council supports it; is that correct?

Mr Pennisi: Yes, absolutely.

Mr MADDEN: I just wanted to clarify that. The first thing I wanted to ask you about—and you have already mentioned it to some degree in your opening submission—is the issue of anonymous complaints. I presume you do not approve of anonymous complaints.

Mr Pennisi: Whether it is anonymous or not, the identity of whoever makes a complaint is withheld. If someone lodges a complaint against me I never know who that is—ever.

Mr MADDEN: Do you have a position on that? Do you think they should be identified?

Mr Pennisi: Only in the fact that when you are walking down the street you do not know who your enemy is and I think it would be important that you should know who your enemy is. Also if it is repetitive; what is my position on repetitive? Do I have a right to say, 'This is vexatious. What are you going to do about this?'

Mr MADDEN: I will not ask you about specific matters that are being dealt with or are in the process of being dealt with, but have you had any difficulties with regard to social media?

Mr Pennisi: Can you ask the question again, please?

Mr MADDEN: Have there been any complaints with regard to your social media?

Mr Pennisi: I have not had any complaints in relation to the social media that I put up because I am very careful.

Mr MADDEN: That is all I needed to know. I am a former lawyer and you talked about going to your lawyers. In the submission, paragraph 7 states—

If a matter is escalated by the OIA to the Councillor Conduct Tribunal and the matter is not upheld, the OIA ... should reimburse all costs incurred by the local government from the commencement of proceedings with the OIA.

I want to clarify this. You talk about going to your solicitors. Is your council's position that they pay your legal costs or pay the cost of a councillor in that situation?

Mr Pennisi: It has not been the case the whole time. It was only in this council where we made councillors' fees able to be remunerated if they requested that. I have chosen to fund my own way most of the time, but it gets to the point where you have no choice because you cannot afford the legal fees.

Mr MADDEN: Has your council ever moved a resolution that it reimburse a councillor?

Mr Pennisi: Yes.

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Mr MADDEN: I do not need to know any more than that. My final question is to do with historical complaints. Again, I do not want to deal with any specific complaints with regard to you or other councillors. Are there instances where complaints are made that could be regarded as historical matters—like quite some time ago?

Mr Pennisi: Yes. We have examples where something that happened 18 months ago is dragged up as a complaint.

Mr MADDEN: Up to 18 months ago?

Mr Pennisi: That is my experience. It could be even more than that. I know examples personally where something that happened 18 months ago was brought forward as a complaint.

Mr MADDEN: I want to confirm that you are happy with the advice you have received from the LGAQ in the instances where you have needed to seek advice from the LGAQ?

Mr Pennisi: Without a doubt. They have been very supportive and the department has as well. They work under a different regime, of course. Both of those have been very supportive, albeit that there are differing views as to what is in and what is out.

Mr MADDEN: In that regard—and, again, putting my old lawyer hat back on—I know the difference between receiving a 10-page advice and getting a yes or no answer to a question. Can I confirm that when you contact the LGAQ you do get the yes or no answers to questions?

Mr Pennisi: They take a little bit of time from the department; they will not respond on the spot.

Mr MADDEN: I am talking about the LGAQ.

Mr Pennisi: The LGAQ are very good. They are very quick. They will give you an opinion there and then.

Mr MADDEN: That is what I wanted to clarify. It was clear that you are not satisfied with the advice that you received from the Integrity Commissioner.

Mr Pennisi: I have not used the Integrity Commissioner for a long time. Why would we go there?

Mr MADDEN: Again, I would like to thank you for coming in today.

Mr McDONALD: I forgot at the start to make a declaration, as I have done before, that I spent 16 years in local government and also that my brother is the deputy mayor of Toowoomba.

CHAIR: Clearly we all know that here on the committee, but I think it is important to state that for the record.

Mr HART: We do not need to make any other declarations?

CHAIR: No. You are fine.

Mr HART: I know I am fine. Vic—again, not getting into specifics of cases that have happened or are underway—when you did seek information from the Integrity Commissioner, what was the subject, as in was it a conflict of interest or was it a performance issue or a social media issue?

CHAIR: You probably do not need to go into too much detail.

Mr HART: Just the subject.

Mr Pennisi: I would go to the Integrity Commissioner for advice, for example, if I had a complaint lodged against me or if I was unsure whether I had a conflict of interest or not—those sorts of things.

Mr HART: With conflicts of interest, the Integrity Commissioner's advice can be used as a defence. That is legislated. How would you treat other advice that you would get? Could you use that as a defence in any way, do you think? If you talked to the LGAQ, is that a defence you could use? If you talked to the department, is that a defence you could use? Who can give you some advice that you can completely rely on?

Mr Pennisi: God, that is a really big question. We would go to the Integrity Commissioner for advice on whether you have a conflict of interest but not to use it as evidence. I would never go there to use it as evidence to defend myself. If I needed a defence, I would go straight to a lawyer to get the defence that I needed. I do not know if that answers your question.

Mr HART: It is near enough. We have done a lot of these hearings now, so we have asked these questions. As far as the investigation of an issue is concerned—again, we do not want specifics—the OIA does not contact you and tell you that you are under investigation. Do you know who they do contact? Do they contact somebody in your council to ask about that particular issue? Do they contact the complainant? Who do they contact?

