



15 December 2021

Mr Chris Whiting MP  
Chair  
State Development and Regional Industries Committee  
Member for Bancroft  
Email: SDRIC@parliament.qld.gov.au

Dear Mr Chair

**LGAQ submission**

The Local Government Association of Queensland (LGAQ) is a not-for-profit association representing all 77 local governments' across Queensland as the state-wide peak body for our sector.

We sincerely thank the State Development and Regional Industries Committee (the Committee) for undertaking this Inquiry, which is very important for the future of the local government sector.

Please find **enclosed** a copy of the LGAQ's submission for your consideration, on behalf of our members. As outlined in the submission, individual councils and councillors were also encouraged to lodge their own submissions as well.

While we are comfortable with this submission being made public, there are some attachments that are marked as confidential and, as previously requested of the Committee, we have included them with the insistence that these confidential attachments must not be published (as they are live matters before the Office of Independent Assessor).

We would be more than pleased to speak to the Committee at subsequent public hearings.

For further information in relation to this submission, please contact Mr Nathan Ruhle, Lead – Intergovernmental Relations on 0411 787 068 or [nathan\\_ruhle@lgaq.asn.au](mailto:nathan_ruhle@lgaq.asn.au)

Yours sincerely

Alison Smith  
CHIEF EXECUTIVE OFFICER



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

Queensland Parliament State Development and Regional Industries Committee

15 December  
2021



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## About the Local Government Association of Queensland (LGAQ)

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association established solely to serve councils and their needs. The LGAQ has been advising, supporting, and representing local councils since 1896, enabling them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and providing them with the means to achieve community, professional and political excellence.

## Partners in Government Agreement

In August 2019, the LGAQ on behalf of all 77 Queensland Local Governments signed a three-year partners-in-government-agreement<sup>1</sup> with the State of Queensland.

The Agreement details the key principles underlying the relationship between the state and local governments and establishes the foundation for effective negotiation and engagement between both levels of government.

The agreement acknowledges that local government is the closest level of government to the community, affecting the lives of everyday Queenslanders and acknowledging Local Government as a genuine partner in the Australian government system.

The intent of the agreement was to continue the tradition of working in genuine partnership to improve the quality of life for all Queenslanders to enjoy. By identifying the roles and responsibilities of each party, it provides a solid foundation for effective negotiation and engagement between both levels of government.

The LGAQ is committed to working with the Queensland Government and will continue to be a passionate advocate for councils, to serve our joint jurisdiction for the people of Queensland.

## Rural and Remote Councils Compact

The Rural and Remote Councils Compact<sup>2</sup> signed on 25 June 2021, compliments the existing Partnership in Government agreement in place between the LGAQ and the Queensland Government to provide a platform to ensure issues of priority for these communities are properly considered by the Government when developing policies, programs, and legislation.

The Rural and Remote Councils Compact, pledges to amplify the voice of and improve outcomes for the state's 45 rural and remote councils and their local communities by enhancing engagement between both levels of government. Its key strategic priorities in 2021 are: roads, housing, and financial sustainability.

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<sup>1</sup> [https://www.dlgrma.qld.gov.au/\\_data/assets/pdf\\_file/0016/45115/partners-in-government-agreement-2019.pdf](https://www.dlgrma.qld.gov.au/_data/assets/pdf_file/0016/45115/partners-in-government-agreement-2019.pdf)

<sup>2</sup> <https://knowledgebaseassets.blob.core.windows.net/images/9c61cdc2-3cfa-eb11-94ef-002248181740/Rural%20and%20Remote%20Councils%20Compact%20-%20signed%20copy.pdf>

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

## Executive Summary

The LGAQ welcomes the opportunity to provide feedback to the Queensland Parliament State Development and Regional Industries Committee (the Committee) on the Inquiry into the functions of the Independent Assessor and performance of those functions (the Inquiry).

A robust, independent and efficient councillor conduct regime is critical to the functioning of the local government sector.

For this regime to work, it must strengthen the ability of the local government sector to represent Queensland's local communities. It must not hamper the ability of mayors and councillors to do the job their communities elected them to do and that is to represent their interests.

Right now, the local government sector is concerned the council complaints process established under the Office of the Independent Assessor is not functioning as it should.

The LGAQ wrote to Hon. Dr Steven Miles MP, Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning Minister Assisting the Premier on Olympics Infrastructure on 22 October 2021<sup>3</sup> following the Queensland Government's announcement it intended to ask the Committee to undertake this Inquiry and provided him with a high-level overview of the sector's concerns.

This correspondence was in addition to our public commentary made by the LGAQ regarding the Office of Independent Assessor's (OIA) investigation into reservations raised by Barcaldine Regional Council Mayor Sean Dillon about the planning of the vaccination rollout in his local government area.

This letter was tabled by the Deputy Premier as an attachment to his correspondence to the Committee and is publicly available.

For the ease of the Committee and also members of the community, we will re-iterate those concerns as part of this submission and also expand on those concerns with further examples and case studies.

The LGAQ has sought specific member feedback to incorporate into this submission. We have also encouraged councillors to make submissions directly to the Committee to illustrate

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<sup>3</sup> <https://documents.parliament.qld.gov.au/com/SDRIC-F506/IIA-9981/211025%20-%20Deputy%20Premier%20-%20Correspondence.pdf>

the sense of frustration held by the local government sector regarding the current councillor complaints regime.

As the Committee would appreciate, there has been some concern amongst elected local government representatives regarding their ability to publicly outline grievances with the operations of the OIA, for a variety of reasons.

We believe it would be of benefit to all stakeholders that this Inquiry is fulsome and able to hear all matters of concern.

We therefore appreciate the Committee being sensitive to these concerns and providing the opportunity for individual councillors to make their submissions in confidence.

In making our detailed submission, the LGAQ has made 18 recommendations for the Committee's consideration, with detailed reasoning and background included in the body of the submission.

## Recommendations

- **Recommendation 1:**

The LGAQ recommends the State Government retains an independent review mechanism for local government conduct complaints to ensure separation from elected representatives, council chief executive officers and the department.

- **Recommendation 2:**

The LGAQ recommends councillors be given at least 7 days to respond to a complaint, once contacted by the OIA in writing during the assessment phase.

- **Recommendation 3:**

The LGAQ recommends the OIA extend the benchmark for assessing complaints from 21 days to at least 28 days to ensure a more rigorous assessment process.

- **Recommendation 4:**

The LGAQ recommends the OIA reviews its current approach to ensure a more thorough decision matrix is used when assessing whether a complaint is frivolous or vexatious and undertakes stronger action to deter such complaints.

- **Recommendation 5:**

The LGAQ recommends anonymous complaints be automatically rejected.

- **Recommendation 6:**

The LGAQ recommends the OIA include in its Annual Report the number of complaints that are dismissed each year because they are frivolous, vexatious, mischievous in their intent, not in the public interest, or would be an unjustifiable use of resources, to increase confidence in the assessment process.

- **Recommendation 7:**

The LGAQ recommends the OIA's three-step escalation process be independently reviewed and amended to better align with the relevant provisions in the LG Act. At the very least, step one and two should be combined.

- **Recommendation 8:**

The LGAQ recommends the State Government broaden the opportunities for the OIA to dismiss a complaint, prior to investigation, under sections 150X and 150Y of the *Local Government Act 2009*.

- **Recommendation 9**

The LGAQ recommends the State Government amends the *Local Government Act 2009* to implement the full recommendation (4.9) of the independent councillor complaints review panel in its report - 'Councillor Complaints Review: A fair, effective and efficient framework'- in relation to frivolous or vexatious complaints.

- **Recommendation 10:**

The LGAQ recommends the Minister amend the Code of Conduct for Councillors in Queensland to expressly ensure that it (i.e. the code) does not impugn the constitutional right of elected local government representatives to freedom of political expression.

- **Recommendation 11:**

The LGAQ recommends the Minister amend the Code of Conduct for Councillors in Queensland to ensure the blocking of persons on social media due to inappropriate, defamatory and/or offensive material can no longer be considered a potential case of inappropriate conduct (or potentially misconduct).

- **Recommendation 12:**

The LGAQ recommends the State Government review the assessment process regarding complaints made against both former councillors who are no longer in office, and complaints made against continuing councillors, and considers the inclusion of an appropriate limitation period prohibiting the investigation of complaints if a prescribed period of time (e.g. three years) has elapsed between the date of the alleged conduct, and the date of the complaint.

- **Recommendation 13:**

The LGAQ recommends the OIA set a target benchmark for investigation timeframes and publicly report on investigation timeframes for deemed misconduct complaints to be finalised, each year in their Annual Report.



