



STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:

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

Staff present:

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

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

TRANSCRIPT OF PROCEEDINGS

MONDAY, 6 DECEMBER 2021

Brisbane

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The committee met at 10.02 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the functions of the Independent Assessor and performance of those functions. My name is Chris Whiting. I am the 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 respect to elders past, present and emerging. We are very fortunate to live in a country with two of the oldest continuing cultures in the world in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share.

With me today are: Mr Jim McDonald, deputy chair and member for Lockyer; Mr Michael Hart, member for Burleigh; Mr Robbie Katter, member for Traeger, on the phone; Mr Jim madden, member for Ipswich West; and Mr Tom Smith, member for Bundaberg. The committee's proceedings today are proceedings of the Queensland parliament and are 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. I remind committee members that officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. 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 on social media pages. The committee is mindful that there may be discussion today on matters considered to be confidential. The committee will conduct these discussions in private. Should the need for private discussion arise, it will take place towards the end of the session. Individuals in the gallery will be asked to leave the room and the broadcast will be switched off. Thank you all for your understanding on this. Finally, I would like to remind to everyone to turn their mobile phones off or to put them on silent.

BLAGOEV, Ms Bronwyn, Executive Director, Local Government Division, Department of State Development, Infrastructure, Local Government and Planning

SMITH, Dr Caroline, Executive Director, Economic and Policy Futures, Department of State Development, Infrastructure, Local Government and Planning

CHAIR: I invite you to brief the committee. Afterwards, committee members will have some questions for you.

Ms Blagoev: Good morning, and thank you for the opportunity to brief the committee. I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. I will start with a brief statement and then open up to questions.

A review of the former councillor complaints system was commissioned in April 2016 to examine and evaluate the effectiveness of the system at the time. Stakeholder concerns about that system included: its complexity; the conflicting role for our local government CEOs in assessing complaints; the timeliness of the system; the costs involved in the system; and the lack of appeal rights. The review report at the time made 60 recommendations for change, and 50 of those recommendations were supported, supported in principle or partially supported by the government, culminating in the councillor complaints framework that applies to all 77 local governments in Queensland now.

The aim of the new framework was to introduce a simpler, more streamlined, more transparent system for making, investigating and dealing with councillor complaints in Queensland. Most importantly, the policy intent of the new framework was to remove council chief executive officers from the role of assessing complaints. This placed CEOs in an untenable position. The sector has strongly supported this outcome.

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Key components of the new framework include a code of conduct made by the minister that sets out appropriate behavioural standards and applies to all councillors. This code was made by the minister following consultation with the local government liaison group at the time. The Office of the Independent Assessor was established and it is responsible for receiving and investigating all complaints and relevant information about councillor conduct to determine how best to deal with that conflict. Generally after assessing the conduct of councillor, the Independent Assessor may decide to dismiss the complaint, decide to refer suspected inappropriate conduct back to the council to address or decide to make an application about misconduct to the Councillor Conduct Tribunal.

Conduct in a local government meeting that contravenes a behavioural standard is dealt with as 'unsuitable meeting conduct' by the chairperson in the meeting. It is dealt with in accordance with meeting procedures adopted by resolution of the council. The thinking behind that is that if something happens in a meeting it is dealt with at the time.

A local government is responsible for dealing with suspected inappropriate conduct. A complaint is referred to the Independent Assessor. If they assess it as 'inappropriate conduct', they refer it back to the council to deal with. It is dealt with in accordance with an investigation policy adopted by a resolution of the local government. Now a single body, the Councillor Conduct Tribunal is responsible for hearing and deciding applications of alleged misconduct made by the Independent Assessor. This is in contrast to the previous system, which had both the tribunal and various regional panels. The Independent Assessor has the power to prosecute a number of offences, including offences relevant to frivolous or vexatious complaints. Matters can now be referred to QCAT for review. This is in contrast to the previous system, where there were no appeal rights.

The current councillor complaints system has been in place for almost three years and, as the committee is aware, in March 2021 the department carried out an analysis of the implementation of the councillor conduct complaint framework for our internal purposes. A copy of that report has been provided. The department initiated the assessment to better understand and support its councillor conduct complaints framework delivery functions. The project was also prompted by recent discussions between the department and stakeholders on framework matters including but not limited to resourcing and role clarity. The project aimed to assess whether the framework is delivering in line with government's policy intent of providing for a simpler, more streamlined system for making, investigating and determining complaints about councillor conduct and to identify options for improvement where needed. I am happy to take questions from the committee.

CHAIR: I will start off, as you have, by looking at the system that existed pre Belcarra and pre 2016. One of the issues has been, obviously, back then the role of the CEO, who was the gatekeeper, assessor, investigator and arbiter or decider if need be in many of these cases. I know that there have been some issues in analysing some of those decisions with that information being available. The experience has been that we cannot go back to that system where we had the CEO in such a pivotal role, especially as their employment is determined by the mayor. Have I characterised the pre-Belcarra system adequately?

Ms Blagoev: In the previous system the role of the CEO was to assess the complaints. That led to inconsistencies in terms of how CEOs were assessing them. As you have said, that placed them in a very difficult position because they were assessing complaints about, essentially, their employer. Their role was to assess it. Depending on how it was assessed, if it was misconduct it would come in to the department. Further investigations would then take place and then, if warranted, it would be referred either to the remuneration and discipline tribunal at the time or to one of the regional panels if it was more of a minor matter. Certainly, the intent of the new system was to have one central body assessing complaints rather than 77 different CEOs having to assess the complaints, with the thinking being that that would give rise to a much more consistent assessment of complaints.

As you have said, there were essentially two conflicts in the old system. One was the CEO, but then there was another potential conflict in the role of the department. The department very much sees its role being to build the capacity of councillors. Having an independent body dealing with the discipline side of it does not give rise to this arrangement where the department is both disciplining and trying to build up the capacity. Certainly, the role of the Independent Assessor is crucial in consistency and really focusing on that assessment, investigation and prosecution side of things.