Mr Pennisi: My experience has been that in the early days the minute they got a complaint against someone they would write to that person and say, 'We've received a complaint in relation to A, B and C,' but nothing specific. Often they would do the investigation and they will give you the result of that investigation without you being able to respond to the allegation. Often they will ask you for a statement. You do not really know what the nuts and bolts are, so you will write your statement based on what you think the allegation is.

In my experience, the first time the Office of the Independent Assessor advises you is when there is nothing to answer for, so you will not know about the fact that you have a complaint. The office will advise you, 'We had this complaint. It is unfounded. We are just letting you know.' That is one way. The other way is when there is an investigation they will advise you that it has either gone to the Councillor Conduct Tribunal or been referred back to council.

Mr HART: You said before that you became aware of a matter that was referred to the OIA about something—again, we do not want specifics. How did you become aware of that? Was that a rumour? Did someone tell you that they had made a submission or did someone in the council find out about it?

Mr Pennisi: In every case when I became aware it was as a result of correspondence with the Office of the Independent Assessor in some way, shape or form.

Mr HART: Was that to you as the mayor?

Mr Pennisi: Yes.

Mr HART: Is that about other cases or just yours?

Mr Pennisi: Just mine. Councillors are dealt with by the CEO. If there is any dialogue entered into, it is entered into with the CEO. If it is about me, the OIA will write to me.

Mr HART: Does your CEO find out about complaints made to the OIA about your councillors or staff?

Mr Pennisi: Complaints made to the OIA about the OIA?

Mr HART: About your staff or your councillors?

Mr Pennisi: I guess only if the OIA writes to him. The other component about the CEO is that, if someone lodges a complaint to council, the CEO will deal with it. Obviously if it is about the CEO I have to deal with it.

Mr HART: Does your council have any written policy around how your CEO would then deal with those matters?

Mr Pennisi: We are largely guided by the act and what is in the act, because you cannot write policy that overrides the act.

Mr HART: Do you think that councillors have freedom of political expression?

Mr Pennisi: Are you asking: are we apolitical? We are apolitical.

Mr HART: No. I am asking whether you feel like you are free to say anything political.

Mr Pennisi: No. We are walking on eggshells all the time.

Mr HART: Is it worse at election time?

Mr Pennisi: Is it worse—

Mr HART: Are more complaints made around elections?

Mr Pennisi: I do not think it makes any difference from my experience. I think they just come thick and fast.

CHAIR: You said you are walking on eggshells. Is that because of fear of complaints being generated?

Mr Pennisi: Without a doubt.

CHAIR: I just wanted to clarify that.

Mr Pennisi: What is the role of the mayor nowadays? All we really do is chair the meetings. You are welcome to look at our live streams, and you should.

CHAIR: I have watched a few council live streams just for my penance.

Mr Pennisi: You will get an indication of what the mayor has to navigate.

Mr SMITH: In terms of political expression, does your council have a media policy for councillors where they must request—

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Mr Pennisi: Yes. I am happy to provide it.

Mr SMITH: Could you talk me through that?

Mr Pennisi: Our media policy changed in this council. I think that councillors have the right to talk to the media. What they do not have the right to do is talk negatively about council or a decision of council. They must make sure that it is their personal view. I think that the people who elect them and the people they represent have the right to know what their councillors' views are on different issues.

Mr SMITH: Would a councillor be able to say, 'I disagreed with the vote. However, council needs to move forward.' Is that acceptable?

Mr Pennisi: Correct.

Mr SMITH: They cannot say, 'I disagree because this councillor is X, Y, Z.'

Mr Pennisi: That is right.

Mr SMITH: In your experience is there a difference between social media and traditional media?

Mr Pennisi: Social media has changed the way we do business. I see social media a little bit like Ash Barty when she is about to serve and someone is heckling from the crowd and how do you deal with that. As councillors, we have to put ourselves in that same mental space and deal with it. I cannot control the rules on social media, but I can control how I act and how I behave. It is there for everyone. We have just learnt to live with it. I certainly have at any rate.

Mr SMITH: I will quickly move to penalties. One of the things that has come out in our public forums is that councillors are spending thousands of dollars in legal fees against a complaint that ultimately ends up being a \$250 fine and an apology. At what point along the way from when the OIA first communicates with you do you become aware of what the maximum penalty would be should you be found guilty of inappropriate conduct or misconduct?

Mr Pennisi: Let me just say that the OIA is a function that I think is needed. It is how it goes about its business—tweaking around the edges, I think, is what we are talking about here, in their defence. The OIA will often write to you and say, 'We have received a complaint against you in relation to inappropriate conduct.' It will not tell you that you swore in the corridor or that you looked at someone sideways or whatever. It will not be specific. It will just say, 'We've received a complaint.' I am happy to share some of that. It is confidential but I have the right to share it. If you want to see some of those things, I am happy to do that and send them through. It is your call. Often it will not be specific but it will say misconduct or inappropriate conduct. What we are trying to do is rid our local government of corruption. That is what we are really trying to do. This is like taking a sledgehammer approach to things that could be addressed in other ways.

Mr KATTER: I was interested in costs. The cost to council has been raised already. I am interested in—it is so subjective that it is hardly worth asking the question—personal cost and the proportion of your time. That is probably just as significant as the financial cost. I will not ask about that because it is probably subjective.

Mr Pennisi: The personal cost to me has been significant. I do not have to tell you but when you get a written letter from a solicitor it is \$3,500 just like that—one letter. If you get a half a dozen of those, those costs climb.