- **Recommendation 14:**

The LGAQ recommends the Code of Conduct for Councillors in Queensland be reviewed at least every two years.

- **Recommendation 15:**

The LGAQ recommends the membership of the Local Government Liaison Group be expanded to include more local government experience, including a former elected representative and a former council CEO.

- **Recommendation 16:**

The LGAQ recommends the relevant Queensland Parliamentary Committee with general oversight of the Office of the Independent Assessor be given statutory oversight functions similar to those afforded to the Parliamentary Crime and Corruption Committee, which oversees the Crime and Corruption Commission (another integrity agency), to increase the level of parliamentary scrutiny and oversight.

- **Recommendation 17:**

The LGAQ recommends the OIA introduce further transparency and cost effectiveness into its annual report around the cost of undertaking assessments and investigations, by increasing the public reporting of costs incurred, including officer hours/resources expended per complaint regardless of how the complaint is dealt with (dismissed or investigated).

- **Recommendation 18:**

The LGAQ recommends s150DX, 150DY and 150DZ of the *Local Government Act 2009* be amended to remove the requirement for matters that have been dismissed, or are the subject of no further action, by the OIA to be published in the Councillor Conduct Register.

## Introduction

The LGAQ strongly welcomes the need for this Parliamentary Inquiry.

Councillors are elected to serve their community. They put their hand up to serve because they love where they live, and they want to make a difference.

Many councillors in Queensland are part-time. Serving as an elected local government representative is something they do because they want to, not because they have to.

It serves nobody when elected representatives operate in an environment of fear and intimidation.

The integrity agencies established to ensure the sector is open and transparent were designed to prevent misconduct and corruption.

They were designed to focus on the minority of elected members doing the wrong thing.



They were not designed to make things harder for the majority of elected members who do the right thing.

If balance is not restored to the system, then good people will continue to be lost from local government and Queensland's local communities will be the poorer for it.

A survey of members taken by the LGAQ before the March 2020 quadrennial local government elections illustrates this risk.

Both councillors and CEOs indicated the integrity reforms were having a negative impact on their confidence levels and on their capacity to effectively do their job.

Further, of those elected members who indicated they were not likely to stand for re-election, 59 per cent stated their decision was strongly impacted by the integrity reforms.

When asked directly about the Office of the Independent Assessor, just two in five believed the OIA was efficient and gave them a fair go.

One in three did not agree the OIA was open and accountable, nor did they agree the OIA was good at resolving issues.

As the LGAQ's policy statement illustrates, the Association — and indeed the sector it represents — believes the system of local government should be accountable, democratic, efficient, sustainable and transparent, and that local governments have a responsibility to comply with standards relating to applicable governance arrangements.<sup>4</sup>

It was a previous LGAQ Annual Conference resolution, supported by the majority of attending delegates, that called for the State Government to establish an independent assessor to handle complaints about inappropriate conduct and misconduct.

Members believed an independent assessor would be a more accountable and transparent alternative to having responsibility for assessing such complaints continuing to fall on council chief executive officers, mayors and the Department.

Having a system that involved councils assessing matters about their own councillors following a complaint from a local community member did not allow for community confidence in what is an important integrity check and balance about the conduct of an elected representative.

It should also be noted that the most fundamental check and balance in our democracy is the regular conduct of free and fair elections, occurring every four years in the case of Queensland's local government sector.

In 2016, the then Deputy Premier and Minister for Infrastructure, Local Government and Planning Hon. Jackie Trad MP announced the appointment of an independent panel to review arrangements for dealing with complaints about the conduct of local government councillors (the Review Panel).

The Review Panel was commissioned to examine and evaluate the effectiveness of the councillor conduct complaints system to ensure councillors were being held to high standards

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<sup>4</sup> <https://www.lgaq.asn.au/downloads/file/183/2019-lgaq-policy-statement#:~:text=1%20The%20LGAQ%20Policy%20Statement,by%20state%20and%20federal%20governments.>

of ethical and legal behaviour. The Review Panel's report outlined 60 recommendations to overhaul the councillor complaints processes.

The most significant changes recommended from the Review Panel included: the creation of a new statutory office of the Independent Assessor to assess complaints and conduct investigations; reconstituting the relevant Tribunal with different powers and responsibilities; creating a Code of Conduct and model meeting procedures for local governments; and, creating a "blackout" for disclosure of complaints during a local government caretaker period.

The Queensland Government Cabinet endorsed the tabling of the Review Panel's report and provided an official Government response.<sup>5</sup>

Amendments were made to the *Local Government Act 2009* (the LG Act) and *City of Brisbane Act 2010* to establish the OIA.

The Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (the LG Complaints Bill) was passed by the Legislative Assembly with amendment on 17 May 2018.

The LG Complaints Bill met its strategic objectives by:

- establishing the Independent Assessor and the Office of the Independent Assessor to investigate and deal with the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the Independent Assessor by the Crime and Corruption Commission (CCC), corrupt conduct;
- providing for local governments to investigate and deal with suspected inappropriate conduct when referred to a local government by the Independent Assessor and to take disciplinary action against councillors for inappropriate conduct;
- reallocating the functions of the current Local Government Remuneration and Discipline Tribunal (LGRDT) and the Regional Conduct Review Panels (RCRPs) by:
  - establishing the Councillor Conduct Tribunal to conduct hearings about a councillor's alleged misconduct, decide whether the councillor has engaged in misconduct and what, if any, disciplinary action to take, and at the request of a local government investigate the suspected inappropriate conduct of a councillor
  - establishing the Local Government Remuneration Commission to establish the categories of local governments, decide the category to which each local government belongs and decide the maximum remuneration payable to councillors;
- dealing with the conduct of councillors at local government meetings that contravene the behavioural standards (a 'local government meeting' is defined to mean a meeting of a local government or a committee of a local government);
- repealing chapter 6, part 2, division 6 of the LGA thereby repealing the declaration that a decision is not subject to appeal, allowing certain review rights for decisions about councillor conduct and judicial review of an administrative decision of a local government;

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<sup>5</sup> <https://cabinet.qld.gov.au/documents/2017/Jul/CCReview/Attachments/Response.pdf>

- providing for administration and governance matters including requiring:
  - a code of conduct (made by the Minister) to set appropriate standards of behaviour for councillors in performing their functions
  - the department's chief executive to make model procedures for the conduct of meetings of a local government and its committees
  - local governments to maintain a councillor conduct register recording particular orders and decisions
  - the Independent Assessor to give the Minister an annual written report about the operation of the Office of the Independent Assessor and for the Minister to table a copy of the report in the Legislative Assembly;
- strengthening offences to support the new system, including providing protection from reprisal for local government employees and councillors who make complaints against councillors, discouraging frivolous and improper complaints and ensuring confidentiality of investigations; and
- providing for appropriate arrangements necessary for the transition to the new councillor complaints system.

In response to the tabling of the LG Complaints Bill in the Queensland Parliament, the LGAQ made a submission for consideration by the relevant Parliamentary Committee (Economic and Governance Committee).<sup>6</sup>

While largely supportive of the intent of the LG Complaints Bill, the LGAQ raised some concerns in its submission to the Committee considering the proposed legislative changes.

Specifically, the LGAQ's preferred position was for inappropriate conduct complaints not to be referred to the council, as this was a significant departure from the previous regime which required the mayor (not the council) to deal with allegations of inappropriate conduct.

Further, the LGAQ recommended that the 7-day notification period of a tribunal hearing be extended to at least 21 days, if not 28 days. This was not supported, and the 7-day notification period still remains in section 150AK of the LG Act.

It was also recommended the LG Complaints Bill be amended to remove from the disciplinary actions available under the Act a sanction preventing a councillor from serving as acting Deputy Mayor for the remainder of the councillor's term. The right to appoint a Deputy Mayor should belong to a council, not be subject to disciplinary proceedings from a Tribunal. This was also not supported, and the provision still remains in section 150AR of the LG Act.

While not subject to the direct terms of reference of this Inquiry, the LGAQ continues to support the Association's initial recommendations.

Following endorsement by the Legislative Assembly, the OIA was officially established on 3 December 2018. It is therefore not unreasonable for the functions and objectives to be reviewed after three years of operation.

On behalf of our member councils and the elected representatives across local government in Queensland, we sincerely thank the Parliament for establishing this important Inquiry and for understanding the ongoing need for bipartisanship on this issue.

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<sup>6</sup> <https://documents.parliament.qld.gov.au/com/EGC-A022/RN556PLGCC-FDE3/submissions/00000003.pdf>

This is a very important Inquiry for our sector.