CHAIR: It is interesting that you point out there was a conflict for the department as well which, as you rightly pointed out, needs to build up the capacity for that. What departmental resources were used to be the discipliner? Can you give an indication of the resources involved or the energy that was needed?

Ms Blagoev: I can give you a general feel. What I do not have handy is how many FTEs were part of that discipline function at the time. From memory, it was somewhere around 10 staff at most. It would have been fewer than 10—somewhere around eight to 10, from memory. Really, that was a dedicated team that were looking after councillor complaints. At the time, Brisbane City Council had a separate system, so it was not every council. There was a dedicated team whose role was to assess the complaint and then to determine whether or not the complaint was frivolous or vexatious, whether it had merit or whether there was enough evidence to progress the complaint. Certainly once that was done the department would then deem which ones it would investigate. It would either investigate internally or brief external investigators. If a matter was to be prosecuted, if it was more serious it would go to the remuneration and discipline tribunal for consideration. If it was less serious, it would go to one of various regional conduct review panels with the view, I guess, that there were more of those panel members spread throughout the state and it could be dealt with more quickly.

CHAIR: You had to deal with a number of panels and tribunals so you had a triangular communication matrix, which would have led to difficulties.

Ms Blagoev: The reality is: the more people who are involved in the system, the more it gives rise to potential inconsistencies. At the time I think there were sufficient people involved and sufficient bodies, but having one body now, being the Councillor Conduct Tribunal, is beneficial because it is the one entity making decisions. It is really important that decisions are consistent, because when a decision is handed down the department will look at the decision and think, 'How do we use that decision to better train our councillors? Is there something in that decision that all of the councillors need to know about? Is there anything novel here? Is there a systemic issue here?' Having that one body is really preferable. It makes it better for the department to look at the decision and determine the training and capacity-building needs that come out of that.

CHAIR: In relation to the decisions that were made by the panel, the tribunal or the CEO, was there a culture of fully and consistently documenting those decisions?

Ms Blagoev: I suspect that it would have depended on how each council's record management system was held. There is certainly nothing central in the department that deals with the council CEO assessment side of it. Council CEOs should have documented them as official records in accordance with the Public Records Act. In terms of tribunal and regional conduct review panel decisions, from memory—and apologies, it was a few years ago now—the decisions were written up.

CHAIR: In the first stage of this public hearing I meant to go through a comprehensive declaration of interests, so bear with me. My apologies for that. I think it is important that we do that as we begin this process.

I served on the Caboolture Shire Council and the Moreton Bay Regional Council. My wife worked for council and worked as an organiser with the Services Union. I have had exposure to and experience of these panels and tribunals as well and I saw how they operated.

Mr McDONALD: I had the honour of being a councillor on the Gatton Shire Council as well as the Lockyer Regional Council. I live in the Lockyer Regional Council area and my brother is the deputy mayor of Toowoomba. I think that will suffice for this inquiry.

Mr MADDEN: I live in the local government area of Ipswich and I am a former councillor with the Somerset Regional Council.

Mr HART: I have nothing to declare.

Mr SMITH: Being the member for Bundaberg, I obviously have a working relationship with councillors on the Bundaberg Regional Council. I also declare that I have personal friendships with two councillors on the Fraser Coast Regional Council.

Mr KATTER: I was councillor on the Mount Isa City Council, where I reside, for four years, from 2008 to 2012.

CHAIR: My intention was to make a full declaration when we began this inquiry. We will not be doing that for every session, but I wanted us to put that on the record as we begin this inquiry. Deputy Chair, I am going to hand over to you for your questions.

Mr McDONALD: I think the review that you undertook was a really positive step. You saw there were some issues and you wanted to clarify roles and other resourcing issues. For us, the roles are of particular interest. I know the Solomon review suggested completely going away from chief executive officers in their role. I see that there are many players in the local government system, including the CEOs, who would be a first point of contact for advice, albeit consistent with an Independent Assessor. Have you turned your mind to how all of the players, including the CEOs, might fit within a new, improved system?

Ms Blagoev: You are right in saying that the CEOs are absolutely essential in this because the CEOs are the first point of call. They are sitting in the council meetings; they are answering all of the governance questions and meeting procedure questions. The department's view really is that the framework itself is sound. We do not want to see a particular role for the CEOs in that system other than making sure the CEOs and their staff have adequate training and skills to ensure there is correct and sufficient advice going to our councillors to make sure they are complying with their legislative obligations.

As you said, if a councillor has a conflict of interest, for example, it is the CEO who is the first port of call for all questions around that conflict of interest. As we know, if a councillor follows the advice of a chief executive officer that is not necessarily a legal defence in front of the tribunal. For that reason in particular, it is really important that CEOs are comfortable giving that advice to the councillors. Definitely we work closely with the CEOs. My understanding is that the CEOs do not necessarily want a formal role in the framework where they are doing anything, but they have to absolutely understand the legislative obligations on the councillors.

Mr McDONALD: I understand your point that the CEOs may not want to be involved because it could be easy for them not to be, but again I reinforce the thought that they have a really important role in this. I am not suggesting winding back the clock but legitimising that point of filter to overcome many things, perhaps even complaints about councillors from other councillors. The CEO is on the council and understands the personalities and dynamics. It appears that a large number of the complaints we have are councillors versus councillors or the mayor, and I think they could have avoided getting to the OIA or clogging up that system. Do you have any thoughts around that?

Ms Blagoev: What we would like to see in the framework is that complaints go to the Independent Assessor. If complaints are not reaching the Independent Assessor we are basically asking the CEO to be a de facto filter, which could mean that something important is missed that should have gone to the Independent Assessor. The framework allows the Independent Assessor to kick out complaints if there is not enough evidence, if there is no public interest, if they are frivolous or vexatious. Those powers are in the legislation.