Mr KATTER: Inadvertently you did answer that. You just said, 'I think we do need the OIA.' That interests me because I am still not convinced that it has a vital role. Can you expand on why you think we need it?

Mr Pennisi: My view is that you need a level of independence. Where it can go grey is if you have a mayor and a CEO making decisions on some of these things. That is where it can get clouded. That is where a level of corruption can come in.

Mr KATTER: You see it as a circuit-breaker for where these problems can emerge?

Mr Pennisi: I think that office is an important role and an important function. The interpretation of what that role should involve is where we need to put some time and effort into changing. Whether it sits under the department and becomes a function of the department or not, I am not sure. It is no different to a tribunal—whatever code you play. I was a state director of Football Queensland and we had tribunals to listen to cases right across Queensland. They were put in place to judge inappropriate conduct. They were at arm's length from the local scene because politics gets into the local scene and it can get clouded.

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In principle, the Office of the Independent Assessor seeks to bring that level of independence. Whether we have it right or not, I do not know. Obviously I would not be here if I thought we got it right. I think that is what you gentlemen and ladies are here to try to navigate.

CHAIR: Thank you very much, Mayor Pennisi. The time for this session has now expired. We do have two questions on notice. One was around the costs to councils. That is across a range of issues, whether it be training, legal and RTI. We will be specific in what we send to you on that. The other one was the correspondence from the Integrity Commissioner.

Mr McDONALD: We can keep that information about costs confidential. It is just about painting a picture across the state. We could talk for an hour Vic, but unfortunately time is against us.

Mr Pennisi: I am really grateful for the opportunity. If you think of anything that is a burning issue, I am happy to take questions from you.

CHAIR: You can also redact some of the information in what you send to us. Thank you very much for your time. We really appreciate it. We would appreciate getting the answers to questions on notice by Friday, 1 April. We will refer you to the transcript of the hearing to clarify the questions. Steph will clarify that with you.

GALE, Mr Andrew, Councillor, Southern Downs Regional Council

CHAIR: I welcome Councillor Andrew Gale from Southern Downs Regional Council. If you want to discuss a current case, we can hear that in private. I would then ask everyone to leave and we would close the doors so no-one can hear. Once you get to that point just let us know.

Mr Gale: Thank you. If I need to get to that I will make it the last thing that I address. I reiterate what my mayor said. Thank you for giving us the opportunity to come here. I spoke to the mayor some time ago and he advised that he was coming here and he suggested that I come too. I have some fairly current and lengthy experience of the OIA. My full name is Paul Andrew Gale, but I have always been known as Andrew. I agree with most of the submission from the Southern Downs Regional Council, but this is my personal opinion. I feel it is important to state that. It is my experience. I was elected to the Southern Downs Regional Council as a councillor at the 2020 election. This is my first term. I am 53 years of age. I am married. I am a business owner and I live in Warwick.

CHAIR: My colleague from Ipswich West reminded me that we should declare that some of us were councillors.

Mr MADDEN: There are a few former councillors on this committee. I was a councillor on the Somerset council from 2012-15.

CHAIR: I was a councillor on the Caboolture Shire Council and the Moreton Bay council from 2000-12. We have heard from the member for Lockyer. I turn to the member for Traeger?

Mr KATTER: I was a councillor on the Mount Isa City Council from 2008-12.

Mr Gale: I have run a training business since 2005. Prior to that I was a Queensland police officer from 1988. I have had significant experience in my life of being the subject of complaints—both in my career as a police officer and now as a councillor. I do not have any specific records, but I would estimate I had at least 30 complaints made against me as a police officer—none of which resulted in any finding being made against me. Many of them were minor things. I know the member for Lockyer would have had similar experiences. One day I would get a complaint for smiling at someone when I wrote them a ticket and the next day I would get a complaint for frowning at someone when I wrote them a ticket. I have always been in the public eye and I realise that my actions have consequences for many people.

The competitive nature of local government elections and the posturing and positioning that may occur around this lends itself to complaints as well. I know that many of the complaints made against councillors all over the state come from political opponents as well as colleagues. I suspect that many of the complaints I have received reflect this. In the two years that I have been a councillor I am aware that I have received at least 10 complaints about them. One of them resulted in me having to take action for inappropriate conduct.

I would like to reflect on what the mayor said in relation to not being made aware of those allegations. I am not here to talk about my example, but I certainly back that up. It would have been very relevant when I was given the opportunity to respond to the complaint knowing where the complaint had come from because it was very specific to what I believe occurred.

I take having complaints made about me as one of the risks of the role. However, I very much respect and empathise with councillors, other than myself—many of whom have only experienced the examination and scrutiny of being the subject of a complaint since becoming a councillor. I have seen this firsthand and heard many harrowing tales of how it can affect people. One of my colleagues I sit alongside is a member of the community of very high standing. He received in his community—not the entire region that we represent—some 80 per cent of the vote and was elected to council. He is someone who has been made a life member of a number of organisations, including Rotary and chambers of commerce. He is a world-renowned international scientist and we are certainly privileged to have him in council with us.

Similar to what I heard the mayor say, he has been someone who has been very active in the water sphere as well. There have been a number of complaints made about him in relation to that around conflicts of interests. I know that it takes a toll on him personally despite his brave face. He has even reflected to me whether he continues or runs for council again because it is difficult for him to do his job. His heart is truly in the right place.

