



STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr MJ Hart MP
Mr RI Katter MP
Mr JJ McDonald MP
Mr TJ Smith MP

Members in attendance:

Mr SA Knuth MP
Ms A Leahy MP

Staff present:

Ms S Galbraith—Committee Secretary

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

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 1 MARCH 2022

Cairns

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The committee met at 9.37 am.

CHAIR: We will now commence the committee's inquiry into the functions of the Independent Assessor and the performance of those functions. My name is Chris Whiting and I am the member for Bancroft and chair of the committee. I would like to respectfully acknowledge the traditional owners 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 here today are: Jim McDonald, the deputy chair and member for Lockyer; Michael Hart, the member for Burleigh; Tom Smith, the member for Bundaberg; Robbie Katter, the member for Traeger; and Ann Leahy, the member for Warrego, who has been given leave to appear with the committee today.

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. Could you please turn your mobile phones off or to silent mode. Finally, in line with Queensland's COVID-19 requirements, all members and witnesses will be required to wear a mask during today's proceedings. Members and witnesses may remove their mask when speaking.

PYNE, Mr Rob, Councillor, Cairns Regional Council

CHAIR: Welcome. Would you like to make an opening statement about councillor conduct and the Independent Assessor and then we will have a few general questions for you?

Mr Pyne: I have a few general points. In terms of the OIA and the complaints system, something you cannot get away with I guess is that it is going to be gamed by people's political opponents complaining about whoever the person is, the councillor concerned who is being complained about. I do not know how to do anything about that. Since I have been in council this time under this system, in the last couple of years, I have not been afraid to engage in robust debate on social media so I have attracted a number of complaints, most recently from anti-vax communities in Cairns. The reply from the OIA has always been the same: 'We've had a look at this and it's not of substance.'

One thing I have enjoyed about it is you want due process and to have your say but to get that is like you do not know your own investigation that you getting, but there is no problem. It can be a stressful experience to think you are being inquired into. I found the OIA pretty good.

I think it is important that for misconduct that the bar is very high. Behaviour that may be acceptable in inner-city parts of Brisbane may be different if you live in Hope Vale, Yarrabah or wherever, so I think you have to have a standard where people who live in different parts of Queensland are not held to as high a standard as the average discourse in their community. I am trying to put that in respectful terms and I hope it makes sense.

I may just leave it at that. My experience with the OIA has been a fairly good one. Even though I have received complaints against me, I have not felt as though I was unfairly targeted. I have found the process to be user friendly. I guess there are other issues around corruption, but I do not know if that is a matter for this forum. I do not think it is.

CHAIR: No. We will focus just on councillor conduct. Tell us the process. You have the 150AA letter from the OIA. Can you tell us what it says, what your reaction is and what your first steps are after getting that?

Mr Pyne: It is very brief: 'We have received a complaint about you. The complaint was along the lines of sharing comments on social media. We found the complaint not to be of substance.' That is the four or five letters I have got in the last couple of years.

CHAIR: Do they ever ask, 'We want to know more about it?' or 'We may reasonably suspect?'
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Mr Pyne: No. That has not been the case for me personally, but other councillors could talk about their own experience. Presumably that has happened.

CHAIR: I have seen the article in the *Cairns Post* on 15 February that talks about issues around conflict of interest at Cairns. In your experience there, how could that system in the Cairns council be improved—in terms of the management of conflict of interest, how the process works, further training?

Mr Pyne: A lot of the complaints that you read about in the media are historical so a complaint might go back five years, who knows. I think a positive change was when the Local Government Act was last reformed and it removed some powers from the mayor in terms of drafting budgets and reaching down to the executive arm of council. I guess you all know through your own work experience that separation between the legislative and the executive. You all have your heads around that and have a clear knowledge and understanding that the legislator makes the law and the role of the executive government. That is often opaque at council level, so I think having that distinction, which has come back in the last couple of years—where councillors who are elected have the role to vote and have their say that way, and the CEO and the executive arm of council are intimate with those decisions that council has made—really addresses a lot of the conflict of interest issues.

CHAIR: What you are saying is that the new system has emphasised the distinction between roles—this is what councillors do and this is what the CEO and senior officers do. The councillor conduct system has really emphasised that councillors can do this but not that and this is what senior officers must do.

Mr Pyne: Exactly. To put the other side of it, councillors ourselves are a bit to blame because prior to elections we will say we are going to fix this and fix that but after elections of course you cannot actually direct staff. You have to get something through a council meeting and that requires getting a number of votes, and you do not know that when you are elected what is going to happen at council meetings.

Yes, you are right. I think having that clear distinction is important. The only remaining grey area is the CEO's tenure. Most councillors like myself think the mayor is entitled to have a pretty big say in who the CEO is. Then you get a problem where the CEO's career becomes dependent on that relationship with the mayor. I do not know how you address that without going back to the old system of having town clerks and shire clerks who move around the state.

CHAIR: What about internal training in your council on the issue of code of conduct, managing conflict, register of interest? What is the training regime here in Cairns?

Mr Pyne: That is quite extensive. A lot of it is provided by the LGAQ. Most councils I would think—smaller councils maybe not—would have someone responsible for governance. We have a woman who has a senior position in council who is responsible for governance. There is every opportunity to go and see the CEO or the person responsible for governance within council to get advice and say, 'I'm in a tricky situation.' I always think that if it feels funny you should be asking someone. If you think, 'Is this okay?' then you should be getting advice, but that advice is always clearly available within council. The LGAQ might not be able to give you distinct advice so there is even more reason to be cautious and go to someone within council.

Mr McDONALD: Councillor Pyne, you mentioned before about ensuring that the standards of inappropriate behaviour or misconduct—you might not have said those words—in different communities was appropriate to their community. I know you mentioned discourse. If it is about swear words, I am not asking you to use them. You might substitute swear words with appropriate letters. Is it about swearing? Could you give us an example or a case study?

Mr Pyne: Often, as you would very well know, you could get comments on Facebook that are attacking you personally. I recently had someone say, 'Go jump in the lake.' You can say, 'Get stuffed,' and it can escalate. I found that the OIA has been fairly tolerant. When you are copping an attack and you respond in robust terms, as I say, every time that has occurred with me I have been cleared in terms of my conduct.

Mr McDONALD: How would that be different in Brisbane to Hobart?

Mr Pyne: There would be more common use of the 'f' word. It is almost a greeting in some communities.

Mr McDONALD: You mentioned some complaints that you had made against you and you received a letter. Was that letter received after it had been resolved?

Mr Pyne: Yes. I would like to think, rightly or wrongly, that if it were being taken seriously I would have the chance to have some input. I would say it has been ruled out at the vexatious stage and then I have had a letter clearing me.

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Mr McDONALD: Do you think there should have been some other step in that process in terms of natural justice or procedural things?

Mr Pyne: I know where you are coming from. I do think that is important. Hopefully, if there had been a case to answer I would have had that opportunity. I am also conscious, like I said at the start, that a lot of these complaints are politically motivated. I do worry, like everyone, about public money being spent on increasing investigations about comments on social media and that sort of thing. I do not think that is where the integrity dollars should be going really.

Mr McDONALD: I do not know whether you have a problem disclosing this, but have you had experience of making a complaint as well as having complaints made against you? Can you tell us about your experience with the OIA from that perspective?

Mr Pyne: No. I have made complaints, but they predate the OIA. They go back to my first time on council. When I got elected this time in 2020, I did not want to make a complaint because my experience as a whistleblower was not always a very supported one.

Mr McDONALD: Sorry, I do not understand. Should it make a difference when the dates were when you made a complaint?

Mr Pyne: It would have been about 2010.

Mr McDONALD: You were making complaints about—

Mr Pyne: A fellow councillor in 2010, yes.

Mr McDONALD: How were they resolved?

Mr Pyne: The problem there—again, I do not know whether they are within the purview of this committee—is that they went to the CCC and then they came back to the CEO. I think that is a real problem.

Mr McDONALD: That was the process then.

Mr Pyne: It may still be. I do not know.