The Independent Assessor is in a unique position whereby they see everything that comes in—this is what they do—whereas a council CEO may only see a couple of complaints a year, and if you are not active in the space it might be difficult to make sure you are getting it right every single time. If we have a system whereby the CEO has to refer it to the Office of the Independent Assessor then the system is designed so it goes to the Independent Assessor and then if it is one of those complaints that, as you said, is so minor that it is clogging up the system, the intention of the system is that they are kicked out quickly.

Mr McDONALD: I will just explore that issue. If a councillor makes a complaint directly to the Office of the Independent Assessor, should or could the CEO be informed of all of those complaints? Would that be a good idea, or do you have concerns about that?

Ms Blagoev: I guess it just depends on the nature of the complaint. The Office of the Independent Assessor takes confidentiality really seriously. There may be very good reasons that a CEO should not be privy to that information. It is hard to give a blanket response to that. Sometimes it may not matter. CEOs can work wonders behind the scenes and locally resolve issues, but I think it is really important that they are dealt with confidentially once they go to the OIA.

Mr McDONALD: Just to give some context, thinking about all of the players in this—Mr Hart will probably have some questions around other complaints and what have you—I am really interested in seeing the interventions that can occur all the way along the process.

Ms Blagoev: The Independent Assessor will essentially deal with misconduct. If they get a complaint and it is unsuitable meeting conduct or inappropriate conduct—the more minor things where a councillor has breached the code of conduct, for instance, and we are dealing with behaviours—then that comes back to the council. Then the obligation is on the council to handle that in accordance with their own policies and procedures. That is where the CEOs can play a really strong role in making sure the councillors do not get caught up in the minor stuff. When it stays over with the OIA that is misconduct, and the design of the system is that that is the more serious conduct. So it is either misconduct with the OIA or it is actually corrupt conduct with the CCC. The CEOs and the councillors do have the opportunity to handle the more minor side, but it is good that the OIA assesses it and it comes back.

Mr McDONALD: In terms of consistency of approach, we have jumped straight into talking about complaints but the other issue is conflict-of-interest provisions. As your review identified, the OIA has taken a more risk-averse position regarding some of those conflict-of-interest issues. Just to

clarify, I am really speaking about both complaints and conflict-of-interest provisions. I wonder if you could turn your mind to how that could be better coordinated as a consistent set of information going to councils, because I really think we are missing out on that model. Some are actually abrogating their responsibility completely, whereas others are actively involved.

Ms Blagoev: You are right: there are actually a lot of players out there giving advice around conflicts of interest. Councils can certainly procure their own legal advice, and we strongly encourage them to do that. As you would have seen in the report, it was at one point the role of the Office of the Independent Assessor to provide training to councils around conflict-of-interest provisions. We then had the department, and we have the LGAQ. There are a lot of players there; you are right in saying that. It is interpretation. Interpretation of the provisions will differ based on whom you speak to on a given day.

To combat that, the department really sees that its key role is to build capacity of our councils. We have a whole regional network of staff who are out there every week providing training. They do training not around just the stock standard 'so you want to be a councillor' or induction training; we actually do bespoke training for councils. It is not death by PowerPoint. We routinely go out to councils. We sit down with them and say, 'Right, let's talk about conflicts of interest.' I have certainly done sessions before where you are going through councillors' registers of interest and you are talking about scenarios. That has been most handy. Our role really is training.

It would be remiss of me not to say that the department is looking at a new learning management system. We would like one online portal which councillors and council staff can all log into to get guidance notes from the department. For example, if we are aware of a particularly contentious issue we will do a guidance note, we might do a podcast—anything like that—but it also is intended to encourage best practice sharing between councils. We have some amazing governance staff in our councils, and it is really good for those governance staff to share resources and how they do things between each other. That is one way we are trying to get better consistency: providing more training, more tools and more guidance.

CHAIR: Just to clarify that, Deputy Chair, we talked about when the issue comes to the OIA, and maybe it is appropriate but it goes back to the council as inappropriate. That is where the role of the CEO or the council can come in to help conciliate, arbitrate, sort it out. Do I have that right? Is that what we have been talking about?

Mr McDONALD: That is part of the process. It is also, I think, still an opportunity—I am not saying it is the right opportunity, but there is still an opportunity. That is, the CEO's advice and instructions to their councillors is an opportunity. We have to remember that we have good members of our community across the state who are keen to be councillors and many that I have talked to have said, 'Why would I do that, given all of the complexity and threats that appear?'—perceived or otherwise. Most of those are perceived, but they are real.

Ms Blagoev: Yes, and certainly our experience with councillors is that a lot of them are struggling with the conflict-of-interest provisions. It is always interesting when you go and have a chat to them in order to understand why they are struggling so much. There are some councillors who are declaring all interests. The legislation specifically says you declare a conflict of interest, not all interests. I agree: there is more work for us to do to work with our councillors to ensure better understanding.

Mr McDONALD: That is a great summary.

CHAIR: Yes, and the deputy chair, I and others have talked about how we get to that process of conciliation and arbitration—sorting it out—without it becoming a black-letter law issue. You have talked a bit about training. I know the member for Ipswich West wants to talk about that.

Mr MADDEN: Yes. In fact, you have already answered some of the questions I was going to ask, but I guess I want to focus on this issue. I was a former lawyer—

CHAIR: We should have declared that!

Mr MADDEN: I should have declared that, but as a former lawyer we had continuing professional development training that we had to do each year and we went to conferences. When I was a councillor we did very similar conferences with the LGAQ, and I am interested in that notion that you put about having too many sources or too many people telling you what the law is. I recall that when I was elected as a councillor in 2012, prior to the creation of the Office of the Independent Assessor, I was given a folder about four inches thick. Obviously it was not all to do with what we are discussing today. Some of it was very basic such as how much you are going to be paid, whether you can get a car and that sort of thing. I am interested in the idea that your department could play a stronger role with regard to that initial training.