I would like to respectfully submit to you, with your indulgence, both some positive and negative feedback about my experiences as the subject of a complaint before the Office of the Independent Assessor. First of all, I must state that I am very supportive of a robust and easy to access complaints system for people who wish to make complaints. I find the notion of abuse of any office and corrupt behaviour personally distasteful. I would like to thank everyone who does their utmost to investigate and prosecute these types of matters.

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I would like to make a statement in relation to anonymous complaints. I support them. I know that is in conflict with the LGAQ submission, which I have read. I did speak against a motion at the LGAQ conference—not very well mind you, unfortunately; if I had my opportunity again I would certainly say something different. There was a motion from the LGAQ to outlaw complaints. I value whistleblowers and I value their right to anonymity. I have very much been a student of Fitzgerald. That is when I started in the police force. Most of the things said about that I find pertinent.

Anonymous complaints are often hard to substantiate. That is a fact. Plenty of bad conduct or corruption has been uncovered by anonymous tips in the first place. I often make an analogy with Crime Stoppers where they say ‘tell us what you know, not who you are’. When I was a serving police officer I know that it was those sorts of things that led us to arrest murderers and such.

What there needs to be, in my personal opinion, is a robust framework around receiving complaints and the ability to be able to declare something as vexatious and frivolous and dispose of it at that first opportunity. That is something that I feel is a better way to attack anonymous complaints than saying that we are not accepting anonymous complaints. I know that they cost money to investigate.

I am a businessperson. I am involved in a boating training business. I have to spend a lot of money on things that I never use. I hope I never use my insurance. I hope I never use my safety equipment. I hope I never need a life jacket to save my life. It is a cost of business. I see that having a robust complaints system is a cost of business that we must absorb because we are operating in a space where we have to be open and accountable.

When I was a police officer I remember a meeting I had with my district officer when I was the officer in charge of Inglewood Police Station. Some 90 per cent of the complaints in the district came out of my station because we had a certain group of people that we were paying a lot of attention to and arresting. They were being used and they were anonymous. I am loath to get rid of anonymous complaints even though those powers existed in the Police Service and Administration Act at the time and still do. I have had experience with that. I have had experience with investigating those types of internal complaints, albeit limited. Mostly my experience was being the subject officer of those complaints.

I would like to speak about another matter that is not as positive. I will speak about this in general terms, but if you want to ask some questions maybe we need to be confidential about it.

CHAIR: Do you want to speak frankly about this matter?

Mr McDONALD: It depends on what the topic is.

CHAIR: Let us play it safe. We can talk frankly about it for few minutes. Do you want to do that?

Mr Gale: I think that is probably the best way to do it.

CHAIR: What we usually do is have the Hansard and secretariat staff in the room and yourself. We will go into private session for about 10 minutes. I ask everyone else to step outside and to take their phones with them.

Proceedings suspended from 10.59 am to 11.12 am.

CHAIR: We will reconvene the public session. Andrew, did you want to make a statement?

Mr Gale: The final thing I wish to submit is in relation to the comments that were made by the head of the OIA when I was present at the 2021 local government conference in Mackay. It was reported in the *Courier-Mail*. I have taken the quote from the *Courier-Mail*. She made a statement that there was a lack of case law to help the office interpret the broad code of conduct. She made a general statement—

When there was a lack of clarity, obviously law reform could be considered or cases could be advanced to the Councillor Conduct Tribunal to provide clarity.

That statement shocked me at the time I heard it and it still does now. I do not like the thought of using councillors to build case law. While it speaks of the situation she is in and the fact that she is looking for some clarity, I would very much prefer if it were a recommendation to come out of this parliamentary hearing that we lean more towards legislative reform than using case law.

I will speak in policing terms, because that is my experience with the legal system. In prosecution terms, it is quite rare that they are the appellant in any case law. It is more likely to be a defence matter where a lot of our case law comes from. I find the idea of using people as test subjects, particularly when I have spoken about the types of people who stand for local government—to put them through a tribunal process, which is very similar to a court process, can be quite distressing.

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I do not know how many times I have appeared in court. Fortunately, I have always been on the prosecution side of the case. That is stressful in itself. You certainly know that you are in an institution where there would be grave implications if you did the wrong thing, let alone knowing that you are going in there potentially facing some sort of sanction. I will respectfully submit that.

Maybe it was a cry for help from her saying, 'We need legislative reform; otherwise we're going to have to go down this track.' I am quite prepared to give her the benefit of the doubt. I just thought I would like to make that comment as well as the other one I made in private. That is the crux of my submission. I have some notes here. I am happy to forward them, if that is appropriate.

CHAIR: If you could, they can be redacted or kept confidential. We will follow that up as a question on notice. Are there any questions for Councillor Gale?

Mr McDONALD: I have two questions. One was about the cost to you personally in regard to time and legal advice. Could you share that with us, either now or privately?

Mr Gale: I have not sought any independent legal advice. I have not incurred any monetary costs as a consequence. Like I said, there is certainly a personal cost and the fear of a reputational cost that is involved when these things come up.

Mr McDONALD: Have you experienced delays?

Mr Gale: Yes, that was my other positive point. In comparison to the police complaints system, I actually like the time that it takes.

Mr McDONALD: Could you quantify that?

Mr Gale: When I was in the police force, I remember when it was alleged that I had travelled through a red light—and I had. I had the lights and sirens going. In the end, I was interviewed and it was fully investigated. I was going to a bank hold-up alarm. The complainant thought I might have been late to get to the bank and bank my pay cheque or something like that. This was 1989. It was post-Fitzgerald. There was a lot of that sort of thing. It took 12 to 18 months to resolve that matter.