In making this submission, we note the terms of reference established for the Inquiry, specifically:

*That the State Development and Regional Industries Committee inquire into and report to the Legislative Assembly on the functions of the Independent Assessor and the performance of those functions, in particular:*

- *whether the performance by the Independent Assessor of the Independent Assessor's functions is consistent with the intent of the local government complaints system,*
- *whether the powers and resources of the Independent Assessor are being applied in accordance with the public interest, and*
- *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.*

For ease of reference, we will respond to the specific terms of reference, include further information to support our recommendations, provide specific member feedback that we sought, respond to the OIA's submission to the Committee, and respond to the questions asked by Committee members in the public hearing on 6 December 2021.

In response to comments from the OIA in the public hearing with the Committee on 7 December 2021, we note the question from the Committee about 'evidence that the new councillor complaints system is working'.

In response, Ms Florian mentioned that "12 per cent of complaints are councillor-on-councillor complaints and 51 per cent of complaints are coming from the local government sector".

From the LGAQ's perspective, this shows everything that is wrong with the current system. At times, there seems to be more focus on generating complaints than improving councillor conduct. The number of councillor-on-councillor complaints shows how the system is being weaponised for political purposes, which happens when this behaviour is not discouraged. The number of complaints coming from the local government sector is a result of the duty to notify under section 150P of the LG Act and specifically:

(2) The government entity must—

- (a) refer the complaint to the assessor; and
- (b) give the assessor all information held by the entity that relates to the complaint.

A government entity includes –

- (a) a local government;
- (b) a councillor;
- (c) the chief executive officer of a local government;

(d) the chief executive officer under the City of Brisbane Act 2010.

In relation to the effectiveness of the OIA in dealing with complaints, Ms Florian also noted:

*"While complaint numbers have risen, the cost of handling complaints has dropped. In 2020-21, the average cost of an OIA misconduct investigation was \$2,700, significantly less than the investigation expenses cited in the Solomon review and those which are still being incurred by some councils when lower level inappropriate conduct is investigated."*

It should be noted that the average cost of an OIA misconduct investigation is still more than double the target of \$1340.

## Submission

### **Term 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**

#### Local government complaints system

The Review Panel's report recommended a number of strategic directions. First and foremost it recommended the State Government create a new Independent Assessor to replace council chief executive officers (CEOs), mayors, and the Department, in deciding whether a complaint about councillor conduct involves misconduct or inappropriate conduct, or should be treated as frivolous, vexatious, lacking in substance or is about another matter.

The need for an independent assessment of councillor conduct complaints is important as not only a key integrity measure and check and balance, but also to uphold confidence in the system. Having mayors and council CEOs more involved in the complaints process – at the assessment and investigation phase - was akin to Caesar judging Caesar.

An independent assessment of councillor complaints, in contrast, should ensure consistency of process and decision making.

The LGAQ continues to believe there needs to be an independent review of councillor conduct complaints – but this review mechanism needs to be effective.

While the introduction of the OIA has increased scrutiny of the local government sector, the LGAQ submits that it has not necessarily enhanced integrity outcomes, which we will outline further in this submission.

There have been a number of high-profile cases the LGAQ believes demonstrates overreach by the OIA in their determinations and in the application of its significant powers under the LG Act.

Cases such as the OIA's decision to investigate and escalate a complaint against Barcaldine Regional Council Mayor Sean Dillon for raising concerns about the efficacy of the planned vaccine rollout in his local community –has highlighted issues with the OIA's application of the framework established to handle councillor complaints. There are many more cases that have not been made public that highlight this as well.

These cases clearly demonstrate the need for significant re-direction of the OIA.

This is the focus of the LGAQ's submission. The LGAQ believes that with reform, the OIA can meet the strategic objectives the Review Panel intended it to meet.

In relation to an independent reviewer of councillor conduct complaints, the LGAQ recommends the following:

- **Recommendation 1:**

The LGAQ recommends the State Government retains an independent review mechanism for local government conduct complaints to ensure separation from elected representatives, council chief executive officers and the department.

#### Assessment of complaints

The OIA has established a benchmark of 21 working days in which to assess complaints. It is noted in the OIA's 2020/21 Annual Report that 89 per cent of all incoming complaints were assessed within 21 working days of lodgement.<sup>7</sup>

We note comments from the OIA in their submission that:

*"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.*

*"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."<sup>8</sup>*

As indicated, the OIA assesses whether a matter raises a reasonable suspicion of inappropriate conduct or misconduct – a threshold not imposed by the LG Act.

In criminal matters, a reasonable suspicion test is a legal standard that is applied.

However, it should be noted that allegations that are deemed to be either inappropriate conduct or misconduct are dealt with significantly differently.

A more rigorous assessment process may assist in determining the veracity of a complaint and whether it should be progressed for investigation. This is important given that investigations are costly and can take considerable time.

Concerns have also been raised regarding what elected members believe to be an inconsistent process applied by the OIA when notifying a councillor of a complaint against them and requiring a response, with some elected members being given just three working days to respond.

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<sup>7</sup> [https://www.oia.qld.gov.au/\\_\\_data/assets/pdf\\_file/0022/62545/annual-report-2020-21.pdf](https://www.oia.qld.gov.au/__data/assets/pdf_file/0022/62545/annual-report-2020-21.pdf)

<sup>8</sup> <https://documents.parliament.qld.gov.au/com/SDRIC-F506/IIA-9981/submissions/00000005.pdf>

This short timeframe surely cannot assist either the councillor, or the OIA, in ensuring the provision of enough information to determine the appropriate course of action.

It may be instructive for the Committee to be aware of the LGAQ's submission to the Review Panel and the importance of assessing and investigating matters in a timely manner:

*"Time is of the essence in resolving complaints. The average of 178 days (61 days to assess and investigate a matter and 117 days to finalise a matter) is far too long. Reducing the time it takes to resolve complaints may require more resources but may also be able to be achieved through the introduction of an effective triage system at the front end to filter out matters at an early stage, a tightening of criteria for lodging a complaint and other streamlining of the system. The length of time taken to resolve a complaint which is ultimately not upheld creates a perception of guilt or unjustified speculation, particularly from political opponents and/or the complainant, as to a potential outcome."*<sup>9</sup>

That comment was made in 2016. Under the new system and through the OIA, the timeliness of matters being assessed, investigated and finalised has significantly deteriorated.

The LGAQ believes extending the OIA's benchmark for finalising its assessments by an extra 7 days, and then affording councillors at least 7 days to respond to a complaint once contacted by the OIA in writing, would assist in ensuring the OIA is able to better identify which matters should be progressed, and which matters should not.

The LGAQ therefore makes the following recommendations to make for a more robust assessment process:

- **Recommendation 2:**

The LGAQ recommends councillors be given at least 7 days to respond to a complaint, once contacted by the OIA in writing during the assessment phase.

- **Recommendation 3:**

The LGAQ recommends the OIA extend the benchmark for assessing complaints from 21 days to at least 28 days to ensure a more rigorous assessment process.

- **Recommendation 4:**

The LGAQ recommends the OIA reviews its current approach to ensure a more thorough decision matrix is used when assessing whether a complaint is frivolous or vexatious and undertakes stronger action to deter such complaints.

### Anonymous complaints

It is noted in the OIA's submission to the Committee that 10 per cent of the complaints lodged with the OIA are lodged anonymously.<sup>10</sup>

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<sup>9</sup> [https://www.statedevelopment.qld.gov.au/\\_\\_data/assets/pdf\\_file/0025/44809/councillor-complaints-review-report.pdf](https://www.statedevelopment.qld.gov.au/__data/assets/pdf_file/0025/44809/councillor-complaints-review-report.pdf)

<sup>10</sup> <https://documents.parliament.qld.gov.au/com/SDRIC-F506/IIA-9981/submissions/00000005.pdf>



Delegates attending the most recent LGAQ Annual Conference endorsed a resolution in relation to anonymous complaints and how they should be dealt with.

That resolution states: *That the LGAQ calls on the Office of the Independent Assessor to not deal with or respond to anonymous complaints or compel local government authorities to deal with or respond to anonymous complaints.*

In supporting the resolution, delegates argued there were many avenues through which a person could lodge a complaint with the appropriate whistle-blower protections, and these should be utilised, rather than accepting and processing anonymous complaints. Removing the requirement to investigate complaints made anonymously would serve to reduce the number of frivolous complaints as well as those complaints lodged merely to cause mischief and angst.

We reiterate our comments from our original submission to the Review Panel. This is a matter of natural justice: no one should be subject to an anonymous complaint.

