



# ***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**

**MONDAY, 21 MARCH 2022**

**Southport**

## MONDAY, 21 MARCH 2022

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### **The committee met at 10.00 am.**

**CHAIR:** Good morning. I declare this public hearing open for the committee's inquiry into the functions of the Independent Assessor and the performance of those functions. My name is Chris Whiting, member for Bancroft and chair of the committee. I would like to respectfully acknowledge the traditional 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 people, whose lands, winds and waters we all share.

With me here today are committee members: Mr Jim McDonald, deputy chair and member for Lockyer; Mr Michael Hart, member for Burleigh—I acknowledge Michael for advocating for us to have a hearing on the Gold Coast; Mr Jim Madden, member for Ipswich West; Mr Tom Smith, member for Bundaberg; and Mr Robbie Katter, 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 to silent mode.

### **GATES, Ms Donna, Deputy Mayor, City of Gold Coast**

### **WALLACE, Mr Luke, Chief of Staff, City of Gold Coast**

**CHAIR:** I welcome from the City of Gold Coast Deputy Mayor, Donna Gates. Thank you for appearing before the committee today. Thank you for the hospitality of your city today as well. I invite you to make an opening statement, after which committee members will have some questions for you.

**Ms Gates:** Thank you, Chair. On behalf of Mayor Tom Tate, who regrets he cannot be here today, I would like to welcome you and thank you and the committee for the opportunity to address you today. At the outset, I would like to express my absolute support for an independent complaints process for Queensland local government. I also wanted to confirm that all of my dealings—and I have had a few—with the OIA have been professional and courteous.

I believe that local government would benefit greatly if the legislation provided for more flexibility to enable minor or trivial matters to be dealt with outside the formal complaints process. I have now served the city for 15 years as a councillor and for the past 10 as deputy mayor. I cannot help but say that I think the best judges of whether mayors and councillors are hardworking people with integrity happens every four years. I do not think there is a benefit in reprimanding a councillor for a misspeak at a media conference or for blocking someone on Facebook or for inadvertently making an administrative error. I do not see any merit whatsoever in reprimanding on those sorts of issues.

My biggest concern is the resources that are being devoted to defending these matters. I hope that this committee will make recommendations to parliament to ensure that only significant matters of genuine public interest or concern are investigated. There is no doubt that complaints are coming from some people with an axe to grind. The OIA's approach to me seems that every complaint is treated as genuine. Whilst I appreciate it would be difficult to make judgements on people's motivations, I believe often the facts speak for themselves.

In the 3½ years since the new complaints regime has been in force, our city has had 168 complaints compared with 14 for the comparable period before the new legislation. That is really significant. Just four findings of misconduct have eventuated from those complaints. The cost to the OIA and council—and, in turn, the government funding that organisation—has been significant. For us, it would be heading towards seven figures. I ask: what would be the benefit of this complaints

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onslaught and how has it improved the standards of councillors or benefited the people of the Gold Coast? I think everyone in government is there to improve people's lives, not to waste time on resources and petty matters.

I am also concerned about the significant delays in delivering outcomes at both the OIA and the Councillor Conduct Tribunal. Some matters have drifted on for over two years. Having those things hang over your head for a period of time is disturbing and distracting. I speak from my own personal experience where my health has been impacted heavily and even coming here today has caused enormous anxiety.

I propose two changes that would bring meaningful improvement and save significant resources and costs. They would be to strengthen the provisions around vexatious or frivolous complaints to create a deterrent for people with a personal or political motivation and to allow the OIA to immediately dismiss insignificant or trivial complaints where a councillor misspeaks or blocks someone on Facebook without recourse to an investigation. These changes would free up resources to deal with more significant matters and would significantly reduce instances of people using the system for political or personal reasons.

That was my opening statement. If the committee is satisfied, I would like to make a statement on behalf of the city as acting mayor and speak to the issues raised within the submission the city made to this inquiry. It said that the strict drafting of the legislation requires all complaints relating to the conduct of a councillor to be referred, even those meeting the very low behavioural standards thresholds. The city recognises that this requirement, coupled with the subjective behavioural standards included in the Code of Conduct for Councillors in Queensland, significantly contributes to the unnecessary burden on the local government and then, in turn, on the OIA.

The city recommended in its submission increasing the threshold of inappropriate behaviour through creating a more prescriptive Code of Conduct for Councillors in Queensland and relaxing the mandatory referral of complaints to the assessor, allowing a greater level of discretion by the CEO, or his or her delegate. The same applies in the case of the contravention of a policy of council where mandatory referral is required. The city recommended including a threshold on a policy or procedure breach or be more prescriptive for inappropriate conduct and, again, relaxing the mandatory referral of complaints to the assessor by the CEO, or his or her delegate.

In summary, the complaints—and there have been many—as I mentioned, run into 168. I am more than happy to table for the committee the list of those complaints, should you wish, with all of the outcomes and the councillors who have been referred where it is appropriate.

**CHAIR:** Just to clarify, Donna, is that the Councillor Conduct Register that you maintain on the website?

**Ms Gates:** It is a copy of the register, yes.

**CHAIR:** There being no objection, it is so tabled. Would you like us to ask you a couple of questions?

**Ms Gates:** Certainly.

**CHAIR:** I understand that we can go in camera in a short while to deal with other issues. One of the issues we talked briefly about before—and it is something we have seen amongst councillors—is that there is quite a substantial fear of being caught up in this system. One of the things that your council has pointed out is that one of the possible consequences of being found guilty of misconduct would be dismissal by the minister. Do you think that fear of that ultimate consequence, unlikely as it might be, has been a large part of what has been driving issues within the complaints system?

**Ms Gates:** I think it is astounding that there is an opportunity for a minister to dismiss on the basis of some of the reasons for misconduct being challenged. There are cases where a simple administrative error could result in dismissal. I do not think that is appropriate at all. There needs to be some examination of the level of charge and its relevance, I believe, to the course of action that might be proposed in the legislation.

**CHAIR:** Legal representation has been an issue that some submitters have talked about. I understand that your council is somewhat unique in Queensland by not being a part of the local government program which is held by the LGAQ; is that right?