Mr McDONALD: What experience of delays have you had with the OIA?

Mr Gale: It has been days or weeks—two to three weeks. I have been quite happy with that. Mind you, I have not had a misconduct matter that has gone to that higher level. I am aware that those things take longer. At the minor level I have found that it is quite refreshing.

Mr McDONALD: Through this process we have found out that the Councillor Conduct Tribunal is spending 200 to 300 hours doing an investigation to come up with an outcome that could be an apology.

Mr Gale: Yes.

Mr McDONALD: How does that make you feel?

Mr Gale: I have looked at some of those outcomes. I certainly concur with what my mayor said before about using a sledgehammer to crack a nut.

Mr McDONALD: What alternative approach do you think you could use?

Mr Gale: I do not know. It is difficult to say. With the matter where I had to make an apology, I would have been happy to make an apology the day I was advised of the complaint. I had some experience with the informal resolution processes that the Police Service has. I like that sort of process because it was expedient both for the complainant and for the subject.

Mr McDONALD: Just for the record, you and I have never worked in the police together.

Mr Gale: No, we have not.

CHAIR: That is probably important to establish.

Mr Gale: No, definitely not.

Mr MADDEN: As I indicated previously, I was a councillor and we did not have this regime. It did not exist. With this new regime and given what has happened to you and your familiarity with other matters, do you think we are in an environment now where some councillors who have had to go through this may consider resignation or not standing again because of what they have had to endure?

Mr Gale: Definitely. I talked about my colleague before. We had a conversation within the last couple of days. He said, 'I am seriously considering'—

Mr MADDEN: Careful—that was before.

CHAIR: No. That was during the public session.

Mr Gale: That is the point. Why would you do it? I have spoken to other good people in the community and it has discouraged them from even standing in the first place and potentially becoming a candidate.

Mr MADDEN: I should have asked you that as well—does it discourage potential councillors?

Mr HART: Andrew, I want to go back to the comments that the OIA made in Mackay. I think the OIA said the same thing to the committee—that the legislation is not clear and it needs to be tested in certain areas for there to be case law that the CCT could then rely on. It might have been the CCT who told us that actually. Have you looked at the legislation? Can you give us any suggestion as to exactly which part of it may need to be clarified? Has the LGAQ looked at that? It might be a better question to the LGAQ.

Mr Gale: I would have to defer to them. I am only basing that comment on—

Mr HART: The problem we have is that if we suggest changes to the legislation we may open up a can of worms in terms of interpretation. The department tells us that they are the point of truth—that there is nothing wrong with the legislation. The way they interpret is from the point of truth.

CHAIR: Be careful. It may or may not have been a confidential document we received. I am not sure. It has been published; that is fine.

Mr Gale: I do not have an opinion on what should be done, no. Fortunately I am not a student of the law—just someone who works in that sphere.

Mr HART: Maybe that is something the LGAQ could take on board.

CHAIR: That might be a question for the LGAQ when we have them before us early next week.

Mr HART: I will give them a heads-up that I might ask that question.

Mr SMITH: Councillor, this may be a hard question for you to answer. Anecdotally, do you believe that councillors actually read the Local Government Act?

Mr Gale: I have seen evidence that some councillors do, but actually reading and interpreting legislation is not entertaining. I am thankful that I have some background in it. It gives me the ability to read it and work out what the 'ands', the 'shalls', the 'shall nots' and the 'must dos' mean.

Mr MADDEN: And the 'mays'.

Mr Gale: I think there could be some improvement in knowledge there.

Mr SMITH: Has your council undergone training where the specifics of the legislation and the code of conduct are reviewed by councillors in any form of training?

Mr Gale: Yes, we have.

Mr SMITH: That was detailed and satisfactory and to your liking?

Mr Gale: Yes, it was to my liking. It gave me some more insight. I made a definite point of trying to get a fairly good understanding of the Local Government Act and how it worked to a certain extent before I sought election as well. I thought that was good.

Mr KATTER: A lot of the evidence we have heard already from councillors is that this sort of thing can apply a bit of pressure and takes away from your normal duties or what you signed up for, which is to play a constructive role in the council. Do you get a sense that there is a disincentive there for people to recontest at the next election or to attract people to be on the council?

Mr Gale: Certainly. It has its days. I find I have to keep focused on the big picture. I have conversations regularly with people who say, 'Why do you do it? I thought about doing it but I'm not going to do it. I'm not going to go down that track because of the level of scrutiny, particularly around conflicts of interest.' I was at a Rugby League function on Wednesday night and had that conversation with somebody.

Mr HART: The mayor was telling us that your council has had a fair bit of training. Do you think that that training was suitable? Would more training help? Have you had enough training?

Mr Gale: I feel comfortable. We have had a lot of scenarios and a lot of things put to us. I feel very comfortable. I concur with what the mayor says. If someone says to me they do not have a conflict of interest about something, I know that they are the person who is wearing the risk. Unless I specifically know differently, I am going to allow them to remain in the room. I am not going to base that on speculation. There are a lot of dots that occasionally get joined for no reason. I can only speak for myself. I have been very appreciative of the training. I sit in a fairly comfortable space with conflict of interest and the legislative training that we have had.

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CHAIR: The time for this session has expired. Thank you very much. A copy of the transcript will be forwarded to you. We have a question on notice about your notes. Obviously they can be redacted as need be, but we will be in contact with you. If we can have those by 1 April. Thank you very much indeed.