Mr SMITH: You have alluded to the fact that some of the complaints in social media were made against you were because of comments that you published and comments that you have shared. Is that correct?

Mr Pyne: Yes—most recently calling anti-vaxxers irresponsible and selfish.

Mr SMITH: At any point has there been a complaint made against you for deleting a comment on your page or having another profile, to your knowledge?

Mr Pyne: No, I have not had any complaint about that.

Mr SMITH: Is there a general time frame between you publishing a comment and then you receiving that letter from the OIA? I am trying to work out how long necessarily it might take.

Mr Pyne: I must admit I have not gone back and kept records. Judging on the last time—which was the anti-vax comments and sharing that and the letter clearing me—it was fairly prompt.

Mr SMITH: Was it in the space of weeks or a fortnight? Could you give us a rough guess?

Mr Pyne: It was about six weeks or something like that.

Mr SMITH: Would it not be more stressful to get a letter from the OIA saying, 'A complaint has been made against you. We are assessing it,' and then you have that time and space until the next letter comes and says, 'There is nothing to see here. You are all okay'? Would you prefer things to stay the way they are in terms of, 'We'll let you know if there is an issue'?

Mr Pyne: There are all different levels of resilience. Provided that if they find there is a case to answer that I have the chance to have some input—I call it a threshold level. I would rather that threshold level of investigation. I am happy to have it done without knowing about it.

Mr HART: Rob, in terms of the investigations you are talking about from the OIA, do you know if they came from somebody making an anonymous complaint or was it self-instigated by the OIA?

Mr Pyne: They were anonymous complaints to me. I do not know whether the person who complained to the OIA told them who they were. I am pretty sure I know who the most recent one was from because I actually shared a message on Facebook. I am joining the dots basically.

Mr HART: So the OIA does not tell you that they are complaints that have been made or that they are starting something themselves?

Mr Pyne: No. I think last time they talked about comments I had shared with people on Messenger, so I was able to narrow it down that way.

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Mr HART: With any of the cases against you or anybody else that have been dismissed by the OIA, do you know whether the OIA looked at the issue of freedom of political expression for councillors specifically?

Mr Pyne: I do not know the answer to that question.

Mr HART: Some of the mayors and councillors we talked with yesterday and previously expressed an opinion that vexatious complaints or complainants should be identified on some level and people possibly no longer allowed to make complaints. Do you support that?

Mr Pyne: If someone is lodging complaint after complaint—and I think we have all experienced people like this maybe in our lives or within our organisations—there has to come a point where someone is labelled as a vexatious complainer.

Mr HART: Let us flip that on its head: if you are making complaints yourself, would you be happy to be identified as a vexatious complainant?

Mr Pyne: If I had made a number of complaints—yes, definitely.

Mr HART: Do you think the OIA process has become too legalistic? Other people say that.

Mr Pyne: I do not know the background. I am like a consumer, if you like. I am not familiar with what is going on behind the counter, behind those letters and what they are ticking off.

Mr HART: I think you said before that you thought that the OIA was being politically weaponised.

Mr Pyne: The point I was getting at is that 95 per cent of the community do not know who the OIA is. But for people engaged in politics or maybe who have potent issues in the local community who are able to use the process, yes, they tend to come from that group who use it. I do worry about that.

Mr HART: In the past you could seek advice from the Office of the Integrity Commissioner and if you complied with their advice you could use that as a legal defence. Now that has been taken away, possibly because of a lack of resources inside that office—

CHAIR: We are not going to have this (inaudible) debate, are we?

Mr HART: It is evidence already before the committee.

CHAIR: No, it is not.

Mr HART: It is evidence before the committee. I can point to it if you would like to me to.

CHAIR: We have had (inaudible). Do not have evidence.

Mr HART: I would like your feedback on whether you ever used the integrity office's advice or sought their advice and then complied with that advice?

Mr Pyne: I have not done that. Certainly I think it is important. Sometimes when you ring the LGAQ they might not be able to give advice on the specifics of your case. It is important. I guess it is up to councillors too. I never kept a diary. I think keeping a diary and meeting notes and those sorts of things is really important.

Mr HART: If you thought that you needed defence in the future, from where would you seek advice?

Mr Pyne: I would go to the CEO and Christine Posgate at council whom I have a lot of personal confidence in. The area of governance is within her jurisdiction in council. I would go there and I would make extensive notes with dates and who I had spoken to.

Ms LEAHY: Hello, Rob. It is a long time since we were on committees together back in the state parliament. You received information from the Office of the Independent Assessor that there was a complaint against you. Had you sought legal advice when you responded to the Office of the Independent Assessor?

Mr Pyne: To be clear, my first actual contact from the OIA has been a letter from them saying that they had looked at it and found I had no case to answer.

Ms LEAHY: So they dismissed. Did that happen in all of your complaints?

Mr Pyne: Yes.

Ms LEAHY: They dismissed them straightaway without you even having to respond?

Mr Pyne: Yes.

Mr SMITH: Councillor Pyne, what would you say is your level of understanding of the code of conduct: say a five is a general knowing and 10 is being all across it?

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Mr Pyne: You get such detail in PowerPoint presentations and advice, but then you are asked in front of a committee like this and I am thinking, 'My God, I can't remember any of that stuff.' Do you know what I mean? I would say not well and even though there is a code of conduct I default to what feels right and what does not, if that makes sense.

Mr SMITH: In terms of being able to make a comment as a councillor or a comment as a person making your own personal reflection, at any point do you ever feel as though your ability to make a political expression is restricted by the code of conduct?

Mr Pyne: No. I speak out on issues, to my own detriment often. I do not feel limited in speaking out on issues.

Mr SMITH: When you say 'detriment', do you mean in terms of politically?

Mr Pyne: Politically.

Mr KNUTH: Councillor Pyne, in relation to complaints that have been made, is there any cost factor or stress or hurt? Can you elaborate on that?

Mr Pyne: I can only speak about my case. Because the letter has come from the OIA saying they find no case to be investigated, the answer is no. If they had found something it may be that I would have to have legal advice, but I do not know. In my experience, no, because the letters always said, 'A complaint has been made about this and you have been cleared.' There is social media banter, so I do not know if that is another area that the committee needs to consider.

Mr HART: Rob, do you think that if a complaint is made that it should be publicly available for people to see on a register somewhere or do you have a different opinion?

Mr Pyne: I am worried if we are talking about vexatious complaints. I do not think they should be necessarily recorded. I think there should be some base level of credibility to a complaint or an investigation before it is.

CHAIR: The time for this session has concluded. Councillor Pyne, thank you very much for appearing before the committee today. There are no questions taken on notice.

Mr Pyne: Thank you very much for your time.

KREBS, Mr Peter, Manager, Legal Services, Torres Strait Island Regional Council

CHAIR: Welcome, Peter. Thank you so much for coming down today. As you know, we are inquiring into the effectiveness and function of the OIA. We would be very keen to hear about your experience in working in this space in Australia's most northerly council. Would you like to make an opening statement and then we will have some questions for you?

Mr Krebs: Thank you, Chair and members, for this opportunity to speak to you and give feedback. As the chair said, my name is Peter Krebs and I am the manager of Legal Services with the Torres Strait Island Regional Council. We call the council TSIRC so during the course of these submissions I will refer to it as TSIRC.

TSIRC came about by the amalgamation of 15 island communities in 2008. Before then, each island in the Torres Strait had its own chair and its own council. They came together in amalgamation in 2008. Roughly 5,000 residents live in the region. They are scattered over 14 islands. We also share a border with Papua New Guinea. The operating environment is somewhat different to a lot of the councils that you are no doubt more familiar with. For a lot of our residents English is their second language. About 70 per cent of Torres Strait Islanders do not live in the Torres Strait; they are scattered around Australia.

Chair, I take it that you do have copies of the submission that we forwarded on 15 December 2021?

CHAIR: Yes, we have read that.

Mr Krebs: I will spare you the indignity of reading that out.

CHAIR: No, I compliment you on it. It was very to the point so thank you for that.