**Ms Gates:** Correct. Our council is the only council that I am aware of that is self-insured. There would not be a time when I believe anyone would risk not seeking legal guidance in responding. Quite clearly there is a team of lawyers involved in putting forward the allegations. Not many of the representatives have a legal education. We have one lawyer on our council. We are grateful for that because he sometimes corrects errors that have been made in suggesting perhaps that a conflict

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exists where one does not exist. That is helpful for us. It is definitely a concern when one of those letters arrives—usually on a Friday afternoon just before you retire for a weekend. You then spend a lot of time concerned about allegations and how to defend them. It is always, in my view, necessary under the current regime to seek legal guidance.

**CHAIR:** We will step through that process. You get a 150AA letter saying, ‘We have this complaint. Please respond.’

**Ms Gates:** Yes.

**CHAIR:** What is the process then with council? Would you then talk to the CEO or someone else in council about accessing legal services? Is that how your process starts?

**Ms Gates:** We each choose our own legal provider. We then would forward the copy of the notice to our city solicitor with the advice that it may give rise to legal costs, depending on the progress of such a complaint. That is noted. Then, as the process proceeds and a lawyer issues his invoices, they are forwarded to the city solicitor—again, in the case of the Gold Coast—who arranges for the payment of those fees through a pay slip to the councillor who then makes sure that the bill is paid. They are not paid directly. They are covered by the city but they do go through the councillor’s pay for direct payment to their legal adviser.

**CHAIR:** Just to clarify that, does the councillor ultimately pay those legal fees or does the city meet those costs?

**Ms Gates:** The city meets the costs.

**CHAIR:** Does there need to be an agreement from a senior officer to start that process of getting legal representation? Does it need to go to the city solicitor to tick off on that or the CEO?

**Ms Gates:** We do have a complaints policy that guides us in the manner of these complaints and their progress. I believe the course of action is to immediately notify the city solicitor or the CEO of a pending allegation.

**CHAIR:** So it is set out in that policy. We might get a copy of that if we could. That is all I have at the moment.

**Mr McDONALD:** Thank you very much, Donna, for being here and the leadership that you provide at the Gold Coast. I was interested in your submission, particularly about the expansion—that is my word—of the inappropriate conduct area. We have heard from many people with regards to misconduct and the connotation and penalties associated with that. Could you give us a case study or give us some examples of where that inappropriate conduct should go to?

**Ms Gates:** Even though we determined that we would judge our colleagues—it did come before the council in the construct of our policy—my personal feeling is that councillors should not be judging other councillors. It is very difficult. We all like to work together as a team wherever possible and it is certainly not conducive to being a team player to be judging a colleague. I would prefer we did not have to do that, but it is our policy and it was put in place with the support of the council.

**Mr McDONALD:** In terms of the costs that the city outlines in your submission, are they the total costs incurred by council? You mentioned there was a solicitor or there were legal people in council. We are trying to get a picture across the state of what these legalistic processes cost councils. Is that the total cost, apart from the personal cost that you referred to?

**Ms Gates:** No. Officer time is incredible. I have files from a personal case where I actually received a misconduct and I swear they would be that high. That whole period of time distracted me completely from my job and my role. At the time I was representing division 1 of the city which covered one third of the geographical area of the Gold Coast, so over 400 square kilometres. I worked through this enormous volume of paper. I think the complaint started off with 11 allegations and it was whittled down to just one allegation for which I received two misconducts, even though they were administrative errors. It did not matter that it was a pure administrative error that had immediately been corrected the moment I became aware of it. I received a misconduct for not updating my register and I received a misconduct for the same reason but for the breach of trust to the community for not updating my register.

**Mr McDONALD:** I wonder if you could take the question on notice in terms of those costs and, whether it be yourself or through the council, provide us in camera some of those things so again we are getting a snapshot of the true cost. It is not just about the independent legal advice; it is all of the other things that you mention.

**Ms Gates:** I do not know how you measure it, to be honest, because I do not know if there is a measure of the officer’s time that can be qualified to provide that to you, but I will certainly do my best to get what I can for you.

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**Mr McDONALD:** That would be great. We certainly have received the information that the whole process is very legalistic. I am not sure if you are aware, but through this inquiry we have discovered that the Councillor Conduct Tribunal is only now dealing with and investigating complaints from June 2020. How does that make you feel?

**Ms Gates:** I can better that. I have got one that has been going longer.

**Mr McDONALD:** Have you?

**CHAIR:** We will talk about that in camera.

**Ms Gates:** It is of great concern to have a matter hanging over your head for a period of time, especially when every possible attempt has been made at being transparent. I think there is a heightened level of concern and for a representative who may have a potential conflict to over declare and in over declaring it can open up more issues than it should, is all I will say. That is definitely my experience: that in showing an abundance of caution one can be faced with another misconduct or inappropriate conduct.

**Mr McDONALD:** The Independent Assessor herself said that she was interested in getting decisions from the Councillor Conduct Tribunal so that precedent or standards could be set and they are considering things in a very risk-averse manner. Would you agree with that?

**Ms Gates:** I am interested in that because in my experience—and I can only speak of the matters that I know of within Gold Coast because often they are confidential matters anyway and there is not a lot that I have the opportunity to know about. But in terms of our mayor and the number of complaints that he has had since the OIA became a thing, I think he has had something like 77 complaints and they have all been dismissed. Those that have been referred from the OIA to the Councillor Conduct Tribunal, I am aware that they have been dismissed as well. I hope I have got those numbers right. I think I do have those numbers right. It is of concern that there would ever be 77 complaints and not one of them has been upheld. It is just so damaging to the reputation of well-respected people who have stood for public office. It is wrong, in my view.

**CHAIR:** I was about to say, bear in mind we cannot comment on any current investigations that may or may not be happening.

**Mr MADDEN:** Thank you very much for coming in today, Councillor. My questions do not relate to any specific matters that may have gone before the Office of the Independent Assessor. I am going to ask you questions relating to the submission to the committee by Joe McCabe. Do you have a copy of that in front of you? You will need it to answer my questions.

**CHAIR:** Is that the CEO?

**Mr MADDEN:** Yes.

**CHAIR:** That is the one from your council which I think you have referred to.

**Ms Gates:** Thank you.

**Mr MADDEN:** It says in the opening line—

I submit the City of Gold Coast (the City's) submission for the above inquiry, with a focus on recommending amendments to the Local Government Act 2009.

