

Office of the Independent Assessor – Submission

**Inquiry into the functions of the Independent Assessor and performance
of those functions**

State Development and Regional Industries Committee

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Executive Summary

Over the past three years, people across Queensland have been motivated to submit more than 3,000 complaints about the conduct of their councillors to the Office of the Independent Assessor (OIA).

The OIA has dismissed 51 per cent of these complaints within 21 working days allowing it to focus resources on the corrupt conduct, misconduct and inappropriate conduct matters that are most in the public interest.

The OIA is not a 'one-stop-shop', it is one part of the councillor complaints system. The OIA receives and deals with complaints, but it is the independent Councillor Conduct Tribunal and councils themselves which decide misconduct or inappropriate conduct matters.

The councillor complaints system which existed prior to the OIA was not effective. Council chief executive officers (CEOs) were placed in the conflicted position of dealing with complaints about their employers; there was significant under-reporting; investigations were not timely or effective and were expensive; not many matters went to Tribunals or were sustained. The reasons for tribunal disciplinary decisions were not made public and no integrity culture existed across councils to identify and deter poor conduct. Criminal prosecutions of councillors and senior officers led to diminished public trust in local government.

The OIA was established in December 2018 as part of the Queensland Government reforms of the councillor conduct complaint system. The reforms sought to enhance public confidence in local government and to foster a culture that encouraged complaints to be made.

It introduced new mandatory reporting requirements for local government officials and required that the OIA **must** investigate misconduct complaints raised by the constituents of Queensland's 77 councils and their own officials. Higher expectations of councillor conduct were established with the introduction of a new Code of Conduct, a new extended definition of misconduct and new conduct offences. The OIA was given investigative powers, consistent with other agencies such as the Legal Profession Act 2007 and the Health Ombudsman Act 2013.

These reforms had the support of councils and their peak representative bodies, which recognised the need for an improved, more efficient, consistent and transparent system for councillor conduct complaints.

The OIA acknowledges that the reforms have resulted in a significant cultural change for councillors over a short amount of time. There have also been ongoing changes to legislation, for councillors to come to terms with.

Having said this, there is evidence that the new councillor complaints system is working.

There is no longer significant under-reporting of councillor conduct allowing a genuine focus on integrity and intervention to prevent conduct from escalating. Ten years ago, there were only two complaints about councillor conduct in Queensland received by the then department. In the year before the OIA commenced, 162 complaints were lodged. In the past two financial years the OIA received more than 1,000 complaints a year.

Those complaints have been centrally and consistently assessed applying the same legislated and Code of Conduct standards to all councils.

An increasing number of councillors are referring their own conduct. Prior to the establishment of the

OIA, six self-referrals were made between 2012- 2018. Since then, 56 councillors have referred their own conduct to the OIA.

The number of complaints made by the local government sector has risen from 11 per cent of all complaints lodged in 2018-19, to 51 per cent of complaints between 1 July – 18 November 2021.

Significantly, this rise has been offset by a decrease in corruption allegations made to the Crime and Corruption Commission (CCC) whose 2020-21 annual report recorded a sharp drop in corruption allegations about local governments.

Following enhanced natural justice processes, more matters have been referred to the Councillor Conduct Tribunal by the OIA and more matters are being sustained. Now all stakeholders have visibility of Tribunal decisions with a published summary of the reasons clarifying how conduct standards are being applied.

While complaint numbers have risen, the cost of misconduct investigations has dropped. In 2020-21, the average cost of an OIA misconduct investigation was \$2,704, significantly less than investigation expenses recorded in the Councillor Complaints Review (Solomon Review) and those which are still being incurred by councils when lower-level inappropriate conduct is investigated.

The OIA was established with the staff and resources to assess 160 complaints a year. This number was exceeded within 11 calendar days of the OIA's commencement. The OIA has received a 1200% increase on the complaints anticipated. This has resulted in delays in investigations and in referring matters to the Councillor Conduct Tribunal. Over the past three years the OIA's employees have gradually increased from 10 when first established to 19 FTE funded in 2021-22 with State Government support.

To deal with this volume of work in the public interest, the OIA has established a range of innovative strategies and robust processes to prevent, redirect, reduce, and prioritise what it does.

For example, the assessment process introduced by the OIA to determine whether a complaint should be fully investigated has resulted in the OIA dismissing or taking no further action on up to 63% of complaints in the first 21 days of lodgement so far this financial year. This allows the OIA's finite resources to be focused on those matters most likely to result in a referral to the Tribunal or which raise important issues to be resolved.

In this unique operating environment, and in response to Terms of Reference 1 and 2, this submission sets out the performance of the OIA against the intent of the legislation, including when and how resources have been applied and how powers have been exercised in the public interest.

The OIA does not write the legislation or the Code of Conduct, but it does apply both consistently. The OIA's powers and resources have been applied in accordance with the legislation, statements of legislative intent, and the public interest for the purposes of holding councillors to high standards of ethical and legal behaviour. Like other jurisdictions, where there is uncertainty about how standards apply; decisions of the Councillor Conduct Tribunal, or on review, provide that guidance to councillors and the OIA.

While the new councillor conduct system has delivered improvements there are areas where further significant improvements are needed. The OIA is recommending 13 possible legislative changes, that experience has indicated, will significantly enhance the current system for the benefit of councillors and complainants.

They include strengthening the inappropriate conduct scheme, redirecting some lower-level misconduct into the inappropriate conduct scheme and a review of the Code of Conduct and the Local Government Act 2009 (LG Act) to consider to what extent the implied freedom of political expression may operate as a limitation on legislative power.

Other recommendations aim to make the investigation and tribunal processes more timely, efficient and sustainable, and the OIA submits that the LG Act be amended to require a regular strategic review of the OIA to ensure it meets ever-changing community needs and expectations.

Intent of the councillor complaints system

Terms of Reference 1

Whether the performance by the Independent Assessor of the Independent Assessor's functions is consistent with the intent of the local government complaints system.

- Operating environment
- OIA established following Solomon Review and councillor arrests
- Local Government Ministers intent to reform
- How the OIA functions
- Evidence that local government reforms are working

Operating environment

The functions of the OIA, and performance of those functions, is tied to the specific instructions set out in legislation in the LG Act and to the unique operating environment, which has seen the OIA deal with more than 3,300 complaints. To date each year has set a new record.

This complaint volume has led to the following extraordinary amount of work undertaken by the OIA since the office was established with 10 staff.

- 1,711 complaints assessed and dismissed or no further action (NFA)
- 945 full misconduct investigations
- 194 matters referred to legal team
- 132 to Councillor Conduct Tribunal to decide
- 14 matters reviewed in QCAT, one in the Supreme Court.

The current workload has the OIA working on 139 investigations (as of 18 November 2021) and 32 cases with the legal team (as of 25 November 2021). A further 71 matters are waiting to be heard by the Tribunal. It has decided 61 matters.

Councillor Conduct System

Reasons for the establishment of the OIA

See also **Appendix 1** Previous councillor complaints system.

The Office of the Independent Assessor was established on 3 December 2018 having been recommended by the Solomon Review, [Councillor Complaints Review. A fair, effective and efficient framework](#).

The review was initiated in 2016 in response to concerns raised by Local Government Managers Australia Queensland (LGMA) and the Local Government Association of Queensland (LGAQ) about the effectiveness of the existing complaints system.

The review panel found 'fundamental changes' were required to improve the fairness, effectiveness, and efficiency of the complaints system, and to make it more responsive and accountable.

After the Solomon Review was announced in April 2016, the Crime and Corruption Commission (CCC) commenced operations that identified serious issues in some councils. The outcomes of these operations highlighted the need to strengthen integrity in local government in Queensland.

The CCC's Operation Belcarra¹ identified deficiencies during the 2016 local government elections and in councillor decision-making processes. The Belcarra Report led to extensive local government reforms with the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 being passed in Parliament in May 2018.

Further CCC investigations saw mayors and councillors face criminal charges² leading to a loss of public confidence and therefore trust in local government. Ministerial statements vowed to strengthen transparency and accountability.

The Solomon Review³ made 60 recommendations for change to the councillor complaints system. The review panel found the starting point for the major reforms was the creation of the Office of an Independent Assessor.

The report detailed that, during consultation, the panel received overwhelming support for a centralised assessor to objectively deal with complaints, applying consistent standards across all councils.

The report also noted that the state's overall objective⁴ was to:

- hold councillors to high standards of ethical and legal behaviour which puts the public interest ahead of their own individual interests;
- deter councillors from poor behaviour or abuse of their positions of trust; and
- maintain public confidence in transparent, accountable, well-governed, efficient and effective local government

The Solomon Review made the following key recommendations⁵:

- The OIA to be responsible for assessing all councillor conduct complaints and investigating and prosecuting misconduct complaints, where necessary
- The OIA to have appropriate powers to conduct investigations, with the panel noting the existing system was potentially limited in its capacity to investigate matters as thoroughly as required
- The OIA to refer inappropriate conduct matters to councils, rather than just mayors
- The OIA to refer corruption complaints to the CCC, and investigate such complaints that are referred back by the CCC
- The OIA to be responsible for assessing whether complaints are trivial, vexatious or frivolous, or for another reason, should be dismissed
- The OIA to be able to initiate own-motion investigations
- The OIA to have an appropriate complaints management system, including provision for internal review of decisions
- The creation of a single Councillor Conduct Tribunal to determine misconduct matters
- Extended definitions of misconduct and inappropriate conduct
- A mandatory uniform Code of Conduct (see **Appendix 2**) for councillors and a model code of meetings procedures, and
- Increased natural justice and fairness for all parties, and a limited right of appeal.

¹ Crime and Corruption Commission. (2017). [*Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government*](#).

² Crime and Corruption Commission. (2019). [*CCC Annual Report 2018-2019*](#). (p.37).

³ Solomon, D., Playford, N. & Kellar, G. (2017). [*Councillor Complaints Review: A fair, effective and efficient framework*](#). (pp 84-92).

⁴ As above (p.18).

⁵ As above (pp.84-85).

Queensland Government response

In July 2017, the Solomon Review was tabled by the Hon Mark Furner, Minister for Local Government and Minister for Aboriginal and Torres Strait Islander Partnerships. On 10 Oct 2017⁶, Minister Furner told parliament the establishment of the OIA would provide for increased transparency and objectivity in the complaints process, as investigations would be conducted by an independent body as opposed to council CEOs or the Local Government Department⁷.

The Minister said the introduction of a new compulsory Code of Conduct would hold councillors to high standards of legal and ethical behaviour, and bring them into line with members of parliament, local government and state government employees, all of whom operate under a Code of Conduct⁸.

Mr Furner told parliament that the local government reforms were met with support from councils and their peak representative bodies, which recognised the need for an improved, more efficient, consistent and transparent framework for councillor conduct complaints⁹.

The Minister said a number of recent matters had arisen which had a cumulative impact on the public perception of integrity and accountability in local government in Queensland.

Major changes introduced

Major changes were introduced and included,

- a new [Code of Conduct for Councillors in Queensland](#)
- new mandatory reporting requirements for local government officials
- new offences and penalties
- new extended definition of misconduct
- new procedural fairness requirements
- the establishment of the OIA as the party in misconduct proceedings who bears the onus of proof
- a single new Councillor Conduct Tribunal to decide if misconduct is made out
- publication of decisions and a summary of reasons of the Tribunal and
- power to review Tribunal decisions.

Intent of the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018

During the second reading speech, the Hon Stirling Hinchliffe, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, told parliament the Government would “ensure that councils merit the trust that the Queensland community places in them”, as so many people “do place trust in their councils right across the length and breadth of the state”. The Minister said, “standards must be high and they must be maintained”¹⁰.

Explanatory notes for the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (the Bill) serve to further highlight the intent of the legislation, as well as its practical application.

⁶ On 10 October 2017, Minister Furner introduced the Local Government (Councillor Complaints) and Other Legislation Bill, however it lapsed on 29 October 2017 (prior to the State general election in November 2017). The Bill was reintroduced by the Hon Stirling Hinchliffe, Minister for Local Government, Racing and Multicultural Affairs in February 2018.

⁷ Queensland Parliament. (2017). [Record of proceedings \(Hansard\) Tuesday 10 October 2017](#) (p. 2943).

⁸ As above.

⁹ As above.

¹⁰ Queensland Parliament. (2018). [Record of proceedings \(Hansard\) Tuesday 15 May 2018](#) (p. 1107).

The Government's intent was to foster a culture that encouraged complaints to be made and to ensure the way a complaint can be made is consistent with the way complaints are made to the CCC and the Queensland Ombudsman. This included making a complaint in writing, by phone, fax, email or in person¹¹.

The Bill provided that the IA **must** investigate a councillor's conduct if the conduct is the subject of a complaint made or referred to the IA.¹² The Bill also supported the IA having the power to initiate an investigation or make a preliminary assessment without having received a formal complaint¹³. [emphasis added]

The Bill provided that **after** investigating the conduct of a councillor, the Independent Assessor may dismiss or take no further action in respect of the complaint, make application to the Councillor Conduct Tribunal or refer suspected inappropriate conduct to the local government.¹⁴ [emphasis added]

The Bill sought to ensure the IA had sufficient investigative powers and that "the powers generally align with the powers of other officers investigating conduct complaints" and powers of other persons investigating compliance with LG legislation.

The explanatory notes state "adequate investigative powers are essential to ensure the integrity of the new councillor complaints system. The Bill provides sufficient safeguards so that the scope of investigators' powers is considered reasonable and proportionate having sufficient regard to the rights and liberties of individuals."¹⁵

The Bill also established the Councillor Conduct Tribunal as the single body to conduct hearings into alleged misconduct, make a finding and order any disciplinary action. It would also investigate alleged inappropriate conduct at the request of a local government, with local governments to pay the Tribunal costs in relation to inappropriate conduct matters as well as misconduct hearings.

The explanatory notes highlighted the Solomon Review which found the existing system, which comprised two bodies to adjudicate complaints, was unnecessarily complex and reduced the likelihood of uniform application of the law.¹⁶

The Bill provided that both the IA and a councillor would be a party to these proceedings and that the IA would be the party the bears the onus of proof.

The Bill also introduced new rights to review misconduct decisions by enabling the Independent Assessor and councillors to apply to the Queensland Civil and Administrative Tribunal (QCAT), for a review of a Tribunal finding.¹⁷

Oversight of the OIA

The amendments to the LG Act which established the OIA did not provide for parliamentary oversight. The Independent Assessor (IA) raised this issue with the Minister before the OIA commenced on 3 December 2018 and wrote to the Minister for Local Government in February 2020

¹¹ Queensland Parliament. (2018). [Local Government \(Councillor Complaints\) and Other Legislation Amendment Bill 2018: Explanatory notes](#) (p.44).

¹² As above (p.8).

¹³ As above (pp.7-8).

¹⁴ As above (pp.8-9).

¹⁵ As above (p.25).

¹⁶ As above (p.5).

¹⁷ As above (p.17).

to formally request independent oversight of the role of the IA and the OIA.

It was considered that the OIA should report to a parliamentary committee as an appropriate check and balance on an office undertaking an integrity function, and in an environment where questions should be able to be asked of the Independent Assessor and the IA should have the opportunity to address them in the public interest.

On 21 May 2020, the Economics and Governance Committee of the Queensland Parliament became responsible for monitoring and reviewing the performance of the OIA. On 12 November 2020, the oversight function was transferred to State Development and Regional Industries Committee (SDRIC), as part of machinery-of-government changes following the state election.

Unlike other statutory bodies or authorities, there is no provision in the LG Act for a regular review of the OIA's functions. It is part of this submission that the Act be amended to require a regular strategic review of the OIA. **See law and process reform recommendation 13. Amend the LG Act to require regular strategic review of OIA.**

How the OIA functions

The functions of the OIA are set out in section 150CU of the LG Act and include,

- to investigate and deal with the conduct of councillors if it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the assessor by the Crime and Corruption Commission, corrupt conduct
- to provide advice, training and information to councillors, local government employees and other persons about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct
- to prosecute offences against the conduct provisions
- to investigate other matters decided by the Minister any other functions given to the assessor under the Act.

A Ministerial Direction was provided to the OIA under section 150CU(1)(e) by the Minister for Local Government, Racing and Multicultural Affairs on 21 November 2018. It required the OIA to "provide advice, training and information to councillors, local government employees, local governments and other persons about alleged suspected inappropriate conduct, misconduct and corrupt conduct". This would allow the OIA to provide advice to councillors on matters relevant to the direction including:

- Recurring or high-risk areas of councillor conduct
- Strategies to manage more complex conduct issues
- Guiding principles on in what circumstances the OIA will prosecute categories of councillor misconduct.

The Local Government Department conducted a review of the councillor complaints system in early 2021 and recommended that this Ministerial Direction be revoked. In a letter dated 13 October 2021, the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning advised the OIA this was to ease workload pressures and allow the OIA to maintain a strong focus on its core business.