Ms Blagoev: We do provide induction training for councillors.

Mr MADDEN: Yes, I just wanted to clarify that.

Ms Blagoev: All councils are offered the opportunity to have induction training. I am aware that some councils have really substantial induction training, whether it be a three-day program for their councillors to sit in. Councils themselves are doing a really good job at making sure their councillors get a whole array of training. We obviously cannot force councils to take up our training; it is just an offer. Some do; some do not. Some will not accept the training and then do no training; some will not accept the training and then put their councillors through a three-day program, so it does vary.

One of the things the department has also been rolling out across the state is financial management training, which is essentially Finance 101 for our councillors, and I think that is really important because that is such a key part of understanding how to deal with decisions when they come to you: when you get your agenda papers and someone is asking for \$5 million for a particular project, what are the things as a councillor you need to be considering? What are the questions you need to be asking of the council staff? There are some great programs out there, and every time I speak to either councillors or council staff I say the same thing. I say, 'Use us. Please use us. We're there.'

Mr MADDEN: I think I get your message. Just continuing on from that point, assuming that in the future the department played a more prominent role with regard to training—and I use those words clumsily; there is no criticism there whatsoever either of you or of the councils that choose to use your services or not use your services—I know with my continuing professional development I had to go to courses and we had to learn things. Do you see a role for your department with regard to ongoing professional development in terms of the councillors of Queensland?

Ms Blagoev: In terms of mandatory training? Is that what you are asking?

Mr MADDEN: Yes, I am asking about mandatory training.

Ms Blagoev: The only mandatory training we do at the moment is 'So you want to be a councillor', which is basically before. When you are a candidate, you have to undergo the program. We have to come up with a program that is suitable for all local government areas in Queensland which, as you can imagine, is quite a challenge. In terms of mandatory training thereafter, ultimately that would be a policy decision for the Deputy Premier.

Mr MADDEN: But it would be a policy decision that you might encourage?

CHAIR: You could not say that, but certainly it is a—

Mr MADDEN: You cannot say that, but you are suggesting it is an opportunity?

CHAIR: I would say that that would accord with your desire to build capacity.

Ms Blagoev: What I would say is that there is a lot of training already out there and we can come up with bespoke training sessions for any councillor, so I would encourage councils to use us.

Mr MADDEN: I have just one final line of questioning. It is nothing to do with training; it is to do with the code of conduct for councillors. I see the most recent incarnation of the code of conduct was 4 August 2020.

Ms Blagoev: Yes, correct.

Mr MADDEN: Was that the original code of conduct or was there an amendment to the code of conduct?

Ms Blagoev: No, I think there have been two amendments. Just give me a minute and I will find the answer to that. The original code of conduct was made on 3 December 2018, so that was the day that the OIA was in place, but let me just check that. The original code of conduct was approved by regulation on 3 December 2018. Since then I do not have the number of times; I just know it has been amended. Amendments were also made in July 2020, so there have been a number of amendments that have been made to the code of conduct. When we make amendments to the code of conduct we always consult the members of the local government liaison group, so that includes the Office of the Independent Assessor, the Local Government Association of Queensland, the CCC, the ombudsman and the Local Government Managers Association. So there is a variety of people who are always consulted to assist us to draft up the amendment.

Mr MADDEN: Obviously it is something that is reviewed as required by the department?

Ms Blagoev: Yes, absolutely. Picking up on the deputy chair's comments, the conflict-of-interest provisions are regularly reviewed as well, so the code of conduct and the conflict-of-interest ones are regularly looked at.

Mr MADDEN: You mentioned the idea of a hotline or a phone number. Does the department offer that service?

Ms Blagoev: The department has, I guess, a team of regional advisers. Every council has an appointed adviser.

Mr MADDEN: For that region?

Ms Blagoev: Yes.

Mr MADDEN: And they can be rung up confidentially?

Ms Blagoev: Yes, absolutely. I personally take calls from councillors. What we do not do is provide legal advice to councillors. I certainly can provide some written guidance to a councillor. We will talk to councillors over the phone and suggest, 'Maybe go this way and think about doing this.' Yes, every council knows who their regional adviser is and those contact details. If the regional adviser cannot assist with something, they will come through to the Brisbane office and our governance team will assist.

Mr MADDEN: So you explain the law but you do not give advice on a particular situation?

Ms Blagoev: No, we will give advice on a particular situation, but it is not legal advice and it is not advice that is, I guess, a legal defence, and that is really important for councillors to understand.

Mr MADDEN: I should have said this when I first spoke, but thanks very much for coming in today.

CHAIR: We will return to that issue of written advice, because I wanted to ask where a councillor would turn in order to get that advice. They would certainly appreciate the advice coming from the department, but where they get that advice that they need to be written out, that they rely upon, is another issue. We will return to that. Just before I go to the member for Burleigh, I had written down that we need the department to do more training, but, as you said, there is a lot of training out there and there are a lot of ways to pick that up. There needs to be an emphasis on that and propelling those councils and councillors towards that and to take that up is probably more the issue instead of saying, 'Why aren't you doing more of it?' The way we are hearing it, it is more like, 'Why is it not being taken up?'

Mr HART: There are a whole lot of questions, Chair, after what we have heard today.

CHAIR: There are, and we have to remember them all. We have to write them down to remember them.

Mr HART: There are a couple of things from what you have told us so far. You said that the code of conduct was made under regulation, so have the changes to the code of conduct also been made under regulation? Have they been tabled in the parliament?

Ms Blagoev: They would have been tabled at the time, yes.

Mr HART: So are they subject to disallowance?

Ms Blagoev: I do not know the answer to that.

Mr HART: Okay. You mentioned before that the councillors should be keeping an official record as per the State Archivist act?