Surely the receipt of an anonymous complaint also makes it difficult for the OIA to determine the veracity of a complaint and fetters its ability to adequately exercise its powers in relation to frivolous complaints and other improper complaints under Chapter 5A, Part 3, Division 7 of the LG Act.

In relation to anonymous complaints, the following recommendation is made:

- **Recommendation 5:**

The LGAQ recommends anonymous complaints be automatically rejected.

## **Term of Reference 2 - Whether the powers and resources of the Independent Assessor are being applied in accordance with the public interest**

### Frivolous or vexatious complaints

The LGAQ's members are concerned with the way the OIA has been interpreting the Code of Conduct for Councillors in Queensland and seemingly validating complaints that could otherwise be described as frivolous, vexatious and/or politically motivated.

Many of these complaints should be instantly dismissed under section 150X of the LG Act, as either not being in the public interest or an unjustifiable use of resources.

However, many are continuing to the assessment or investigation phase. This is leaving the OIA and the related Code of Conduct open to being weaponised for political purposes.

While there are powers in section 150X of the LG Act for the OIA to take immediate action and dismiss a complaint as being frivolous or vexatious or as one that was not made in good faith (a complaint made for a mischievous purpose, recklessly or maliciously), it is unclear how many times the OIA has exercised these powers. For transparency and to underline this option as a tool, it is recommended that the OIA be required to publicly report on this action, as outlined below.

It should not be lost on the Committee that throughout the three years of its existence, the OIA has never successfully prosecuted anyone for making frivolous or other improper complaints, under sections 150AU and 150AV of the LG Act. The LGAQ is not advocating for a heavy-handed approach, but it is clear the current system is far too lenient.

The three-step escalation process outlined in the OIA's Annual Report<sup>11</sup> seems incongruous with the LG Act. That process, as outlined by the OIA, is as follows:

- Step One; the OIA provides a warning that any further complaint may be dismissed as vexatious or improper;
- Step Two; The complaint is dismissed as vexatious/improper, and an offence warning is issued.
- Step Three; The OIA commences an investigation ahead of a possible prosecution. (A fine of more than \$11,000 may apply.)

It is noted the OIA may move directly to step three in cases where the complainant's behaviour is very serious.

The Committee should be aware that this three-step escalation process is not outlined in the LG Act, or in any statutory scheme for that matter. Specifically, there is no legislated provision for step one.

In 2020/21, the OIA issued a warning to 34 complainants after matters were escalated to step two.<sup>12</sup>

The Review Panel report recommended (at 4.9) the Act be amended to include a section making it an offence for a person to: (a) make repeated complaints about a councillor – (i) vexatiously; or (ii) not in good faith; or (iii) primarily for a mischievous purpose; or (iv) recklessly or maliciously; or (b) counsel or procure another person to make a complaint about a councillor as mentioned in point (a).

It was the LGAQ's view at the time that this recommendation be implemented, however the change was not supported.

The LGAQ believes this Review Panel recommendation should be implemented to ensure the Act includes a stronger disincentive to the making of repeated complaints by the same person, going forward.

The LGAQ therefore recommends:

- **Recommendation 6:**

The LGAQ recommends the OIA include in its Annual Report the number of complaints that are dismissed each year because they are frivolous, vexatious, mischievous in their intent, not in the public interest, or would be an unjustifiable use of resources, to increase confidence in the assessment process.

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<sup>11</sup> [https://www.oia.qld.gov.au/\\_\\_data/assets/pdf\\_file/0022/62545/annual-report-2020-21.pdf](https://www.oia.qld.gov.au/__data/assets/pdf_file/0022/62545/annual-report-2020-21.pdf)

<sup>12</sup> [https://www.oia.qld.gov.au/\\_\\_data/assets/pdf\\_file/0022/62545/annual-report-2020-21.pdf](https://www.oia.qld.gov.au/__data/assets/pdf_file/0022/62545/annual-report-2020-21.pdf)

- **Recommendation 7:**

The LGAQ recommends the OIA's three-step escalation process be independently reviewed and amended to better align with the relevant provisions in the LG Act. At the very least, step one and two should be combined.

- **Recommendation 8:**

The LGAQ recommends the State Government broaden the opportunities for the OIA to dismiss a complaint, prior to investigation, under sections 150X and 150Y of the *Local Government Act 2009*.

- **Recommendation 9:**

The LGAQ recommends the State Government amends the *Local Government Act 2009* to implement the full recommendation (4.9) of the independent councillor complaints review panel in its report - 'Councillor Complaints Review: A fair, effective and efficient framework'- in relation to frivolous or vexatious complaints.

### Freedom of political expression

While the Australian Constitution does not explicitly protect freedom of expression, the High Court has held that an implied freedom of political communication exists as an indispensable part of the system of representative and responsible government created by the Constitution.

In the matter of *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 and *Australian Capital Television Pty Ltd v the Commonwealth* (1992) 177 CLR 106, the majority of the High Court held that an implied freedom of political communication exists as an incident of the system of representative government established by the Constitution. This was reaffirmed in *Unions NSW v New South Wales* (2013) HCA 58.<sup>13</sup>

The Queensland *Human Rights Act 2019* (section 21)<sup>14</sup> provides for freedom of expression in that:

1. Every person has the right to hold an opinion without interference.
2. Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether—
  - (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by the person.

In the case of the Barcaldine Regional Council Mayor Sean Dillon, he was expressing his views and concerns on behalf of his community. That was what he is elected to do.

<sup>13</sup> <https://humanrights.gov.au/our-work/rights-and-freedoms/freedom-information-opinion-and-expression>

<sup>14</sup> <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2019-005>

As the LGAQ has stated publicly in response to reports of Mayor Dillon's case, mayors are elected to represent their council and their community and to be the first spokesperson on issues of importance to that community. Anything that encroaches on that right significantly undermines the role of elected local government representatives in Queensland.

By way of some further historical context, when the first Code of Conduct for Councillors in Queensland was approved on 3 December 2018, members expressed concern to the LGAQ that certain behavioural standards contained within that code contravened: -

- (a) The implied freedom of political communication; and/or
- (b) The human right of freedom of expression (as contained in the *Human Rights Act 2019* (which commenced on 1 January 2020)).

The LGAQ subsequently sought and obtained advice from Queens's Counsel about these issues which confirmed that: -

1. Sections 2.1 to 2.3 of the code, to the extent that they imposed a general embargo on councillors making derogatory comments about other councillors, impermissibly burdened councillors' implied freedom of political communication; and
2. Sections 3.3 and 3.4 of the code: -
  - Impermissibly burdened councillors' implied freedom of political communication; and
  - Contravened councillors' rights to freedom of expression in accordance with section 21 of the *Human Rights Act 2019*.

The LGAQ subsequently shared the conclusions expressed in this advice with representatives of the Department. Although the initial response from the Department was that it did not agree with the views expressed by LGAQ's Queens Counsel, subsequent versions of the Code of Conduct for Councillors in Queensland were approved on 7 April 2020 and 4 August 2020.

The following table shows the provisions objected to, as they appeared in the first code (approved on 3 December 2018), and the amended provisions that appear in the current code (approved on 4 August 2020):

	Code of Conduct approved on 3 December 2018	Code of Conduct approved on 4 August 2020
<b>Standard of Behaviour 2</b> Treat people in a reasonable, just, RESPECTFUL and non-discriminatory way	For example, Councillors will, at a minimum: 2.1 Show respect for fellow Councillors, Council employees and members of the public 2.2 Not bully, harass, intimidate or act in a way that the public would reasonably perceive a Councillor's behaviour to be derogatory towards other Councillors, Council employees and members of the public 2.3 Be respectful of other people's rights, views and opinions.	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
<b>Standard of Behaviour 3</b> Ensure conduct does not reflect adversely on the REPUTATION of Council	For example, Councillors will, at a minimum: 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 Avoid making unnecessary or irrelevant comments or accusations about Councillors or Council employees in order to undermine them or their position 3.4 Ensure behaviour and presentation is appropriate to maintain the dignity of the office of the Councillor.	For example, Councillors will, at a minimum, act 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.

It is the LGAQ's submission that the Department has already demonstrated, by amending the code as shown above, that councillors' implied freedom of political communication, as determined by the High Court's rulings has precedence. The OIA should not involve itself in matters of public or political debate. To put the matter beyond doubt, and to ensure the Code of Conduct for Councillors in Queensland doesn't impinge on the implied right to freedom of political expression afforded to elected local government representatives under the Australian Constitution, the LGAQ makes the following recommendation:

- **Recommendation 10:**

The LGAQ recommends the Minister amend the Code of Conduct for Councillors in Queensland to expressly ensure that it (i.e. the code) does not impugn the constitutional right of elected local government representatives to freedom of political expression.