Mr Krebs: I acknowledge my Acting CEO, Hollie Faithfull. She might be able to assist if need be. Regarding the Office of the Independent Assessor, as you will see from our submission, our councillors work in a very distinct cultural background. Usually everybody on the island is related or they know each other. To make things a bit more difficult, each island has a native title determination except for Hammond Island, of course, at this stage. The native title is held by a prescribed body corporate, which has its own specific chair. Often you can have a bit of tension between the native title and the role of the local government, which can lead to conflict between a councillor and the PBC chair.

These types of matters come to us in Legal Services within the council. Generally, we find that it takes quite a bit of time before the matter is resolved by the Office of the Independent Assessor, of course depending on the complexity of the matter and whether further investigations are required. Unfortunately, throughout the process there is very little in the way of feedback. Sometimes for some of the councillors it can be quite demoralising because they do not know what is going to happen or a possible outcome.

The other matter, and I believe Councillor Pyne raised it as well, is about how we manage vexatious or frivolous complaints or complaints without substance. In our operating area in TSIRC there is a lot of hearsay. People who do not have the full facts will make a complaint that has a complete lack of substance and has no truth to it whatsoever. I hate using the term 'fake news', but that is probably a good way to say it. People then get upset, particularly if they are traditional landowners or that sort of thing, and they will make a complaint. Of course, under the legislation we then have to refer it on to the office and it goes through that process.

As you will note in our submission we refer to section 150P of the Local Government Act. We suggest that in those circumstances where it goes to the CEO, the CEO looks at it and can see that it is vexatious, frivolous or lacking in substance and the CEO can then make a decision to dismiss the complaint. Of course, that would be subject to doing a report to the Office of the Independent Assessor so you do have that level of scrutiny that things are just not being swept under the carpet. That was one of the suggestions we have, which has been born out quite often by experience. Often we will see a complaint that we could knock on the head but, of course, unfortunately we are obliged to send it to through the process. That is particularly with anonymous complaints. Often I will get a call in my capacity from a resident on an island or from a PBC or a native title, complaining about something. Quite often I can put their mind to rest, but formal complaints or anonymous complaints have to go through that process.

Effectively, those are the two main matters on behalf of TSIRC that we would seek to have addressed. I am open to questions, Chair.

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CHAIR: Thank you very much, Peter. Certainly that last issue that you spoke about is quite interesting. The system was initiated to make sure that a third party is involved so that complaints do not just go to the CEO, the CEO deals with them and that is the end of the matter; it goes to the OIA. What you have outlined is a further refinement to the system: if someone in TSIRC has an issue, the first person they would approach would be the CEO; am I correct?

Mr Krebs: That is correct.

CHAIR: And then probably yourself as part of that?

Mr Krebs: Yes, that is correct. Usually the CEO would send it to me.

CHAIR: It might be that you have the opportunity to resolve that locally before it would be passed on to the OIA in Brisbane; is that correct?

Mr Krebs: Yes, that is correct.

CHAIR: Do you find that an effective way of dealing with things locally, so that they do not escalate?

Mr Krebs: I think depending on the matter. With how our complaint process is set up, say somebody goes online and makes an anonymous complaint outlining a set of facts, that complaint goes to us. We then prepare a checklist and it goes to the CEO for a recommendation. Quite often it is not only about councillor conduct; it can be about employees of council which, of course, is of no interest to the Office of the Independent Assessor. Often we get a machine-gun approach with complaints where they will complain about everything and we have to distil where it steps into the jurisdiction of the Office of the Independent Assessor.

CHAIR: Obviously if you are dealing with things at a local level regarding councillor conduct, still you notify the OIA so you keep them involved at every step of the process?

Mr Krebs: Yes.

CHAIR: This is exactly what we want to hear about how the system works for the different councils. One of the other things we talked about is the code of conduct. The government makes a code that applies across Queensland. It is a pretty broad code. There are going to be some difficulties in implementing, enforcing or imposing a code across areas of such great cultural diversity. How does TSIRC deal with those issues of imposing a code that has been imposed by a system down in Brisbane?

Mr Krebs: It can be challenging, especially when it comes to managing conflict of interest matters as well. Quite often, it is not as clear-cut in the Torres Strait Islands—with island custom, as we call it—as it would be, say, down south. Again, our approach has been the law is the law, the code is the code, and there is no trying to get around it. We recently had a situation where we had to deal with councillor conduct—it was inappropriate language and gestures perhaps—and that was dealt with by council. The recommendation was the councillor had to review the code of conduct. That was actually minuted and that was the outcome of that. There are challenges when it comes to those sorts of specific things. Otherwise, we have had good support from the code of conduct. Quite frequently, if issues do arise, they do know to seek advice on those matters so we do have that communication going on from time to time.

CHAIR: What is the training regime on these matters? How do you train your councillors on these matters?

Mr Krebs: We do have support from the Local Government Association—like meeting protocols and dealing not only with the nuts and bolts of council meetings but also with other matters like code of conduct, inappropriate meeting conduct and that sort of thing. It is kind of on a needs basis. If there is inappropriate meeting conduct, of course the mayor now knows how to bring that into line. My experience—and I go to all the council meetings—is that very rarely do you have a situation where there is inappropriate meeting conduct amongst the councillors, I am happy to say. That is more to do with the cultural thing, because members of the council are recognised as elders and they are treated accordingly.

CHAIR: It is quite interesting that you have island custom and sometimes that presents some difficulties with code, register of interests, conflict of interests.

Mr Krebs: It does at times, yes. As we say to councillors, it is always better to declare everything. We have to comply with the act, even though sometimes there is a bit of tension between it. The law is the law as it is, and that is what we have to comply with.

Mr McDONALD: Can you give us an example of where the customs in the Torres Strait may provide that conflict or challenge in that area so we can understand it better?

Mr Krebs: Sure. One of our islands only has about 40 people living on it, and our biggest island has about 750 people. Quite often, you will have very close family relationships and everyone knows each other. The island itself is deed of grant in trust, or DOGIT, as well, so the councillors are also the trustees of the land so they have to make trustee decisions about the land. Let us say, for argument's sake, they want to build a new supermarket and the supermarket manager is the brother of the councillor or if the land where the supermarket is going to be built is traditional family land. You can see ordinarily whether that would be a prescribed conflict of interest. It is that sort of thing. It is more about the familial relationships where we get the most tension.

Mr McDONALD: I guess your point then is declaring that and making sure it is out in the open and transparent.

Mr Krebs: Yes, that is right. We always make sure it is declared, it is minuted, and whether it is a declarable or a prescribed conflict. That is where it gets a bit tricky. You might have somebody who we would understand as a third cousin but it could be like a brother and sister relationship, so very close, but down here that would not be too much of an issue. With the family relationships, it is where people have grown up. They might have what we call a biological mother and father and also the parents who grew them up and siblings. It can be quite tricky at times. Our advice is on how they feel. If they feel it is a close enough relationship that it could impair their decision or they are unable to bring an impartial mind to making a decision, they should hand it over.

Mr McDONALD: Thanks for that explanation. It is great. So the current legislation as it sits with those matters is sufficient?

Mr Krebs: When we are managing it, that is correct, yes.

Mr McDONALD: Just coming to the point the chair also identified, and I appreciate the suggestion about the opportunity for the CEO to record the matter after a brief investigation or understanding there is a problem. Some advocates at the start of the intervention of the assessor want to carte blanche make sure it was a third-party person. What do you say to those people? Is the system—

Mr Krebs: Sorry, as in?

Mr McDONALD: Your suggestion.

Mr Krebs: Just looking from our perspective—and I do not know how other councils operate—we see that there are a lot of things that could be knocked on the head very quickly. There is just absolutely no truth in them but we are compelled to report it up. We understand of course that the reason we do have this system is that you do not sweep things under the carpet. We understand there has to be oversight. However, for the sake of having a councillor with this hanging over their head or subject to investigation, it could be knocked on the head. If the Office of the Independent Assessor think otherwise, they could then reactivate it. We just see it as a way we could deal with it and get on with it.