Ms Blagoev: The Public Records Act.

Mr HART: The Public Records Act. Does anybody check to see that that is in fact happening?

Ms Blagoev: This department does not audit councils in terms of public records.

Mr HART: You raised it as an issue. Has the department taken it up with the State Archivist to check?

Ms Blagoev: I am not aware that it is an issue.

Mr HART: Okay, but we have not double-checked that? In terms of the review your department did in March, what actions have you taken since that review, because that has been six months? Can you give us a precis of what the department has done since then?

Ms Blagoev: Yes, I can give you a run-down of the key things that we have done. We have established a forum between the department, the OIA and the Councillor Conduct Tribunal. It has not yet met—I think it is due to meet this month—with a view to ensuring consistency and better consistency. We do regularly speak to the OIA and we are obviously in close contact with the CCT, but this is a more formal arrangement set up to discuss operational matters in an attempt to build the consistency. As I have said, a lot of the recommendations from the report pertain to training. The

Deputy Premier has revoked the ministerial direction to the OIA which allowed the OIA to do, for instance, conflict-of-interest training throughout the state. With that in mind, the department has really focused on increasing its councillor capacity-building function. We have—

Mr HART: Sorry, but did you say he has revoked it?

Ms Blagoev: Yes, it was revoked.

CHAIR: That was going to be one of my questions. Is it possible to get a copy of that letter?

Ms Blagoev: We will take that on notice.

CHAIR: Yes, you can take that on notice.

Ms Blagoev: Our councillor training team now has a dedicated director and we are really focusing on the new learning management system and providing just training, training, training to councils. In terms of the framework itself, in terms of conflicts of interest the department and the Local Government Association of Queensland have been working together on some potential minor amendments around conflicts of interest to iron a few things out. They have only been discussed at officer level at the moment, but I guess that reinforces that we are continuing to look at the conflict-of-interest provisions. We also have started the process of looking at the framework itself. The department has a view that the conduct framework is sound, but there are some amendments that we think can be made to improve the system. We are starting to look at those. I am not privy yet to what those are. It is very early days. I am also expecting that that work will dovetail nicely into your considerations of the framework. A senior officer role has been established to provide support to the CCT and there has been some work there in terms of looking at the support provided to the tribunal.

Mr HART: Looking at your internal review and the submission that the OIA has made to the committee, there seems to be a real problem with the intent of the legislation. Your review seems to indicate that the OIA may not be following the intent of the legislation, but their submission to the committee is that they know what the intent is and they are following through with the intent.

From a point of consistency, I am a bit concerned whether the legislation actually puts the intent of the government in a clear focus. When we talk to our councillors, none of them seem to know what they do or do not have to do. They are overly cautious, as you mentioned before, about declaring absolutely everything. They are worried about being pulled up by somebody making a complaint that is substantiated at the end of the day. There really does seem to be a problem between what has been written in legislation or in regulation versus the intent of the government. Has any work been done to fix that particular problem?

CHAIR: That is a difficult question. Part of that is also related to policy and that is an issue that the department needs to be very cautious in replying to. Is that something you want to deal with in camera later?

Mr HART: Yes, that is why I asked the question.

CHAIR: Perhaps when we go in camera later we can pursue that a bit further.

Mr HART: On the subject of legal advice—this is something we can possibly cover in camera as well. When are we going in camera?

Mr McDONALD: Later.

Mr HART: Were you aware we were going to do this, by the way?

Ms Blagoev: Yes.

Mr HART: On the training side of things—

CHAIR: The members for Bundaberg and Traeger still have to ask some questions.

Mr HART: Are we running out of time?

CHAIR: No, we have lots of time.

Mr HART: Come back to me. That is fine.

CHAIR: We will return to you early in the piece when we go in camera.

Mr McDONALD: We will have another chance for questions before we go in camera?

CHAIR: I think so. We are looking at 20 minutes or half an hour. First we will go to the member for Bundaberg and then the member for Traeger.

Mr SMITH: Thank you both for being here. I refer to the annual report of the OIA. They have said that since the OIA has come in complaints have risen largely and consistently compared to previously, when they were made through the department. Would the department be able to offer a Brisbane

statement as to their belief about why this has happened? Is this a result of a sense of faith returning to government through an OIA process? Is this a shock reaction, be it positive or negative, to something like the Belcarra report coming out?

Ms Blagoev: I think there has been a spotlight on local government over the last three or four years that we have not seen for quite some time. We have seen multiple bills put through parliament which talk about transparency and accountability in local government. That spotlight is very strong at the moment on councils and there has been a lot of discussion around conflicts of interest. I think the department's view is that there is just an increased focus on this in the community.

Mr SMITH: Obviously with more complaints coming forward there is also going to be an additional number of vexatious and frivolous complaints. Could you go through the penalties for continued vexatious complaints under the act?

Ms Blagoev: Originally the penalty was 10 penalty units. With the new framework, that was increased to 85 penalty units. The framework is there to dismiss and, if the OIA feels appropriate, prosecute frivolous, vexatious complaints. There is also the power to dismiss a complaint on public interest grounds. The framework allows lots of options to dismiss complaints early on in the process.

Mr SMITH: For the layperson, what would 85 penalty points equate to?

Ms Blagoev: I knew someone was going to ask this. I do not know what a penalty unit is off the top of my head. It is in excess of \$100.

CHAIR: It is \$130, so 85 is a lot.

Mr SMITH: Can that continue to go up if someone continues these vexatious—

Ms Blagoev: It is a maximum penalty.

Mr SMITH: I will move into the realm of social media, as we have all been pushed into. When we look at the code of conduct, why is it that deleting a comment or blocking a person can be against a code of conduct and can therefore bring a councillor into the eyes of the OIA?