#### Social media

The LGAQ is aware of numerous examples where the OIA has initiated action against elected members for blocking social media trolls on various platforms, most commonly Facebook.

In one case raised with the LGAQ, the OIA initiated action against a councillor alleging he engaged in inappropriate conduct because he did not remove a troll's abusive post.

On each occasion the elected member has been issued with Notice under s150AA of the *Local Government Act 2009* and given three days to respond. Elected members take the issuing of such notices extremely seriously.

As the Act explains, these notices are issued when the assessor is considering whether to make a decision to refer the councillor's conduct to the council to deal with, or to make an application to the Councillor Conduct Tribunal regarding the councillor's conduct.

In determining whether there is a reasonable suspicion of inappropriate conduct or misconduct, the OIA has stated in its Notices that the action of blocking a social media troll is a breach of the Conduct of Conduct for Councillors in Queensland, particularly the section of the Code that states: 'Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness.' The OIA has also stated that blocking a social media troll could be considered a breach of the *Human Rights Act 2019* – presumably freedom of expression.

It is interesting to note that the OIA walks both sides of the street on freedom of expression. Social media trolls are protected, and yet important comments about a community's vaccination rollout – a matter of life and death – are deemed inappropriate conduct (or potentially misconduct).

State and Federal Members of Parliament are allowed to block social media trolls at their discretion and manage their social media pages effectively. All elected local government representatives are asking is that the same standard that is applied to State and Federal parliamentarians also apply to them.

Constituents have multiple avenues available to them to contact elected members other than on social media. Indeed, not all elected members engage on social media sites like Facebook. The blocking of comments on social media should not be considered even a potential case of inappropriate conduct.

- **Recommendation 11:**

The LGAQ recommends the Minister amend the Code of Conduct for Councillors in Queensland to ensure the blocking of persons on social media due to inappropriate, defamatory and/or offensive material can no longer be considered a potential case of inappropriate conduct (or potentially misconduct).

#### Complaints against former councillors/limitation period

Section 150M of the LG Act deals with the application of conduct complaints as it relates to former councillors. It provides that the regulation of councillor conduct complaints applies in relation to a person who was but is no longer a councillor if a person was a councillor when the conduct that is the subject of a complaint or investigation is alleged to have happened.

Surely there should be a limitation on complaints:

- (a) against former councillors who are no longer in office; and

- (b) More generally, regardless of whether the subject of the complaint is a current or former councillor.

While complaints about serious matters, such as allegations of corrupt conduct against current and former councillors (which are dealt with by the Crime and Corruption Commission) should be timeless, other less serious matters such as inappropriate conduct or misconduct should be time limited to some extent.

Some current and determined complaints are in relation to matters that are almost 10 years old when they are lodged and assessed.

- **Recommendation 12:**

The LGAQ recommends the State Government review the assessment process regarding complaints made against both former councillors who are no longer in office, and complaints made against continuing councillors, and considers the inclusion of an appropriate limitation period prohibiting the investigation of complaints if a prescribed period of time (e.g. three years) has elapsed between the date of the alleged conduct, and the date of the complaint.

**Term 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.**

#### Investigation timeframes

This is one of the most significant issues raised by our members.

The OIA has no benchmark for investigation timeframes. The LGAQ is aware of investigations that have continued for in excess of two years. During that time the matter hangs over the head of the elected local government representative causing significant distress and reputational damage. It can also leave the investigation open to being weaponised politically by the elected member's opponents.

The Review Panel's report identified a number of strategic directives in relation to increasing natural justice and fairness for all concerned. It stated the model it was proposing (the current model) would allow for complaints to be dealt with more effectively, more efficiently, in a timelier manner and with a greater degree of fairness. The Review Panel report also claimed the Panel's recommendations would lead to complaints being processed through speedier investigations. It is our contention that this has not occurred.<sup>15</sup>

In the LGAQ's submission to the Review Panel, we noted of the previous system that:

*The average of 178 days (61 days to assess and investigate a matter and 117 days to finalise a matter) is far too long.<sup>16</sup>*

<sup>15</sup> [https://www.statedevelopment.qld.gov.au/\\_data/assets/pdf\\_file/0025/44809/councillor-complaints-review-report.pdf](https://www.statedevelopment.qld.gov.au/_data/assets/pdf_file/0025/44809/councillor-complaints-review-report.pdf) (page 13)

<sup>16</sup> [https://www.statedevelopment.qld.gov.au/\\_data/assets/pdf\\_file/0025/44809/councillor-complaints-review-report.pdf](https://www.statedevelopment.qld.gov.au/_data/assets/pdf_file/0025/44809/councillor-complaints-review-report.pdf)



While the assessment benchmark has been reduced to 21 days under the OIA, misconduct investigations are still significantly delayed, which is unacceptable.

As the well-coined saying goes, justice delayed is justice denied. As such, the LGAQ makes the following recommendation in relation to the need for more timely investigations to be undertaken:

- **Recommendation 13:**

The LGAQ recommends the OIA set a target benchmark for investigation timeframes and publicly report on investigation timeframes for deemed misconduct complaints to be finalised, each year in their Annual Report.

#### Code of Conduct for Councillors in Queensland (Code of Conduct)

The Code of Conduct is provided for in Chapter 5A, Part 1, Division 2 of the LG Act.

It is made by the Minister for Local Government and sets out the standards of behaviour for councillors in performing their functions as councillors under the LG Act and the *City of Brisbane Act 2010*.

It is therefore pivotal to how complaints regarding councillor conduct are determined.

Once finalised, the Code of Conduct is approved by Regulation through Governor-in-Council, meaning it is therefore subordinate legislation.

As outlined in section 150E of the LG Act, once the Code of Conduct is approved by Regulation, it must be tabled in the Legislative Assembly alongside that Regulation, and also published on the Department's website.

As stated in its purpose, the Code of Conduct sets out the principles and standards of behaviour expected of councillors and mayors when carrying out their roles, responsibilities and obligations as elected representatives for their communities. By adhering to the behaviours set out in the Code of Conduct, it states that councillors will increase public confidence in local government and council decisions.<sup>17</sup>

Given the importance of the Code of Conduct to the councillor complaints process, it is important that it remains a contemporary document that is subject to regular reviews.

The Code of Conduct is developed by the Local Government Liaison Group, which was established as a recommendation of the Review Panel. Its membership is comprised by the OIA, LGAQ, the CCC, the Queensland Ombudsman and the Local Government Managers Association (LGMA).

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<sup>17</sup> [https://www.dlgrma.qld.gov.au/\\_\\_data/assets/pdf\\_file/0017/45170/code-of-conduct-for-queensland-councillors.pdf](https://www.dlgrma.qld.gov.au/__data/assets/pdf_file/0017/45170/code-of-conduct-for-queensland-councillors.pdf)

While the LGAQ understands the need to include representative organisations such as the Association and the LGMA, the Association believes the drafting of the Code of Conduct may also benefit from practical experience gained from the sector.

The LGAQ believes this experience could be gained if the Local Government Liaison Group's membership is expanded to include a former council CEO and a former councillor or mayor. Their added perspective could provide an additional level of understanding of the challenges faced by elected representatives and senior officers at a council level.

- **Recommendation 14:**

The LGAQ recommends the Code of Conduct for Councillors in Queensland be reviewed at least every two years.

- **Recommendation 15:**

The LGAQ recommends the membership of the Local Government Liaison Group be expanded to include more local government experience, including a former elected representative and a former council CEO.

### Oversight

The LGAQ notes the comments from the OIA in their submission, that:

*"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."*<sup>18</sup>

They recommended: *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.*<sup>19</sup>

The LGAQ agrees with those sentiments.

The parliamentary oversight of the Crime and Corruption Commission (CCC) – an integrity agency - through the Parliamentary Crime and Corruption Committee (PCCC) serves as an important check and balance.

The LGAQ does not believe a separate committee should be established to oversee the OIA, however, there is no reason why legislation could not be amended to ensure the OIA has a similar statutory oversight to the CCC through a portfolio committee that is established under the *Parliament of Queensland Act 2001*.

Chapter 5 of the *Parliament of Queensland Act 2001* outlines that the main object of establishing statutory committees of the Assembly is to enhance the accountability of public administration in Queensland.