In a letter from the Minister on 27 July 2021, the OIA was advised that the "analysis found that the framework is fundamentally sound and achieving the government's intent of an independent system for managing councillor conduct complaints." The review made six recommendations clarifying policy lead, training and capacity building roles, greater coordination, resources and consideration of minor amendments to LG Act in 2021.

As of 26 November 2021, the OIA has not been provided with a copy of the review report.

Overview of the current system

The LG Act refers to four types of councillor conduct, unsuitable meeting conduct; inappropriate conduct; misconduct and corrupt conduct. Between 3 December 2018 and 18 November 2021, the OIA received more than 3,300 complaints including,

- 938 inappropriate conduct complaints raising 1027 separate issues/allegations. i.e. (28% of complaints received in this period)
- 1,577 misconduct complaints raising 1729 separate issues/allegations (48%)
- 574 corrupt conduct complaints raising 612 separate issues/allegations (17%)

Making a complaint

Anyone can lodge a complaint about councillor conduct (inappropriate conduct or misconduct) to the OIA and complaints received by other government bodies¹⁸ must be referred to the OIA to deal with. Local government officials have a statutory obligation to report councillor conduct to the OIA.

Inappropriate conduct

The OIA conducts a natural justice process and must then refer complaints that raise a reasonable suspicion of inappropriate conduct to the relevant council, which is responsible for investigating and resolving the matter, including deciding any orders.

Misconduct/corrupt conduct

The OIA refers alleged corrupt conduct to the CCC and investigates matters that are referred back to the OIA to deal with. The OIA **must** investigate the conduct of a councillor if the conduct is referred by a member of the public, is referred or notified by local government or the CCC.

Councillor Conduct Tribunal

The Tribunal is the independent body that determines, on the balance of probabilities, whether a councillor engaged in misconduct and decides any orders when an allegation is sustained. The councillor and the OIA are parties to these proceedings and the IA bears the onus of proof.

QCAT Review

Any party to a matter has a right to review a tribunal decision to the Queensland Civil and Administrative Tribunal (QCAT). These are full-merits reviews where the entire matter is prosecuted once again.

Initial assessment of complaints

The OIA **must** investigate the conduct of a councillor when a complaint is received.¹⁹

After investigating the conduct of a councillor, the assessor may decide to dismiss a complaint, take no further action in respect of a complaint, make application to the Tribunal or refer the matter to the local government to deal with.²⁰

In the face of the extraordinary and unanticipated volume of complaints however, the OIA has implemented a robust assessment process to triage complaints and an early decision point to ensure that the most effective use is made of the OIA's finite investigative resources. **See law and process reform recommendation 5. Discretion not to deal with certain complaints.**

In assessing matters the OIA considers whether a complaint raises a reasonable suspicion of inappropriate conduct or misconduct. This is a self-imposed threshold and not a requirement of the Act. In assessing matters the OIA does not use its investigative powers.

¹⁸ [Local Government Act 2009](#) (Qld), section 150P.

¹⁹ As above, section 150T.

²⁰ As above, section 150W.

After assessment, complaints are dealt with in one of the following ways:

- Under the OIA's broad discretion, a complaint is dismissed or subject to no further action (NFA)²¹ if it is not within the OIA's jurisdiction; does not raise a reasonable suspicion of councillor conduct; does not contain sufficient information for a proper assessment; it is not a justifiable use of resources to take further action; is not in the public interest; or is improper i.e., vexatious or frivolous.
- A complaint is dealt with as suspected inappropriate conduct by undertaking the natural justice process prior to a possible referral to the relevant council for investigation and resolution²²
- A complaint is referred to the CCC if it raises a reasonable suspicion of corrupt conduct²³ or,
- A misconduct complaint becomes subject to a full OIA investigation

The OIA set itself a target to assess all complaints within 21 working days.

Table: Percentage of complaints assessed within 21 days

2018-19 (7months)	2019-20	2020-21	2021-22 (to 18 Nov)
80%	75%	89%	98%

Under the new councillor conduct system, the costs of assessing complaints and the costs of investigating matters shifted from councils to the OIA²⁴ but unlike previous legislation there is no ability for the OIA to recover costs from local government.

Overall, 10% percent of complaints are lodged anonymously and 25% of these have been investigated. Of these, 5% have progressed to the OIA legal team to undergo a natural justice process and 2% have been referred to the Councillor Conduct Tribunal. The rate of anonymous complaints received by the OIA is higher in First Nations communities.²⁵

Dismissal of complaints

As a result of the OIA's assessment process, a large number of matters are dismissed, or no further action (NFA) is taken within 21 days of lodgment. A letter advising of this outcome is often the first time a councillor becomes aware that a complaint was made about them.

Table: Matters dismissed or subject to no further action following assessment

	2018-19 (7months)	2019-20	2020-21	2021-22 (to 18 Nov)
Total number of complaints dismissed/ NFA	382	583	558	238
As a percentage of total complaints	46%	52%	52%	63%

Most complaints are dismissed because the allegations do not raise a reasonable suspicion of inappropriate conduct or misconduct by a councillor. Or they may also be dismissed because further dealing with the complaint would be an unjustifiable use of resources.

²¹ [Local Government Act 2009](#) (Qld), sections 150X, 150Y.

²² As above, section 150AC.

²³ [Crime and Corruption Act 2001](#) (Qld), section 38.

²⁴ Between December 2018 - March 2020, all Queensland councils except Brisbane City Council (BCC) came within the councillor complaints system. BCC joined the system following the local government elections in March 2020.

²⁵ Office of the Independent Assessor (2021). [The complaints landscape in Indigenous councils](#) (p.3).

The OIA's broad discretion to dismiss or take no further action on complaints provides a way to manage the number of matters that progress to a full investigation.

When an assessment is finalised the OIA provides an outcome advice to the person who made the complaint, the councillor and the local government, if the complaint is dismissed or no further action taken. Under the LG Act the outcome and decision must be placed on council's conduct register with a summary of the complaint. When dismissed, councillors are not identified.²⁶ A decision to (further) investigate a matter will be advised to a complainant and the councillor unless there is an operational reason not to do so²⁷. **See law and process reform recommendation 6. Remove requirement to record in council conduct registers matters that have been dismissed or subject to no further action.**

Unsuitable meeting conduct

Unsuitable meeting conduct²⁸ involves a contravention of a behavioural standard in the Code of Conduct during a council meeting²⁹. The OIA does not have jurisdiction to deal with unsuitable meeting conduct. Instead, the chairperson of the relevant meeting may deal with Code of Conduct breaches in real time and make orders, if considered appropriate³⁰. A breach of a Code of Conduct in an informal meeting or workshop however is inappropriate conduct.

Unsuitable meeting conduct is referred to the OIA as inappropriate conduct when³¹ a councillor contravenes an order by the chairperson to leave a meeting and stay away, or a councillor receives three orders in one year for unsuitable meeting conduct. **See law and process reform recommendation 1 Unsuitable Meeting Conduct, Extend the definition to capture informal meetings and workshops.**

Inappropriate Conduct

The OIA has raised its concerns with the inappropriate conduct scheme in its past two annual reports 2019-20 and 2020-21, in its Insight publication, a presentation at the LGAQ Civic Leaders Summit in June 2020, and to government.

Inappropriate conduct³² predominantly involves a contravention of the Code of Conduct or a policy, procedure or resolution of the council.³³ The OIA does not have the power to investigate inappropriate conduct unless it is tied to alleged misconduct. These allegations must be referred to the council to investigate under its own investigation policy.

To reduce the number of referrals however, the OIA assesses an inappropriate conduct complaint to determine whether the complaint has substance or if it could be resolved, for example, if there was an independent witness to the conduct.

Before referring any complaints to local government, and to understand the councillor's position, the OIA **must**³⁴ issue a notice providing the councillor with 'an opportunity to respond to the allegation/s

²⁶ [Local Government Act 2009](#) (Qld), sections 150DX, 150DY, 150DZ.

²⁷ In these cases, advice to the subject councillor may be delayed for operational reasons such as securing evidence.

²⁸ [Local Government Act 2009](#) (Qld), section 150H.

²⁹ As above, section 150H.

³⁰ As above, section 150I.

³¹ As above, section 150K(2)(a) and (b).

³² As above, section 150K.

³³ As above, section 150K.

³⁴ [Local Government Act 2009](#) (Qld), section 150AA.

and to say why the assessor should not make that decision³⁵ (to refer to council). After considering the councillor's response, if the OIA still suspects inappropriate conduct, the complaint is referred to the relevant council to investigate and resolve.

When referring a matter, the OIA may make a recommendation about how the matter is dealt with³⁶. When the complaint involves a mayor or when it is made by one councillor against another, the OIA will recommend the council use external investigators.

Table: Inappropriate conduct matters referred to councils 3 Dec 2018 - 18 Nov 2021

	2018-19 (7months)	2019-20	2020-21	2021-22 (18 Nov)
Inappropriate conduct matters referred by OIA to a council	23	26	60	11
As a percentage of total inappropriate conduct complaints received by the OIA	9%	10%	21%	8%

Issues with the inappropriate conduct scheme

In 2019-20 only 15 per cent of inappropriate conduct complaints were finalised by local governments. There was significant improvement after the OIA introduced a raft of initiatives and in 2020-21, 53 per cent of inappropriate conduct matters were finalised by councils.

The OIA has monitored the operation of the inappropriate conduct scheme and has identified the following significant issues,

- A reluctance amongst councillors to sit in judgment of their peers or to substantiate a conduct allegation against another councillor
- The impact of alliances or fractured relationships between councillors on objectivity, fairness and consistency
- Issues surrounding compliance with council investigation policies and natural justice provisions
- Dealing with inappropriate conduct at council meetings and conflicts of interest
- A matter referred back to local government that was not dealt with at all
- The proportion of matters where complainants withdrew complaints when at least one matter was referred back to local government.

To assist councils to overcome some of these challenges, the OIA's initiatives were provided to all councils in September 2020. They included the identification of a panel of external investigators, who could assist councils by quickly and independently examining allegations if required. The OIA conducted a workshop with the companies to facilitate a uniform approach to investigations and application of the Code of Conduct. A template short form investigation report was agreed to support timely investigations, proportionate to low level conduct, that complied with natural justice and best practice. To assist councillors to determine an appropriate order when an allegation is substantiated, the OIA provided a decision-making guide which was developed by the interim Logan City Council in 2019 in consultation with the OIA. An updated guide was provided by the OIA on 15 June 2021

The OIA recommends legislative reform of this scheme to further improve its fairness and effectiveness. **See law and process reform recommendation 3. New Inappropriate Conduct Scheme: making the inappropriate conduct scheme more effective.**

³⁵ As above, section 150AA (2)(d).

³⁶ As above, section 150AC (3).

Misconduct and corrupt conduct

The OIA investigates misconduct, and corrupt conduct when referred by the CCC. A decision is made to fully investigate a matter where preliminary inquiries indicate that there is a reasonable suspicion of misconduct or where further enquiries are required to determine this. Investigations are also undertaken to examine some of the complex factual and legal issues that can be raised in misconduct complaints. Effectively dealing with misconduct matters as they arise helps to prevent an escalation to more serious misconduct or corrupt conduct and prevents longer term systemic or cultural issues. Misconduct is defined in the LG Act³⁷ (See **Appendix 3** for the full definition) and includes,

- Conduct that adversely affects the honest and impartial performance of functions & powers
- A breach of trust placed in a councillor
- Misuse of information or material acquired in, or in connection with, the performance of the councillor's functions.
- A breach of the acceptable request guidelines of the local government
- Failure to notify the OIA about the conduct of another councillor as required by section 150R(2)
- Failing to declare a prescribed conflict of interest
- Influencing a decision-maker when a councillor has a prescribed or declarable conflict of interest
- A councillor giving directions to local government staff
- A councillor releasing information that is confidential to the local government
- A failure by a councillor to update or correct their register of interests.

Misconduct investigations

Investigations vary widely between relatively simple matters that can be finalised quickly and those that are factually and legally complex and require a substantial investment of time and resources. Since its establishment on 9 November 2021, the OIA has raised 945 investigations, of which, 805 investigations have been finalised.

Table: OIA investigations*

	2018-19 (7 months)	2019-20	2020-21	2021-22 (to 18 Nov)
Total number of investigations commenced	311	240 38Footnote	314 39Footnote	75
As a percentage of total misconduct/ corrupt conduct complaints received	38%	23%	29%	20%
Total number of investigations finalised	168	284	194	159

*Based on the date matters were referred from assessment to investigation

In March 2020, the Brisbane City Council (BCC) came under the jurisdiction of the OIA and 94 investigations regarding BCC councillor conduct began in 2020-21. This accounts for the increase in that financial year.

The reduced number of investigations in 2020-21 is because the OIA had to redeploy two investigators to the legal team to deal with a backlog of matters.

In 2021-22 and following the announcement of further budget and resources by the Deputy Premier, the OIA currently has eight investigators (five are temporary) dealing with the workload. As of 18

³⁷ [Local Government Act 2009](#) (Qld), section 150L.

³⁸ 130 complaints received in relation to one councillor were dealt with as one investigation.

³⁹ 106 complaints received in relation to one councillor were dealt with as one investigation.

November 2021, this increased resourcing allowed the OIA to finalise 159 investigations in the first four and a half months of 2021-22.

Investigations are prioritised based on seriousness of the allegation, the potential continuing impact of the conduct, evidence preservation and whether it was referred by the CCC. Otherwise, investigations are undertaken in date order. To maximise the efficient use of resources, the OIA may 'park' an investigation where other processes need to be finalised before the investigation can proceed.

The OIA may also recommend training, rather than disciplinary action, when systemic issues are identified. Investigations are parked until the councillors complete relevant training and the matters are then dismissed or subject to no further action.

As of 18 November 2021, the OIA had eight investigators and 139 investigations. A total of 59 investigations are on hold pending the availability of an investigator and 11 have been parked. Sixty-nine matters have been allocated to investigators who are also preparing 10 briefs of evidence.

Even with a rigorous assessment process that reduces the number of investigations to less than a quarter of all complaints, the volume of investigations remains a substantial body of work. During this period, the COVID pandemic has also impacted investigation timeframes, particularly in remote locations as investigators have been unable to travel.

Table: Current investigation timeframes as of 18 November 2021*

Over 12 months	10**
9-12 months	18
6-9 months	22
3-6 months	29
0-3 months	49

*Not including parked investigations

**Two of these investigations were finalised as of 25 November 2021.

Cost of misconduct investigations

In 2020-21, the average cost of a misconduct investigation was \$2,704.⁴⁰ This is significantly lower than figures cited in the Solomon Review which found it was possible for a council to incur a \$30,000-50,000 bill for a misconduct investigation⁴¹ if it was outsourced to contracted investigator.

Dismissal after investigation

Since the OIA was established, a total of 945 investigations have been undertaken. Of these, 471 matters were dismissed or subject to no further action⁴² following the investigation. This is another decision point where a matter is critically considered. Following a full investigation, 194⁴³ matters have been progressed to the OIA legal team for a natural justice process. Nine matters were referred to the CCC and four were referred to local governments as suspected inappropriate conduct.

⁴⁰ The [Department of State Development, Infrastructure, Local Government and Planning 2021-22 Annual Report](#) referred to a 'target' cost of investigations of \$1,340. The explanation of the difference is footnoted as where there are multiple complaints on one issue, it is dealt with as one investigation. In the department forecast it was counted as many investigations, but the actual figure was treated as one investigation.

⁴¹ Solomon, D., Playford, N. & Kellar, G. (2017). [Councillor Complaints Review: A fair, effective and efficient framework](#). (p.28).

⁴² This includes the dismissals from a review of investigations into former councillors following the 2020 quadrennial local government elections. See: [Office of the Independent Assessor Annual Report 2019-2020](#) (p.10).

⁴³ This includes 130 complaints in relation to one councillor which were referred to the Tribunal as one matter.

If a decision is taken to dismiss or take no further action on a matter after investigation the complainant and councillor are provided detailed reasons for this decision, which is in itself an important outcome.

Again, the OIA's discretion to dismiss or take no further action on a matter provides a mechanism to manage the number of matters that progress to OIA legal team.

Natural justice after an investigation

The OIA legal team will undertake a natural justice process as required by the LG Act to ensure the decision-making is a fair process.

A section 150AA notice provides the councillor who is subject of a complaint with a statement of facts that sets out the allegation/s and the facts that have been gathered as part of the investigation. The statement of facts also clearly sets out how the alleged conduct may constitute misconduct.

The councillor is invited to make a submission stating their position in response to the notice, and it must be considered by the OIA. Following this consideration, a decision may be made to refer the matter, or with amendments, for example by removing one or more allegations for which a reasonable satisfaction of misconduct no longer exists, to the Tribunal to decide. Alternatively, the OIA may decide to dismiss the entire matter or take no further action at that time. This has occurred on 11 occasions after the councillor has provided a response to the allegations raised in the natural justice process.