Do you support this submission?

**Ms Gates:** Yes, but I am not sure that this submission was a decision of the council.

**Mr MADDEN:** I will just limit it to you. Do you support this submission?

**Ms Gates:** Yes.

**Mr MADDEN:** My questions relate to paragraph 3 where it talks about costs. Do you see where it says 'incurred \$237,957'?

**Ms Gates:** Yes.

**Mr MADDEN:** At the end it says '(City insurance claims)'?

**Ms Gates:** Yes.

**Mr MADDEN:** This is what I wanted to clarify. I will just give you an example. I am going to go into hospital tomorrow. I am going to walk into the hospital and pay \$250 and my insurance scheme will pay for all the costs after that. All I will pay is \$250. If I have an accident in my car I pay \$500; the insurance company pays everything after that. It was very similar when I was a lawyer. When I was a lawyer if there was a claim made against me I paid \$15,000—quite a substantial amount. What I want to clarify is where you say \$237,957, are they premiums per claim or are they the claims made against the insurance policy?

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**Ms Gates:** I do not know where the money comes from.

**Mr MADDEN:** You cannot answer that?

**Ms Gates:** Sorry, I cannot answer that.

**Mr MADDEN:** I can assist you. Can you supply the committee with details as to what this amount is? What I am trying to clarify is whether it is premiums or the amounts paid pursuant to the policy in total.

**Mr HART:** I notice William Owen-Jones is behind you. I do not know if he can assist with that process at all.

**CHAIR:** We have another witness. Could you state your name for the record?

**WALLACE, Mr Luke, Chief of Staff to the Mayor, Gold Coast City Council**

**Mr MADDEN:** If you can assist.

**Mr Wallace:** As the acting mayor outlined before, we are a little bit unique in that we are I think the only council in Queensland that is self-insured. We have a captive insurance company. We have various different classes of insurance, as you do: public liability and everything else, professional indemnity. Our policy deduct was \$20,000. The only way we would get anything back on that \$237,957, which is what it was in December—it is obviously more than that now—would be if a particular matter was over \$20,000. So the ratepayers effectively are funding it.

**Mr MADDEN:** These are not really monetary claims, are they? Or are you talking about claim as in the total potential legal cost?

**Mr Wallace:** Bear in mind that I think only four of 168 complaints have arrived at a finding of guilt.

**Mr MADDEN:** You are saying only four triggered the insurance policy. Because it is less than that amount, you have had to incur the costs yourself?

**Mr Wallace:** No, many more than four. A lot of those were dismissed but required legal advice for our mayor or councillors to get to the point of dismissal. As the acting mayor said, as soon as council receives one of those 150AA notices, we have a policy that indemnifies and allows the councillor to be reimbursed for their legal costs.

**Mr MADDEN:** Does it incur a premium? Does that have a premium paid on it per letter?

**Mr Wallace:** No, we are self-insured. We have a captive insurance company.

**Mr MADDEN:** I am still a bit mystified as to what this amount is. Is this the total legal costs incurred by the council? You have an insurance policy. It says 'City insurance claims'. Generally you pay a premium per claim, and it is limited. Like I said, I am going to hospital tomorrow and I will pay \$250. If I crash my car it is \$500. Does your insurance policy have a similar system with regard to a premium?

**Mr Wallace:** Our policy is deductible so we are self-insured. Our insurance company is called the Gold Coast Insurance Company. It is a captive insurance company and the council is the sole shareholder so we are self-insured. We have a reinsurance policy if the matter is over \$20,000. I am not sure whether it is with Zurich or Suncorp or one of those that picks up the reinsurance, but the first \$20,000 is worn by the ratepayers effectively because we are self-insured.

**Mr MADDEN:** It is a little bit like when I was a lawyer and we had a \$15,000 premium. Potentially, if the claim was less than \$15,000 I would not make a claim; I would just wear it. Is it a similar sort of thing?

**Mr Wallace:** Correct.

**Mr MADDEN:** Can you clarify my question: is this amount the legal costs that maybe were less than \$20,000 or are these premiums?

**Mr Wallace:** No, that is the total costs and I would be very confident in saying that we have not had one individual matter that has incurred over \$20,000 in costs so, therefore, that whole figure is—

**Mr MADDEN:** So it is sub \$20,000 so you have incurred the legal costs yourselves?

**Mr Wallace:** Yes. They tend to be \$3,000, \$4,000, \$5,000. Some of them have been more.

**Mr MADDEN:** It seems to be that this is your actual legal costs.

**Mr Wallace:** It is.

**Mr MADDEN:** It is cumulative. They are my questions. Sorry if it was a bit all around the place.

**Ms Gates:** That is perfectly all right.

**Mr HART:** Donna, I have a couple of short questions. Was the old system better than the new system, in your opinion?

**Ms Gates:** In my opinion, yes, and a check of the registers would show that I never missed a declaration under the old system anyway. I always declared. I did want to speak in camera about some of this, but I am happy to share with you and then not go into that. I personally held race days that came at a high cost, but that was my choice. They cost me about \$50,000 to put on and I would make a \$30,000 excess, so I would use that approximately \$30,000 to fund my campaigns, but it did create for me a declarable conflict always if I had received funds from anyone.

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The difficulty I have now is that, as you would all be aware, you do not get to deduct your costs; you must declare the total amount of funding received, even though at the time I thought it was a very wise way of raising funds because the net profit per head was between \$60 and \$80 and it was irrelevant in my view in terms of the suggestion that—and I have said publicly before if it was a million dollars it would not change my vote in any way—someone could be influenced by having received an amount like that. That is insulting, to be honest. It is insulting at any level, but it is just impossible and I am often left out in the lobby now while important decisions are being made where I cannot represent my community when what I did was very transparent, always on the public record and I always declared that there had been funds received, but it would never influence my decision-making.

**Mr HART:** If you had to make a guesstimate of the percentage of the complaints that are made, what sort of percentage would you say are politically motivated, vindictive or genuine complaints?