Ms Blagoev: I will not comment on particular cases. Certainly that is the role of the OIA and the CCT to handle individual situations. I will say that when councillors interact on social media they must always comply with the local government principles, which are in section 4 of the act, and the councillor code of conduct. Councillors are certainly free in social media to interact, as we all do as private citizens. They do have to keep in mind public record obligations when they do that. I would say to councillors that they must always comply with the code of conduct, local government principles and then any particular policy their council has around social media.

Mr SMITH: I foreshadow that I will continue this line of questioning tomorrow with the OIA. Looking at the code of conduct, the best principle I can see that might refer to social media is principle 3, democratic representation, social inclusion and meaningful community engagement, which is what that social media element would come under—make sure that you have meaningful community engagement. When I look at the impression that the LGAQ and the OIA have put forward, they say everyone has a right to make a comment and engage in content as long as it is positive, neutral or negative, but the posts that attack someone based on their age, gender, impairment or political beliefs can be taken down. The department's point of view—and I guess when we are talking about meaningful community engagement, if somebody posts on a councillor's website that this is a waste of money, would the political belief, therefore, come into play? Would that give you the right to then take down any comment?

CHAIR: That will be a hard one to answer, member for Bundaberg. There is a lot of subjective assessment and opinion in that.

Ms Blagoev: It might be something you could put to the Office of the Independent Assessor tomorrow. We always caution councillors to make sure they are complying with the principles when they are using social media. Over the years I have seen a lot of different posts, a lot of different social media activities that are not always in compliance with the local government principles. It is a tough one for councillors. It is a tough environment.

Mr SMITH: The department is supportive of the impressum put forward by LGAQ and the OIA with regard to social media?

Ms Blagoev: Sorry, say that again?

Mr SMITH: LGAQ and OIA have created an impressum for councillors to put up on their Facebook page and that—

CHAIR: A disclaimer.

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Mr SMITH: Their disclaimer, essentially. Has the department seen that and is the department supportive of that?

Ms Blagoev: I might need to take that on notice. I have been on substantial leave and have just returned to the role.

CHAIR: That question is looking at the disclaimer and the department's role or response to that.

Mr SMITH: I do have a further line of questioning, but I am happy to give the member for Traeger an opportunity.

CHAIR: The member for Burleigh wants to ask a quick question.

Mr HART: On that subject, can you tell us whether there is any further explanatory information or content around what the member for Bundaberg has been talking about? Is it purely the intent of the code of conduct that is open for interpretation with regard to this issue?

Ms Blagoev: From memory, I believe either the OIA or the LGAQ did produce some social media guidelines. I am not aware of anything from this department that provides further guidance around social media. It is a topic that comes up at training and we do deal with it in a training context. I am not aware of any formal departmental position or guideline.

Mr HART: If a third party comes up with this, shouldn't the department tick off on an interpretation to make sure it is correct?

Ms Blagoev: Like many things, there are so many elements of social media that—

Mr HART: I do not mean just social media but anything that somebody interprets from what a document says.

Ms Blagoev: There are a lot of people interpreting things in the local government principles. Are you referring to if a third party had produced—

Mr HART: In the case of the LGAQ producing some best practice principles or a training device or advice—it is not legal advice—everything here seems to be open to interpretation instead of being clear-cut.

CHAIR: I am just clarifying that the OIA and LGAQ have put out the social media guidelines and I think the department is aware of that and work with that. You are saying: has there been any official endorsement?

Mr HART: Have you checked to make sure that it actually aligns with the intent?

Ms Blagoev: When an entity is producing a guideline we will usually provide input into it. If we have concerns, we will raise concerns. What we cannot control is a third party releasing a document, either—full stop. The document might not reflect the department's policy intent, but all we can do is provide that advice. It might accurately reflect our policy intent. Entities like the OIA and the LGAQ are at liberty to produce the material and all we can do is input into that as much as they will allow.

CHAIR: We are always looking for that point of truth regarding social media and it is very hard to pinpoint. I just make that general observation.

Mr KATTER: My question revolves around the fact that I consistently come up with the same theme. Based on my experiences with these things, there is often tension between the CEO and council officers which can precipitate some of the behaviour that I think ends up falling to the OIA. More and more I think we are seeing CEOs and officers play the role of the elected representatives, whether that is because they are out of the room or it is a cultural thing because they are getting scared of getting burnt and so they stay away from decision-making or not having as much influence from those officers.

Last time we had the department before the committee, the comment was that this has nothing to do with the OIA. However, I think it does, and it seems to precipitate a lot of the activity, if not at least some activity, that falls back on the desk. Where does the department fall on that? Where do you see your role? I think it is definitely a problem. There is no question in my mind about that, but I cannot see from these discussions how there is enough pushback. You will say that through education hopefully people get it right, but I think it is inviting more and more encroachment from the operational staff onto the employed staff which creates tension and conflict and ends up back on your desk. Where is the effort to try to turn that around?

CHAIR: The member for Traeger is talking about that tension between employees of the council and elected officials which he has seen in his area. How is that resolved? Is that resolved at the council itself or by bringing in the department or someone else to help resolve that? Is that what your question focuses on?

Mr KATTER: It would be hard to focus as it is a pretty broad-reaching question. I am happy to ask about one direct component of that, as suits. You can move into the development of a cultural area where people are stepping away from applying it literally, are stepping out of the room or are just not being involved in the policy approach and generating frustration because there is more and more encroachment from the operational side of the council.

CHAIR: I guess the department can comment on it in terms of building capacity. How do you deal with it when you have that conflict in terms of council staff suggesting policy et cetera?