If a matter is referred to the Tribunal, the natural justice process can assist to narrow the issues that may be in dispute. For example, a councillor may accept the facts but dispute that they amount to misconduct.

The threshold for referral is a reasonable satisfaction that a councillor has engaged in misconduct. Some of the factors considered include whether it is in the public interest to refer the matter to the Tribunal and whether there are reasonable prospects of the allegation/s being sustained.

Referral to Councillor Conduct Tribunal

As of 25 November 2021, there were 71 matters⁴⁴ before the Tribunal awaiting determination by the members. The Tribunal has decided 61 misconduct matters⁴⁵ since its establishment at the same time as the OIA. The number of matters where one or more allegations have been substantiated against a councillor is set out on Page 25.

The purpose of misconduct proceedings

A referral to the Councillor Conduct Tribunal is a disciplinary process, not a criminal one. The purpose of a disciplinary process is not to punish but, in the context of councillor conduct, to ensure compliance with the standards of conduct set out in the LG Act to promote future compliance, and to uphold confidence in the integrity of councillors.

Historical lack of precedent or guidance

Prior to the establishment of the Tribunal, there was no visibility of the previous tribunal decisions in relation to the conduct of councillors in Queensland and the reasons for those decisions. This meant

⁴⁴ A 'matter' forwarded to the Tribunal, refers to the result of one complaint and one investigation. It can contain many allegations.

⁴⁵ [Local Government Act 2009](#) (Qld), section 213.

that other councillors could not see how standards were being applied and consider how that might apply to their own circumstances. Decisions were made by a tribunal, regional panels as well as a separate Brisbane City Council review panel.

For the OIA and others, who assess or advise on local government issues, there has been no access to previous tribunal decisions in this jurisdiction before 2019. It is likely that historically this has had a significant impact on the consistency of advice and decision-making on councillor conduct matters.

It should also be noted that that due to the volume, value and complexity of decision-making by councillors, disciplinary matters when they arise, particularly around conflicts of interest, can be factually and legally complex.

Since 2019, the OIA has sought to obtain clarity and consistency of decision-making on councillor conduct by advancing matters to the Tribunal for consideration that clarify how the legislated standards apply to particular facts, particularly where there is uncertainty.

For the first time, a body of tribunal decisions is available to key stakeholders which clarify how legislated standards are being applied. However, only a summary of the decision is made public and not the more detailed reasoning behind the Tribunal decision. This matter is addressed in this submission under the chapter on ***law and process reform recommendation 10. Amend section 150AS(2) of the LG Act to require publication of Councillor Conduct Tribunal decisions in full.***

Councillor Conduct Tribunal process

The Tribunal must conduct a hearing about the application from the OIA to hear an allegation of misconduct⁴⁶. The Tribunal is constituted by at least two or three members for a hearing and the President; or not more than three members when considering an administrative or procedural matter⁴⁷.

The Independent Assessor is a party to the hearing and bears the onus of proof.⁴⁸ The councillor is the respondent to the application and a party to the hearing⁴⁹. When conducting a hearing the Tribunal must observe natural justice; but act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing⁵⁰. The President of the Tribunal has issued [practice directions](#) for the conduct of Tribunal matters⁵¹. In practice most Tribunal hearings are conducted on the papers following the receipt of submissions from both parties.

When a decision is made, a [case summary by the Tribunal](#)⁵² is published on the website of the Department of State Development, Infrastructure, Local Government and Planning, although some details may be redacted to protect the complainant, witnesses, or confidential information. The subject councillor will only be identified in the summary if the allegation was sustained or if they consent to being named. A full decision with reasons is provided to the parties but not made public.

Backlog of legal and Tribunal matters

As of 25 November 2021, 71 matters, involving 31 councillors or former councillors and 107

⁴⁶ [Local Government Act 2009](#) (Qld), section 150AL.

⁴⁷ As above, section 150AM.

⁴⁸ As above, section 150AN.

⁴⁹ As above, section 150AO.

⁵⁰ As above, section 213.

⁵¹ As above, section 150DV.

⁵² Department of State Development, Infrastructure, Local Government and Planning (Qld). [Councillor Conduct Tribunal: Decision Summaries](#).

allegations were before the Councillor Conduct Tribunal.

As of 25 November 2021, the OIA legal team had 32 matters, involving 20 councillors and 48 allegations being prepared for, or are undergoing, a natural justice process.

Delays have been experienced in progressing matters through both the OIA legal team and the Councillor Conduct Tribunal. From the OIA's perspective these delays are due to limited legal resources and the increasing resource impact of QCAT reviews.

Table: Legal matter* timeframes as of 25 November 2021

Time with OIA legal	Number of matters
0 – 3 months	11
3 – 6 months	9
6 – 9 months	6
9 – 12 months	3
12+ months	3

Note: A matter represents one complaint and one investigation but may involve multiple allegations.

Table: Councillor Conduct Tribunal timeframe of matters referred as of 25 November 2021

Time with Tribunal	Number of matters referred to Tribunal
0 – 3 months	7
3 – 6 months	30
6 – 9 months	7
9 – 12 months	2
12+ months	25

Queensland Civil and Administrative Tribunal (QCAT)

All parties may review a Councillor Conduct Tribunal decision to the QCAT. The LG Act in combination with the QCAT Act currently provides for a full-merits review (that is a full re-hearing of the matter) of a decision of the Tribunal. Unlike other legislation that provides a review to QCAT, section 150AT of the LG Act provides no guidance on the nature and scope of the review power from a Tribunal decision.

The first QCAT review was initiated in April 2020 and is awaiting a hearing date. Since December 2020, another eight councillors have reviewed to QCAT and the OIA has reviewed one matter. This is likely a result of increased awareness of the review option.

When a matter is referred to the Tribunal, councillors can apply to have their costs covered by their professional indemnity service associated with the LGAQ. For Queensland councils, JLT provides 'Local Government Mutual Services'. The scheme can extend cover for councillors funding reviews in QCAT in relation to Tribunal decisions. These are considered on a case-by-case basis.

When a councillor has been found to have engaged in misconduct by the Tribunal, the scheme can recover costs from the councillor under the scheme's policy. However, consideration on whether to take that action would depend on the seriousness of the conduct and whether all avenues of appeal have been considered.

Before QCAT, the Tribunal is the required respondent with the option of the OIA being joined as a co-respondent. Two QCAT review matters are ready to be listed for hearing, but all other matters remain at the directions stage where the nature and scope of a review from the Tribunal remains under consideration by several QCAT members. Either the applicant or the respondents may produce new evidence as part of the review process.

In directions hearings there have been differing QCAT member views on:

- Whether the OIA or the Tribunal should be the respondent that takes the active role in re-litigating the matter on review; however, most members have taken the view that the OIA should be that party.
- Whether complainants may apply to QCAT to request to be added as a party to the review.
- Whether a review means that only substantiated allegations before the Tribunal are re-litigated, or whether a review requires re-consideration of both allegations that were substantiated by the Tribunal as well as any allegations that were unsubstantiated.

The practical effect of this review power is that the OIA initially prosecutes a matter before a panel of three Councillor Conduct Tribunal members, in a specialist Tribunal established to consider councillor conduct matters only; and if a matter is reviewed, the OIA re-prosecutes the same matter before a single non-judicial QCAT member.

The review process has become a significant resource implication for the OIA, which is unsustainable. As more matters are referred to QCAT and progress to the hearing stage this is likely to exacerbate delays in referring matters to the Tribunal and dealing with matters before the Tribunal. ***See law and process reform recommendation 11. Amend the LG Act to remove the right of review from a misconduct finding and replace it with a right of appeal on a point of law.***

Criminal prosecutions

The LG Act and CoBA create certain statutory offences that the OIA may investigate and prosecute.⁵³ The OIA has not commenced a criminal prosecution for breach of a conduct provision. The OIA has a discretion to deal with breaches of conduct provisions by a councillor as misconduct and to date has exercised this option.

The [OIA's prosecution policy](#) on its website sets out when the OIA will deal with a matter as misconduct or as a statutory offence. The steps taken include consideration of the prospects of success and the public interest. Generally, the OIA will deal with a matter as misconduct unless it is serious, involves repeat conduct and/or dishonesty, and is not being dealt with by the CCC.

⁵³ [Local Government Act 2009](#) (Qld), sections 150CU(1)(c) and 150AY(b).

Evidence local government reforms are working

While this submission identifies issues in the councillor conduct system that could be improved, there is also evidence that legislative intent of the system is being realised.

No more under-reporting of complaints

Importantly, there is no longer significant under-reporting of councillor conduct, allowing a genuine focus on integrity and disciplinary intervention to prevent conduct from escalating to more serious levels that may impact communities or individuals.

In 2011-12 there were only two councillor conduct matters reported to the then Local Government Department. The following table depicts the number of councillor conduct complaints received and the number of councils that complaints have been received about between 2011-12 to 31 October 2021.

Table: Historical statistics: councillor conduct complaints

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22 (to 18 Nov)
Number of Complaints	2	11	46	78	133	141	162	917*	1030	1075	376
Number of councils	2	5	21	31	36	34	36	53**	55	62	42

*Of the 917 complaints lodged in 2018-19, 824 complaints were received by the OIA between 3 December 2018 and 30 June 2019.

**The OIA received complaints from 53 councils in the period 3 December 2018 to 30 June 2019

Anecdotal evidence suggests that people are more comfortable reporting concerns to a body that is independent of a council, bringing greater transparency, accountability and confidence to the process. Improved public trust in the complaints system is evidenced by the numbers of complaints received since the OIA commenced.

Statewide consistent and independent assessment of complaints

Another important outcome has been the fair and independent assessment of all conduct complaints by a centralised assessor who applies consistent legislated and Code of Conduct standards statewide. Councillors are being held to same high standards for the benefit of their communities, no matter where they live in Queensland, and council CEOs are no longer in the conflicted position of having to assess complaints about their employers, the councillors.

Improved reporting culture in councils

For councillors themselves, trust in the new complaints system is evidenced by the number who refer their own conduct to the OIA. This provides an indication of councillors' awareness of conduct provisions as well as a commitment to transparency and accountability. Prior to the establishment of the OIA, six self-referrals were made between 2012 and 3 December 2018. Since then, the OIA has received 56 matters from councillors referring their own conduct.

This positive cultural change is also seen in the increased notifications and complaints by local

government officials, who are often well-placed to identify issues.

In 2018-19, local government accounted for just 11% of complaints and notifications to the OIA, but in just two years that number increased to 52% (Figures recorded in 2020-21).

Reduction in corrupt conduct matters

A key plank in the current system is addressing conduct breaches to prevent an escalation to more serious levels or systemic issues from arising. As the number of matters involving lower-level conduct reported to the OIA has risen, the number of more serious corrupt conduct complaints received by the CCC has reduced.

The CCC's latest annual report states corruption allegations about local governments dropped sharply in 2020–21⁵⁴. The number of referrals made by the CCC to the OIA has also reduced over the time of the OIA's operation.

Table: Percentage of matters referred by the CCC to the OIA 3 Dec 2018 – 18 Nov 2021

Source of complaints	2018-19	2019-20	2020-21	2021-22 (To 18 Nov)
CCC	23%	7%	4%	7%

Low cost of investigations

While complaint numbers have risen, the cost of misconduct investigations has dropped. In 2020-21, the average cost of an OIA misconduct investigation was \$2,704, whereas the Solomon Review found an external investigation could cost councils between \$30,000 - \$50,000 under the previous system.

In 2021, at least two councils advised the OIA that an external investigation into alleged lower-level inappropriate conduct had cost each council more than \$9,000.

Under the new councillor conduct system, the costs of assessing complaints and the costs of investigating matters shifted from councils to the OIA⁵⁵ but unlike previous legislation there is no ability for the OIA to recover costs from local government.

Increased procedural fairness

The current system also provides a high degree of procedural fairness. The OIA treats matters confidentially and it routinely requests that all parties to a complaint do the same, at least until it is resolved. Councillors are given the opportunity to respond to allegations, and their responses are considered before any decision is made by the IA to either dismiss the matter or refer it to either the relevant council or the Councillor Conduct Tribunal for a decision on the councillor's conduct.

⁵⁴ Crime and Corruption Commission. (2021). [Annual Report 2020 -2021](#) (p.53).

⁵⁵ Between December 2018 - March 2020, all Queensland councils except Brisbane City Council (BCC) came within the councillor complaints framework. BCC joined the framework following the local government elections in March 2020.

Increased referral of misconduct matters to a Tribunal and sustained decisions

As of 25 November 2021, there are currently 71 misconduct matters relating to 31 councillors and involving 107 allegations before the Councillor Conduct Tribunal.

A search of publicly available reports reveals the following trend in the referral and decisions made regarding misconduct matters over 11 years, noting that prior to the establishment of the OIA, misconduct matters were decided by two bodies, the Local Government Remuneration and Discipline Tribunal (LGRDT) and Regional Conduct Review Panels (RCRP). Reports on matters dealt with by the RCRP are limited.

Table: A comparison of misconduct matters referred to a tribunal and outcomes 2010-2021

Year	Tribunal	Matters referred	Matters decided ⁵⁶	Matters sustained ⁵⁷
2010	LGRDT established 1 July 2010	1	1	1
2010-11	RCRP	9	9	unknown
2011	LGRDT	8	8	5
2011-12	RCRP	50 (complaints)	28	6 misconduct
2012	LGRDT	7	7	5
2012-13	RCRP	10	5	2
2013	LGRDT	6	3	0
2013-14	RCRP	7	Unknown	Unknown
2014	LGRDT	6	9	0
2015	LGRDT	3	2	1
2016	LGRDT	5	5	1
2017	LGRDT	14	8	3
2018	LGRDT	20	18	10
2018-19 (7mths)	Councillor Conduct Tribunal (Tribunal) and OIA established 3 Dec 2018	25*	13	10
2019-20	Tribunal	50	23 (9 from 2018-19)	16
2020-21	Tribunal	49	15 (3 from 2018-19, 12 from 2019-20)	13
2021 -22 (to 25 Nov)	Tribunal	8	10 (10 from 2019-20)	10

*NOTE: Each matter referred by the OIA represents one complaint and one investigation (although it may involve multiple allegations); except for one matter in 2019 that contained up of 130 complaints about the same or similar conduct which was recorded as one matter.

Body of decisions about how standards apply

For the first time a body of Tribunal decision summaries are made public and are available to key stakeholders to clarify how legislated standards are being applied. This information helps councillors to build their capacity to recognise misconduct risks and avoid complaints by applying Tribunal

⁵⁶ The OIA reports a matter as being decided on the date that the decision is published by the CCT, which is occasionally in a different financial year from the date recorded in the decision itself.

⁵⁷ The OIA considers a matter sustained if it is wholly or partially sustained. For example, a matter may relate to two allegations of misconduct and the CCT may sustain one allegation but not the other. This matter would be considered sustained for the purposes of OIA reporting.

learnings to their own circumstances.

Increased focus on building capacity of councillors

Preventing misconduct and inappropriate conduct was a focus of the OIA in approximately its first two-and-half years in operation. To highlight complaint trends and emerging issues and to identify ways to avoid conduct risks, the OIA delivered information sessions and tailored training interventions, produced a quarterly report, published summaries of Tribunal decisions and contributed to stakeholder events and publications.

The OIA also collaborated with a range of stakeholders to produce valuable resources for councillors including a councillor's guide to social media (see **Appendix 4**) and an innovative conflict-of-interest 'app'. These collaborations have allowed the OIA to deliver important initiatives in a way that minimised any impact on OIA resources.

Response to Terms of Reference 1

The OIA has performed its functions in accordance with the LG Act and the intent of the legislation as expressed in speeches during the parliamentary debate on the Bill.

If anything, the OIA has been far more proactive in applying the councillor conduct complaints system than the legislation requires. This was achieved by inserting in an early assessment decision point and self-imposing a reasonable suspicion threshold for commencing a fuller investigation. Further, all possible steps have been taken at every decision point to manage this workload within resource limitations. The analysis of the process and key statistics provided demonstrate the process is both robust and procedurally fair.

The system however has imposed new high standards of conduct and has resulted in both an increased number of complaints and an increased number of matters referred to the Councillor Conduct Tribunal.

While the implementation of this law reform has meant significant cultural change for councillors within a short period of time, there is evidence this reform program has achieved the following:

- CEOs are no longer assessing complaints about their employers
- Complaints are assessed consistently by an independent body
- There is no longer significant under reporting of councillor conduct
- Increased trust in reporting concerns to a body independent of council
- Increasingly local government officials⁵⁸ have engaged in the complaint process.
- At the same time the number of complaints that the CCC received about the local government sector has sharply decreased.
- Current legislation provides a high degree of procedural fairness
- The OIA investigative model is cost effective.
- More misconduct matters have been referred to the Tribunal and sustained.
- There is visibility of Tribunal decisions and how conduct standards are being applied.
- In conjunction with key stakeholders the OIA has been involved in a range of prevention and education activities targeted at the very issues that complaint data revealed that councillors need help with.