**Ms Gates:** I can only speak personally again because we do not get to know. Unless the matter comes before the council for a decision on inappropriate conduct, we do not talk amongst ourselves about complaints that are received because they are confidential. In my own experience I have most definitely had a significant complaint that was dismissed that went on for months and months and months. It was politically motivated through my, at the time, being on the board of directors of the Gold Coast Turf Club and it related to a one per cent share in a horse that had been a gift from my son at a value of \$800, so it did not appear on my register. I am more than happy to speak openly about it because it went on forever. It was a one per cent share that was actually a joke. He said that I would get my name in the race book as an owner with one per cent, for goodness' sake, but someone with an axe to grind read the annual report and saw that I had my name in the race book and saw my register and that it was not there.

**Mr HART:** So have a stab at percentages, Donna. What would you think?

**Ms Gates:** For me I suppose probably about 20 per cent because—

**Mr HART:** Twenty per cent are genuine or 20 per cent are—

**Ms Gates:** I have not had community complaints—

**CHAIR:** Sorry, but just a moment. We are straying into realms of conjecture. With regard to complaints, anonymity is an important part of that. I understand where you are going with that, but there are some issues with asking the witness to take a guess at something that they could not possibly quantify.

**Mr HART:** Really?

**CHAIR:** Yes.

**Mr HART:** Okay; I will move on.

**CHAIR:** I caution the member and caution the witness on that.

**Mr HART:** Donna, from a council's point of view, I do not know if you have had an opportunity to talk to other councillors, but do you think enough information flows from the OIA?

**Ms Gates:** They have a newsletter that they release that is available for everyone to digest. The anonymity of complainants is something I do not understand. When a complaint is lodged against an elected representative they do not get to know who the complainant is and, because some are politically motivated, it might assist in knowing who is making the complaint. Yes, I am aware of politically motivated complaints and so it would be—

**Mr HART:** Does your council have any sort of policy that allows for the CEO or the councillors to know about complaints that come to the council for information?

**Ms Gates:** No, only where it is a matter for the council to decide. So only where it is an inappropriate conduct that is sent back for the council to decide.

**Mr HART:** When councillors became delegated people under the legislation, they could go to the Integrity Commissioner and get advice around conflicts of interest. Did you ever use that situation?

**Ms Gates:** I tried on a couple of occasions and the Integrity Commissioner was too busy to assist.

**Mr HART:** Okay. So the Integrity Commissioner advice could be used for a councillor as a defence with the OIA and the CCT?

**Ms Gates:** I am not sure about that. I had a number of discussions with the Integrity Commissioner and she was very helpful initially and offered to come to our council and brief our council on the new legislation in its entirety, and Ms Florian came along as well, and it was very helpful



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at the time. I subsequently sought her advice on a matter between a council meeting and a full council meeting and she was unable to help me. I wanted to know my grounds before I went to the full council meeting. I then sought the advice of the city solicitor in the absence of advice.

**Mr HART:** Would it be helpful then for councillors if there was somebody that you could seek advice from that could then be used as a defence in the CCT?

**Ms Gates:** It would obviously save the ratepayers a lot of money if we had the confidence that someone was able to do that.

**Mr HART:** Do you think the councillors had enough training? This is more a personal question for you then: do you think you understand enough about the legislation and how that could be interpreted or do you think it is too legalistic?

**Ms Gates:** I think we have had enough briefings and information provided, but it is really only the lawyers that understand it completely. It is astounding that there is an opportunity to dismiss on the basis of a misconduct. There is so much more to the role.

**Mr HART:** Do you feel more confident then if you seek advice from the council's legal officers about what you should do, or does that not help?

**Ms Gates:** I did, but in one instance where I have accepted that advice I still have an active misconduct charge despite the advice from our city solicitor. So I do not actually know what to say because it would seem that legal opinions can differ very greatly and one opinion can be totally the opposite of what the OIA or the conduct tribunal may be.

**Mr HART:** We have heard from a number of councillors around the state that they feel like they do not want to be councillors anymore because of what has happened here. Do you get a sense from your councillors that there are a number of them that feel the same way?

**Ms Gates:** I can only speak personally and I have many times in the last few years wished to step aside.

**Mr HART:** Thanks, Donna.

**CHAIR:** We are running a bit over time, but we are going to keep on with this.

**Mr SMITH:** Councillor Gates, thank you for being here today. I should declare that Southport is the city of my birth.

**CHAIR:** I am sure they are very proud of it, member for Bundaberg.

**Ms Gates:** It is not a conflict of interest!

**Mr SMITH:** The really interesting part of the city's submission is around their concern that the principles, values and standards are very subjective in the code of conduct. I am not sure, Councillor Gates, but do you happen to have a copy of the code of conduct with you?

**Ms Gates:** I do not believe I do, no.

**Mr SMITH:** That is okay. I might just read through some of the steps, because some of the concerns that I may well share are around the wording and whether the wording is actually practical in a real-life scenario. Principle 3 states—

In representing and meaningfully engaging with the community, Councillors will:

- clearly and accurately explain Council's decisions
- Has the department or the OIA ever provided training as to what is clarity and what is accuracy when explaining and what is not? Have examples ever been provided of what is and what is not?

**Ms Gates:** Not in my recollection, but I might be wrong there. As far as councillors expressing a view, there is the option for one to express a view and it be your personal opinion anyway. So I think that often a personal opinion is expressed, but I do not know that there has been a—

**Mr SMITH:** I suppose clarity is very much a subjective understanding of a conversation, is it not, at times?

**Ms Gates:** Yes, and I suppose in speaking clearly to a decision one would have to refer to the resolution and only the parts of that that apply.

**Mr SMITH:** Dot point 3 of the same principle states that councillors will—

- accept and value differences of opinion

I raised this in Mount Isa. I personally can accept differences of opinion but I do not always value them. Do you think that is a fair and practical expectation that councillors will value every opinion?

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**Ms Gates:** No, I do not believe so because every vote that is taken allows an opinion to be expressed and it might not be that the opinion that carries is the one you share, so no.

**Mr SMITH:** Just one more along the code of conduct. Principle 5 states—

To meet the community's expectations for high level leadership, Councillors will:

- be committed to the highest ethical standards

This is one of my favourite questions, and the committee has heard this quite often. Could you please explain in the best way that you can the difference between the highest ethical standard and an ethical standard?