Mr McDONALD: I think it still provides a level of transparency. We have had a number of submissions come to us where it has been the tension of the mayor employing the CEO and the CEO is doing the right thing by the mayor. I think the suggestion would cover and cater for those sorts of things.

Mr Krebs: Yes.

Mr McDONALD: In terms of costs to your community—this is a question I ask regularly—the ratepayers are the ones who end up paying the costs, or the council paying the costs, of legal complaints. Have you had many complaints go to the OIA that it has cost your community?

Mr Krebs: Actually we do not rate; we are not a rates council. We are an Indigenous council so we are on funding.

Mr McDONALD: It is still a cost.

Mr Krebs: Absolutely, it is a cost. We do have external legal advisers to assist us sometimes. I do not see it as too much of a cost to us besides the administrative staff, myself and other staff and the CEO's time. We are in a situation where we do not often have, in particular for councillors, to refer for external advice.

Mr McDONALD: Do you know how many complaints since the establishment of the OIA your council has dealt with?

Mr Krebs: I was meaning to bring that information.

Mr McDONALD: Are we talking about dozens?

CHAIR: I think that is on your website.

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Mr Krebs: We do a report and we are in the process of collating that information. I would say about councillors it would be dozens; it would not be any more.

Mr SMITH: My question is pretty relevant for Indigenous communities especially. The Local Government Association of Queensland put a motion that was carried about the fee per complaint—so about \$200 per complaint—made against local government councillors. Could you discuss what kind of impact this would have on people across the Torres Strait if they tried to pay \$200 each time? Do you believe that would be a brick wall to putting in complaints?

Mr Krebs: It definitely would. Most of our people are on social welfare, so \$200 would be a significant portion of the household budget for our residents. It would be a significant imposition on them to do that. As you pointed out, it would act as an absolute deterrent for them to do it.

Mr HART: You heard all of the questions I asked before so I am happy for you to give any response to those questions if you would like to. When you pass on a complaint to the OIA, are you able to give additional information on top of that complaint?

Mr Krebs: We can. If they request additional information, we can.

Mr HART: But not at the time that you lodge that with the OIA?

Mr Krebs: It is held by another legal officer who forwards it onto the OIA. As far as I understand, we just hand the complaint over as is. We just wait for a response from the OIA if they require further information.

Mr HART: The whole point of the Office of the Independent Assessor is to have a third party, as the other members have said, to make decisions. Would it assist if when you pass that complaint on you are able to voluntarily give some additional information right at the start to assist the OIA? Is that something the committee should consider recommending?

Mr Krebs: Yes. I suppose my only comment on that would be that, when you receive a complaint, you are not inclined to maybe doctor it or be seen to try to downplay it or something like that. I think the safest way for us is just to say, 'This is the complaint' and hand it to the OIA and leave it up to them if they wish to ask any questions or have our feedback on it.

Mr HART: Then what is your point of being able to attempt to dismiss it before it even goes there?

Mr Krebs: My understanding is that we have not asked to do that as such. Once we get a complaint, we just forward it onto the OIA.

Mr HART: Sure. But you want the power to triage it even before it goes to the OIA and say, 'No, this is vexatious'?

Mr Krebs: Yes.

Mr HART: Wouldn't it be better to send it to the OIA as written and say, 'We think this is vexatious and we are happy to give you more information'?

Mr Krebs: Yes.

Mr HART: Or 'Here's all of the information you need. In our opinion, it's vexatious and here's the information you need'?

Mr Krebs: In that situation, as we have proposed, absolutely I think that would be the way to go. If the CEO was to say it is vexatious—and giving reasons for it, because no doubt the OIA would want those reasons—and to have that as part of the process as well, yes, absolutely.

Mr HART: The committee has heard that there is quite a backlog in the Councillor Complaints Tribunal after the OIA sends things to that tribunal. The CCT has told us that some councillors or mayors or councils have not even responded to questions that the CCT has sent them. What is your experience around that? Do you always respond to the CCT or are you aware that your councillors always respond?

Mr Krebs: I have never heard of that happening, member. We are very diligent about making sure there is a proper and timely response.

Mr HART: I think it is on the public record that some councils have not, so you might want to review that.

Mr Krebs: I have not heard of that occurring with our council.

Mr HART: I am not saying it is, but there are some.

CHAIR: I missed that, member for Burleigh?

Mr HART: The CCT has told us that some councillors do not respond to questions from the CCT.

CHAIR: Wasn't that the OIA?

Mr HART: Was it the OIA?

CHAIR: It is about things that have been referred from the OIA back to council for inappropriate conduct and the outcome of those.

Mr HART: Sorry. That could be the case then.

CHAIR: It is not being referred back. I think that is what you are talking about.

Mr HART: So your council always responds to the OIA then in that case?

Mr Krebs: Yes, that is correct. Sometimes there might be a bit of a delay in getting material there.

Mr HART: You heard my question to Councillor Pyne about the Integrity Commissioner. Is that something your councillors use or do you advise your councillors to talk to the Integrity Commissioner? Have you done that in the past?

Mr Krebs: No, we have not.

Mr HART: Were you aware that advice from the Integrity Commissioner, if followed through, could be used as a legal defence?

Mr Krebs: I think so, yes, if we made inquiries. We have never had in my experience the need to do that, but I imagine if we acted upon that advice it would provide some legal protection.

Ms LEAHY: You are proposing an amendment to section 150P of the act so that the CEO can actually do a triage of complaints that come through. What then would you do in a situation where the CEO has a conflict?

Mr Krebs: If the CEO has a conflict, it could be delegated to another senior manager within the organisation. We used to have a chief operating officer who used to act as a deputy CEO or even one of the executive directors perhaps. I do not think it would be appropriate to send it to the mayor for that type of decision.

Ms LEAHY: Why?

Mr Krebs: In our dealings with the councillors, it would be because of relationship issues. Quite often in the Torres Strait in our particular area it might cause some conflict there as well.

Ms LEAHY: The mayor is popularly elected, whereas your council are divisional.

Mr Krebs: Yes.

Ms LEAHY: Why would it not be appropriate to delegate to an elected official?

Mr Krebs: I have not spoken to the mayor or anything like that. This is my own personal—please excuse me if I am stepping over any boundaries.

CHAIR: That is fine. Keep going.

Mr Krebs: Quite often there can be very close relationships with the mayor. I imagine it could cause the mayor some angst in dealing with a complaint about a councillor. You might have a particular relationship with the mayor. It would probably be just on that basis that the mayor might find it difficult to do that in that situation.

Mr KNUTH: Has there been a dramatic increase in claims and more frivolous claims since the establishment of the Independent Assessor?

Mr Krebs: I do not think there has been too much regarding councillors. My impression is that, no, there has not been a big spike in claims against councillor conduct that I am aware of. The workload at the moment—I always hate saying it—is quite manageable. It might change tomorrow. I am not aware that there has been a spike in complaints against councillors at all in our region.

Mr KNUTH: In regard to frivolous claims, how do they get feedback? Does the Independent Assessor write back to the councillor or whoever it may be and say, 'We have assessed this and we find that it is all null and void'?

Mr Krebs: Yes, they do.

Mr SMITH: Can the CEO be removed by a majority vote of the council?

CHAIR: It depends on the contract.

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Mr Krebs: I do not think so. Do you mean passing a no-confidence motion sort of thing? I do not think so, no.

Mr KATTER: The feedback I have had about these complaints is that, whether they are frivolous or not, they are a substantial burden on council resources, which are often fairly meagre anyway in terms of just having skilled resources to do the day-to-day activities of the council. Then suddenly the CEO, say, at Doomadgee for the next two weeks has to spend time gathering information to send to the OIA. Has that been your experience? Do you have any observations on that?

Mr Krebs: It has not been too onerous from my experience with the types of complaints we have had to deal with. I really do not think at this stage it is too onerous.

Mr KATTER: That is the feedback I have had from the gulf.

Mr Krebs: Yes. No.