⁵⁸ CEOs, Mayors and Councillors.

Powers and Resources

Terms of Reference 2

Whether the powers and resources of the Intendent Assessor are being applied in accordance with the public interest.

- What is the public interest in the context of councillor complaints system?
- How the OIA uses its powers
- OIA resources managing an extraordinary workload
- 12 strategies employed to reduce workload and apply resources

OIA powers

What is the public interest in how the OIA uses its powers?

OIA investigative powers are available for misconduct investigations and the investigation of statutory offences, such as corrupt conduct. They are not available for the investigation of inappropriate conduct and they are not used when the OIA is assessing matters.

The Solomon Review found that under the previous system the Local Government Department was ill-equipped in not having the necessary powers for its role in the complaints system. The review stated that the department had weak investigative powers which were not clearly defined and potentially limited its capacity to investigate matters thoroughly.

It also noted that the Local Government Department regularly had to “employ (expensive) outside contractors to conduct investigations”, but those contractors were also “handicapped because they lacked adequate powers to obtain vital information”⁵⁹.

The review stated the Independent Assessor’s powers should allow it to do more with fewer investigators, and more quickly, as it would be able to require witnesses to respond to its enquiries.

On 15 February 2018, the then Local Government Minister, the Hon Stirling Hinchliffe told Parliament, “we will be equipping the independent assessor with the powers necessary to do the job”⁶⁰.

The Minister advised that the Bill provided the OIA with appropriate powers to carry out investigations including powers to enter a place, seize evidence and require a person to provide information or to attend a place to answer questions.

The Bill sought to ensure the OIA had sufficient investigative powers and that “the powers generally align with the powers of other officers investigating conduct complaints”, such as the Crime and Corruption Act and Legal Professions Act, and powers of other persons investigating compliance with LG Act legislation.

The Bill enabled the OIA to issue notices⁶¹ to require a person to keep certain information related to an investigation confidential. It was noted that new offences of disclosing confidential information

⁵⁹Solomon, D., Playford, N. & Kellar, G., (2017). [Councillor Complaints Review: A fair, effective and efficient framework](#) (p.82).

⁶⁰ Queensland Parliament. (2018). [Record of proceedings \(Hansard\) Tuesday 15 February 2018 \(p.149\)](#).

⁶¹ [Local Government Act 2009](#) (Qld), section 150CK.

were similar to an offence in the Crime and Corruption Act. According to the explanatory notes, the new confidentiality offence was sufficiently justified to ensure that the OIA was able to carry out an investigation confidentially and to prevent the commission of an offence.

It was further noted that without the power to specify that information was confidential, the disclosure of the information, may itself, adversely affect the rights and liberties of individuals by causing interference in an investigation, the commission of an offence or reputational damage to the councillor.

The explanatory notes stated that the maximum penalties for the new offences (85, 100 units respectively) were considered proportionate and appropriate considering the maximum penalties that apply to other similar offences.

These Ministerial statements of intent demonstrate that that provision of additional powers to the OIA was considered necessary and in the public interest at the time the Bill was passed.

It is also in the public interest that those powers are then used lawfully.

OIA use of powers in practice

When investigating the conduct of a councillor or a breach of a conduct provision the OIA has the power to issue the following notices,

- Section 150CH – notice requiring provision of information which is reasonably necessary to investigate a councillor's conduct.
- Section 150CJ - notice requiring the attendance of a person at an interview with investigators
- Section 150 CK notice requiring a person's attendance at an interview or information provided to be kept confidential, as is the notice itself.

An OIA investigator is also able to apply for a search warrant⁶² under the LG Act where there are reasonable grounds for suspecting that there is evidence of a conduct offence, at a place. It is significant that the most intrusive of the powers provided to the OIA, to execute search warrants, have not been exercised.

Table: OIA use of powers

Use of Powers	2018-19	2019-20	2020/21	2021/22 as at 18 Nov 21
150CH information	126	160	119	69
150CJ interview	9	9	14	9
150CK confidential	33	20	28	6
150BN search warrant	0	0	0	0

Use of powers and media

The context in which concerns about the OIA's use of its powers have been raised, is the use of notices to obtain evidence about a councillor's conduct from media organisations.

It is the OIA's experience that dealing with complaints about elected representatives tends to raise questions about how a councillor has engaged with the media much more so than the oversight of other professional disciplines. This is because, as part of their responsibilities, councillors are much

⁶² [Local Government Act 2009](#) (Qld), section 150BN.

more engaged with the media in the public domain.

The circumstances that raise alleged misconduct through the media are limited to circumstances where an identified councillor has made a public statement or engaged in a public act. This may involve a councillor publicly releasing information which is confidential to council or making statements in the media which are allegedly false and or misleading or where a councillor has engaged in public conduct that may have been recorded by the media.

To investigate such conduct, it may be necessary for the OIA to serve notices on media organisations seeking information or vision with most requests being for copies of already broadcast stories and vision. This is a standard practice for law enforcement and integrity bodies.

In many cases the media organisation itself requires a formal notice.

The OIA only uses its powers to issue a notice to obtain relevant evidence if a councillor has already been identified as the source in the media story. The evidence may be needed to determine whether the councillor has been reported correctly. Because councillors are already named in the stories, they are not confidential sources. Making such inquiries is in the interests of councillors to ensure that they have not been paraphrased and or to establish the context of what was said.

In these instances, the OIA has exercised its powers lawfully. The broader public discussion appears to be whether the OIA ought to be able to obtain evidence from media organisations if it is relevant to the investigation of a councillor.

It is respectfully submitted the OIA should be able to obtain evidence of councillor conduct from media agencies where that information or evidence does not involve the identification of a confidential source.

[The transcript of proceedings](#) before the Committee on 11 October 2021, now made public, details the OIA's actions in relation to this issue in a matter involving a Scenic Rim councillor.

Resources

Prior to the establishment of the OIA the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) managed councillor conduct complaints referred by mayors and CEOs. The department performed more straightforward investigations and complex investigations were outsourced to external contractors.

According to the Solomon Review, in 2015-16 the department had 7.5 full time equivalents⁶³ working on councillor complaints matters and received 133 complaints. Total departmental costs were \$820,100 and \$108,000 was spent on contract investigators.

For the full calendar years in 2015⁶⁴ and 2016⁶⁵, a total of eight matters were referred by the Department to the Local Government Remuneration and Discipline Tribunal. The Department did not deal with complaints about Brisbane City Councillors.

⁶³ Solomon, D., Playford, N. & Kellar, G., (2017). [Councillor Complaints Review: A fair, effective and efficient framework](#) (p.78).

⁶⁴ [Local Government Remuneration and Discipline Tribunal report 2015](#)

⁶⁵ [Local Government Remuneration and Discipline Tribunal report 2016](#)

When the OIA was established under the new councillor conduct system, the OIA was given the same tasks plus more functions:

- receive and assess all inappropriate conduct and misconduct matters (previously undertaken by all councils and the department)
- investigate all misconduct matters
- become a party to Tribunal proceedings responsible for discharging the onus of proof (new function)
- although not expressly anticipated by system, the OIA has assumed responsibility for re-prosecuting matters before QCAT (new function).

Under the new system, there was no provision to recover costs from local governments.

The OIA was resourced with 10 FTE including the Independent Assessor, Deputy Independent Assessor, four investigators, two prosecutors and two administrative employees in the expectation that it would receive approximately 160 complaints a year. The OIA received 222 complaints in the first month of operation and more than 1,000 in the first year. Currently the OIA has jurisdiction over all of Queensland's 578 councillors and 77 councils, with the Brisbane City Council added in March 2020.

The OIA requested further resources to cope with the major increase in complaints and in 2019, DLGRMA transferred one permanent media and engagement officer to the OIA and provided one temporary staff member from the re-deployment pool.

As complaint volumes continued, funding from other line items was reallocated to employ temporary assessment, investigative and legal staff to address the growing backlog in investigations and referrals of the matters to the Councillor Conduct Tribunal.

In December 2020, the Deputy Premier provided funding of \$250,000 to support three additional staff for the remainder of 2020-21. On 28 July 2021, the Deputy Premier announced \$1.302 million over two years to support a total of eight FTE positions.

Table: Aggregate employee FTE since establishment

On establishment	10 FTE
3 Dec 2018- 30 June 2019	12 FTE (10 permanent)
2019-20	15.4 FTE (11 permanent)
2020-21	17.5 FTE (11 permanent)

As of 31 October 2021, the OIA had 11 permanent and eight temporary employees including two assessment officers, eight investigators and four lawyers; 42% of the OIA's staff are temporary until 30 June 2023. This has meant that it has been difficult to retain staff.

During surge periods in assessment and in legal, investigators are redeployed into these areas. To relieve pressure on legal resources the OIA has also participated in the QUT practical legal training program.

The OIA is value for money. In 2020-21 the average cost of an OIA misconduct investigation was \$2,704 compared to the previous system. Similarly, councils have reported to the OIA that the cost of lower-level inappropriate conduct investigations undertaken with external investigators range from \$600 to \$9,849.

Strategies to manage workload and apply resources in the public interest

To make the best possible use of the OIA's resources in undertaking the OIA's statutory functions

and managing the workload, the following strategies have been implemented in the public interest.

Complaint form

The OIA's online complaint form is designed to ask specific questions about the complaint before information is entered. This includes cautioning people against making vexatious or other improper complaints and diverts them to other appropriate entities if their complaint is not within the OIA's jurisdiction. The online form is designed to assist the complainant to provide as much information as possible up front to facilitate timely assessment.

Dealing with matters as enquiries

Often, despite the attempts to divert out of jurisdiction complaints through the online form, out of jurisdiction complaints are submitted. In those cases, where possible, the OIA contacts the complainant to explain the jurisdictional issue and, where appropriate, refer the complainant to the best placed authority to deal with their issue. In those cases, by agreement, the complaint is changed to 'enquiry only' in the system and the matter is not further dealt with by the OIA.

Dealing with vexatious complainants

While the OIA has a responsibility to enforce the legislative standards for councillor conduct, it must also address unacceptable complainant conduct, be it be vexatious, frivolous or improper.

The OIA uses a three-step escalation process to deal with improper complainant behaviour. The three steps are,

- First complaint dismissed but complainant given vexatious warning
- If there is a second complaint - dismissed as vexatious and offence warning provided
- If there is a third complaint – dismissed as vexatious and OIA may commence an investigation into the complainant.

This process enables the OIA to demonstrate a course of conduct on the part of the complainant, following warnings, that can be taken as a vexatious charge to the Magistrates Court.

In 2020-21, 34 complainants advanced to the second step. Two complainants advanced to step three, and investigations were commenced. To date, the OIA has commenced three investigations into vexatious complainants. To date no person has been charged but two investigations are current.

The OIA will not deal with a complaint that has substance, as vexatious. There are occasions where motivated complainants or political opponents make complaints that have substance.

Rigorous management of matters to limit the matters in which greater resources are invested.

The OIA rigorously reduces the number of matters it invests its resources in at every decision point; on assessment, at the conclusion of an investigation, and following a natural justice process.

How the OIA achieves this has improved year on year. From 1 July 2021 to 18 November 2021, 63% of complaints were dismissed or NFA on assessment, while 20% of complaints progressed to a misconduct investigation.

This ensures that resources are focused on those matters which raise a reasonable satisfaction of misconduct, including those matters that raise important issues which require clarification.

The OIA's discretion to dismiss or take no further action on complaints provides a mechanism to manage the number of matters that progress through the complaints process.

Fast track for councillors

Councillors are given the opportunity to fast-track matters where allegations are agreed. This means a full investigation is not undertaken. This occurs with many self-referred matters. The OIA includes details of the councillor's assistance and co-operation in its submissions to the Councillor Conduct Tribunal and this is considered by the Tribunal when determining an appropriate order.

When the OIA provides notification of an investigation after assessment, a councillor is generally given the option to fast track.

Seeking early submissions

If a matter is disputed, councillors are encouraged to make a submission on the allegation/s at an early stage. In many cases this can help to expedite or focus an investigation by providing an investigator an early understanding of what a councillor accepts is correct or what is disputed and why. It can also identify information which leads to early dismissal/NFA of an investigation.

Once the investigator has gathered and evaluated the available evidence, the matter is reviewed by a multi-disciplinary panel which includes the Independent Assessor and/or the Deputy Assessor, the OIA investigator and lawyers. If the panel is not reasonably satisfied the councillor has engaged in misconduct, based on the available evidence, the matter will be dismissed or subject to no further action.

Reducing election complaints

Throughout the 2020 council elections, the OIA employed strategies which combined to avoid a traditional spike in complaint numbers. The OIA joined the CCC, the Electoral Commission and the Queensland Integrity Commissioner to ensure the elections were conducted honestly, transparently and fairly.

The OIA sent letters to all complainants in ongoing OIA investigations or disciplinary matters urging them to keep matters confidential until due process had been followed. The Independent Assessor publicly condemned the release of information about ongoing matters. Parties were warned where patterns of escalating and/or tit-for-tat complaints were identified, with letters detailing the potential penalties for vexatious or improper complaints. Following these measures, the OIA did not receive an increase in complaints in the lead up to the elections.

New councillor amnesty

The OIA announced a three-month amnesty on minor matters for new councillors from the date of being sworn in as a councillor. This temporary measure was in recognition of the steep learning curve faced by new councillors. They were given detailed letters, following a complaint, setting out relevant conduct standards. The amnesty was applied in 18 cases involving 18 councillors until 30 June 2020.

Review complaints relating to former councillors

The LG Act specifically states that the councillor conduct system still applies to a former councillor⁶⁶ where the conduct occurred when they were a councillor.

Following the local government elections in March 2020, the OIA reconsidered investigations that related to councillors, who were not re-elected, to assess if those matters remained in the public

⁶⁶ [Local Government Act 2009](#) (Qld), section 150M.

interest. As a result, 57 investigations were dismissed or subject to no further action. The OIA has only one current matter relating to a councillor who recently resigned but there are several matters with the Tribunal relating to former councillors awaiting directions. The OIA has no power to withdraw matters before the Tribunal.

The review criteria considered the seriousness of the complaint, the strength of the evidence, the types of sanctions likely to be imposed if a misconduct allegation was sustained, the former councillor's disciplinary history and whether they were the subject of any other outstanding matters already before the Tribunal or the courts. The OIA also considered the principle of deterrence and whether other councillors would benefit from a Tribunal decision.

Assistance for First Nations councillors

Dealing with complaints regarding First Nations councillors has highlighted issues faced by councillors trying to reliably access the internet and devices, when communicating with the OIA. To help overcome this and to ensure that inappropriate conduct complaints were dealt with efficiently, councillors were given the option to write to or phone the OIA to respond. This strategy significantly improved both the capacity of First Nations Councillors to have their say about inappropriate conduct complaints and reduced the number of matters that required referral.

Diverting systemic capacity issues into a training response

When complaints are received that identify a lack of knowledge or capacity by a significant proportion of councillors, the OIA will 'park' the investigation and propose training as the best way to deal with the issue. If the council agrees to training, and it is delivered, the OIA will reconsider if it is still in the public interest to continue the investigation. Councillors are advised that continued issues will be dealt with as misconduct.

Previously, the OIA would deliver tailored training to the councillors under a function directed by the Minister. Since that function was revoked, training is arranged by agreement with the Local Government Department.

Forty-six complaints or investigations involving seven councils have been dismissed following a training intervention and or are currently parked awaiting a training intervention.

Prevention activities

When the OIA had a broader prevention function, the OIA collaborated with key stakeholders to deliver guides and tools to councillors to help councillors not engage in councillor conduct, to understand how the Tribunal has applied the standards and how the OIA assesses matters. This included:

- LGAQ-OIA social media guidelines to help councillors to manage their online presence. (2019)
- A suite of conflict-of-interest guides produced in collaboration with the Queensland Integrity Commissioner to assist councillors to make decisions in the best interests of their communities. (2019)
- LGAQ-OIA training video for mayors and chairs dealing with unsuitable meeting conduct (2020)
- LGAQ-OIA conflict-of-interest online application. An online tool to help councillors identify and report conflicts of interest under new laws. (2020, updated 2021)
- Example policy and supporting guidance: councillors' interactions with property developers, lobbyists and other submitters to council (2021).

Response to Terms of Reference 2

The OIA's powers are being used in the public interest and in line with the intent of the legislation. The OIA has used its powers judiciously and lawfully. It is significant that the most intrusive of the powers provided to the OIA, such as to execute search warrants, have not been exercised.

The OIA only uses its powers to issue a notice to obtain relevant evidence from the media if a councillor has already been identified as the source in the media story. It is submitted the OIA should be able to obtain evidence of councillor conduct from media agencies where that information or evidence does not involve the identification of a confidential source.