**Ms Gates:** I think that—

**Mr SMITH:** And no answer is a perfect answer for this one, by the way.

**Ms Gates:** No, it is very difficult to do that. I could try. The highest ethical standard is obviously what we all aspire to deliver.

**CHAIR:** The member for Burleigh has pointed out that that also goes into the realms of conjecture.

**Mr SMITH:** And I think that perfectly highlights the point. Chair, with some indulgence: Councillor Gates, you mentioned Facebook and blocking and deleting comments and so forth. Could you maybe just provide a short elaboration around your thoughts and feelings around the OIA's investigations into complaints made around blocking Facebook profiles and so forth?

**Ms Gates:** I can certainly speak about one incident that happened during an election campaign whereby some commentary was placed on Facebook that resulted in an OIA complaint and the person who actually put the post on Facebook did not exist. It is pretty scary to think that an elected representative can go through the stress of an OIA complaint when no real person was on the electoral roll, could not be found anywhere and did not actually exist. Facebook really should, in my view, not be a means for targeting complaints against elected representatives.

**Mr SMITH:** Thank you, Councillor.

**Mr KATTER:** Just a simple question from me. Councillor Gates, how long have you been on council?

**Ms Gates:** I have been on council since 2007, so 15 years.

**Mr KATTER:** So a long time; good on you. Since this has all ballooned as an issue and all of these complaints are snowballing now—and we are seeing a lot of evidence of that—what is your opinion on how that now impacts on attracting people to council and getting people involved in the process?

**Ms Gates:** I would think it will inhibit good people coming forward, most definitely. It is so weighted against the elected representative. In my own case I won my first election not with an overwhelming majority, but since that time I have contested the 2012 election where I got nearly 80 per cent of the vote. In 2016 I was unopposed as a representative and in 2020 I got 79 point something per cent of the vote. I have been a very hardworking council representative who has given everything that I can. You are not going to satisfy all the people all the time, and I understand that, but I feel very comfortable with the role that I have fulfilled for the people that I represent, and I have done so very genuinely. It is very disturbing, and people have seen the impact it has had on me and many people who might be thinking of stepping up would say, 'Not sure I want to go there now with that legislation in place,' because it is troubling. It is really troubling. We all know that there needs to be scrutiny and people have to be held accountable, but it is shameful that small matters can cause the level of stress that they can when it just distracts people from doing the job at hand, which is to represent community and the people who have put their trust in you.

**Mr KATTER:** To tease that out a little bit further—it might not require much of a response—what about the cultural shift then? Does that impact on your ability and your tendency to then tackle some difficult policy issues? I imagine that if you are in that headspace with this you are always walking around on eggshells. You are going to start steering clear of more and more controversial issues, so what I am talking about is reducing your capacity to do your job properly.

**Ms Gates:** Absolutely. When we go in camera briefly if I can speak to a specific issue that highlights exactly what you are saying and I can explain more fully.

**Mr KATTER:** Okay.

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**Mr McDONALD:** Donna, just to follow up on a couple of things you mentioned, you said in answer to the member for Burleigh's question that you thought that the system was better before, but in your opening you said that you thought having an independent decision-maker was important. Do you think that it needs to be the OIA or are you suggesting the LGAQ could be the independent decision-maker or—

**CHAIR:** The CEO.

**Mr McDONALD:** Yes, or the CEO?

**Ms Gates:** I would prefer it to be the CEO, the chief executive officer. In my experience we have just got a new chief executive officer, but the former chief executive officer was able to handle complaints more than adequately. I think anyone appointed to that role would do so fairly and without any bias whatsoever but also with an understanding totally of the chain of events that may have led to an allegation.

**Mr McDONALD:** Thank you.

**CHAIR:** Donna, do you still want to talk about your issue in camera?

**Ms Gates:** If you do not mind, just briefly. I know we are running late, but I will be brief.

**CHAIR:** I will close the open session and we will go into a private session. I ask if everyone can follow Ray out the door; he knows what to do. I also ask that we turn the broadcast microphones off.

**Proceedings suspended from 10.48 am to 11.01 am.**

**CHRISTENSEN, Mr Greg, Mayor, Scenic Rim Regional Council**

**CHAIR:** Good morning. Thank you, Greg, for appearing before us today. I invite you to make an opening statement, after which we may have some questions for you.

**Mr Christensen:** I seek some guidance. I have prepared a very focused statement to try to demonstrate the impact of the current environment. In doing so, I have included some content that is specific to a matter that is potentially heading through the OIA and, I would hope, to the CCC. In making my opening statement, that is included in it. I seek your guidance about whether going in camera for that is best at this time.

**CHAIR:** Certainly. We can go in camera for that part of it or we can go in camera for your entire submission. It is up to you. For any issues that are currently live we have been talking about them in camera. It all depends on how you want to separate them, or not.

**Mr HART:** Just be mindful, Greg, that anything you say in camera will not appear in public. If you have some public statements you want to make—

**Mr McDONALD:** Now is the best time to make them.

**Mr Christensen:** It is very important for the context to respond to the matters. I am not afraid of them being in public. I am confident that what I am saying is factually based. I have spent my own money to get a legal review of what I am going to say.

**CHAIR:** This is in response to some of the public submissions—

**Mr Christensen:** Yes, they are.

**CHAIR:**—and you would like to put them on the public record. We will invite you to read that as part our public hearing. When you want to go in camera to discuss other issues, we can do that.

**Mr Christensen:** That would be greatly appreciated. Thank you.

**CHAIR:** It is over to you.

**Mr Christensen:** Again, thank you. By way of introduction, before becoming Mayor of the Scenic Rim Regional Council in 2016, I had an extensive corporate executive career including responsibilities across human resources, governance systems and compliance, with a strong track record of success in cultural transformation, business improvement and leadership coaching.

I do thank you for the invitation to present before the inquiry today. I do propose to share a personal view rather than a council view of how the current interaction of the OIA, the Councillor Conduct Tribunal and the CCC, with the legislative expectations I am bound by, has created an environment with my council that is now dysfunctional. In doing so, I propose to focus on examples to assist.