CHAIR: Peter, thank you very much for helping us today. We do not have any questions on notice. We appreciate TSIRC coming down and being a part of this inquiry.

Mr Krebs: Thank you, Chair and members.

KERR, Mr Michael, Mayor, Douglas Shire Council

CHAIR: I welcome to the table Councillor Michael Kerr, the Mayor of the Douglas Shire Council—one of the most beautiful parts of Queensland. I do not need to tell you that.

Mr Kerr: It is indeed.

CHAIR: Michael, as you have heard, we would like to hear from mayors and councillors about their experience of the OIA and the councillor complaints system—how it is working and how it could be improved. I invite you to make an opening statement and then we will ask some questions.

Mr Kerr: Thank you for allowing me to speak to you this morning regarding this. I would also like to start by acknowledging the traditional owners of the land on which we meet and pay my respects to their elders past, present and emerging.

From my personal perspective, opening up with the name of the 'Office of the Independent Assessor' is leaving a bad taste in a lot of councillors' mouths at the moment. I am also the chair of FNQROC. I speak to a lot of the other mayors as well. We all have a similar opinion about the way that it is operating.

The body or the task force was initiated to assist in the reduction of potential bad behaviours from elected councillors, but I do not believe that it has given our communities any sense of confidence in that realm for the most part because it has become an effective tool for political games, malice attacks and weakening of the collaborative strengths of local government. I have been reading a lot of these submissions online which I find very interesting. A lot of them I absolutely fully support. They do show a theme of how this has been reacting with the councillors. I do not believe there is a councillor out there who does not agree that we need an office of independent assessor. We absolutely do. It is the way this process has rolled out and the legislation that is, I believe, what has failed the councillors in its intent to protect us because it has not; it has not protected us. I wholeheartedly support this inquiry for that reason.

It was ironic that the inquiry was announced the day after I wrote a scathing response to the OIA and the Deputy Premier regarding one of the dozen or so complaints that I have received in the past two years. This particular complaint I received from the OIA read—

On 29th September 2021 the Office of the Independent Assessor received a complaint about your conduct as mayor of the Douglas Shire Council. It is alleged you engaged in conduct as outlined in the enclosed notice issued pursuant to section 150A of the Local Government Act 2009. Having considered the complaint, I am notifying you that pursuant to section 150W(b) of the act I reasonably suspect that the conduct subject of the complaint could amount to inappropriate conduct and as delegate of the Independent Assessor I will consider whether this complaint should be referred to the Douglas Shire Council to be dealt with.

The crime to my community was that I blocked a resident on Facebook. I blocked her because of the 18 months of crap that she put on Facebook. It was never anything that was completely malice to the point that I could give her a warning. There was nothing that was rude. It was just constant negativity. She is the partner of an ex-councillor. She is a very close friend of the ex-mayor. She was involved in a lot of very malice behaviour before the election. I put up with it for 18 months. There was one night I looked at it and she had started an argument with one of my supporters online so I blocked her. I had just had enough. She noticed I blocked her. She reported me and that was the result of me getting this letter saying that I was up for inappropriate conduct and I had to defend myself.

My defence was pretty much that my mental health is far more important than this woman's attitude and her belief that she has a right to get to me on Facebook. She has my email address, she has my phone number, she has the council website and she has the council Facebook page. All of those things give her all the details. My Facebook page is for me to notify my supporters of what I am doing. I am at the point now where my Facebook page is locked down, no-one can comment and no-one can say anything because it is not worth it. It is a crazy situation when it gets to that point.

There have been at least a dozen other complaints made about me that have all been dismissed. Most of them should not have even reached my inbox. They are one-sided stories. How is it that a person can make a complaint and you automatically get a letter sent to the CEO, the person who made the complaint and the councillor saying, 'We believe that you have conducted inappropriate conduct or misconduct.' Whilst it is supposed to be confidential, the person who made the complaint now has a letter from the OIA saying, 'We believe you are right and that they have done it.' They are not confidential about it. They just go straight out there and tell the public about it, and that is wrong. When a complaint is made it should straightaway be sent to that councillor who is told, 'This has been said. Please pass your information on.' There should be no accusations until they have all the details from both sides.

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You were talking before about the CEO being able to mediate. Most of the complaints that I have had have come back to the CEO for the CEO to investigate anyway. The CEO chooses what information is going to go back to the OIA so they have to be honest about it in the first place. As far as the CEO having a conflict of interest, matters like that should just go straight to the OIA with a notification that there is a conflict of interest with the CEO. As far as anything that is not a conflict of interest—we now have a full-time governance officer, a part-time governance officer and we could easily have another full-time governance officer to deal with the malice complaints and crap that come into council. Between legal cases and dealing with what is within councillor conducts and councillor declarables and all the rest of it, it is just a constant realm for them to do that.

I know that the process is currently that when councillors have something they get an opportunity to respond, but it is too late; there is already that original letter. That part has to stop. In the past two years I have had complaints about my usage of mayoral minutes; being a member of a Facebook group; bullying and attacking councillors in chamber because I enforce standing orders; not disclosing relationships that did not need to be disclosed; releasing confidential material that was not confidential; making misleading comments to residents; obstructing the local government principles by lying to and withholding information from councillors; failing to comply with a resolution from council to sign a contract that was not even finished and ready to be signed; putting a post on social media about my personal beliefs on a matter that was supposedly misleading and created hate in the community. I had one that I had made factually incorrect statements at a council meeting and so on. How much is this costing the taxpayers and how much is it costing the ratepayers when it comes to having these constant letters going backwards and forwards? I am quite sure that the OIA is full of solicitors and it is costing them an absolute fortune for something that the CEO can look at and say, 'These are the facts,' and it can go to the OIA with all the details; matter closed. If they have an issue with the details and they do not believe there is enough there, they can contact the CEO again before it even gets to councillors and starts affecting the way that they are working in their community.

The OIA should be there to strengthen the ability of the local governments to represent their communities and not make councillors feel like they are being unfairly scrutinised and fearful of everyone. They should not be constantly concerned about who they talk to and who they are seen with. They should not be scared to speak their minds about matters that are in the community that they should be able to speak about when representing their constituents without the fear of electoral opposition using that as a tool to wear them down. They are constantly wearing them down with these matters.

Unfortunately, the current legislation is allowing that to happen. There is no balance of what actually is a floor limit on what should be judged; what complaints will actually affect the community. You are getting things that happen and people are being found with misconduct when it would make no difference. You would have heard about one of the mayors down south where there was an error of judgement in not putting something on a declaration. That would have made no difference whatsoever to the community. There is no balance there of what actually does affect the community in these matters.

I know of a case currently where a councillor has a misconduct that was reported on 20 May. It is still going on. A letter came through yesterday saying that they now have more staff and it has been allocated to another staff member. That councillor has sat there since May with this misconduct hanging over their head, waiting to get some sort of movement.

When I became a councillor and then the mayor, I would have thought that this sort of legislation would be there to support me in doing what I did. I did and still do run numerous community groups. I became a councillor because I love my community and I want to do something for my community. I ran for mayor because I did not believe that what was happening in council was right. I believed too many things were happening in closed sessions and the community was missing out. I would have thought that this sort of legislation would be there to support me and not make me feel like I do not want to be the president of a local community group.

Currently, a local community group is considered no different to a profit-making corporation when it comes to misconduct and as far as it goes with your declarations. As the president of a local community group that has 2,000 local community members, I am a professional witness basically if they put in an application to council. I do agree that, yes, I should not be allowed to vote on the matter, but absolutely I should be able to at least advise the other councillors on what this community group is doing and why this is a reasonable thing, but at the moment I cannot. At the moment I have to leave the room immediately anything about the matter is discussed.

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The LGAQ has put through acting recommendations that I fully support. I think as a bare minimum that is what should be considered at the moment. There are a lot of flaws within this. It was legislation that I believe was reactive rather than constructive. It needs to be refined and it needs to be brought to a point that actually works for everyone. I do not have an issue with the OIA. All my dealings with the OIA have been good. But they are bound by this legislation, which is tying them into doing things that are just not working at ground level for councillors.