The OIA has used every strategy to work within its resourcing to progress the workload and finalise complaints in the best interests of councillors and complainants, and in the face of a continuing yearly rate of 1,000 complaints. It is value for money when compared to previous systems.

The extra burden of re-prosecuting QCAT reviews is unsustainable. The funding for temporary staff is only until 2022-2023. It is anticipated that the OIA can substantially reduce current investigation and legal backlogs with the continued maintenance of resourcing levels and consideration of law and process reform recommendations identified by the OIA to improve efficiencies. Law reform is a critical part of the OIA being able to achieve the timeliness of investigations and legal matters.

Law and process reform

Terms of Reference 3

Any amendments to the Local Government Act 2009 or changes to the functions, structures or procedures of the Independent Assessor that the committee considers desirable for the more effective operation of the Independent Assessor and/or the local government complaints system.

OIA amendments to the LG Act including,

- Expand unsuitable meeting conduct
- New effective inappropriate conduct scheme
- Redirect lesser misconduct matters into an effective inappropriate conduct scheme
- Change mandatory investigation requirement
- Amend sections 150DX, 150DY and 150DZ to remove requirement to record in council conduct registers, matters that have been dismissed or subject to no further action by the assessor.
- Review of the Code of Conduct for Councillors in Queensland and the LG Act to consider whether the implied right to freedom of political expression might operate as a limitation on legislative power
- Amendments to improve efficacy of investigations, tribunal and review/appeal mechanism
- Request for a regular strategic review of the OIA.

OIA amendments to the Local Government Act 2009

1. Unsuitable Meeting Conduct

Extend the definition to capture informal meetings and workshops

Unsuitable meeting conduct is defined in the LG Act as conduct which happens during a **local government meeting** and contravenes a behavioural standard, that is the Code of Conduct.⁶⁷

Under the LG Act, a 'local government meeting' is limited to formal meetings of the local government (ordinary meetings and committee meetings).⁶⁸ This has meant that conduct which contravenes a behavioural standard, but which occurs in informal meetings or workshops, falls outside the definition of 'unsuitable meeting conduct'. Such conduct must therefore be dealt with as possible 'inappropriate conduct'.

It is recommended that the definition of unsuitable meeting conduct be extended to capture informal local government meetings, such as workshops and briefings, to allow the appointed chair of those meetings to deal with breaches of the behavioural standards in real time.

2. New Inappropriate Conduct Scheme

Making the inappropriate conduct scheme more effective

What legislation currently provides

Inappropriate conduct is a breach of a local government policy, procedure or resolution of the local

⁶⁷ [Local Government Act 2009](#) (Qld), section 150H.

⁶⁸ As above, Schedule 4.

government or a breach of a behavioural standard in the Code of Conduct⁶⁹. Under the current legislative system:

- Complaints are received by the OIA and inquiries undertaken (if this is possible) to determine if the complaint raises a reasonable suspicion of inappropriate conduct.
- If inappropriate conduct is suspected, a s150AA notice is issued to a councillor setting out the complaint/allegation and seeking their response as to why the matter should not be referred back to the local government to deal with. Councillors are generally given one week to respond to the notice, but sometimes engage lawyers and or seek further time.
- If the matter is referred to the local government for an investigation, the local government must investigate the complaint in accordance with their investigation policy⁷⁰ or any recommendation the IA may have made.⁷¹
- The example investigation policy developed by the Department to assist local governments, requires that an investigation of suspected inappropriate conduct be carried out in accordance with natural justice.⁷² As the example investigation policy explains, this means that:
 - the person being investigated has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken (fair hearing)
 - Inappropriate conduct investigations are often outsourced by local governments to either the Councillor Conduct Tribunal⁷³ or an external investigation agency to undertake the investigation independently – particularly if the complaint is against the Mayor or is a councillor-on-councillor complaint.
 - Once the investigation is complete, the councillors - excluding those councillors who have declared a conflict of interest in relation to the matter - must decide whether their fellow councillor has engaged in inappropriate conduct and what, if any, disciplinary action is suitable. This decision must be made in an open meeting of council.

Under the LG Act there is no formal review available from a decision that inappropriate conduct has been engaged in.

Disadvantages of current system

The current system involves double handling and duplication and is not proportionate to dealing with lower-level conduct. It does not promote timely consequence management allowing a councillor to learn and move on. While the current system has shifted the cost of assessing inappropriate conduct from 77 local governments to the OIA, undertaking inappropriate conduct investigations remains costly for local governments.

While some councils have dealt with inappropriate conduct openly, objectively and fairly, many councils have expressed concerns about councillors sitting in judgment of their peers and their reluctance to substantiate a conduct allegation against another councillor. Alliances are cause for concern as councillors who belong to a team or voting block appear less likely to be found to have engaged in inappropriate conduct than someone who is on the political outer. Issues have also been

⁶⁹ [Local Government Act 2009](#) (Qld), section 150K.

⁷⁰ [Local Government Act 2009](#) (Qld). Section 150AE provides that a local government must adopt, by resolution, an investigation policy about how it deals with the suspected inappropriate conduct of councillors referred, by the assessor, to the local government to be dealt with.

⁷¹ [Local Government Act 2009](#) (Qld). Under section 150AC(3), when referring suspected inappropriate conduct to the local government to deal with, the IA may make a recommendation about how the local government may investigate or deal with the conduct.

⁷² The example investigation policy is available at www.statedevelopment.qld.gov.au/local-government/councillor-information/councillor-complaints-framework/local-government-investigation-policy.

⁷³ The Tribunal also has jurisdiction to undertake inappropriate conduct investigations and to make recommendations to local governments. The Tribunal has itself been outsourcing these investigations to external investigation providers and recovering the costs of doing so from the local government.

identified surrounding compliance with a council's investigation policy, including the requirement for natural justice.

Complainants in the community have expressed concern about the current process for determining whether a councillor has engaged in inappropriate conduct. It is not unusual for complaints to be withdrawn if they are referred back to local government to deal with. In at least one council no action has been taken on an inappropriate conduct matter referred back to it.

Where it is possible for conduct to be categorised as either inappropriate conduct or misconduct the issues with the inappropriate conduct scheme mean that they are more likely to be dealt with as misconduct particularly if a councillor has substantiated disciplinary history for like matters; or if the matter raises legal issues which would be beyond the inappropriate conduct scheme to address, and from which there is no formal review.

There is no consistency with how inappropriate conduct is dealt with from council to council. Dealing with inappropriate conduct can raise issues in relation to conflicts of interest, quorum, delegations and or ministerial interventions.

While the OIA has implemented strategies to attempt to mitigate the above issues and some improvements have been observed in the last performance year; a broader law reform approach is recommended.

Proposal

The OIA recommends legislative amendment to create a central inappropriate conduct scheme that removes duplication, improves consistency, is proportionate and delivers cost savings.

It is proposed that:

- Consideration be given to the OIA investigating suspected inappropriate conduct (where an investigation is required).
- That investigations and decisions be undertaken quickly and, in a manner, proportionate to dealing with lower-level conduct.
- section 150AA be amended so that a councillor be afforded an opportunity to respond to an inappropriate conduct complaint in accordance with natural justice, when a matter is ready to be referred to a panel for decision, rather than have two natural justice processes.
- costs are recovered from local governments to deliver the scheme in a manner similar to section 150DU of the LG Act.
- Consideration be given as to what central body would be best to decide inappropriate conduct matters.
- potential inappropriate conduct orders be amended to include other capacity building or behaviour modification options such as formal mentoring. Such options could have a significant positive impact in managing inappropriate conduct of inexperienced councillors.

How the proposal would be more effective, efficient and reduce costs

Dealing more effectively with inappropriate conduct would also continue to build an integrity culture in local government, that would inhibit conduct escalating to misconduct or corrupt conduct. Lower-level conduct, such as inappropriate conduct, should be dealt with fairly, in a timely manner and consistently across all local governments regardless of their size or the political or relationship dynamics within particular councils.

The proposal would simplify the approach, remove duplication, make it more efficient and reduce

costs. Figures cited in the Solomon Review found it was possible for a council to incur a \$30-50,000 bill for one external investigation. In response to inquiries sent out to all councils that had dealt with inappropriate conduct matters referred by the OIA our best indication was that external investigations were costing council between \$600 and more than \$9,000 per matter.

In 2020-21, the average cost of a more serious misconduct investigation by the OIA was significantly lower at \$2,704.

This cost recovery model is familiar to local government and is already in use where inappropriate conduct investigations are referred to the Councillor Conduct Tribunal pursuant to section 150DU of the LG Act.

3. Redirecting some misconduct matters into an effective Inappropriate Conduct Scheme

What the legislation currently provides

If a complaint comes within the definition of misconduct in section 150L, rather than the definition of inappropriate conduct in section 150K, the Independent Assessor has an obligation to either deal with the matter as misconduct and refer the matter to the Tribunal or dismiss or take no further action on the matter (usually on the basis that taking further action is not a justifiable use of resources). This tends to create an all or nothing outcome.

This is because if a matter referred to local government indicates that a councillor may have engaged in misconduct the local government must immediately stop dealing with the matter and refer it back to the OIA to deal with.⁷⁴

This was the issue encountered in the widely reported matter involving a former Scenic Rim councillor which involved a councillor breaching the council's acceptable requests guidelines. Amendments to the LG Act in 2018 added a breach of a council's acceptable request guidelines to the definition of misconduct (See section 150L(1)(c)(ii)). Acceptable requests guidelines are guidelines about the way in which a councillor may ask a local government employee for assistance or information to help the councillor carry out his or her responsibilities under the LG Act and places reasonable limits on requests that a councillor may make.⁷⁵

Pursuant to section 170A (7) of the LG Act, councils are required to adopt, by resolution, acceptable request guidelines. There is no model acceptable requests guideline produced by the Department, so consequently the contents of these guidelines differ from council to council.

Breaches of a council's acceptable requests guidelines are a category of misconduct that the OIA finds problematical.

It is considered that a breach of the acceptable request guidelines should not be a category of misconduct, but rather potential inappropriate conduct. By contrast, the more serious conduct of giving directions to local government employees, contrary to Section 170, should remain as misconduct.

Disadvantages of the current system

In the OIA's experience complaints sometimes raise misconduct breaches that are more technical in nature, are less serious (but would benefit from a timely training or counselling intervention) and

⁷⁴ [Local Government Act 2009](#) (Qld) section 150AF(4).

⁷⁵ As above, section 170A(7).

or arise in the context of a new or inexperienced councillor learning the ropes. The current inflexibility puts greater strain on the misconduct framework where work volumes are greatest.

Proposal

The OIA recommends legislative amendment to allow greater flexibility for lower-level conduct to be dealt with as inappropriate conduct and to amend the definition of misconduct.

It is proposed that the LG Act be amended to confer on the Independent Assessor a statutory discretion to refer allegations of lower-level misconduct to be dealt with as inappropriate conduct, in appropriate circumstances. Possible considerations for the exercise of such a discretion, which could be legislated, may be:

- The nature and seriousness of the allegation of misconduct
- The councillor's experience
- The councillor's previous disciplinary history, if applicable
- If the matter may be more effectively dealt with as inappropriate conduct having regard to all of the circumstances of the matter.
- It is proposed that the definition of misconduct in section 150L be amended to remove section 150L(c)(ii), which deals with breaches of the acceptable requests' guidelines of the local government under section 170A or the City of Brisbane Act 2010.

The proposed amendments would reduce the number of matters which are required to be investigated by the OIA as potential misconduct, allowing the OIA to focus its investigative resources on more serious conduct. The amendments would also reduce the workload of the OIA's legal resources as it would reduce the number of matters referred to the legal team. These changes would also reduce the pressure on the Tribunal's resources.

4. Discretion not to deal with certain complaints

Section 150T of the LG Act provides that the IA **must** investigate the conduct of a councillor if a complaint or notice about the conduct of a councillor is made to, or referred to, the OIA.

The effect of section 150T being expressed in mandatory terms is that even if a complaint or notice falls outside the OIA's jurisdiction, there are certain formal requirements which the IA must comply with under the Act before the IA can stop dealing with the matter.

Currently, where such a complaint is received, the Act requires the IA to make a decision about the conduct under section 150W, that is, either to dismiss the complaint or take no further action in relation to the conduct; to inform the councillor, local government and complainant, if applicable; and for the local government to publish the decisions in the local government's councillor conduct register pursuant to section 150DX.

It is recommended that section 150T be amended to reflect that an initial assessment is undertaken to determine whether an investigation of the matter is appropriate and to provide the IA with the discretion to deal with complaints that are out of jurisdiction as enquiries only. This amendment would increase the OIA's efficiency and have a positive flow-on effects for local governments.

Correspondence could be sent to the complainant only explaining why the matter is out of jurisdiction. Should a complainant be dissatisfied with this outcome, they would have the option to raise the matter with the Queensland Ombudsman.

5. Amend sections 150DX, 150DY and 150DZ to remove requirement to record in council conduct registers matters that have been dismissed or subject to no further action by the assessor.

At present councils are required to record in the councillor conduct registers the following details of decisions to dismiss or take no further action on a councillor conduct complaint:

- The date of decision/date the complaint was made
- A summary of the complaint
- A summary of the decision and the reasons for the decision⁷⁶.

Where matters are dismissed or subject to no further action a councillor is not identified unless they consent to being identified.

Councils rely on correspondence that the OIA sends to the CEO in relation to each matter to update the councillor conduct register. To support a consistent approach, accuracy and that matters are de-identified as much as possible the OIA provides CEOs with recommended entries. It is up to each council whether they use this recommended entry.

While sustained councillor conduct matters should be transparently recorded in councillor conduct registers the OIA is of the view that matters that are dismissed or the subject of no further action should not be publicly recorded. It is noted that total numbers of matters that are dismissed or subject to no further action are reported in the OIA's annual report. Removing this requirement would create significant efficiencies for both the OIA and councils.

6. Inappropriate Conduct, Misconduct and the Implied right to freedom of political expression

Review of the Code of Conduct for Councillors in Queensland and the LG Act to consider whether the implied right to freedom of political expression might operate as a limitation on legislative power

Prior to 2018 there was no Code of Conduct for Councillors in Queensland. The Solomon Review recommended the introduction of a uniform, mandatory code of conduct for councillors in Queensland noting that, "Codes of Conduct are increasingly being used to set standards of ethical behaviour for public and governmental organisations. Such codes have been adopted in Queensland for example, by the parliament, the cabinet and the public service."⁷⁷

Following the 2018 amendments to the LG Act, and pursuant to section 150D of the Act, the Minister for Local Government must make a code of conduct stating the standards of behaviour for councillors in the performance of their responsibilities as Councillors. In addition, the code of conduct may contain anything the Minister considers necessary for, or incidental to, the standards of behaviour. All councillors are required to make a declaration of office under the LG Act to abide by the Code.

All three behavioural standards are expressed in broad terms. Behavioural Standard 2 requires councillors to, **"Treat people in a reasonable, just, RESPECTFUL and non-discriminatory way."**⁷⁸

⁷⁶ [Local Government Act 2009](#) (Qld) sections 150DY(2) and 150DZ (1).

⁷⁷ Solomon, D., Playford, N. & Kellar, G. (2017). [Councillor Complaints Review: A fair, effective and efficient framework](#) (pp.12-13, p. 42).

⁷⁸ Code of Conduct for Councillors in Queensland Approved on 4 August 2020 (p.7).

The code offers the following examples of what this behavioural standard, “as a minimum” means:

- 2.1 Treat fellow councillors, council employees and members of the public with courtesy, honesty and fairness
- 2.2 Not use abusive, obscene or threatening language (either oral or written) or behaviour towards other councillors, council employees or members of the public
- 2.3 have proper regard for other people’s rights, obligations, cultural differences, safety, health and welfare.”⁷⁹

The LG Act also sets out the responsibilities of a councillor and principles for how councillors will undertake these responsibilities.

Under the LG Act, councillors must perform their responsibilities in accordance with the local government principles and must ensure that any action taken in fulfilment of their responsibilities, is taken in a way that is consistent with the local government principle and provides results consistent with those principles.

The local government principles are set out in section 4 of the LG Act and include:

- democratic representation, social inclusion and meaningful community engagement⁸⁰; and
- ethical and legal behaviour of councillors, local government employees and councillor⁸¹ advisors.

Section 12 of the LG Act sets out the responsibilities of councillors, which includes the responsibility to provide high quality leadership to the local government and the community⁸², to represent the current and future interests of the residents of the local government area⁸³ and when performing a responsibility to serve the overall public interest of the whole local government area⁸⁴.

Conduct which is inconsistent with the local government principles or the responsibilities of councillors under the LG Act, is potential misconduct if the conduct is sufficiently serious to amount to a breach of the trust.

How the implied right of freedom of political expression may operate as a limitation on legislative power, namely the LG Act and the Code of Conduct, should be considered as part of this review.