I entered local government with professional experience in meeting modern community standards of behaviour as required by ASIC, Workplace Health and Safety duty of care, anti-bullying requirements and the wide range of other standards that modern workplaces must meet. My goal has been to bring the same community standards to the behaviour of elected councillors. I believe the local government legislative frameworks and post-Belcarra expectations align with such intent.

I have found that, based on empirical data, some vocal parts of the community and at least two present councillors subscribe to an outdated model of councillor behaviour that is not consistent with current legislation—an approach that puts their outcomes above proper process and popularity ahead of strategic purpose. In practice, this means I have councillors whose actions show misuse of the power relationship to belittle, bully and undermine colleagues and staff, leaking of confidential information and bypassing process repeatedly.

The OIA, along with the Councillor Conduct Tribunal and the CCC, is supposed to play a critical role in supporting proper standards and the transition of local government away from the failings of its past. Within its practices, it is meant to provide impartiality, natural justice, confidentiality and objective analysis to discern a wide range of issues and help lift performance standards and accountability. Unfortunately, in practice, within my council the reverse has occurred.

Local government legislation requires that I refer bona fide matters to the OIA. My perspective is based on reading the applicable local government legislation, code of conduct and council standing orders and participating in training on all three. The positive reporting obligation that rests particularly on mayors and CEOs, as they are often the recipients of such matters from other parties, for bona fide referrals has created undue pressure and exposure to abuse for mayors and CEOs—by the way, 'abuse' meaning public abuse and councillor abuse.

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For context, I refer to the submission by Mr Swanborough to this inquiry. Mr Swanborough, in his submission, would have the committee believe he is a shining example for local government who is hard done by. It is a matter of public record that in his prior term as a councillor he was on multiple occasions found to frequently fail acceptable behaviour standards and even in the current system has been found to continue in this vein.

As evidenced in Mr Swanborough's submission, when I or a council officer fulfil our proper referral obligation, it is misrepresented to the public as victimisation or weaponising the OIA—currently, it seems, with impunity. In practice, neither me nor the council CEO have received reasonable and proper protections for undertaking these obligations such as exist for deemed public interest disclosures. Even where these protections have been confirmed in writing by the OIA, when retribution has then occurred, there has been no action. This has led to a pattern of retribution and vilification towards me, the council CEO and other officers by councillors who do not like to be held accountable to a standard—in particular, in this case, Mr Swanborough.

For the CEO, this retributive action has contributed greatly to the non-renewal of his employment contract—a high price to pay for his integrity. What did that look like? In summary, the councillor had pursued a personal legal action against parties, including the CEO, seeking damages. He repeatedly denied the presence of any conflict of interest through the CEO review and decision process. He strongly denigrated the CEO and influenced three other councillors in the process. When his conflict was finally forced into public, he still failed to properly declare it. Three other councillors who knew he had not properly declared it still perverted proper process so they could control the numbers for a vote.

**CHAIR:** Greg, did you want to do some of this in camera or are you happy to continue?

**Mr Christensen:** I am happy to continue. Quite frankly, the level of vilification in public that I am subjected to at the moment cannot get any worse.

**CHAIR:** Just bear in mind that if we are talking about third parties we do urge caution.

**Mr Christensen:** I note the caution.

**Mr McDONALD:** You are speaking under parliamentary privilege as well.

**Mr Christensen:** I did take cautious legal advice because this is not a comfortable place.

**CHAIR:** I understand. Please keep going.

**Mr Christensen:** While I am sure there are matters under consideration now by the OIA regarding those matters, my experience is that there is insufficient timeliness, particularly for high-impact matters to progress fully through the process. As the saying goes, justice delayed is justice denied. This is beyond just the OIA context and includes the operation of the Councillor Conduct Tribunal and the CCC. I have seen circumstances where matters referred are still unresolved for almost two years and have not been either referred to the CCC for potential corrupt conduct or to the Councillor Conduct Tribunal for potential misconduct or to council for further investigation as inappropriate conduct. As summarised above, this has created an environment where the councillor in question is growing increasingly emboldened in such behaviours. Some other councillors are also adopting similar poor standards.

In the context of the CEO contract discussions, Mr Swanborough cynically stated in front of senior Department of State Development, Infrastructure, Local Government and Planning officers, external lawyers, council officers, as well as other councillors, to the effect, 'I know this will get reported to the OIA, but by the time they deal with it the term of council will be over and I don't intend to run again.' Sadly, I also note that the senior Department of State Development, Infrastructure, Local Government and Planning officer indicated no willingness to act or accept accountability for the creation and failure of this flawed system.

There are many other aspects of concern to me about the current environment concerning the OIA. I have tried here to focus on the net effect that is leading to significant disruption. I am a supporter of the OIA. I believe it has endeavoured to play a proper role in the assessment of referrals but is overwhelmed, burdened by inadequate legislative scope and not structured to succeed at present. As so often in life, good people set up to fail, but my council, myself, my family, council staff and the community are paying a heavy price for its growing pains. Something has to change.

**CHAIR:** Thank you, Greg.

**Mr HART:** How long have you been a councillor, Greg?

**Mr Christensen:** I became mayor in 2016. I had not been in council before. I ran for mayor because I saw the region failing.

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**Mr HART:** You heard the questions we asked Donna. How does it make you and other councillors feel about being councillors in the future?

**Mr Christensen:** For me, I am still as passionate as the day I walked in the door about what is possible for my region. For my wife, hell will freeze over before I stand again.

**Mr McDONALD:** Thanks very much, Greg, for the leadership you show to the Scenic Rim. I know from your background you understand governance systems, so I will not go into the specifics of what you have talked about. We have what appears to be no point of truth. We have the LGAQ providing training and the department providing training. We did have the Integrity Commissioner who could provide legal advice and if you followed that legal advice it was a defence.

**Mr HART:** On conflicts.

**Mr McDONALD:** Yes, on conflicts. Do you have any thoughts around that point of truth from your experience that you could enlighten the inquiry with?