CHAIR: If a complaint is made against you, the complainant gets a letter back saying that it is being investigated and they immediately release that.

Mr Kerr: They can do.

CHAIR: They can do. In terms of confidentiality, do you find yourself constrained in that case because the OIA cannot release information and you cannot release information? Do you find that difficult?

Mr Kerr: Yes, because I cannot answer it. They can put whatever they want on social media and there is no fall back for them.

CHAIR: In cases where, perhaps, something has gone to the OIA and they say, 'That might be inappropriate so let us send it back to council to deal with,' how is that usually dealt with?

Mr Kerr: The CEO or the governance officer would first look at it. A lot of the complaints that were made were for council issues against me, so the CEO and the governance officer usually had a lot of that information anyway so they just forwarded it on to the OIA. If needed, I also would forward information myself from my personal involvement with that event.

CHAIR: In getting those inappropriate conduct issues resolved by council, have you used external people to come in and resolve some of those issues or can you deal with some of them pretty quickly?

Mr Kerr: All of mine have been dismissed before they have even got any further. We had one that had to come back to a council meeting, which just caused absolute angst amongst the councillors. You are having to make a judgement on your fellow councillor over a matter that, yes, you can see that they possibly did wrong here but you also know the circumstances around why it happened. Where do you go with it? Do you support your councillor or do you find them inappropriate for the way that they behaved while knowing that they were antagonised to the point of doing it? You have to make those calls. I do not like the system where it has to come back to councillors. It should be external.

CHAIR: I know a couple of the other councils certainly have had external bodies in to resolve some cases so that is a possible solution.

Mr Kerr: There is the whole concept of forcefully reporting as well. If you know another councillor has done something then you must report it. That also has caused great angst within our council. Personally, I believe I lost my CEO because of it.

CHAIR: You talked about some of the issues that you have had. Councillor Pyne from Cairns told us that with some of his issues he received a letter saying that a complaint came in and it was dismissed at that first level. You have had some of those letters and others that have said they will further investigate; is that correct?

Mr Kerr: I have had both. Of the ones that have come in, I think probably about eight of mine have been that no further action will be taken and the other ones required further action that the CEO or the governance officer responded to or I have myself.

CHAIR: When you get a letter asking for more information, what is your first reaction? Do you get assistance from the CEO, do you seek legal advice or do you go to another body such as the LGAQ to ask what you should do?

Mr Kerr: Again, most of my matters have been dealt with in council and we have legal advice anyway. The legal advice has been to send it to the OIA, which has shown that the complaint was not worth writing. This is one of the big issues: when this was rolled out, the LGAQ did some training but most councils also got local law firms in to break down things for them. We were all given the fear of death that this is the way it has to be. I am quite sure another council would have got their own law firm to do that as well and there was a lot of mixture.

Whatever changes you do make, I personally would like to see that it is the OIA that puts out the training for it. They are the ones that are judging at the back, not the LGAQ. The LGAQ can only read the actual legislation; the OIA is the one that interprets it. Everyone interprets it differently.

CHAIR: It is interesting that some councils will use internal resources and some people will bring in external resources from law firms.

Mr Kerr: Because it was fairly new legislation, the governance officers and the CEOs a lot of the times said, 'Let's just get a legal perspective on this.' We had King & Company, I believe it was at the time, come in and do a breakdown of it.

CHAIR: I do have further questions and we are going to extend this session a little bit longer. I will hand over to the member for Lockyer.

Mr McDONALD: Thank you, Councillor Kerr, for being here. I appreciate you sharing your personal experience with us. I did not pick up in your presentation whether that matter of the complaint regarding blocking on Facebook has been resolved. Was that resolved?

Mr Kerr: It was. It was eventually knocked out. It was dismissed.

CHAIR: I did not even get on to social media issues. We all have opinions on those.

Mr McDONALD: I appreciate that. Can you explain to us the challenges that you had and the outcomes of that?

Mr Kerr: The main one for me is that you are an elected representative. You are supposed to be a person with a standing within the community. You do civic functions. You do citizenship ceremonies. You are running a body of multiple millions of dollars, yet you do not have the right to even make a decision that someone is affecting you mentally on Facebook and you should be able to take them on. That is crazy. What hit it off for me was that the day before I wrote that letter I was speaking to one of the ministers. I brought up in conversation about blocking on Facebook. They laughed and said, 'I blocked three this morning on the way here.' I am thinking, 'You have signed off on this legislation.' This is what it is bringing through to the local government level.

Mr McDONALD: You mentioned the cost of the legal process. Have you and your council quantified that cost? At the end of the day, it comes back to the revenue of council.

Mr Kerr: Our legal bill last year was probably the highest it has ever been.

Mr McDONALD: Could you quantify that?

Mr Kerr: I could not tell you an actual figure, but I can get back to you on it.

Mr McDONALD: Would you mind?

CHAIR: It is best that we get a break down. We heard RTIs have been involved with that as well. The more detail as possible on that the better.

Mr Kerr: Absolutely.

Mr McDONALD: I am not just talking about external legal costs. There would obviously be staff time, CEO time and personal trauma associated with that. Councillor, in regard to the delays in the process, recently we found that the CCT, the Councillor Conduct Tribunal, are only now dealing with matters from June 2020. What is your response to that?

Mr Kerr: I am not surprised. By pure coincidence, at the last LGAQ conference on the Gold Coast I happened to sit down at a spare seat and the lady I was seating next to was the chair of the tribunal. We had a discussion then about funding—the body's funding—and the shortage of corporate space, finding space to have it, and then finding people to be on the tribunal was not being supported enough. There was a backlog from day one pretty much. I do believe some more funding went towards it late last year. It opened it up. In having compulsory complaints with no floor limit, there were going to be massive complaints come in. There had to be. The resources were not there to deal with that. It is a subject of maths: the more that come in the more that will eventually have to go to a tribunal. The numbers are there. There is no way that they could have stacked up to process all of those complaints.

Mr McDONALD: Are you aware of how the CCT operates? They use sessional members.

Mr Kerr: They are solicitors that are brought in, I believe, yes.

Mr McDONALD: Do you think that having permanent members on that tribunal would assist?

Mr Kerr: I believe having a majority of them, yes, so at least they have common knowledge of what happened last time so they give a balance of punishments to suit the crime. If you are a new person each time you can get guidance. Knowledge is key to everything, as we all know. If they have that knowledge, history and rapport, things could be processed a lot quicker.

Mr McDONALD: We also heard that sessional members were spending 200 to 300 hours on matters of misconduct that were resulting in education or perhaps training and apologies as outcomes. Do you have any thoughts on that?

Mr Kerr: Where is the balance of that as far as dollars are concerned? It is a crazy situation that you are spending that sort of money—and these are all lawyers who will not be charging a cheap amount—just on a matter that even looks like it could be an apology in the first place.

Mr SMITH: Could you please quote again which parts of the legislation OIA referred to for your case in regard to the block on Facebook?

Mr Kerr: ‘Notice issued pursuant to section 150AA of the Local Government Act’ and ‘having considered this pursuant to section 15WB of the act’—which is basically not treating everyone fairly.

Mr SMITH: You say it has since been resolved. Did the OIA make that determination?

Mr Kerr: Yes.

Mr SMITH: Roughly how long was it between you receiving that first letter that there is a complaint and an assessment and the final decision being made?

Mr Kerr: That was actually fairly quick. I received the letter on 29 September. I think it was in October that I wrote my reply to them, giving them very honest feedback of what the complaint was. I think it was the next day the Deputy Premier announced he was going to have an inquiry into it. That was that period there.

Mr SMITH: Are you aware of any councillors who you have come across in your time who have been found to have committed inappropriate conduct because of blocking a Facebook profile or deleting a comment?

Mr Kerr: Not that I know of. Mine was the first one in that respect. I think another one came out about a week later with a lady down south doing the same thing.