Mr Gale: No. Thank you very much.

O'TOOLE, Ms Samantha, Mayor, Balonne Shire Council

CHAIR: I now welcome Samantha O'Toole, Mayor of Balonne Shire Council. I invite you to make an opening statement, after which we will have some questions for you.

Ms O'Toole: Thank you for having me. As noted, I am Samantha O'Toole, Mayor of the Balonne Shire Council. I also chair the South West Queensland Regional Organisation of Councils, which represents the six councils in the south-west including Paroo, Bulloo, Quilpie, Murweh, Balonne and Maranoa. Thank you very much for the opportunity today to cover off on some of the key issues that are included in both the Balonne submission and the South West Queensland ROC submission. We do welcome the review into the Office of the Independent Assessor because it provides an opportunity for rural and remote councils to explain some of the current experiences with the OIA and the challenges around the conflict of interest legislation.

We do believe, as was said earlier, that the OIA should be consistent with the local government complaints system and it should be relevant to all the principles in the Local Government Act. Our experience with the complaint process has lacked timeliness and it has not been well defined in either the LG Act or the Local Government Regulations. We understand that the OIA can also initiate its own investigations if it has reason to suspect misconduct or inappropriate action.

We have included in our submission a suggestion that the legislation should be amended to also include reasonable time frames in the LG Act to finalise an investigation and maintain communication with the complainant, the subject councillor and the relevant council. As an example, a Balonne Shire councillor had a complaint made against him in February 2019 that was initially dismissed. Then the OIA established its own-motion investigation, which commenced in April 2019 and was then referred to the Councillor Conduct Tribunal. It was not known until 9 September 2021, despite it handing down a hearing in 20 June 2021.

These time frames do not appear to be consistent with the reasonable complaints process management system. At no time did the Balonne Shire Council or councillors in this example receive updates at three-month intervals. In fact, if a councillor had not directly contacted and confronted the OIA at a public function we might still be waiting for an outcome.

This delay has the potential to impact local government elections, particularly when it overlaps a term like in this example. The length of time it has taken to progress has caused the councillor involved considerable stress and has tarnished their personal reputation and that of their business, particularly since it ended up appearing on the front page of several local and state based media. The councillor has publicly said that if the outcome was known prior to the 2020 local government elections he would not have sought re-election and is considering resignation currently.

This delay has also caused significant financial cost to the Balonne Shire Council and two individual councillors. There are also resource implications including the provision of information, responding to requests for information and preparing affidavits and supporting documentation.

We also request consideration be given to the removal of the ability to make anonymous complaints. I believe this is a natural justice issue. In all other courts of law you have a right to know who has made the complaint against you. In the case of the councillor in Balonne, three years later he is still unaware who made the original complaint, which was dismissed. We would argue that this transparency would reduce the number of frivolous and vexatious complaints being made.

Over the last three years there have been significant changes to the Local Government Act and the local government regulation with rolling reforms in that area. This has resulted in a range of different interpretations, terminology relating to conflicts of interest, material personal interest, prescribed conflicts of interest and declarable conflicts, along with how and when to declare them and the processes to deal with them.

Training has been on offer but, to be blunt, it leaves something to be desired. During the last sessions of training that Balonne undertook as a whole of council with the department of local government midway through 2021, we actually used three examples of conflict that we deal with on a monthly basis and sought clarification around whether councils did have a conflict of interest. These are probably issues particular to rural and remote councils. One of the examples was around stock route legislation. These were taken on notice by the department and six months later we still have not received clarity on the issue. This makes it very difficult to be clear about when and where a councillor needs to declare and how the processes to deal with that need to be undertaken.

It does interfere with our ability to get on with our job and run a council, particularly where you may lose quorum on issues, which is common in rural and remote areas. If I go back to the stock route issue, if one of us has a conflict of interest it is common that many of us would have, purely due

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to the nature of where we live. How do we still get on with the job of managing our stock routes when dealing with legislation around them if we cannot get clarity around whether we have a conflict of interest or not?

In Balonne shire we had no history of egregious complaints or offences prior to this recent one. On behalf of Balonne and the five other councils in the south-west, we would like to ask if it is possible for the committee to consider amendments to the Local Government Act and changes to the functions and structure of the OIA for a more effective operation and for a local government complaints system to include: reasonable time frames to be added to the legislation, to resource the OIA if it is to stay, to apply appropriate resources to avoid the lengthy delays that are occurring, legislative changes to structure the penalties for minor and procedural matters, options for a more effective operation of the OIA in order to get to the state where you may apologise or training may be handed down without the lengthy tribunal processes and costs—regulations and clarifications about ordinary business matters are currently being reviewed by the department to remove the ambiguity and it is welcome, but we really need clarity in that area—and the ability to seek advice from the Integrity Commission or similar services would be a welcome return to provide elected representatives with the opportunity for independent and sound advice on integrity matters.

Thank you for the opportunity to appear today. I am happy to answer any questions.

CHAIR: Thank you for your council's submission. I found it very useful. One of the things you recommended is for the OIA or CCT to order an apology or training for misconduct to avoid the lengthy tribunal hearing. You specifically talked about changing section 150AR to avoid a lengthy tribunal hearing. That includes making a public submission, reprimanding the councillor, or the councillor being ordered to attend training or counselling. Do you want to explore that a bit more, because it is quite specific? We would like to hear a little bit more about the specific recommendations.