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<sup>18</sup> <https://documents.parliament.qld.gov.au/com/SDRIC-F506/IIA-9981/submissions/00000005.pdf>

<sup>19</sup> <https://documents.parliament.qld.gov.au/com/SDRIC-F506/IIA-9981/submissions/00000005.pdf>

The relevant committee should also be able to receive and review complaints made about the OIA, from any member of the public in a similar way to how the PCCC receives complaints made about the CCC.

The OIA has CCC-like powers and that needs a mechanism for strong checks and balances.

We make the following recommendation in relation to the oversight of the OIA:

- **Recommendation 16:**

The LGAQ recommends the relevant Queensland Parliamentary Committee with general oversight of the Office of the Independent Assessor be given statutory oversight functions similar to those afforded to the Parliamentary Crime and Corruption Committee, which oversees the Crime and Corruption Commission (another integrity agency), to increase the level of parliamentary scrutiny and oversight.

- **Recommendation 17:**

The LGAQ recommends the OIA introduce further transparency and cost effectiveness into its annual report around the cost of undertaking assessments and investigations, by increasing the public reporting of costs incurred, including officer hours/resources expended per complaint regardless of how the complaint is dealt with (dismissed or investigated).

### Councillor Conduct Registers

All 77 councils across Queensland are required under the LG Act to publish details of complaints both upheld and dismissed by the OIA on a publicly available Councillor Conduct Register.

The LGAQ understands the need to ensure a public register of complaints upheld by the OIA, however, the publishing of complaints dismissed by the Independent Assessor is an onerous and unnecessary step.

The LGAQ notes the OIA is of the same view with its submission to the Committee recommending s150DX, 150DY and 150DZ of the LG Act be amended to remove the requirement for matters that have been dismissed, or are the subject of no further action by the OIA, to be published in the Councillor Conduct Register.

The LGAQ supports this recommendation.

- **Recommendation 18:**

The LGAQ recommends s150DX, 150DY and 150DZ of the Local Government Act 2009 be amended to remove the requirement for matters that have been dismissed, or are the subject of no further action by the OIA, to be published in the Councillor Conduct Register.

### **Specific member feedback**

As noted previously in this submission, members were given the opportunity to provide comment to the LGAQ, so that it could be incorporated in this submission. Councillors were

also encouraged to make individual submissions so they could speak further to their concerns if the Committee desired.

These are listed in the “case studies” section below.

### **OIA submission**

The LGAQ notes the submission provided to the Committee from the OIA. Many of the issues raised have been responded to in this submission.

Since its establishment on 3 December 2018, the LGAQ has developed a professional working relationship with the OIA and in particular the Independent Assessor Kathleen Florian, on behalf of our member councils and for the benefit of the local government sector. That included Ms Florian attending the LGAQ Annual Conference in Mackay only recently, which was appreciated.

In its submission, the OIA made 13 law reform proposals in response to Term of Reference 3<sup>20</sup>. While some have been dealt with previously in the LGAQ’s submission, for completeness the LGAQ provides the following comments:

- 1. Unsuitable meeting conduct – extend the definition to capture informal meetings and workshops**

LGAQ Comment: It is unclear how this recommendation would reduce the workload of the OIA. If this could be substantiated in relation to the number of complaints this would reduce from OIA assessment and potential investigation, the LGAQ would give further consideration to this recommendation.

- 2. New Inappropriate conduct scheme – Making the inappropriate conduct scheme more effective**

LGAQ Comment: Not supported. The OIA does not have the resources to investigate its current workload and the LGAQ does not support adding to the investigation workload of the OIA, given it cannot handle the existing workload.

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

LGAQ Comment: This is supported as long as Recommendation 2 above is not supported.

- 4. Discretion not to deal with certain complaints**

LGAQ Comment: Supported

- 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.**

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<sup>20</sup> <https://documents.parliament.qld.gov.au/com/SDRIC-F506/IIA-9981/submissions/00000005.pdf>

LGAQ Comment: Supported. This is a common-sense recommendation that has also been raised by members.

- 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 Improve efficiency of investigations**

LGAQ Comment: Not Supported. As canvassed in the submission, local councillors should not be denied the same rights afforded to other representatives. Removing this right would greatly diminish a councillor's ability to do the job they were elected to do in representing their communities and publicly advocating on their behalf.

- 7. 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.**

LGAQ Comment: Supported, in part. The LGAQ would not oppose the requested amendment, limited to information obtained via a notice to provide information issued to government entities and their employees (i.e. not councillors or other individuals), pursuant to section 150CH of the LG Act. However, the LGAQ does not support this amendment being extended to evidence obtained (i.e. questions answered) in response to a notice to require attendance, issued via section 150CJ of the Act

- 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.**

LGAQ Comment: Supported. The LGAQ notes recommendations referred to previously in this submission that the 7-day notice period is too short. It should be extended to provide sufficient notice to the respective councillor. That was submitted to the Parliamentary Committee that considered the LG Complaints Bill.

- 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.**

LGAQ Comment: Supported. This is a common-sense recommendation. Further, this amendment should be extended to allow the IA to withdraw matters referred back to Councils, as inappropriate conduct, where there is a change in circumstances that is relevant to the public interest in progressing such matters.

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

LGAQ Comment: Supported.

- 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.**

LGAQ Comment: Not supported. There is no issue with the current review process.

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

LGAQ Comment: Where a former councillor is properly the subject of disciplinary proceedings (allowing for any legislative limitations on proceedings relating to former councillor conduct) and is the subject of an appropriate order in accordance with the LG Act, we support provision for requiring compliance with Councillor Conduct Tribunal orders.

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

LGAQ Comment: Refer to the LGAQ's recommendation 16 regarding 'oversight'.

### **Questions asked by Committee members on 6 December 2021, taken on notice**

#### The Committee asked questions about mandatory training

As indicated in the public hearing, the LGAQ does not support mandatory training.

The local government sector faces the challenge of having new representatives elected every four years. This means the cohort of mayors and councillors contains many long-term representatives and many newly elected representatives who are learning the ropes of what being a local government councillor is about. All must deal with ongoing requirements of understanding changes to legislation – and there have been some significant changes in recent years.

This environment would make mandatory training difficult, onerous and impractical.

It would, however, be beneficial for the training to be provided in a more coordinated way than is currently the case, and then individual councils could opt-in to what they felt was necessary for them. That is something that could potentially be coordinated by the Department.

#### The Committee asked about the current level of services provided by the LGAQ and whether fees were involved

Further to the response provided in the public hearing, elected member updates are provided as a four-hour training workshop to all elected members at every council, every year. This is provided as a benefit of membership with no extra cost. That includes an update on key governance issues, advocacy plans and other important information relevant to the local government sector. A section of this training is also tailored to new councillors with that delivered at the start of every term. The LGAQ considers it ideally placed to provide this training as the Association is a n experienced member body at arms-length from the regulator, the Department.

In terms of governance queries, the LGAQ's dedicated Member and Advisory Services Team provides assistance on how local government legislation, the code of conduct and any guidelines operate and impact on how councils conduct business, free of charge – however the advice given is not legal advice. In response any, specific queries and to support our members, the LGAQ can obtain legal advice from its legal service provider and depending on the nature of the specific query, it may not attract any fees.

The Member and Advisory Services Team develops new tools, resources and educational content that will be of assistance to members in understanding their legislative, regulatory, governance and compliance obligations and responsibilities.

The LGAQ's subsidiary company, Peak Services Pty Ltd also offers a variety of training covering topics from the Code of Conduct to Public Interest Disclosures to fraud awareness. Councillors have the ability to conduct this training via eLearning.

The Committee asked about examples that impact a councillor more than a State or Federal Government MP

The different rules that apply to how a councillor can moderate their social media account – and the OIA's interpretation of the blocking of social media trolls, is one example of this. State and Federal MPs are free to block who they like on social media. Councillors are not.

Another example is the ability for a councillor to engage in political debate. As the matter involving Barcaldine Regional Council Mayor Sean Dillon has demonstrated, councillors risk having allegations of inappropriate conduct or misconduct being made against them and being the subject of disciplinary proceedings for engaging in political debate should the OIA deem it to be in contravention of the Code of Conduct. State and Federal MPs have very little limitation on their ability to engage in political debate.

The Committee asked about the application of the Council Conduct Register in terms of how matters are reported and whether more confidentiality could be applied

As indicated previously in this submission, the LGAQ supports law reform proposal 5 outlined by the OIA in their submission to the Committee. The LGAQ does not believe complaints that have been dismissed – or that the OIA has decided to take no further action on – should be included in the Councillor Conduct Register.