Ms Blagoev: It is a good point. It is important to remember that, for the most part, the Office of the Independent Assessor's jurisdiction is on councillors and not council staff. Typically they will not get involved in, as the member has said, what could be cultural issues. It is also really important that our councillors are not reaching into the operations of council. We always say that a councillor's role is like a board member: it is strategic, not operational. It is really important that our councillors leave their CEOs and the council staff to basically do the operations and to spend their time on the more strategic big-ticket items. As the member has said, that is sometimes really difficult for councillors to understand and to get their heads around. The department can only say that we continue to offer support and we do work with councils around trying to understand the dichotomy of responsibilities. In our training programs—'So you want to be a councillor', the induction and then the bespoke ones—we talk about that divergence of roles. There is obviously only so much that the department can do in that space but we do try to make it very clear what is the role of a councillor.

CHAIR: There would be a number of different questions there. Deputy Chair, do you have a particular question to ask before we go in camera?

Mr McDONALD: Definitely. There are a couple of things and the first is with regard to the issue of vexatious complaints. Talking about the players again, it can range from anybody being able to make a complaint through to the consequences for that complaint. Can you tell us why so few people have been identified as vexatious complainants? Is there an opportunity to change the definition of 'vexatious complainant'? It seems that anybody can make a complaint and there are no consequences for making that complaint.

Ms Blagoev: The framework certainly sets up the ability for the Office of the Independent Assessor to determine that someone is frivolous or vexatious and, indeed, to prosecute that. That is a discretionary matter for the Office of the Independent Assessor. I do not know at what point the line is reached in terms of operationally when they determine if someone is frivolous and/or vexatious. It could be something that you may wish to explore with them. Certainly I can assure you that the framework is there, able to be used.

Mr HART: Is it left to them to determine?

Ms Blagoev: Yes.

Mr McDONALD: I have two other really quick questions, and the first is a scenario in terms of conflict-of-interest training. In a rural community such as where I live—but any community across the state—you have councillors who might be members of the show society, for example. There could be 1,000 members of the show society. Because of the conflict-of-interest provisions, councillors have chosen to no longer be \$10 members of the show society because of the fear of a conflict. I would suggest that a councillor who is a member of a society or club should have no conflict-of-interest issues. Being an executive member of a board or a society is a different situation. We have seen many councillors withdraw from membership of all different sorts of community groups because of the fear of a conflict of interest. As long as it is properly declared, most times councillors could stay in the room to make a decision for things of that nature.

Ms Blagoev: That is an excellent point. The Local Government Act already states, at clause 150EO(1)—

A councillor who has a conflict of interest in a matter does not have a declarable conflict—
so something that has to be declared—
of interest in the matter if—

...

(b) the conflict of interest arises solely because—

...

(ii) the councillor, or a related party of the councillor, is a member or patron of a community group, sporting club or similar organisation, and is not appointed as an executive officer ...

If you are just a member, that is fine; you do not declare it.

Mr McDONALD: Thank you for that answer. I knew the answer to that, but this is an example of overreach or perceived overreach. I think that has come from the inconsistency in training. In the submission that we had from the OIA they said that they believe they are meeting the obligations that the government has set for them. I think that is a clear example, because that is replicated 1,000 times across the state, whether it be darts clubs, race clubs or show societies. They are the fabric of our communities. This is fundamental to the conflict-of-interest provision confusion.

Ms Blagoev: Most of the people who nominate to be a councillor are community minded people and they will have interest in that. You will see, throughout the Local Government Act, provisions such as that where we have identified a particular issue that we have felt the need to carve something out expressly to provide guidance to councillors. I guess as a department we are trying to run a balance between a piece of legislation that is prescriptive and one that is principles based, because we cannot just deal with every individual circumstance. That is a good example where we have very much heard feedback loud and clear and there is a particular provision that deals with that.

CHAIR: What you are saying is that there are potentially 77 interpretations.

Mr McDONALD: Certainly there is a very large perceived interpretation, and perception is reality. People out there are erring on the side of caution and I congratulate them for that. I go back to the days of 'when in doubt, walk out'.

CHAIR: It was very simple.

Mr McDONALD: It was simple. Maybe we should go back to simple. I will move on. I have a real struggle in understanding why departmental training or a component of departmental training is not actually mandated for all councils and councillors at the commencement of their term.

CHAIR: That may be more of a comment. It is hard to ask the department—

Mr McDONALD: Do you think that should happen?

CHAIR: That is a policy question. You cannot ask that.

Mr McDONALD: Is it policy?

CHAIR: Yes, I believe it is.

Mr MADDEN: Maybe you can ask whether that would be advantageous.

Ms Blagoev: Maybe what I could offer is that the department has asked. We had an LGMA CEO forum last week and we actually posed to the CEOs if they thought there should be any mandatory training. It was mixed. I think there is a variety of factors that need to be considered. What are we making mandatory? Is it the Finance 101 training? Is it governance training? Is it a mixture? Are we making sure that we have training that really suits all of our councillors? The difference between the Brisbane City Council and some of our Indigenous councils is enormous and that is the challenge.

Mr SMITH: I refer to the 'Councillor conduct and complaints' fact sheet that has been produced by the department. Unsuitable behaviour is when a councillor in a meeting bullies, harasses or intimidates a staff member. Bullying can happen over a series of events. Would continuous bullying within a meeting then become inappropriate conduct under the repeated unsuitable meeting conduct rules? Can continuous bullying in a meeting become inappropriate conduct?

Ms Blagoev: Yes, I think it could. It would depend on the nature of it. If it was in a meeting, our preference is that matters are resolved in a meeting. If there are multiple instances of it, it could elevate it to inappropriate conduct.

Mr SMITH: My concern is this: if a councillor is repeatedly bullying a staff member, can it be dealt with only through a meeting of the council or can the staff member go to the HR of the council or the CEO? Can a councillor be dealt with for the bullying and harassment of a staff member only through a meeting of the council?

Ms Blagoev: The only mechanism to deal with councillor conduct is the councillor conduct framework. If it happens in a meeting, it should be addressed by the chair in a meeting. If it is outside of that and it is not dealt with—for example, if you have a staff member who feels bullied but does not say anything until outside the meeting—I would encourage that staff member to speak to HR, their manager or the CEO. It might still amount to inappropriate conduct and is dealt with through that system.