Mr SMITH: My next questions seem a bit bizarre, but trust me there is method to the madness that will be revealed later. In regard to the code of conduct, it talks about five key principles. I will go to principle 3. In representing and meaningfully engaging with the community, councils will show respect to all persons. Who determines whether you have shown respect to all persons or not?

CHAIR: That is very personal, isn't it?

Mr Kerr: I think that is up to me. First and foremost, I am elected by the community for the person that I am. If I am not showing respect to people, I am not going to be here for long.

Mr SMITH: Who is the determiner of whether you have clearly or accurately explained council's decisions to a resident?

Mr Kerr: The resident is. If they are not understanding, you are not explaining it properly to them.

Mr SMITH: If we look at that, if a resident then says, ‘I don't believe it has been clearly or accurately explained,’ should the resident seek further clarity?

Mr Kerr: Absolutely.

Mr SMITH: Do you currently feel as though a resident could use that against you though? They could go to the OIA and say, ‘I didn't have clear understanding after my discussion.’ Is that a potential concern?

Mr Kerr: In some cases yes. I would say yes to that. As I said, it has been well known now—I can guarantee out of all the complaints I have had I could give you the seven names of people who have done it. It is a tool.

Mr SMITH: Principle 5 is to meet community's expectations for a high level of leadership. Again, to your understanding of the code of conduct, who is making that determination about what the expectation of a high level of leadership is?

Mr Kerr: Again, first and foremost, I think it would be me because I am the one who wants to be re-elected. The majority of your community—the way they respond to you and the way they act to you—shows you whether you are doing that or not.

Mr HART: Michael, you said that you spoke to a minister and they had blocked some people from Facebook. How do you feel about councillors' freedom of political expression versus state members, federal members and general members of the public? How do you fit into that now?

Mr Kerr: What is good for the goose is good for the gander. Again, what you say publicly affects your role in respect of whether you are re-elected or not. You should be able to absolutely have freedom. If you believe that the majority of your community are feeling a certain way, you should be allowed to say it. If that affects state government, for example, or the federal government and the policy they have, then they need to be hearing that from the elected representatives.

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Mr HART: As a member of the general public, you had freedom of political expression. Now you have been elected—

Mr Kerr: And gagged.

Mr HART: What is your opinion—

Mr Kerr: It is as frustrating as hell.

Mr HART: Do you think since the OIA came into existence things have got worse or better?

Mr Kerr: Worse—far worse.

CHAIR: In what way—the number of complaints or the way it is being dealt with?

Mr Kerr: In the way you can operate as a councillor. I am feeling a lot more disconnected from my community because of the fear factor. If you are seen standing at a bar talking to the same person for a couple of weeks in a row and the next thing they have an application coming through for a building, my opponents will use that against me. 'You know him. He's a friend of yours. We have seen you standing there.' Whether there is justification for it or not, it will be used against you.

CHAIR: There is fear of it being used.

Mr Kerr: Absolutely. It has become a tool for the people who know how to use political nastiness and malice.

Mr HART: The Integrity Commissioner was able to give advice to councillors when they became—

Mr Kerr: Yes.

Mr HART: And that advice could be relied on as a defence in these cases. Do you see some value in that? Do you think that the Integrity Commissioner should be given resources to allow that to happen?

Mr Kerr: Absolutely. That is a far better avenue to take than the cost of the legal avenues that we are having to go down.

Ms LEAHY: Michael, do you think that the initial contact from the OIA, when they come to a mayor or councillor with a complaint, is affording natural justice to those mayors and councillors or is it making them out to be guilty before they are proven innocent? What is your sense?

Mr Kerr: They clearly state that you are guilty: 'We believe that there is inappropriate conduct,' so the response—

CHAIR: Is that in the AA, in the first notice that you get?

Mr Kerr: Yes. In the letter it actually states, 'We believe there has been inappropriate conduct.' It is a one-sided story. There should be no accusation until you get both sides of the story. Yes, notify the councillor that a complaint has been made and ask for justification or reasons or evidence to support your matter. Then something should come out about it being inappropriate or misconduct. Before that, why are you being told—all mine have been dismissed and I am quite sure that a lot of others have been as well but you are straightaway thrown this very formalised legal letter stating that you are having to defend yourself. You are not giving a response; you are defending yourself. That is not fair.

Ms LEAHY: Basically for mayors and councillors who receive these complaints, do you think that it is really impacting on their mental health because the whole reverse onus of proof, which is a fundamental principle of our justice system, is basically being thrown out of the door by this office?

Mr Kerr: Yes.

CHAIR: Steady on there, member.

Ms LEAHY: How do you think that is affecting their mental health?

Mr Kerr: I do believe it is affecting mental health. I know for me—

CHAIR: Hang on a tick: what is being thrown out the door?

Ms LEAHY: Basically people are being told that they are guilty before they are given the opportunity.

CHAIR: If the councillor wants to give an example—for example, let's see the letter. The letters we have seen from the OIA say specific things. Member, I warn you against some of your language. Direct the question in a direct manner to Councillor Kerr.

Mr Kerr: I understand where you are coming from with it. The letter, as I said, because it is formally written and a legal matter and it makes—from a councillor's perspective inappropriate conduct or misconduct is no different to corruption on our level. That is how it is felt. It is not just a case that you may have done something wrong and it could be a mistake. This is a nasty thing. It is going to be listed on the website.

I go into adrenalin shock whenever I see the email coming with, '*** OIA Confidential'. It is like, 'What the hell is coming now?' It should not be like that. Especially when, as I said, you have councillors who have been waiting since May. They have received this letter saying there is possible misconduct and we are now in February heading towards March and it has gone no further. For that whole period you possibly have misconduct written against you—for all that time.

Ms LEAHY: Do you think those delays have also contributed to people saying, 'I don't want to have anything to do with the local government sector'? Do you think that discourages them from the community work which they are elected to do?

Mr Kerr: It does frustrate me. I know I have one councillor who has lost all appetite because of the number of complaints and the amount of delays. It is frustrating for them. I believe that we are going to get to a point where we are going to lose good people wanting to run for local government because it is just the too-hard basket. Who knows where you will end up with it.

Mr KNUTH: In your experience with the OIA, do you feel there is pressure on them (inaudible) to justify their legislative existence?

Mr Kerr: Absolutely. Conversations have been had with them in that respect. They have clearly said in some respects that they have legislation here and that is what they have to work to. They are frustrated, as well, in a lot of respects.

Mr KNUTH: If five people came to you and said, 'I want to run for council,' would you tell them that they do not know what they are getting into?

Mr Kerr: Yes, and I have had that conversation recently. You have to really educate yourself on this piece of legislation. One of the things that I want to point out to you is that the department of local government and racing put out this cheat sheet for your declarables. One of them in particular is that you have a prescribed conflict of interest if a matter relates to a contract with council. We had an issue recently where this came up. When you go to the legislation that is not what is written. It is written for a contract to supply the goods and services 'to' the local government; it is not 'from' the local government. If you are a councillor who is going to be receiving something from your local government, that is not a prescribed conflict of interest. That hit us all for a six because I was pushing the fact that someone had a prescribed conflict of interest and it was not. Even the cheat sheet is wrong. So what other details within the information are not correct or how it is being put across to councillors, because it is so complicated?

Mr KNUTH: You said before that a number of governance officers have been appointed to deal with the OIA issues. Do you have two or three?

Mr Kerr: I have one full-time governance officer. She deals with all of council's legal processes. We have had to put on a part-time officer as well to assist because of the extra burden put on with all the OIA complaints and the freedom-of-information requests from people that blend up with an OIA complaint. It goes on.

CHAIR: The time for this session has expired. Thank you very much for coming in today, Michael, and sharing your story. There are many other things that we did not discuss but we have run out of time.

Mr Kerr: I very much appreciate your time.

CLIFTON, Mr David, Councillor, Tablelands Regional Council

CHAIR: Councillor Clifton, feel free to have a brief chat about your issues. We have all that you have given us. We will have some questions for you after that.