The Committee asked about the joint social media impressum developed by the OIA and in conjunction with the LGAQ

The impressum developed by the OIA and the LGAQ was designed to help councillors navigate social media in light of the Code of Conduct. It set out the rules of engagement on a councillor's page. It welcomed engagement - be it positive, neutral or negative – but it drew the line at unacceptable behaviours by defining them and outlining the circumstances that would lead to comments being hidden or deleted, or to users being warned and/or ultimately blocked. This impressum has been removed by the OIA following the decision of the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning to clarify that any training and/or advice should be the domain of the Department.

The Committee asked about the need for other key performance indicators in terms of the processes the OIA operates under

This has been covered in this submission.

The Committee asked about the cost to councils under the current system

Data provided to the LGAQ by the Local Government Mutual Scheme, the LGAQ members' insurance scheme, show that legal costs to respond to a complaint can vary from just over \$6,300 per matter, to as much as \$100,000 for one particular matter that is still ongoing. For



one council, responding to OIA matters cost \$50,000 in one financial year in staff time and in training and mediation. That is ratepayers' money that could have been spent on establishing the feasibility of a wool processing plant such as that in Blackall-Tambo, undertake detailed design, legal and administrative costs of a hydrogen project like Goondiwindi, or host an annual community event like in Townsville where they provided \$50,000 via grants and waived fees to enable a hugely popular community event to proceed - The Stable on the Strand Christmas event – which will expect up to 35,000 visitors across its five-day run.

The Committee asked for an LGAQ response on the OIA's law reform proposals contained in their submission

The LGAQ have responded to those 13 law reform proposals in this submission.

## Case studies

### COUNCILLOR A

The fear of retribution across the Local Government sector is real and is having a significant impact on Councillors being able to perform their role. In some cases it has also extended to the families of Councillors, impacting their livelihoods and relationships. In my opinion the mere fact that I have had to take these steps to protect my anonymity shows the complete breakdown in confidence in the OIA and the need for systemic and wholesale changes.

Noting the Terms of Reference of the inquiry, please find below my input into the LGAQ submission:

Timeframes and communication of complaint investigations:

In my experience the time taken to investigate and respond to seemingly simple complaints is completely unsatisfactory, with such investigations sometimes taking up to two years and at considerable expense, notwithstanding the Councillor has already made admissions and publicly apologised. This delay leaves the Councillor, Council and community in limbo while the matter is investigated, which is completely unacceptable.

Additionally the communication from the OIA throughout the complaints process is unsatisfactory. There appears to be no standard communication process or protocol used to inform Councillors of receipt or progress of a complaint. In some instances I was completely unaware there even was a complaint made against me until I was informed of the complaint outcome, or in some cases read about the complaint in a public forum (see further detail below).

Public commentary and politicisation of complaints:

I am pleased to see this inquiry's Terms of Reference include investigating whether the powers and resources of the OIA are being applied in accordance with the public interest. In my view the public interest test has not always been applied, with a number of instances of the OIA being used as a political tool by some elected officials and community groups.

On a number of occasions complaints have been lodged and then the details of the complaint released either to the media, through social media or under parliamentary privilege; creating a perception of guilt before the matter has even been investigated.

The risk of complaints being publicly released was discussed in the 2017 Councillor Complaints Review – A fair, effective and efficient framework, which ultimately recommended the establishment of the OIA.

Specifically, the review stated - As discussed in Chapter 8, a complaint is sometimes made at election time for the very purpose of revealing that 'councillor x' is under investigation. The complaint may be little more than a mud throwing exercise.... It must be acknowledged that almost any complaints system can be misused for political (in the broadest sense of that term) purposes.

Despite the identification of this risk during the review, the OIA remains powerless to prevent people from releasing details of complaints and hence powerless to prevent the complaints process being used for political point scoring. The vexatious complainant provisions that were meant to act as a deterrent to this occurring have clearly not worked and need to be strengthened.

Additionally, I have serious concerns about the OIA discussing the outcomes of complaints with elected Members of Parliament before a complaint has been finalised. I am personally aware of a situation where the OIA told a sitting MP the outcome of a complaint before the Councillor had been informed of the outcome and potentially before the outcome had been determined. This practice provided an opportunity for the MP to then tell others about the OIA's decision, encouraging the politicisation of the OIA and further undermining confidence in their ability to act independently and fairly. This practice is unacceptable and is in opposition to natural justice and due process, which should be afforded to all.

This same MP has demonstrated abuse of the process for public political posturing. This comes at a financial expense to ratepayers and the broader public purse. As the OIA does not always reveal the complainant, I have calculated an estimate of the costs for these complaints (that were dismissed) and Right to Information processes to our local government. This is calculated on the MP's public admission of lodging complaints and amounts to approximately \$1000 of ratepayer funds per complaint.

Furthermore, how can it be in the public interest that investigations can take up to two years to formally complete, at great expense, even after a Councillor has publicly admitted to error.

An absence of common sense and reasonableness:

I firmly believe there must be a robust and independent system of managing complaints regarding all elected representatives. With that being said, such a system must be practical and reasonable so as to retain public confidence.

In recent months there have been a number of examples of Councillors being subjected to what can only be described as unreasonable complaints. To have Councillors investigated for blocking abusive people on their own personal social media pages, or for commenting about the rollout of the State's response to the COVID pandemic shows a complete lack of understanding of the Local Government environment.

Councillors are elected to represent their community and they should be free to do that provided it is respectful and informed. When you compare these complaints to other levels of government where MPs attack each other, Councillors and community members under parliamentary privilege, there is a clear difference in the freedoms afforded to Councillors compared with their State and Federal counterparts.

The lodging and investigation of unreasonable complaints has a significant impact on Councillors, with a paralysis setting in due to a fear of complaints being lodged against them. This makes it impossible for Councillors to robustly represent their constituents. Thank you for the opportunity to provide this input.

## COUNCILLOR B

This was the councillor referred to previously in this submission regarding social media trolls and failing to remove derogatory remarks a member of the public made about them on a Facebook post. Councillor B was notified that, pursuant to section 150W(b) of the Local Government Act 2009 (the Act) the OIA reasonably suspected that the conduct the subject of the complaint is inappropriate conduct, and the complaint was referred to the relevant council to deal with.

The comment in question in the social media post was: **"fucking braindead spastic cunt."**

In response, Councillor B made the following remarks:

The substance of the complaint was that I had failed to delete the offensive comment. But after the OIA referral letter was received, I took reasonable steps to find the offensive post and could not do so. It seems Facebook moderators may have deleted the comment themselves. This is concerning for two reasons:

1. I'm being reprimanded because someone else abused me online.
2. Facebook has its own processes for moderating and deleting abusive behaviour on the platform, and the OIA does not have the resources or the mandate to establish its own duplicate process.

On another occasion, a complaint was referred by the OIA and treated as legitimate despite a lack of evidence. A resident (who we suspect was a member of another political party) complained that I had offered to help put renters in touch with landlords to negotiate rent discounts at the start of the covid shutdown. This complaint was mis-interpreted by the OIA as a complaint that I had offered to violate the privacy of landlords by disclosing private contact details without consent, which is not what I had proposed to do (we only ever pass on landlords' contact details to tenants if we first get the landlord's consent).

Despite my response to this effect, the OIA referred the complaint to (the council) to deal with, and the (other) councillors on the relevant committee thus acted as though the complaint was legitimate and backed up by evidence even though it wasn't.

## COUNCILLOR C:

Although at this point, I have personally not received an OIA, I was very close to it. A colleague of mine was sworn into council after another councillor resigned for personal reasons at the eleven-month mark of tenure. After the LGAQ conference in Mackay and media in relation to Mayor Sean Dillion, my colleague gave the information in relation to his OIA.

Having been in tenure for two weeks he was invited to visit the site of an impact assessed development application. He visited the site on the Monday public holiday of the Easter long weekend. He invited me to attend, and I was going to attend with him, however my sister-in-law and her daughter arrived at my in-laws house, so I gave my apologies and did not visit the

site. All councillors, as far as I know, did not know that the development application was submitted on the Wednesday, two days, before the Easter long weekend.

Having been a new councillor and had not had the opportunity to undertake councillor training, my colleague found himself with an OIA that I am led to believe was submitted by the CEO. It was said that he was found guilty however no penalty was applied due to having not been through training. The process was quite swift and took approximately two weeks to conclude. My concern is:

Why is there not discretionary measures allowable to take into consideration individual circumstances. Example (Was unaware that a DA was submitted, no training commenced, and a timeline of public holidays taken into consideration).