Mr SMITH: The OIA would make that determination?

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Ms Blagoev: If a complaint goes to the OIA, they will make an assessment on whether or not it is inappropriate conduct. The act does give a definition of what is inappropriate conduct. They would apply that definition. You referred to multiple instances. At section 150K(2) the act states that the conduct of a councillor is inappropriate conduct if—

- (b) it is part of a course of conduct at local government meetings leading to orders for the councillor's unsuitable meeting conduct being made on 3 occasions within a period of 1 year.

That can elevate from unsuitable meeting conduct to inappropriate conduct. If it is something outside the meeting framework it may still be inappropriate conduct, which is referred to the OIA for assessment.

Mr SMITH: So if a staff member does feel as though they are being bullied or harassed by a councillor or a group of councillors, the best way is to the OIA as an inappropriate conduct matter?

Ms Blagoev: I would encourage the staff member to speak to their manager, CEO, HR or whoever internally is best for them to speak to. Either the department or the OIA, I am sure, can provide advice, preferably, I guess, through the CEO if they did wish to make a complaint.

Mr SMITH: Potentially is it best to take the term 'bullies' or 'bullying' out of 'unsuitable meeting conduct' because an act of bullying is a continuous situation with events; it is not a one-off? You can intimidate someone as a one-off but bullying has to happen over a series of events. Is that maybe something the department could review in their fact sheet?

Ms Blagoev: I think bullying can still be a one-off instance.

Mr SMITH: Okay. That sort of goes against the definition, but that is fine. I think there should be a clear differentiation between 'unsuitable meeting conduct' and 'inappropriate conduct' to help push it along.

CHAIR: I think what we are seeing in this particular instance is that if we apply the guidelines, the code, it does cover it—how it fits under that—in these particular circumstances. It is good to hear that certainly the code and the framework do address that.

Mr HART: I go back to the question of the deputy chair and ask it in a different way. Has the department identified any issues with there not being consistent training for councillors, not being consistent record keeping for councillors, not having consistent procedural systems in place in every council? Have you identified any issues? Did your internal review cover that, for instance?

Ms Blagoev: We have not identified any concerns regarding record keeping or how councils are keeping records.

CHAIR: In terms of training?

Mr HART: In terms of training as well.

Ms Blagoev: We will keep records when we do training of a councillor or council staff—whatever it is—to try to ensure there are always records as to what it was and who attended.

Mr HART: You said that some of the bigger councils may have some training procedures in place, some of the little ones do not and some of the Indigenous ones do not and there is no consistency. Has the department identified any issues that that is causing?

Ms Blagoev: We are certainly aware of where training has been inconsistent. We are receiving feedback from the sector to say it wants more consistent training. There is also a lot of crossover and duplication in training. I am aware of an instance where we went out to train on topic X and then the next day the LGAQ was out there to do the same training. We are aware of duplication. What we like to see is that councils take up all offers for training. We definitely see some councils that do not. Yes, consistency in training is very important.

Mr HART: Thank you. That will assist us.

Mr McDONALD: With regard to the cost of complaints, I note that the Solomon review said that the average cost was about \$38,000 per investigation and the Office of the Independent Assessor spoke of \$2,700-odd. That is their cost for an investigation. Has the department done any work or asked councils about their legal costs associated with this, because that would be outside of the OIA investigation?

Ms Blagoev: The answer to your question is, no, I am unaware of how much councils are spending on legal fees to do with complaints. The only visibility the department has in terms of fees is where the Councillor Conduct Tribunal will invoice a council for a hearing. We are unaware of what costs the OIA is incurring.

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Mr McDONALD: What methodology could we suggest would be the best to capture that? Is it about writing to each of the councils and asking that question? Would the LGAQ coordinate that or would the department take a role in it?

Ms Blagoev: Either/or. I guess the thing to keep in mind is that some councils are unlikely to feel comfortable to answer that question.

CHAIR: We will go in camera to ask the next round of questions.

Proceedings suspended from 11.16 am to 11.56 am.

CHAIR: We will continue with our proceedings. We have many more questions, but I think two-hour blocks are probably enough. It is our intention to have further hearings in January. Before we wrap up, does anyone have any further questions?

Mr McDONALD: I have a follow-up with regard to legal advice and people saying it is not binding and it cannot be used in defence. Councillors and mayors are asking for legal advice. It seems to me that if it is not binding or cannot be used in a defence then maybe they should not be being asked for that or that advice should not be being provided. I recognise that email advice might have been provided in the past. Could you turn your mind to how that advice might be of more comfort to councillors or mayors given their bona fide asking for that legal advice?

Ms Blagoev: I have certainly always encouraged councillors to seek legal advice because then they are on the path to doing the right thing. You are right in saying that the legal advice is not an absolute defence. It might be that the Councillor Conduct Tribunal will consider whether a councillor has acted in accordance with legal advice. That might be a good thing for them to consider in terms of their decision, penalties and mitigating factors.

Mr McDONALD: If we have consistency of interpretation then that legal advice should be quite easy or say that it has not been determined and it is a matter for another day.

Ms Blagoev: Yes.

CHAIR: Before we conclude, I note that we have a couple of questions on notice. We asked for a copy of the letter from the Deputy Premier regarding the training capacity or training role of the OIA. If possible, we would like to see that. Let us know whether or not that is possible. The other question related to the disclaimer developed by the LGAQ and the OIA on social media. Has the department been involved with that? What is your view on that? Any further general advice on that would be good.

That concludes the briefing. Thank you for your attendance today. Could we have your answers to the questions on notice by Thursday, 16 December. Thank you very much for your attendance, Dr Smith and Ms Blagoev. We look forward to chatting to you in the future.

The committee adjourned at 12.00 pm.