Mr Clifton: That folder is basically a full set of documentation for two cases, case 1 and case 2. I will ask you to flick to a couple of pages during this to explain it to you, if that would be convenient for you. To introduce myself, I am David Clifton, the Tablelands Regional Council councillor for division 4, which is an area including Lake Tinaroo and the township of Yungaburra. It is one of the more beautiful parts of not only Queensland but also Australia and I would suggest the world. Mr Knuth is our local member.

The Tablelands Regional Council has a population of about 26,000 people. Atherton, Malanda, Ravenshoe, Yungaburra, Walkamin and Kairi—I do this to give you an impression of the nature of the people—Tolga and Mount Garnet. The economy is based on agricultural cropping, dairying, beef production and cattle grazing. There are other large activities such as health and tourism, but the core of it is that strong agricultural core. In the first instance I refer you to case 1.

CHAIR: Just to clarify, Councillor, these are publicly available council reports?

Mr Clifton: Everything in here is publicly available. Having said that, following along from that is the letter from the Independent Assessor and following on from that is my letter to the Independent Assessor as requested by them.

CHAIR: So it is a council report, correspondence to you and correspondence from you. You are happy for all of those to be public?

Mr Clifton: I am happy for them all to be public. In the first case, it was a situation where two landholders had been looking after a disused road. There are many of those on the Atherton Tableland. They graze on them and keep weeds and pests under control in return for the use of them. It is a very common situation everywhere. It is a very common rural situation; I am sure it does not matter where it is. Suddenly this peaceful arrangement is disturbed by bike riders coming past their houses, potentially spreading weeds and certainly having a good look. The landholders naturally feel insecure and want to understand what it is all about. But the bike riders themselves are good people and will respect the landholders' rights. All that was required was a good old face-to-face chat between them and the bike riders.

In the midst of that, to get this thing going, we passed a resolution saying that we approved of the use of those roads—the public has the right to use them anyway—and we authorised officers to go out and augment it. There was such a lot of angst. As you will see, and it is highlighted in here—it is towards the end—I wrote to the lead person of the group and said—

Hello Gale

I think it would be useful to meet with the Peterson Creek crossing landholders to show the proposal to them. I think it would simplify things if you develop a relationship without using the TRC as a go-between.

I shot myself in the foot, apparently.

That person then discussed it with a council officer and then wrote back and said, 'No, I will not do that.' That is fine. Then we passed a council resolution supporting the go-ahead. In the meantime the landholders attended a council meeting and were asking, 'What is going on?' They are perfectly normal people. They said, 'What is going on?'

I then wrote to the head bike rider again, on that next page, and said, 'Gale, here are my personal talking notes from the council meeting' to indicate what I was thinking about because she was not there. I said, 'I would urge you to have negotiations with these landholders.' Bang! That was it. Out was trotted a set of meeting minutes that were about six or seven months old, which the CEO had held in his bottom draw for that period. He had never spoken to me about them. Suddenly I find that they are in here accusing me of breaching a council resolution.

What have I done wrong? I was found guilty of misconduct, along with a fellow councillor. We were found guilty of misconduct and we had to stand up there and cop it publicly for basically urging members of our community to talk to other members of the community. I say that the case was trivial and the Office of Independent Assessor should have considered referring the matter back to the mayor for discussion with me if they thought it was important, but there was no exercise of judgement by the OIA. They just received it and processed it and gave me one of those letters that Councillor Kerr was talking about: 'We believe you have committed a misconduct; give us an excuse.'

In my view, this case was officers using the OIA as a vehicle to shut me out of the issue because they knew they did not want councillors involved—operational policy, Belcarra, be careful, do not take a step, you might stand on a broken egg that might be rotten. It also reflects that the OIA is not in Cairns

touch with the real world. People must work together to resolve problems. It may seem strange that such, if you like, a petty case could cause an investigation. You would rightfully, as sensible elected people, be sceptical of my story. Have a read of it. That is why I have given you all of the documents. From my point of view, it was a case of officers working against two elected members, it was trivial and it was very onerous on both of us.

Because I have been found guilty of a misconduct, I now feel that whenever anything in relation to these bike trails and this particular sporting group comes up there is a perceived conflict of interest. There may not be a real conflict of interest, but because we live, as I said earlier, in a small, intimate, hardworking community—it is not fair for me to go up there if they perceive that I have a conflict of interest. Two meetings ago they put up a proposal to obtain some money from council. I had to exclude myself. They were shocked as to why I had to exclude myself. I was not going to tell them the full story because I do not believe I am allowed to. That is the first case.

CHAIR: We have the cases here. We might go quickly to a question because from reading through I know the second case has similar process issues.

Mr McDONALD: Mr Clifton, you heard my question to Mayor Kerr earlier regarding the costs to council. If you have that information available that would be great or perhaps you could take it on notice and provide it in due course?

Mr Clifton: I have given Mr Hampton a copy of my talking notes.

Mr McDONALD: I understand the cases. I am talking about the costs, both legal and in time to your council.

Mr Clifton: In terms of costs, of those documents the two cases in question finally cost the Tablelands Regional Council ratepayers in excess of \$15,000 because they were investigated by independent investigators. Apart from the time taken in interviews and questioning councillors and staff, probably all up it cost something like \$30,000, which I consider to be ridiculous and I cannot justify it to any of my ratepayer residents.

Mr McDONALD: For clarity, that \$30,000 is in relation to these matters?

Mr Clifton: Only those two.

Mr McDONALD: What about the others? Would you be able to quantify that for us and provide that to us in due course? Can you take that question on notice?

Mr Clifton: Yes, I can take that to our CEO.

Mr HART: Chair, out of an abundance of caution I would like to declare that my sister runs cycling events on the Tablelands so I will avoid asking any questions.

CHAIR: That is duly noted; it will be noted here.

Mr HART: That has just come up.

CHAIR: Councillor Clifton, we have run out of time but is there something that you would like to say to wrap up? You have talked about your experience and we have your notes. Are we tabling these? They are so tabled. We can also take that and table it.

Mr Clifton: That is in case 2. That was in the *Cairns Post*. The second case took one year to resolve. It was an orchestrated campaign by the then CEO. With the second case, it was declared that there was no case to answer. I hung around like a flapping—I do not know what—on a clothesline for a year whilst this was resolved. People still say to me, 'What is going on? Did you finally intercede with the CEO?' No, I did not. In this process there is no ability for me to defend myself. In either of these cases, all that happens is that for a year you are on tenterhooks.

Mr McDONALD: Chair, given that Councillor Clifton has driven an hour and a half, can we ask another question?

CHAIR: One quick question.

Ms LEAHY: Councillor Clifton, I am assuming that this is your first term on the Tablelands Regional Council?

Mr Clifton: It is my first term.

Ms LEAHY: You alluded to what had happened with staff. Do you feel the process is enabling people who may not necessarily see the view of the councillors, the elected representatives, to weaponise situations to advance their own agenda rather than the council's agenda?

Mr Clifton: Bear in mind that this is my first term on council, so I am inexperienced in that sense. That is why I brought these two cases forward. The OIA has weaponised the staff to act against councillors. They have their vision of what we should be doing and if we vaguely step outside Cairns

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that at all then we have overstepped their line. Both those cases were not cases—to be absolutely truthful, I do not know who they came from but no-one in the public so I assume they have come from council officers. I believe that the processes of the OIA weaponise council officers to do these sorts of things and there is no consequence. In my written notes, which I am not able to refer to now—who protects the accused? There is no protection for the accused in this situation.

I am not a spring chicken, as you can see. I have a wide range of life experience and have confronted quite a number of things, but local government is about the most confronting thing I have ever been involved in. I have found it to be really destructive on a whole set of my beliefs in our society because people can tell fibs, lie and distort and not be accountable for it. I think that that is very inequitable and a denial of natural justice.

CHAIR: The time allocated for the session has now expired. Thank you so much, Councillor Clifton, for being a part of this hearing. Thank you to everyone who participated today. Thank you to Hansard and our technical staff. Thank you to everyone who attended. A transcript of these proceedings will be available on the web page in due course. I declare the hearing closed.

The committee adjourned at 11.29 am.