Ms O'Toole: I suppose the experience in Balonne is pretty limited, having only had one complaint made against councillors, which is different to some of the other stories you have heard this morning and I am sure you have heard elsewhere. In this particular council's experience, the original complaint was dismissed and then the OIA raised its own motion. It has taken 2½ years to deal with that and in the end the consequence was an apology and training. That is 2½ years, tens of thousands of dollars of legal fees, enormous personal stress and the councillor's face being splashed all over state media. Imagine what his family and then he himself personally went through. If that was the outcome to be sought, it could have been dealt with in a timely manner and we would probably have had the same outcome. It probably would have also altered the 2020 local government election because he would not have stood again. That came from our legal team—the specific reference to that act and where we are seeking changes. That is just to give you clarity about where in the act we think a change could be made.

CHAIR: They are very specific recommendations in relation to that case, which was started and then 2½ years later ended in an apology. It could have been short-circuited by doing this.

Ms O'Toole: Yes.

CHAIR: Thank you for being very specific.

Mr McDONALD: Thank you for being here. I appreciate your submission. It is very comprehensive and similar to others we have received. Your focus on time frames and interpretation, which is very good. You heard me ask Mayor Pennisi about costs. I know you have not received many complaints, but I am sure there has been a cost to Balonne council. I am sure that Balonne does not have a big rate base. Could you share with us about that?

Ms O'Toole: That is why I said we are up to tens of thousands of dollars on this particular case. It has actually been appealed and is ongoing. It has not been completely dealt with at this stage. I would be happy to submit our legal fees for you to consider. The last update I had from our CEO was above \$40,000. For us that is relevant to a one per cent rate rise.

Mr McDONALD: That is significant.

Ms O'Toole: It is significant.

Mr McDONALD: Please feel free to share any personal costs as well as the financial cost.

Ms O'Toole: Absolutely.

Mr McDONALD: I have asked questions before about the delays and you have given us one of the case studies. Can you give us a sense of how the council and also the community feel about those delays?

Ms O'Toole: It is a very good question. In terms of the councillor personally, it obviously has a very big personal toll on them, just taking that length of time into account and it being ongoing. When they are requested for information or affidavits they are very specific about the time frame; it might be 10 days or seven days in which you have to respond to that. But then there can be months when there is absolutely no contact. You have no idea where the process is at. I think that is completely unreasonable on a personal level for someone to deal with that.

As I said, when his misconduct was handed down, to make state media—and nowadays with social media that is very easy to do because a lot of the newspapers are owned by the same company, so it was splashed all over the state. He had dozens of personal phone calls about that and some very confrontational ratepayers on the street as well saying, 'We voted for you and if we knew this was going to be the outcome, we wouldn't have done that.' I think on a personal level it does have a very big impact on councillors and it may cause a by-election in Balonne as a result of what has been handed down.

I think it also puts a bit of a cloud over your head as a council group. Individual councillors do not have an opportunity to do much independently, so we have to work as a group and as a collective. It casts a doubt across all seven of us about whether we are doing things transparently and we have integrity as a council. That is frustrating. Obviously the cost, which wears on rural and remote councils, is significant. I also think the ratepayers would like these issues dealt with in a timely manner, particularly running into a local government election and out of a local government election, so that they have the transparency to make the best decision for representation of their community.

CHAIR: Just bear in mind the mayor has said this is currently under appeal, so it is still a live issue.

Mr MADDEN: Thanks very much for coming in today. I am a former solicitor, a country solicitor. I want to clarify what you said when you talked about the cost burden to the council. As a lawyer, the only costs I understand are the ones that appear on a tax invoice from a barrister or the solicitor. When you talk about the cost burden to the council, are you talking about the time the CEO has to spend on it or your legal advice? Are you purely talking about the cost you have received as tax invoices from your lawyers or the lawyers of the councillor?

Ms O'Toole: The figure that I mentioned would be specifically related to the bills we have had from our legal firm to provide advice and support for the councillor. Particularly in rural and remote councils the overall cost to council would also need to incorporate—like you say, the CEO has obviously been involved. Other members of senior staff have had to provide affidavits. A number of staff have been involved in providing information to the OIA for their investigation. If we took into account their time and that commitment or that burden that is on the council, it would be significantly above that.

Mr MADDEN: You are talking about both? You are talking about the staff time and the lawyers' time?

Ms O'Toole: Yes, but the figure I mentioned when I said 'tens of thousands of dollars' would be purely our legal fees that we would have received on an actual invoice.

Mr MADDEN: So purely the legal fees?

Ms O'Toole: Yes.

Mr MADDEN: That is what I wanted to clarify.

Mr HART: Without getting into specifics, which body has the particular case been with?

Ms O'Toole: The CCT.

Mr HART: How long has it been there?

Ms O'Toole: Since prior to Christmas.

Mr HART: Does your council have a sense of when QCAT may—

Ms O'Toole: We have not been contacted in any way, shape or form since the notice of appeal had occurred.

Mr HART: I think there is quite a backlog in QCAT. You mentioned that a decision was made in a case when the OIA was directly confronted at a social event. How quickly was it resolved after that?

Ms O'Toole: The OIA actually appeared at a local government conference in Cairns some time ago. When the OIA got off the stage, the councillor actually confronted her, I think out of anger because he simply had not had any progress—

Mr HART: No specifics please.

Ms O'Toole:—and mentioned his case to her.