Namely whether the burden imposed on councillors by the Code of Conduct and the local government is for a legitimate purpose consistent with the system of representative and responsible government mandated by the constitution and, if so, whether the law is reasonably appropriate and adapted to the achievement of that objective⁸⁵.

It is recommended that this review also consider the codes of conduct that apply to elected representatives in other jurisdictions or at different levels of government.

It is further noted that council media policies, which are passed by a resolution of the local government, operate to limit, and in some cases prevent, councillors from making public statements in relation to local government issues. A breach of a council’s media policy is also potential

⁷⁹ As above.

⁸⁰ As above, section 4(2)(c).

⁸¹ As above, section 4 (2)(e).

⁸² As above, section 12(3)(b).

⁸³ As above, section 12(1).

⁸⁴ As above, section 12(6).

⁸⁵ The test applied by the HC in such matters see [Comcare v Banerji \[2019\] HCA 23 - BarNet Jade - BarNet Jade](#) at paragraphs 29-42.

inappropriate conduct.

7. Improve efficiency of investigations

Amend the LG Act to allow the OIA to use material in its possession and obtained under notice for other investigations to which the same material relates.

What legislation currently provides

In the course of undertaking misconduct investigations, the OIA uses statutory notices served on a witness, department or organisation, to require the recipient to produce information or answer questions relevant to the investigation of that matter.⁸⁶ When a statutory notice is used to obtain information, the notice must require information necessary for the investigation of a particular matter. This has the effect of limiting the use of the information obtained under that notice, to that investigation alone.

Disadvantages of current system

Since establishment, the OIA has encountered numerous occasions where information obtained under a notice is relevant to a number of separate investigations. This particularly applies where the OIA serves notices on the Department seeking records of training undertaken by a councillor or the previous disciplinary history of a councillor. The OIA currently has to issue further notices to obtain the same information for the new purpose. This causes a significant duplication of effort both for the OIA and for the recipients of notices who are required to provide the same information or evidence on multiple occasions for different investigations.

How the proposal would be more effective or efficient

Section 60 of the CC Act addresses the same issues that arises in the CCC context by relevantly providing:

60 Use and disclosure of information, document or thing

(1) The commission may use any information, document or thing in the commission's possession in performing the commission's functions...

The insertion of a provision into the LG Act, similar to section 60 of the CC Act, would remove the need for duplicate notices to be issued which require the recipient to produce information or evidence which is already in the OIA's possession.

In some situations, it will also remove the need for new affidavits/statutory declarations to be drafted and executed to produce the same material before the Tribunal. This would make more efficient use of the OIA's resources and also reduce the impost on the entities those notices are issued to.

8. Remove the requirement in section 150AK for the IA to provide to a subject councillor the details of the day, time and date of a Councillor Conduct Tribunal hearing at least seven days prior to a hearing and insert a provision that requires the Tribunal provide that information to both parties.

⁸⁶ Statutory power to require information or attendance for questioning is provided by sections 150CH and 150CJ of the [Local Government Act 2009](#) (Qld), respectively.

What legislation currently provides

Where there is a reasonable satisfaction that a councillor has engaged in misconduct, the IA may apply to the Tribunal to decide the matter. Pursuant to section 150AK of the LG Act, a copy of the application to the Tribunal must be provided to the subject councillor that has written on it the day, time and place of the Tribunal hearing which must be provided at least seven days prior to the hearing.

Disadvantages of current system

At the time of making application to the Tribunal, the IA is not aware of the day, time and place of the hearing. It is the Tribunal which is responsible for identifying and notifying the parties of the day, time and place that they will undertake a hearing. Due to the number of matters which have been referred to the Tribunal, there is often a significant delay between the filing of the Tribunal application and the parties receiving directions and/or advice of a hearing.

The Tribunal's current approach is to issue directions following the receipt of an application that do not include a hearing date, but rather stating that the hearing will be conducted on, "A date to be fixed".

The OIA's practice is therefore to provide subject councillors with a copy of the application to the Tribunal at the time of, or shortly after, the Tribunal application is made. The application is sent without the day, time and place of hearing inserted. However, once the hearing details are advised by the Tribunal, the OIA's practice is to provide the subject councillor with a second copy of the same application that includes the day, time and place written on it (which has already been communicated by the Tribunal to both parties) in order to comply with the legislation. This is a duplication of process.

How the proposal would be more effective or efficient

This proposal would remove duplication and inefficiency in managing referrals to the Councillor Conduct Tribunal.

9. Amend the LG Act to allow the IA to withdraw matters referred to the Councillor Conduct Tribunal, where there is a change in the circumstances that is relevant to the public interest in progressing the matter.

What legislation currently provides

The LG Act is currently silent on whether the IA can withdraw a matter previously referred.

In the lead up to the 2020 local government election the IA sought to withdraw two matters previously referred (in circumstances where both councillors had not nominated for the 2020 local government election and the misconduct alleged in both cases was not serious misconduct). The IA relied on section 24AA of the Acts Interpretation Act 1956.) The Tribunal took the view that, as a matter of statutory interpretation, the IA could not withdraw a matter once referred.

To obtain clarification on this point the IA reviewed the decision by the Tribunal to proceed to determine whether misconduct had been engaged in by a former Scenic Rim councillor. In the Supreme Court decision of *Independent Assessor v Councillor Conduct Tribunal & Anor* [2020] QSC 316 it was held that as a matter of statutory interpretation the IA did not have power to revoke or rescind a referral to the Tribunal once made.

Disadvantages of current system

It is inevitable that there will, from time to time, arise a change of circumstance which impacts on the public interest in proceeding with a matter before the Tribunal. Examples might include a councillor being diagnosed with a serious illness, the councillor being convicted of a disqualifying criminal offence, or a councillor retiring from local government, in certain circumstances.

The LG Act expressly anticipates that misconduct proceedings can be undertaken in relation to former councillors, and it is considered that this is appropriate particularly where more serious misconduct is alleged, or a matter raises a question which may provide clarity on an issue that would benefit all councillors.

For lower-level misconduct however the sanctions that may ordinarily apply such as training or counselling become obsolete and there are questions around the enforceability of disciplinary orders made against former councillors generally.

Continuing with such matters is not the best use of the finite resources of the OIA and the Tribunal and does not contribute to building the capacity of the current cohort of councillors.

How the proposal would be more effective or efficient

If the OIA were able to withdraw Tribunal applications where there was a change of circumstance impacting on the public interest in proceeding – this would streamline current processes, improving the efficiency and cost of the councillor complaints system.

The effective use of resources is vital as a high volume of councillor conduct complaints is currently causing delays in the prosecution and finalisation of matters.

10. Amend section 150AS(2) of the LG Act to require publication of Councillor Conduct Tribunal decisions in full

What legislation currently provides

When the Tribunal decides about whether a councillor has engaged in misconduct, it is required to keep a written record of the reasons for those decisions, to provide a copy of the full decision to the IA, the local government, the complainant (if applicable) and the subject councillor and provide a summary of the decision to the department's chief executive for publication.

Disadvantages of current system

For every decision, the Tribunal is required to produce two documents: a full decision and a summary of the full decision. The summaries which are published on the Department's website have varied from being 1-2 paragraphs in length to fulsome reasons for a decision.

Having visibility of Tribunal decisions **and the reasons for them** is a key element in building the capacity of councillors to identify and avoid misconduct risks and to achieve general deterrence. Understanding the reasons for a Tribunal decision allows councillors to see how standards are being applied and enforced in different circumstances – and to apply this reasoning to their own circumstances.

In accordance with Tribunal directions the IA and subject councillors file submissions on fact and law with the Tribunal in relation to all matters. Many matters are decided on the papers after receiving these submissions. In writing submissions, the IA often relies on reasoning of the Tribunal in previous like matters, to promote consistency in decision-making. This however places the subject councillor

at a disadvantage because they have access to the summaries only which often omit material relied on by the IA. While the OIA provides a copy of any such decision relied on to the councillor, subject councillors cannot likewise proactively consider and reference previous full decisions.

How the proposal would be fairer and more efficient

The proposal would remove the need for the Tribunal to produce two documents for each decision, would assist councillors to build their capacity and contribute to prevention, and would provide councillors appearing before the Tribunal with equal access to the information necessary for them to actively engage in the Tribunal process.

11. Amend the LG Act to remove the right of review from a misconduct finding and replace it with a right of appeal on a point of law.

What legislation currently provides

The LG Act, in combination with the QCAT Act, currently provides for a full-merits review of a decision of the Councillor Conduct Tribunal, with the Tribunal as the required respondent and the option of the IA being joined as a co-respondent. In practice however, the IA is a necessary party to review proceedings as it is the IA, not the Tribunal, which is the active contradictor in review proceedings brought by a councillor.

This is so having regard to the IA's functions; that QCAT on review stands in the shoes of the Tribunal to arrive at the correct and preferable decision; and that QCAT must decide the review in accordance with the QCAT Act and the LG Act under which the Tribunal decision was made.

Either the applicant or the respondents may produce new evidence as part of the review process.

Disadvantages of current system

Until December 2020, a QCAT review had been instigated by only one councillor. Since December 2020 another eight councillors have reviewed to QCAT. The IA has applied to review one Tribunal decision. The increasing numbers of councillors applying to QCAT for review is likely a result of increased awareness of the review option. The fact that a councillors' legal costs may be covered by professional indemnity insurance may also operate to incentivise use of the review process.

In most cases it has been accepted that the OIA is the party that has responsibility for re-prosecuting the matter before QCAT although some QCAT members are of the view that the Tribunal should be that party. This is the subject of ongoing submissions before QCAT.

In effect, it means that the OIA prosecutes a matter before a panel of three Tribunal members, a specialist Tribunal established to consider Councillor Conduct matters only. If the matter is reviewed to QCAT, then the OIA re-prosecutes the matter before a single non-judicial QCAT member with the review potentially encompassing allegations that were substantiated and allegations that were not substantiated before the Tribunal.

The review process has become a significant resource implication for the OIA and the Tribunal which is redirecting limited legal resources away from the timely referral of matters to the Tribunal and being able to meet submission deadlines to progress the matters before the Tribunal, exacerbating current delays.

How the proposal may be more effective or efficient

The proposal to substitute a review power with an appeal on a point of law or jurisdictional error would reduce the resource burden on the OIA and the Councillor Conduct Tribunal and therefore reduce some of the impact on backlogs before the Tribunal.

It is proposed that instead of having a right of review to QCAT, the councillor or the IA would have the right of appeal to the District or Supreme Court. An appeal rather than a review provision may result in more authoritative, consistent decision-making on what can be a complex legal area, making councillors' obligations clearer and contributing to consistency in decision-making.

There is a risk under the current system for inconsistency in decision-making and for uncertainty about the Tribunal's decisions whilst decisions are subject to the QCAT review process. There are also significant ongoing demands on QCAT's resources. The first matter reviewed to QCAT in April 2020 is yet to be heard.

Of note, this proposal is consistent with the Solomon Review Recommendation 10.5 which was that: *the provisions of the LG Act limiting appeals be amended to permit appeals to the district court from decisions of the proposed tribunal on misconduct matters on questions of law only and for jurisdictional error.*⁸⁷

12. Insertion of a provision which makes it clear that a former councillor is required to comply with the Councillor Conduct Tribunal's orders

Under section 150M, a complaint against a former councillor can be dealt with provided that the person was a councillor when the conduct was alleged to have happened. However, an issue of enforceability of the Tribunal's orders can arise in relation to former councillors.

Under the LG Act, a councillor may engage in misconduct where they fail to comply with an order of the Tribunal (or the local government as the case may be). This is because the definition of misconduct in section 150L includes a limb relating to non-compliance with orders of the of the local government or the Tribunal. Under section 150L(2)(c)(i), the conduct of a councillor is misconduct if the conduct contravenes an order of the local government or the Tribunal.

Given that the person must be a councillor when they engaged in the conduct, the definition of misconduct does not apply to persons who are former councillors and who fail to comply with orders of the Tribunal or local government.

This means that if the Tribunal makes an order against a person who is no longer a councillor (for conduct engaged in when they were a councillor) and the person disregards the Tribunal's orders, the OIA has no jurisdiction to take action against the former councillor.

13. Amend the LG Act to require regular strategic review of OIA

What legislation currently provides

Unlike other statutory bodies or authorities there is no provision in the LG Act for regular strategic reviews of the OIA's functions.

⁸⁷ Solomon, D., Playford, N. & Kellar, G., (2017). [Councillor Complaints Review: A fair, effective and efficient framework](#)

Proposal

That provisions be inserted into the Act to provide regular, transparent review of the role and functions of the Independent Assessor and provide a regular opportunity to revisit whether the councillor conduct system is achieving its policy intent and to consider law reform proposals that may address issues identified.

See for example sections 86-88 of the Integrity Act 2009.

Response to Terms of Reference 3

This inquiry provides a timely opportunity to analyse what is working well in the legislation and what can be improved. Given the OIA's detailed experience in working with the legislative system over three years, 13 recommendations are made to further improve on the system.

The consideration of law reform recommendations and continued maintenance of resourcing levels are imperative for the OIA to improve efficiencies. It is critical part of the OIA being able to achieve the timeliness of investigations and legal matters.

Protections or confidentiality considerations

The Committee requested information on any protections or confidentiality considerations under the LG Act that established the Office of the Independent Assessor, that might apply to individuals who are the subject of investigation by the OIA, or who may be the subject of a complaint. The request related to protections other than those provided by parliamentary privilege and Standing Rules and Orders of the legislative Assembly.

There are a number of provisions in the LG Act and the Public Interest Disclosure Act 2010 that require the OIA to conduct investigations confidentially and which protect the identity of councillors and complainants in certain circumstances. These provisions are set out in **Appendix 5**.

The Committee however has broad powers to receive evidence and require questions to be answered and the Independent Assessor is committed to fully assisting the Committee to undertake its inquiry.

The Standing Orders contained in Schedule 3 rules of procedure which govern the inquiry are complimentary to the confidentiality protections in the LG Act. If the Committee has reason to believe that evidence about to be given may reflect adversely on a person, or if the witness requests, the Committee must consider whether the evidence should be given in a private hearing: Schedule 3, (k), Standing Orders.

It is anticipated that where the inquiry raises matters about the conduct of the Assessor's investigations which the Assessor is required to keep confidential under the LG Act the Assessor will endeavour to provide responsive answers in each case which preserves that confidentiality if that is practicable in the circumstances.

However, the obligation under the LG Act to maintain the confidentiality of investigations, and the other protections given to councillors, complainants, and public interest disclosers, might make it appropriate for the Committee to consider, at the appropriate time, whether to receive some evidence in camera in accordance with the Standing Rules. That, however, is a matter for the Committee.

Matters raised in the media

Implied right to freedom of political expression

In recent weeks both the LGAQ and the Barcaldine Mayor Sean Dillon have raised the implied right to freedom of political expression as a response to a complaint received by the OIA relating to potential inappropriate conduct or misconduct.

In Australia – unlike other jurisdictions – we do not have an express right to, or freedom of, political expression. Through various decisions, the High Court has held however that an implied freedom of political communication exists as part of the system of representative government established by the Constitution.

As the High Court has made clear, in various cases, the implied freedom of political communication is not a personal right of free speech. It is a restriction on legislative power and, as such, extends only so far as is necessary to preserve and protect the system of representative and responsible government mandated by the Constitution⁸⁸ (emphasis added).

*Comcare v Banerji*⁸⁹ is a High Court case which held that the implied right to freedom of political expression did not operate to limit Public Service Act, and the Australian Public Service Code of Conduct on the facts of that matter.

The issue in the councillor conduct context is to what extent the implied right of political expression may operate as a restriction on the legislative power in the LG Act and the Councillor Code of Conduct.

To date, the Councillor Conduct Tribunal, which was established to independently determine whether councillors have engaged in misconduct, has not decided a matter which has turned on the implied right to freedom of political expression.

The OIA has made a recommendation to review the terms of behavioural standard two and sections 4 and 12 of the LG Act in this context to consider to what extent the implied right to freedom of political expression may operate as a limitation on the LG Act and the Code of Conduct. This has been addressed in the OIA's response to terms of reference 3. **See law and process reform recommendation 6. Review of the Code of Conduct for Councillors in Queensland and the LG Act to consider whether the implied right to freedom of political expression might operate as a limitation on legislative power**

Councillors releasing the existence of complaints or investigations to the media

Publicly litigating unresolved complaints is inconsistent with the legislative process for dealing with councillor conduct matters, which if not dismissed by the OIA, are for the Councillor Conduct Tribunal to decide, if potential misconduct, or the relevant council to decide, if potential inappropriate conduct.

It is also unfair to both councillors and complainants, especially if all facts and circumstances are not acknowledged or known.