**Mr Christensen:** The point of truth is a real challenge. We have had training from the LGAQ, we have had it from the department and we have had it from the council's lawyers, and we get a different message each time. We have now tried having at least two of them in the room at once and we still get slightly different messages. The department's conversation about their intent is different to the legal interpretation of their language. That is what I hear on a regular basis. That creates a grey field that certain parties play willingly. There is an assumption that everyone becomes a councillor with good intent. The evidence I see says that that is not a reasonable assumption.

**Mr McDONALD:** We are trying to get a snapshot of the cost to local government and the ratepayers. Could you take on notice to give us a summary of those quotes, because it is a big cost?

**Mr Christensen:** It is for us. I do not know the total number—I lose count—but I suspect we are in the same vicinity as the Gold Coast for a council that is significantly smaller. I think their operational surplus is more than our total budget. When matters get referred back to go through an investigation process—and we have had probably eight or 10 of those matters now—those investigations cost somewhere between \$6,000 and \$16,000 per investigation, just to give you an idea. That is in direct costs for an investigator. The CEO and I have recently been required to provide input to matters that are progressing from 2020 finally with the OIA, so that takes time preparing statements, providing additional information and affidavits and so forth. I could not give you a number today. I could do an estimate later in the week, with a plus or minus 20 per cent.

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

**Mr MADDEN:** I am very pleased that in your submission in paragraph 5 you raised the issue of the public interest test. It seems to me that this is something critical to our committee's investigation. It has come up twice previously. When you read the list of matters that have been resolved by the Office of the Independent Assessor, often it says 'failed to address that level'. It also came up with regard to some matters involving the Ipswich City Council with former councillors not running again. The response I got to my question of why the Office of the Independent Assessor did not proceed with those investigations was that it did not meet the public interest test. Do you believe that the public interest test should apply immediately the Office of the Independent Assessor receives the complaint? If they are satisfied at that point that it does not meet the public interest test, then the matter should not proceed beyond that initial receipt of the complaint?

**Mr Christensen:** I like the notion of a public interest test. It is just really challenging to get the dimensions understood. The challenge sitting in my chair and perhaps sitting in the CEO's chair—although I will not speak on his behalf—is that the legislation we live under does not allow us any discretion to consider the materiality. In fact, what it says to me is that, if you get a bona fide matter across your desk, you have to report it or you are in the crosshairs of the CCC. I have told every one of my councillors, 'There's not a person in this room I care enough about to sit in front of the CCC for.'

I follow the prescribed governance rule. That is what the legislation says. I understand why it says it, by the way, if I may elaborate on the answer. The challenge for a public interest test in the old scheme put a lot of pressure on a CEO. If you get a council with a toxic environment, a CEO who is under pressure to keep his job does not mean he makes public interest tests. He is now not able to be independent. He is dealing with his employers and is inevitably impossibly compromised in trying to manage that and is at risk. Even in the environment where putting that to an independent third party for consideration brings him into conflict—a so-called weaponising the OIA rather than just fulfilling legislative obligation—how do you get to the point of a public interest test without an independent body that actually can explain it, educate it and test people's understanding of it? None

of the training for local government—apart from the Mickey Mouse piece that happens at election time of a little bit of cartoon play online—tests the proper understanding of councillors. You learn in the minefield. If you can channel Aunty Jack, you make it alive through the minefield. Those who do not know Aunty Jack die in the minefield.

**CHAIR:** That is a very specific cultural reference that I will explain to the younger members later.

**Mr MADDEN:** Just on that point, I take it from what you are saying that it would be of assistance to councillors if we had some guidance with regard to that test, other than what is in the legislation. That could come from decisions of the tribunal that were published or decisions of QCAT if it went further, although we do not have those yet. Do you think it would be of advantage to everyone if we had a clearer idea of the public interest test and also a clearer idea of the obligations of people in your position or the CEO's position with regard to the reporting of matters?

**Mr Christensen:** Totally. The legislation at the moment gives zero discretion. I should put my hand up and say that more than 50 per cent of the reports I put in have been on myself. If I receive a complaint from someone who has accused me of something, I have to self-refer. That is what the legislation requires. I think it would be helpful. It would require a change to the legislation to provide that discretion. It would still need to be a documented process of some form. The current system is smothering.

**CHAIR:** I will follow up on that. What you are talking about is section 150R, which talks about the obligation to report if someone becomes aware. What we have brought up here is that materiality, or the public interest test, of how that should be applied to help the system, instead of it just being used by people to perhaps take advantage of the system. Is that the crux of the point we have talked about for the last few minutes?

**Mr Christensen:** Absolutely, and it does go to one of the other submissions that I referred to in my correspondence from a member of the public. It is a whole myriad of what is best described as a Grimms' fairytale—perhaps a grim fairytale—and I am talking about the submission by Ms Wilkinson that the committee would be aware of. I attended by invitation an AGM of a wonderful group of volunteers. At their meeting they took a vote to try to change their name. I did not participate in the vote. The matter came in to council and officers then took charge of the process for that name transfer. This lady has reported me. It is very clear, because it is in her submission, that she has reported. She has continued to pursue a public campaign of misinformation. I cannot go out publicly and confront her because I will be in breach of code of conduct. I cannot have a voice, but in the world of Facebook if I were to step out into the world of employment now and do a Google search of myself I would be unemployable.

**CHAIR:** We have talked about the issue of training, pre-election training and some responsive training from the OIA and the Integrity Commissioner. Have you looked to initiate from your own council's point of view a comprehensive ongoing training program? How does that sit in with what you have talked about? You have talked about some outdated views of council. How can you roll out a comprehensive and rolling program of training in your council on conflict of interest?

**Mr Christensen:** At the commencement of this term, learning from the changes that happened through 2016 to 2020, we put together a program, even though COVID smashed us a bit, that actually went through every aspect of being a councillor. That was over a four-month period or thereabouts. It included intimate sessions with legal advisers working through the wording of the legislation and how that converted. We then had follow-up sessions with LGAQ. In the context of trying to get clarity of thinking and process for councillors around the CEO decision, we have had a long session again about a whole heap of these requirements and the legislative requirements about conflicts of interest, behaviour and process with senior departmental officers and lawyers in the room at once. When that door closes and we move into the public arena, the behaviour does not change.

**CHAIR:** That is a problem. It is probably not the most conducive training environment when you have got legal people in the room. It is ideal perhaps to have ongoing professional development as well as those other ones. You found that program you initiated did not have the impact you wanted; is that correct?