Mr HART: As far as vexatious complaints go, some of the other councils have suggested that vexatious people be identified and banned from making complaints. Do you see that as an issue?

Ms O'Toole: We have not experienced that in Balonne. Listening to the stories this morning I am thankful we have not had a series of vexatious complaints. I do think it would be reasonable that if there was a complaint made repetitively by the same person, that person could be deemed vexatious.

Mr HART: What about identifying anonymous complainants?

Ms O'Toole: I did mention that in my opening statement. I do believe they should be identified. In any other court of law you would be identified. I understand under whistleblower legislation there may be times when a person's safety is at risk or there may be specific reasons when you would withhold the person's name. However, I think in most cases that should be made public.

Mr SMITH: Going to the submission around reasonable time frames, could you give us an example of what you think is a reasonable time frame for an investigation of misconduct?

Ms O'Toole: I suppose it depends on the particular offence that is being investigated. I do not think 2½ years is reasonable. I do not think no communication in 2½ years is reasonable. I think maybe 90 days to six months would be reasonable as well as having reasonable communication with the council and the councillor involved so that they understand the process.

Mr SMITH: So what do you base that 60 to 90 days on?

Ms O'Toole: If it is a minor offence that is going to result in training or an apology, I think it can be dealt with in a timely way, in 90 days realistically. If it was dealt with in the previous system where a CEO or mayor had to deal with that complaint, it would be dealt with almost immediately on the spot. I do not understand why, because we are doing a referral system, it is acceptable for 2½ years to be undertaken for an investigation. I think it is as a result of the under-resourcing of the OIA and other problems that are there, so if they are going to put the system in place they need to resource it appropriately.

Mr SMITH: So it has been 2½ years. Is that matter before the CCT?

CHAIR: That is the one, yes; QCAT.

Mr SMITH: Yes, so it is not still currently under investigation, is it; it is before the CCT?

Ms O'Toole: Because of the appeal, yes.

CHAIR: QCAT.

Ms O'Toole: QCAT, because of the appeal.

Mr HART: A decision was made and it has been appealed.

Ms O'Toole: So since 2019. That is not reasonable.

Mr SMITH: But I guess there is a difference though—that is, between an investigation or an assessment, is there not? It is different to it then going before a tribunal?

Ms O'Toole: The original complaint was made, I believe, in June 2019 and the first OIA or the CCT letters of a decision being made was midway through last year, so it was 2½ years to that point.

Mr SMITH: To that point; okay. In terms of being anonymous—and I can absolutely understand why people want to know who is making a claim against them—you mentioned that you do support whistleblowers in the realm. Is it fair to say that when a councillor becomes elected there is a perceived elevation of their role within the community?

Ms O'Toole: I think it would be fair and reasonable to say that, yes.

Mr SMITH: And do you think that, for someone who may feel as though they are more vulnerable in the community, having that ability to stay anonymous and not put themselves in the firing line of a more elevated person would be fair; it would be fair for them to do that?

Ms O'Toole: I do not think it is reasonable. I think there would not be retribution against the person making the complaint, and if there was retribution they would have an opportunity to make another complaint.

Mr SMITH: But do you not think it is fair that a person who is vulnerable in the community or perceives themselves as being in a more vulnerable state in the community may well have that thought that there would be retribution?

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Ms O'Toole: I think it is possible, but I cannot surmise what a third person is going to think, so I am sorry; I do not think I can answer the question.

Mr SMITH: I guess what I am saying is that being anonymous may well protect the more vulnerable people in our community against a perceived elevation of power within the community; is that a fair comment?

CHAIR: Hard to say without offering an opinion on that, but I think we—

Ms O'Toole: Yes.

Mr SMITH: I think it is a fair comment. Thank you.

CHAIR: I think we get your—

Mr SMITH: Thank you, Chair.

CHAIR: We will take that as a comment from you.

Mr SMITH: Tony Jones, thank you!

Ms O'Toole: If we can agree to disagree.

Mr SMITH: Yes.

Mr HART: With the 2½-year time period, at what stage during that 2½ years did the council generally become aware that a complaint was made?

Ms O'Toole: I believe it was February 2020.

Mr HART: So what was that—12 months after?

Ms O'Toole: It would not have been quite 12 months; it would have been eight or nine months after the complaint was made.

Mr HART: Right, so are you aware how the OIA investigated the particular issue? Did they talk to people in the council?

Ms O'Toole: Because it was an own motion at that stage, I am aware that because of the nature of the investigation a number of different staff were contacted and requested to give an affidavit, as was the councillor who was involved. So I am aware a little bit of some of the undertakings that occurred during the investigation, yes.

Mr HART: Did your CEO know that process was going on?

Ms O'Toole: Yes.

Mr HART: Okay. That is it.

CHAIR: There being no further questions, the time allocated for this session has expired. I thank Councillor Gale, Mayor O'Toole and Mayor Pennisi for coming along and being a part of this. We always enjoy coming out and chatting face to face about these issues. The committee would appreciate if any answers to questions on notice could be provided by Friday, 1 April 2022. We will send you the transcript of the hearing and clarify any questions. The public transcript will be available on the committee's website. Thank you to everyone who has participated today. Thank you to Hansard, thank you to our secretariat and thank you to the staff here and everyone who has helped out at the Burke & Wills Hotel. As I said, a transcript of the public proceedings will be available on our website in due course. I declare this public hearing closed.

The committee adjourned at 11.48 am.