The receipt of a complaint or commencing an investigation about a councillor is not proof of wrongdoing. The OIA is required to deal with complaints it receives. An investigation is an opportunity

⁸⁸ *David Russell Lange v Australian Broadcasting Corporation* [1997] HCA 25, at paragraphs 53-54:

⁸⁹ *Comcare v Banerji* [201] HCA 23, at paragraphs 29-42:

to examine allegations, circumstances and legal points in more detail. No assumption can be made about the outcome of a complaint or an investigation.

Social media and blocking of constituents from a councillor's official page

The Code of Conduct and other legislated standards may apply to how a councillor engages on social media.

While social media provides significant opportunities for councillors to communicate with their constituents it can also be a challenging environment for councillors to navigate.

To assist councillors to manage their social media presence the OIA worked with the LGAQ to produce guidelines which clarified for councillors how the Code of Conduct may apply to councillors on social media. The guidelines strike a balance between ensuring councillors use of social media is appropriate and open to positive, negative, or neutral electorate feedback, while supporting councillors to protect themselves against unacceptable online behaviour.

Councillors were encouraged to use the LGAQ-OIA recommended impressum or rules on their official councillor social media page as follows:

This page is moderated in a way which recognises that everyone has a right to comment and engage with the content, in a way which may be positive, neutral or negative.

However, comments or posts which do the following will be removed and repeated contravention of these rules, will result in the person being blocked from the page:

- *Posts that harass, abuse or threaten a councillor, council staff or a member of the public*
- *Posts that attack someone based on their age, gender, impairment, political beliefs, race, religion or sexuality*
- *Posts that contain obscene or offensive language*
- *Posts that constitute spam or solicit business*

Comments that negatively impact the experience of other community members on this page may also be removed and those posting such comments will receive a warning. If members of the public continue to post such comments after receiving two warnings, they may be blocked from the page.

The LGAQ and the OIA encouraged councillors to take screenshots of posts that breach the guidelines before a person is blocked from a site so that should a complaint arise this can be dealt with quickly. The OIA-LGAQ social media guidelines received ministerial support in a media release, dated 14 April 2019.

When the OIA receives a complaint of this nature, a notice is provided to the councillor of the complaint (as required by section 150AA) requesting that they provide the screenshots or other information about why the member of the public has been blocked. After receiving this information, the matter will either be dismissed or referred to local government to determine whether the councillor has engaged in inappropriate conduct.

See LGAQ media release on the guidelines [here](#). See **Appendix 3** for the Queensland Councillor Social media Community Guideline and the Your Social media and You guide published in April 2019.

Councillor matters in media

The OIA has a policy not to comment on councillor conduct matters which are currently before the OIA due to its obligation to undertake investigations confidentially. However, several completed matters decided by the Councillor Conduct Tribunal have been referred to in the media. In those cases, the OIA can provide the following facts.

Misconduct matters decided by the Councillor Conduct Tribunal

Rockhampton former Mayor

The OIA can brief the committee in-camera on further details that are not part of the public record.

1. On 19 January 2018, the Local Government Department received a complaint. It alleged that a councillor failed to update their publicly available register of interests to record hospitality received from Adani Enterprises on 18 March 2017, during a trade mission to India.
2. On 8 June 2018, the Department wrote to the Council's CEO requesting that the councillor update their register of interests to include the hospitality from Adani.
3. The councillor declined the request as they did not believe, based on legal advice, that they needed to record Adani hospitality on their register of interests.
4. On 5 July 2018, the councillor provided a statutory declaration that their publicly available register of interests was true and correct and did not need to be amended.
5. The matter was transferred from the Department and the CCC to the OIA on 17 December 2018, (i.e., two weeks after the OIA commenced).
6. On 7 May 2019, the OIA wrote to the Council's CEO explaining why it was considered that the hospitality should be on the councillor's register of interests and providing the councillor with a second opportunity to update their register of interests.
7. On 5 June 2019, the councillor provided a statutory declaration that their publicly available register of interests was a true record of fact but did not include the Adani hospitality.
8. Under section 171B of the Act (that applied at the time) a failure to provide or update a register of interest was an offence.
9. However, the OIA assessed it as alleged misconduct only (an alleged breach of trust).
10. On 22 November 2019, the IA referred the matter to the independent Councillor Conduct Tribunal to decide whether the councillor had engaged in misconduct.
11. On 2 July 2020, the Tribunal found that the councillor had failed to correct their publicly available register of interests. The councillor was ordered to make a public apology, update their register of interests within 21 days and undertake training at their own expense.
12. The councillor is reviewing the Tribunal's decision to QCAT.

Moreton Bay former Councillor

The OIA can brief the committee in-camera on further details that are not part of the public record.

1. On 27 May 2019, the councillor referred their own conduct to the OIA.
2. The councillor stated that they had not disclosed the employment/income of their spouse on their register of interests.
3. Under the LG Act a councillor, or related party, is required to declare any income greater than \$500 per year.
4. Under section 171B of the Act (that applied at the time) a failure to provide or update a register of interest of a councillor or a related party was an offence.
5. The OIA determined to deal with it as misconduct only (as an alleged breach of trust).
6. On December 14, 2019, the Councillor Conduct Tribunal found the councillor engaged in misconduct when they failed to declare their spouse's employment on their register of interests

and ordered that the councillor be counselled by the council CEO on register of interest requirements.

Townsville City former Councillor

1. On 6 June 2019, the OIA received a notification from the Townsville City Council (TCC) after a councillor told the media that council had funded the upgrade of a footpath.
2. That information was part of preliminary budget information and council had not passed any resolution approving the works.
3. Release of information which is confidential to council is a category of misconduct.
4. On 10 February 2020 the OIA referred the matter to the Councillor Conduct Tribunal.
5. On 13 July 2021 the Tribunal sustained the allegation and ordered that the councillor make a public admission and pay the council \$250.

Gympie Regional Councillor

1. On 17 September 2019, the OIA received a complaint from the Gympie Regional Council.
2. During a confidential 'in-committee session' council considered supporting Gympie to host a campervan rally. It was held in-committee because the bidding to host the event was a competitive process and the outcome was to be announced at a future date. Information discussed in the meeting was confidential to the council.
3. After the meeting, the councillor posted information on their Facebook page about the outcome of council's considerations.
4. Release of information which is confidential to council is a category of misconduct.
5. On 28 January 2020, the OIA referred the matter to the Councillor Conduct Tribunal.
6. On 1 December 2020, the Tribunal ordered that the councillor attend training and pay the Council \$700 noting the councillor had previous disciplinary history for a like matter.

Gold Coast City Councillor

1. On 13 February 2019, the OIA received a complaint that a councillor had asked a businessman for he and his partner to be placed on the guest list for a concert which would mean that their attendance was free of charge. The businessman said they complied with the request because of the councillor's position and potential ability to influence council decisions that may impact their business.
2. The OIA investigated the complaint as a potential breach of trust and referred the matter to the Tribunal on 20 September 2019.
3. On 24 September 2020, the Tribunal sustained the allegation and ordered the councillor to make a public admission of misconduct and pay the council \$250 within 90 days.

Scenic Rim former Councillor

1. On 9 April 2019, the OIA received a complaint from the Scenic Rim Regional Council.
2. On 9 May 2019 the OIA referred the matter back to local government as potential inappropriate conduct.
3. During the subsequent investigation of the matter a breach of that council's acceptable request guidelines was identified, which is a category of misconduct, and the matter was referred to back to the OIA on 11 September 2019.
4. On 22 January 2020, the IA referred the matter to the Councillor Conduct Tribunal.
5. In February 2020 the councillor did not nominate for the council elections and ceased being a councillor in March 2020.
6. On 10 March 2020, the IA sought to withdraw the matter as the councillor was retiring and it involved lower-level conduct, and it was no longer in the public interest to continue to deal with

the matter.

7. On 20 March 2020, the Councillor Conduct Tribunal President determined that once referred the Tribunal it must deal with the matter. The IA reviewed this decision to seek clarification.
8. In October 2020, the decision review found that the IA could not withdraw an application once it was referred to the Tribunal. ***See law and process reform recommendation 9. Amend the LG Act to allow the IA to withdraw matters referred to the Councillor Conduct Tribunal, where there is a change in the circumstances that is relevant to the public interest in progressing the matter.***
9. On 26 May 2021 the Tribunal found that the (former) councillor engaged in misconduct by breaching the acceptable request guidelines and reprimanded the former councillor.

Dealing with inappropriate conduct complaints

Bundaberg Regional Councillor

1. On 27 November 2019 the OIA received a complaint about a Bundaberg Regional Councillor
2. The complaint alleged the councillor was using council resources to moderate his Facebook page and website, as well as creating media releases to raise his profile before the upcoming election.
3. Some enquiries were made and the complaint was dismissed on assessment (i.e., it did not proceed to an investigation).
4. On 18 December 2019, correspondence was sent to all parties, advising that the complaint was dismissed (as the allegation/s did not constitute inappropriate conduct or misconduct).

Gold Coast City Councillor

5. On 4 December 2018 the OIA received a complaint from a member of the public about comments made by the councillor about environmental protesters in a Channel 7 interview.
6. On 20 December 2018, the matter was referred to the Gold Coast City Council (GCCC) for investigation and determination as possible inappropriate conduct.
7. On 21 June 2019 the GCCC advised the OIA that the allegation had been dismissed as the conduct did “not meet the standard of inappropriate conduct”.

Gladstone Regional Councillor

1. On 29 October and 3 November 2021, the OIA received complaints that a councillor had blocked a member of the public from their official councillor Facebook page and defamed the same member of the public.
2. On 10 November 2021, the OIA sent a notice to the councillor, as required by the LG Act, to provide them with an opportunity to respond to the allegations.
3. On 15 November 2021, the OIA received the councillor’s response.
4. On 17 November 2021, the OIA dismissed the complaint and issued a vexatious complaint warning to the complainant.

Appendix 1

History of councillor complaints process

The OIA was established on 3 December 2018 having been recommended by the Solomon Review: [Councillor Complaints Review: A fair, effective and efficient framework](#).

The Solomon Review was initiated in 2016, in response to concerns raised by Local Government Managers Australia Queensland (LGMA) and the Local Government Association of Queensland (LGAQ) about the effectiveness of the existing complaints system. The previous systems included:

Making a complaint: Anyone could lodge a complaint about councillor conduct to the council, the Local Government Department or the Crime and Corruption Commission (CCC). Complaints could be made anonymously, and the provision of supporting evidence was not required.

Preliminary assessments: Most complaints were first considered by the council CEO. However, if the complaint was about the mayor or deputy mayor, or was made by the mayor or the CEO, the preliminary assessment was undertaken by the Local Government Department chief executive.

If a preliminary assessment found the complaint had substance, the matter was referred for further action as follows:

- Complaints referred to the mayor when they related to inappropriate conduct by any councillor other than the mayor or deputy mayor
- Complaints referred to the Local Government Department when they related to misconduct by any councillor
- Complaints referred to the CCC where there was a reasonable suspicion of corrupt conduct.

Inappropriate conduct: For allegations of inappropriate conduct by a councillor, the mayor was responsible for making a decision the action required and could make a disciplinary order.

If the complaint was about the mayor or deputy mayor, or made by the mayor or the CEO, the Local Government Department's chief executive decided what, if any, action would be taken and any orders.

Misconduct: The Local Government Department's chief executive considered complaints about misconduct and whether further investigation was required. The Department investigated most misconduct matters. The Department decided whether a complaint would be referred to the Local Government Remuneration and Discipline Tribunal (LGRD Tribunal) or Regional Conduct Review Panels (RCRP). The LGRD Tribunal was expected to deal with more serious forms of misconduct.

RCRP and LGRD Tribunal hearings: The standard of proof was the balance of probabilities, which applies in civil matters, rather than the criminal standard of 'beyond reasonable doubt'. The principles of natural justice and a fair hearing must apply.⁹⁰ The available orders ranged from an apology and counselling, to fines or a recommendation to the Minister that the councillor be suspended or dismissed. There was no right to appeal.

Solomon Review

After conducting research and extensive consultation, the Review Panel found "fundamental changes" were required to improve the fairness, effectiveness, and efficiency of the complaints

⁹⁰ Legal representation was at the discretion of the RCRP or LGRD Tribunal and was usually considered unnecessary, although anecdotal evidence suggested it was becoming more common.

system, and to make it more responsive and accountable. The following issues were identified at various stages of the review:

Effectiveness/efficiency

- The LG Department had weak investigative powers; no clear authority for the Department to require persons to produce documents, give assistance or answer questions nor any penalty for non-compliance with an investigation
- High number of unsubstantiated complaints
- A low incidence of prosecutions for serious offences, partly because investigations failed to yield sufficient evidence
- Serious penalties were not imposed when findings of misconduct were made
- Significant departmental resources were used to deal with complaints, with a disproportionate amount applied to inappropriate conduct allegations
- An unsatisfactory amount of time was taken to deal with complaint

Costs

- The costs of hearings (including investigations that lead to a hearing) were borne by the relevant council. It was possible that a council could incur a \$30-50,000 bill for an external investigation.

Legislation

- Council CEOs were placed in a conflicted role by the legislation which required them to assess complaints about the conduct of mayors and other councillors, who are the CEOs' employers.
- Lack of clarity in the definitions of inappropriate conduct and misconduct; other legislative anomalies Many of the 'standards' imposed on councillors were expressed in imprecise terminology
- No mandatory or model Code of Conduct, nor one for meeting procedures.

Natural justice

- Inconsistent hearing processes used by RCRPs and the LGRD Tribunal
- Having different bodies to adjudicate complaints reduced the likelihood of uniform application of the law
- Problems with legal representation and the absence of entitlements for complainants
- No right to appeal

Complexity

- The complaints process required multiple steps and involved a range of alternative pathways dependent on who made the complaint, the subject of the complaint and the allegation.

Other concerns

- A very large number of improper complaints, particularly in the lead-up to elections.

Diminished public trust in local government

The Solomon Review was announced in April 2016 and some months later the Crime and Corruption Commission (CCC) commenced operations that identified serious issues in some councils. The outcomes of these operations highlighted the need to strengthen the integrity in local government in Queensland.

Operation Belcarra commenced in September 2016. It identified deficiencies during the 2016 local government elections and in councillor decision-making processes. The Belcarra Report led to extensive local government reforms with the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 being passed in Parliament in May 2018.

The Belcarra report recommended changes to conflict-of-interest (COI) provisions including the need for councillors to report another councillor's suspected/undeclared COI, suitable penalties for councillors who fail to comply with their COI obligations and making it an offence for a conflicted councillor to influence or attempt to influence a relevant decision by another councillor or council employee.

Operation Windage commenced in October 2016 to investigate alleged corruption at Ipswich City Council. It led to several outcomes including the following⁹¹:

- Former Ipswich Mayor Paul Pisasale was jailed for a range of offences including receiving secret commissions, official corruption, fraud, perjury and extortion
- Former Ipswich City Council CEO and others were jailed for corruption offences
- Former Ipswich City Council Chief Operations Officer jailed for misconduct in public office.

In addition to serious criminal matters, Operation Windage found “evidence of a wide spectrum of governance and integrity failures”⁹², some resulting in the misuse of council funds and assets. It found that in many cases, “the behaviour continued over a significant period of time but went unchallenged and unreported”.⁹³

The CCC said the operation showed how “an unhealthy culture and unsound practices, once established and never corrected, can derail the efficient operation of a council”.⁹⁴ It found the governance failures would not have occurred in an environment where the values of transparency, accountability and good governance had been instilled in both councillors and employees.⁹⁵

In November 2017 (i.e., several months after the Solomon Review was delivered), the CCC’s Operation Ebulus⁹⁶ resulted in charges being laid against the then Fraser Coast Mayor Chris Loft. Mr Loft was subsequently jailed for misconduct in relation to public office.

Establishing the OIA

The Solomon Review was delivered in January 2017 and made 60 recommendations for change to the councillor complaints system. The Review Panel found the starting point for the major reforms was “the creation of the Office of an Independent Assessor”.

The Review stated that during consultation, the panel received overwhelming support for a centralised assessor to objectively deal with complaints, applying consistent standards across all councils. The Review also noted that the state’s overall objective was:

- to maintain public confidence in transparent, accountable, well-governed, efficient and effective local government
- to hold councillors to high standards of ethical and legal behaviour which puts the public interest ahead of their own individual interests
- and to deter councillors from poor behaviour or abuse of their positions of trust.

The Solomon Review made the following key recommendations:

- The OIA to be responsible for assessing all councillor conduct complaints and investigating and prosecuting misconduct complaints, where necessary
- The OIA to have appropriate powers to conduct investigations, with the panel noting the existing system was potentially limited in its capacity to investigate as thoroughly as required
- The OIA to refer inappropriate conduct matters to councils, rather than just mayors

⁹¹ Crime and Corruption Commission. (2018). [Allegations of corruption related to the Ipswich City Council \(Operation Windage\) \(Outcomes\)](https://www.ccc.qld.gov.au/corruption/outcome/allegations-corruption-related-ipswich-city-council-operation-windage). <https://www.ccc.qld.gov.au/corruption/outcome/allegations-corruption-related-ipswich-city-council-operation-windage>

⁹² Crime and Corruption Commission. (2018). [Culture and corruption risks: Lessons learned from an investigation into Ipswich City Council \(operation Windage\)](#) (p.4).