**Mr Christensen:** Correct. I do not use the word 'dysfunctional' lightly. I have dealt through some pretty horrid business cultures for transformation in my career so I think I have a fairly high threshold before I reach the word. Speaking of thresholds, I have had a conversation in the past with senior officers of the OIA where they have said, 'Your behavioural standards are too high,' and I have asked them—

**Mr HART:** How did those conversations take place?

**CHAIR:** Were they in confidential private meetings?

**Mr Christensen:** They were meetings that I had. I am happy to take that in camera to discuss that.

**CHAIR:** If it was being discussed in a private meeting, we should.

**Mr Christensen:** I am happy to come back to that. Suffice to say, I think it is a challenge for every councillor today. We live in a world where behavioural standards in the community are totally confused and lost in the emerging world of social media, which is disconnected from reality. We all know about mistruth becoming verified as truth through nefarious means—if I hear one more person, for instance, tell me, 'If you want to get the truth about COVID and vaccines, you need to go to this website,' which is not the WHO website. That is the reality that we now operate in.

As an example, every planning matter that we deal with now in a particular part of my region results in a series of complaints about every one of the planners being corrupt or in bed with the developer. We have got all these armchair experts who sit back and do not comprehend the process, but once that is out there it causes severe distress. It is the same for councillors. We operate in a world where the majority of my community like to go to work, do their farming, do their work, play with their family, enjoy the place they live in and not get involved at all—they are happy with what is happening in their region. Then you get these noisy minorities who position themselves as the new holders of standards, which is abusive, belittling and derogatory and that becomes the norm. I do not know why we are surprised that our kids are struggling with bullying in schools.

**CHAIR:** Before we go to the member for Bundaberg, did you want to clarify something, member for Burleigh?

**Mr HART:** When we were in Mount Isa, the CEO suggested that we look at something called a municipal monitor, which is a former-CEO panel going around sitting in on a meeting and assisting with interpreting legislation and giving advice to councillors. I wonder how you would feel about that sort of thing given your comment before about having the department and legal advice in the room at the same time giving conflicting advice.

**Mr Christensen:** My motto in life has always been: I can demonstrate I am the smartest person in the room by having smarter people around me. I am always happy to have those smarter people. That is how you make businesses greater, that is how you should make councils greater: by making sure you have really competent staff and really competent support staff. Off the top of my head, a concept whereby there is a consulting panel of some form that can provide a reference—and this is a bit like the Integrity Commissioner—provided it has merit, and there are two things for it to have merit: one is that in providing the initial briefing it is a comprehensive and complete context, not a partial context; and that when that response is given that it really does have merit. There is an online tool through the OIA or the department, I always forget which one, for people to check conflicts of interest. I have run five scenarios through it on five different days and come up with different outcomes.

**Mr HART:** Interesting.

**Mr Christensen:** That is just because of the way I am articulating things on the day.

**Mr HART:** Got it.

**Mr SMITH:** Mayor, thank you for being here. Much like Aunty Jack, you are bringing a bit of colour to the black-and-white world of legislation. Just some quick responses and then some elaboration on the final question: would you agree that you have a sound knowledge and understanding of the code of conduct?

**Mr Christensen:** I believe so.

**Mr SMITH:** Do you have an equally sound knowledge and understanding of the local government as it pertains to inappropriate conduct, misconduct and the OIA?

**Mr Christensen:** I believe so, yes.

**Mr SMITH:** In your personal opinion, does the difficulty of the situation where councillors find themselves now come through the legislation in the code or more so the interpretation by the OIA of the legislation in the code?

**Mr Christensen:** I think this is a potpourri of time. The legislation was, I believe, flawed in its totalitarian and not listening to practical intent and I believe there were opportunities or attempts to try to have that changed—some of those examples that I have already alluded to about the absolute nature of it. The code of conduct: it fails one of the pieces that I have had in codes of conduct in Southport



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business, for me. I think the piece that I find in a business that is missing in this code of conduct—I am reflecting through my video replays here—is the clarity around, I guess, what the principles are there, but really around the values.

This whole discussion I heard earlier around ethics, and ethics and integrity for me sit in this really close relationship and they form out of the values on which I guess the code of conduct is espoused and I guess the legislation is espoused, but they are seen as legal principles rather than actually values you must cherish if you walk in the chamber. For me, and I may be a freak, I spent 18 months reading all of the prior legislation and existing material before I decided to stand for council. When the legislation changed I then sacrificed a few of my wife's weekends to make sure I could read it, put my questions down, re-think it and try to get clarity on it before I moved forward. Still on five different days I feed things through and I end up with different answers. The answer is that I think the OIA is in a place where it is doomed to fail with its current legislation and the local government legislation not having a logical, proper, clear alignment. And in the gap between those, councils sit and try to interpret what those people are saying, which is different to what this legislation is saying. It is a potpourri of failure.

**Mr SMITH:** Thank you. That is a very good answer. If I can maybe shift, in light of time: does your council have a media policy for councillors to be able to speak to your traditional media outlets?

**Mr Christensen:** We do have a media policy. It is one of those that we would like to refresh. Fundamentally it precludes councillors from trying to speak on behalf of council. It does not stop them speaking as individuals, but they need to clarify that.

**Mr SMITH:** If they make a statement on their social media account, is there a difference between it being Joe Blogg's Facebook account and Joe Blogg's as divisional councillor? Is there a difference there in terms of the policy?

**Mr Christensen:** If you have a council site then it is a council controlled site and it is part of a council public record. If you have a private site—I do not have a council Facebook account; I have a council Instagram account that is a public record managed by officers. I do have a private Facebook account that people try to communicate council business to me on and I then have to either refer them back to council—and even when I refer them back to council I have to do a screenshot of what they have sent to me there, send it to myself at council so that I can then have it as a record, and then respond to it. I have just got to keep remembering to do that.

**Mr SMITH:** Did that policy come in before or after the OIA?

**Mr Christensen:** For me I have had that in place since I got elected and that was 2016. In my first term of council none of my councillors were on Facebook.

**CHAIR:** We will now close the public hearing.

**The committee adjourned at 11.37 am.**