⁹³ As above (p.7).

⁹⁴ As above (p.4).

⁹⁵ As above (p.9).

⁹⁶ Crime and Corruption Commission: [Former Fraser Coast Mayor convicted of corruption-related offences](#).

<https://www.ccc.qld.gov.au/corruption/outcome/former-fraser-coast-mayor-convicted-corruption-related-offences>

- The OIA to refer corruption complaints to the CCC, and investigate such complaints that are referred back by the CCC
- The OIA to be responsible for assessing whether complaints are trivial, vexatious or frivolous, or for another reason, should be dismissed
- The OIA to be able to initiate own-motion investigations
- The OIA to have an appropriate complaints management system, including provision for internal review of decisions
- A single Councillor Conduct Tribunal to determine misconduct matters
- Extended definitions of misconduct and inappropriate conduct
- A mandatory uniform Code of Conduct for councillors and a model code of meetings procedures
- Increased natural justice and fairness for all parties, and a limited right of appeal.

Appendix 2

Code of Conduct for Councillors in Queensland

The behavioural standards in the [Code of Conduct](#) approved by the Minister for Local Government on 4 August 2020 are,

1. Carry out RESPONSIBILITIES conscientiously and in the best interests of the Council and the community

For example, Councillors will, at a minimum, have the following responsibilities:

- 1.1 Attend and participate meaningfully in all Council meetings, committee meetings, informal meetings, briefings, relevant workshops and training opportunities to assist them in fulfilling their roles other than in exceptional circumstances and/or where prior leave is given
- 1.2 Respect and comply with all policies, procedures and resolutions of Council
- 1.3 Use only official Council electronic communication accounts (e.g., email accounts) when conducting Council business
- 1.4 Report any suspected wrongdoing to the appropriate entity in a timely manner
- 1.5 Ensure that their behaviour or capacity to perform their responsibilities as a Councillor is not impaired by the use of substances that may put them or others at risk while performing their duties (for example, alcohol, illegal drugs or prescribed/nonprescribed and/or restricted substances)
- 1.6 Cooperate with any investigation being undertaken by the local government or other entity
- 1.7 Ensure that the Councillor's Advisor is aware of their obligations to comply with the standards of behaviour in the Code of Conduct for Councillor Advisors in Queensland.

2. Treat people in a reasonable, just, RESPECTFUL and non-discriminatory way

For example, Councillors will, at a minimum, act in the following ways:

- 2.1 Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness
- 2.2 Not use abusive, obscene or threatening language (either oral or written) or behaviour towards other Councillors, Council employees or members of the public
- 2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.

3. Ensure conduct does not reflect adversely on the REPUTATION of Council

For example, Councillors will, at a minimum, conduct themselves in the following manner:

- 3.1 When expressing an opinion dissenting with the majority decision of Council, respect the democratic process by acknowledging that the Council decision represents the majority view of the Council
- 3.2 When making public comment, clearly state whether they are speaking on behalf of Council or expressing their personal views

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

Appendix 3

Types of councillor conduct

Unsuitable meeting conduct

Unsuitable meeting conduct is defined by section 150H of the LG Act as a contravention of a behavioural standard (Code of Conduct) which happens during a local government meeting.

Inappropriate conduct

Inappropriate conduct is defined by section 150K of the LG Act as follows:

- conduct that contravenes a behavioural standard (the Code of Conduct)
- conduct that contravenes a policy, procedure or resolution of the local government
- conduct that contravenes an order of the chairperson of a local government meeting for the councillor to leave and stay away from the place at which the meeting is being held
- conduct that leads to orders for the councillor's unsuitable meeting conduct being made on three occasions within a period of one year (i.e., the conduct that led to the orders being made, taken together, is the inappropriate conduct).

Misconduct

Misconduct is defined by section 150L of the LG Act to include the following types of conduct:

- Conduct that adversely affects the honest and impartial performance of a councillor's functions and powers as defined by section 150L(1)(a) LG Act
- Breach of trust as provided by section 150L(1)(b)(i) of the LG Act by contravening the local government principles as defined by section 4 (a) to (e) of the LG Act or CoBA, or the responsibilities of a councillor as defined by section 12 (1) to (6) of the LG Act or 14 (1) to (5) of the CoBA.
- A misuse of information or material acquired in, or in connection with, the performance of the councillor's functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person as defined by section 150L(1)(b)(ii)
- Contravening an order of the tribunal or local government as provided by section 150L(1)(c)(i) of the LG Act
- A breach of the acceptable request guidelines of the local government authorised under section 170A of the LG Act or 171A of the CoBA
- A breach of the local government's policy about the reimbursement of expenses as defined by section 150L(1)(c)(iii) of the LG Act
- A failure to notify the OIA about the conduct of another councillor as required by section 150R(2) of the LG Act
- Participating in decisions when a councillor has a prescribed conflict of interest as defined by section 150EK of the LG Act or 177H of the CoBA.
- Failing to declare a prescribed conflict of interest when a councillor may, or is, participating in a decision as prescribed by section 150EL of the LG Act or 177I of the CoBA.
- Participating in decisions of a failure to declare when a councillor has a declarable conflict of interest as defined by section 150EQ of the LG Act or 177N of the CoBA.
- Failing to report another councillor's prescribed or declarable conflict of interest as defined by section 150EW of the LG Act or section 177T of the CoBA.
- Influencing a decision-maker when a councillor has a prescribed or declarable conflict of interest as defined by section 150EZ of the LG Act or section 177W of the CoBA.

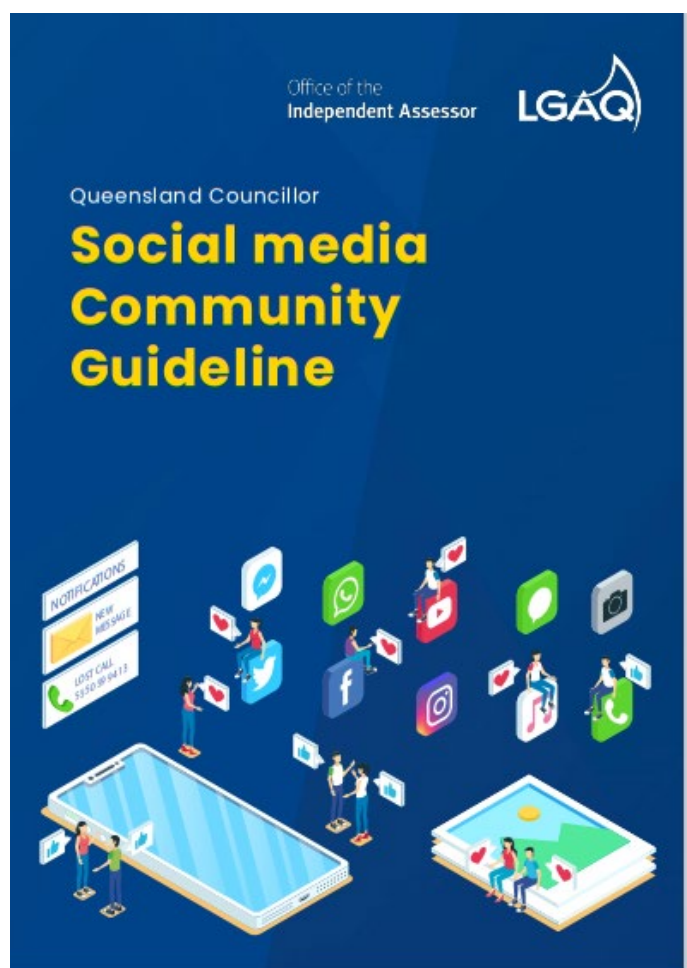
- A councillor giving directions to local government staff contrary to section 170(3) of the LG Act or section 173(3) of the CoBA.
- A councillor releasing information that is confidential to the local government contrary to section 171(3) of the LG Act or section 173(3) of the CoBA.
- A failure by a councillor to correct their register of interests at the start of their term or appointment as prescribed by section 201A of the LG Act and section 198A of the CoBA.
- A failure by a councillor to correct their register of interest generally as prescribed by section 201B of the LG Act and section 198B of the CoBA.
- A failure by a councillor to correct their register of interest annually as prescribed by section 201C of the LG Act and section 198C of the CoBA.
- Engaging in a course of conduct leading to the local government taking action for inappropriate conduct under section 150AG on 3 occasions within a period of 1 year as defined by section 150L(2)(a) and (b) of the LG Act.

Appendix 4

OIA and LGAQ social media guidelines

Queensland Councillor Social Media Community Guideline April 2019

In conjunction with the 'Your Social Media and You' guide April 2019.



Social media Channel

This social media channel is maintained by Cr (name).

Comments and posts will be responded to when possible between the hours of 9-5.

This is a supportive online community that is built on respect. Everyone is encouraged to participate in an open and constructive conversation about relevant topics.

This page supports the Facebook Statement of Rights and Responsibilities and related policies – and requests visitors to this page do the same – <https://www.facebook.com/terms.php>

Official posts on this page will be treated as public records.

Comment Guideline

This page is moderated in a way which recognises that everyone has a right to comment and engage with the content, in a way which may be positive, neutral or negative.

However, comments or posts which do the following will be removed and a repeated contravention of these rules, will result in the person being blocked from the page:

- Posts that harass, abuse or threaten a councillor, council staff or a member of the public
- Posts that attack someone based on their age, gender, impairment, political beliefs, race, religion or sexuality;
- Posts that contain obscene or offensive language;
- Posts that constitute spam or solicit business.

Comments that negatively impact the experience of other community members on this page may also be removed and those posting such comments will receive a warning. If members of the public continue to post such comments after receiving two warnings, they may be blocked from the page.

This page is not for official complaints or feedback. Please contact the council. (link to your council complaints policy)

Appendix 5

Provisions of the Local Government Act 2009 that raise confidentiality considerations are as follows:

General provision relating to the confidentiality of investigations

Section 150V of the LG Act is as follows:

- (1) The assessor may exercise the assessor's powers as an investigator under part 4 for an investigation under section 150T or 150U.
- (2) Subject to part 4, the assessor may—
 - (a) conduct an investigation in the way the assessor considers appropriate; and
 - (b) make any inquiries the assessor considers appropriate.
- (3) **However, the assessor must conduct the investigation in a way that ensures the investigation is kept confidential to the extent practicable.** (emphasis added)

Section 150V(3) is mandatory: the Assessor “must” conduct the investigation in a way that ensures the investigation is “kept confidential to the extent practicable”. The section will govern the conduct of investigations generally. The obligation is qualified by what is practicable.

The IA may issue notices about confidentiality

Section 150CK of the LG Act permits the Assessor to give a notice stating that the fact of the person's attendance to answer questions, or information given by the person, “is confidential information”. The notices are given by the Assessor to others.

The power to give the notices nevertheless reinforces the Assessor's general obligation referred to above to keep the conduct of investigations confidential. The notice may only be given by the Assessor in limited circumstances, including if the Assessor reasonably believes the notice is necessary to “ensure the investigation of a councillor's conduct is kept confidential”.

“Confidential information” is not defined in the LG Act for the purposes of s150CK. It is, for example, separately defined for the purposes of the s150EA “Secrecy” provision (addressed below).

Under s150CK(5), the person must not disclose “the confidential information” (being the information the subject of the notice) unless permitted under s150CK(6) or the person has a reasonable excuse. Unlike other sections, the LG Act does not say what is a “reasonable excuse” for the purposes of s150CK.

Secrecy obligations on the Assessor, investigators, or staff of the OIA

Section 150EA of the LG Act imposes obligations on persons who are, or have been, the Assessor, an investigator, or a staff member of the OIA and who obtain “confidential information” whilst performing (or because of) their functions under the LG Act.

“Confidential information” means information not publicly available about a person's affairs or reputation, or that would be likely to damage the commercial activities of a person to whom the information relates. It applies to information not publicly available about all “persons” not just councillors.

The person cannot make a record of confidential information or disclose it or use it to benefit or cause a detriment to a person: s150EA(2).

There are exceptions in s150EA(3). A person may make a record or disclose or use the confidential information in the performance of the person's functions under the LG Act or as otherwise required or permitted by law.

In assisting the Committee, the IA would be acting in the performance of the IA's functions.

Councillor conduct registers

All councils must keep and publish a councillor conduct register. The register includes details for certain decisions (s150DY, LG Act) and complaints dismissed by the Assessor (s150DZ, LG Act).

There are restrictions on identifying councillors and complainants in the register. The restrictions are consistent with the other confidentiality protections in the LG Act.

The name of the councillor whose conduct is the subject of a decision may be included in the register only if they are found to have engaged in inappropriate conduct or misconduct, or if the councillor agrees. If a complaint is dismissed by the Assessor, the name of the councillor must not be included in the register, unless the councillor agrees.

In the case of either a decision or a dismissed complaint, the register must not include the name of the person who made the complaint, or information that could reasonably be expected to result in identification of the person.

Information that is part of a public interest disclosure under the PID Act must not be published as part of the register on the council's website or be made available for inspection.

Public interest disclosures

There are restrictions on the disclosure of "confidential information" obtained because a person is a public officer who receives a public interest disclosure for a proper authority: s65 of the PID Act. "Confidential information" is given a broad meaning: s66(7), PID Act. It includes information about the identity of the person who made the disclosure and the information disclosed.

Glossary of terms

CC Act – [Crime and Corruption Act 2001](#)

CCC – [Crime and Corruption Commission](#)

CCT – [Councillor Conduct Tribunal](#)

CoBA – [City of Brisbane Act 2010](#)

Code of Conduct – [Code of Conduct for Councillors in Queensland](#)

COI – conflict of interest

Councillor Conduct Register – Each Queensland local governments must keep an up-to-date register that lists the orders made about councillors' unsuitable meeting conduct and the outcome of councillor conduct complaints (inappropriate conduct/misconduct). See sections 150DX, 150DY and 150 DZ of the [Local Government Act 2009](#)

DIA – Deputy Independent Assessor

DLGRMA – Department of Local Government, Racing and Multicultural Affairs

DSDILGP – [Department of State Development, Infrastructure, Local Government and Planning](#)

ECQ – [Electoral Commission of Queensland](#)

EGC – [Economics and Governance Committee](#)

FTE – full-time equivalent

HR Act – [Human Rights Act 2019](#)

IA – Independent Assessor

INV – investigation

LG Act – [Local Government Act 2009](#)

LGAQ – [Local Government Association of Queensland](#)

LGMA – [Local Government Managers Australia \(Qld\)](#)

LGRD Tribunal – Local Government Remuneration and Discipline Tribunal

M&CR – merit and compliance review. A matter referred to the OIA by the CCC may be subject to a M&CR. M&CRs require progress reports to be made to the CCC at three months, with the investigation to be finalised within 12 months.

MoG – machinery of government

NFA – no further action

OIA – [Office of the Independent Assessor](#)

PID – public interest disclosure

PIR – public interest review. A matter referred to the OIA by the CCC may be subject to a PIR. PIRs require progress reports to be made to the CCC at six weeks, three months, six months, and nine months; and the investigation must be completed within 12 months.

QCAT – [Queensland Civil and Administrative Tribunal](#)

QSA – [Queensland State Archives](#)

RCRP – Regional Conduct Review Panel/s

Resolve – a case management system used by the OIA

ROI – [register of interests](#)

SDRIC – [State Development and Regional Industries Committee](#)

Section 40 arrangement – an arrangement between the OIA and CCC, pursuant to section 40 of the CC Act, which allows the OIA to immediately commence investigating agreed categories of corrupt conduct without first referring the matter to the CCC. The CCC has oversight of these matters and can resume responsibility for a case at its discretion. The arrangement improves efficiencies for both agencies.

Section 150AA notice – notice issued to a councillor if the IA is considering referring the councillor's conduct to the local government (alleged inappropriate conduct) or the Councillor Conduct Tribunal (alleged misconduct).

The notice describes the nature of the alleged conduct and gives the subject councillor an opportunity to respond to the allegation/s.

Section 150CH notice – notice requiring provision of information which is reasonably necessary to investigate a councillor's conduct.

Section 150CJ notice – notice requiring the attendance of a person at an interview.

Section 150 CK notice – notice requiring that a person's attendance or information provided is kept confidential, as is the notice itself

Self-referral – a councillor refers their own conduct to the OIA

Solomon Review – [Councillor Complaints Review: A fair effective and efficient framework](#); January 2017

Solomon Review panel (the panel) – Dr David Solomon AM, Noel Playford OAM, Gary Kellar PSM

Tribunal – Councillor Conduct Tribunal