For me the OIA is there to assist in the more lenient matters other than hard core corruption. Why is it that some matters can result in two years of investigation leaving the councillor anxious and insecure.

**COUNCILLOR D:**

The speed or lack of to any investigation that they do. There doesn't seem to be a time frame on responses from the OIA. There is a date put on responses from councillors but never their end. From a personal point they haven't corresponded with me in 17 months.

They investigate stuff off their own bat. I don't know if it is in their charter, but they don't only respond to complaints they also raise their own complaints. With a name like OIA I would of thought that they would be just assessing complaints not making them.

**COUNCILLOR E: Cr Greg Christensen, Mayor of Scenic Rim Regional Council**

This correspondence is provided in full as Attachment A to this submission

**COUNCILLOR F:**

This correspondence is provided in full as Attachment C, however it has been provided in-confidence as it is understood the matter is still under active consideration by the OIA.

**COUNCILLOR G:**

No sensitivity shown to people who are domestic violence victims and/or people who are subject to safety concerns because they have been harassed on social media. Particularly about notification of principal place of residence on a Register of Interest. There is no reason those specific details can't be disclosed to the CEO only, without needing to be made public.

**COUNCILLOR H: Cr Lyn McLaughlin, Mayor of Burdekin Shire Council**

I refer to the Committee's Inquiry of the above and I wish to make a submission on my experience in dealing with the Independent Assessor.

An Anonymous person reported to the Office of the Independent Assessor that I had not completed my Register of Interest correctly. When I became aware of this, I did not dispute the fact that I had omitted to include my position on a private family company in my Register.

The Independent Assessor informed me that if I was still involved with the family company, I could have amended my Register of Interest; however, as the family company had been de-registered, and the interest was no longer current; I was unable to do this.

In their research of the anonymous complaint the Office of the Independent Assessor found that I was a Director with the Palm Island Economic Development Corporation Pty Ltd. Of note is that the Corporation had held no meetings, I had never received any correspondence from the Corporation, and I had never received any payment from the Corporation.

The Independent Assessor informed me that in relation to the Palm Island Economic Development Corporation Pty Ltd, I could have amended my Register of Interest; however, I had resigned as a Director.

I am now in my 20th year of local government; having served six years as a Councillor and I am now in my fourth term as Mayor.

Preparing this submission has been challenging as I again dealt with emotional distress and disbelief that the Councillor Conduct Tribunal on 5th August 2019 made a finding of Misconduct against me.

The Councillor Conduct Tribunal in their findings stated:

*"Councillor McLaughlin did not intentionally fail to record the particulars of her interest, the subject of the allegations, in her register of interest. The omissions were inadvertent."*

My costs, which I personally funded, included legal fees of \$9,136.16, the Councillor Conduct Tribunal finding that I reimburse the Burdekin Shire Council \$250.00 towards their cost, and I voluntarily paid Burdekin Shire Council the remainder of costs that it incurred from the Tribunal of \$1,550.00. As well as the financial costs, how do you put a price on my emotional distress, hours of lost productivity and time to prepare for the Councillor Conduct Tribunal hearing.

I believe the Independent Assessor saw my case as an 'easy win' which increased the number of decisions adding weight to the necessity for the Office of the Independent Assessor.

Considering that if I was a Director of either identity at the time of the findings, I could have amended my Register to comply with the requirements.

I believe that the Independent Assessor's actions in dealing with my complaint was not consistent with the intent of the local government complaints system and in accordance with the public interest for the following reasons:

- There was no intention to deceive the Council and ratepayers.
- There was no intention to mislead the Council and ratepayers.
- There was no risk to Council.
- There was no financial cost to Council.
- There was no benefit to the family company.
- There was no political gain for the Councillor or family company.
- There was no financial gain/loss for the Councillor or family company.
- There are no decisions by Council that involved the family company.
- The family company was not in the Council area.
- The family company did not transact any business with the Council.
- The family company did not transact any business with any company in the Council area.
- I received no payment for my role as a Director.
- I only became a Director following the death of my brother.

- I owned 4.04% shares in the family company.
- I had declared that I received an income from my shares in the family company on my Register of Interest.

My concern is that in researching other findings of Misconduct there have been instances such as:

- Potential benefit to a Councillor.
- Potential benefit to a family member/relative/close associate.
- Receipt of money in support of a Councillor during elections.
- Detrimental social media posts of another Councillor.
- Risks for the Council.
- Confidentiality breaches.

On 8 January 2020, I prepared a Submission to the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 with suggested amendments for consideration. I can make this available if required.

I am extremely disappointed that the action taken by the Independent Assessor in dealing with the complaint against me was not an effective use of resources for what was an administrative oversight for which I gained no financial or other benefit. It blemished my impeccable record and tarnished my reputation, with the resulting publicity causing me great personal distress.

I would welcome an opportunity to meet with members of the Economics and Governance committee. Thank you for the opportunity to present a submission.

#### **COUNCILLOR I:**

The OIA treats councillors like they are guilty until proven innocent. There is no sense of natural justice in the assessment process. It is floored from the beginning.

The system is already being weaponised and politicised. People are baiting councillors in order to orchestrate circumstances that leads to a complaint being lodged. Councillors feel that they cannot simply state the facts and reiterate a position because that is seen as showing a lack of respect towards the public. If they remove themselves from the conversation, that also shows a lack of respect. It is too subjective and encourages vexatious complaints.

#### **COUNCILLOR J:**

This correspondence is provided in full as Attachment D, however it has been provided in confidence as it is understood the matter is still under active consideration by the OIA.

#### **COUNCILLOR K: Cr Greg Campbell, Mayor Cloncurry Shire Council**

This correspondence is provided as Attachment B and the matter has been finalised. The period in which it took for this matter to be dealt with should be of interest to the Committee.

#### **COUNCILLOR L:**

1. Concerns about the release of confidential internal council documents to complainants, which can be taken out of context and used against a councillor during an election campaign.

2. Timeliness of investigations. It took the OIA around 12 months to contact witnesses at the event where an incident occurred that lead to a complaint. Because of that delay, people at the event did not have a fulsome memory of what happened. Also, the OIA were not clear about the process when a complaint was lodged.

#### **COUNCILLOR M:**

##### Definition of misconduct (150L of the *Local Government Act 2009*) and the broad scope of interpretation by the OIA

The OIA has taken an overly wide and liberal interpretation of the definition of misconduct in assessing complaints and in doing so, is consuming resources (both of the OIA itself and of councils and individual Councillors) in investigating matters which in many cases, constitute little more than an oversight by a Councillor, an action based on unawareness of circumstances or information and/or that are so trivial in nature that their investigation could constitute an unreasonable use of limited resources.

This is particularly the case in the context of the OIA's interpretation of subsections 1 (a) and (b) of section 150L of the Act. By way of example, the OIA spent 14 months investigating a politically motivated complaint of misconduct against a Councillor for attending and speaking at an event relating to a development where the development had not (at that time), received all requisite approvals. In this case, the OIA went as far as to prepare a brief to recommend the matter to the Councillor Conduct Tribunal - when from the outset, the Councillor had advised he was unaware there were development approvals outstanding and a senior Council officer had provided a Statutory Declaration confirming that the officer had neglected to confirm the status of the development prior to the Councillor attending the event.

Likewise, the OIA spent eight months conducting an investigation of an allegation that a Councillor made a potentially false or misleading statement during the 2020 local government election campaign relating to the actions of a person who was managing the campaigns of five other candidates. This complaint was ultimately dismissed based on an unjustifiable use of resources, but this occurred after the Councillor had spent time and resources on formulating his submission to the OIA in response to the complaint. The appropriateness of the OIA investigating matters relating to statements by candidates in an election campaign is addressed further below.

It is recognised the OIA has a statutory duty to investigate all complaints received (see comments below) but if this aspect of the law could be amended to enable the OIA to decide early on that an investigation of a complaint would involve an unreasonable use of resources in the circumstances outlined above, it would assist in many ways to avoid unnecessarily putting Councillors through an investigative process for no discernible outcome and reduce the impact on the resources of the OIA, councils and individual councillors.

##### Section 150T (1) of the *Local Government Act 2009* – statutory obligation to investigate all complaints

Section 150T (1) of the Act establishes a statutory obligation on the OIA to investigate every complaint received relating to the conduct of a councillor. The only instances where the OIA may decide not to investigate a complaint are limited and are confined to:

- (a) where the person does not comply with a notice from the OIA requesting further information; or



- (b) the person complies with the notice but, in the OIA's opinion, there is still insufficient information to investigate the conduct.

Effectively, this requires the OIA to investigate every complaint received where there is sufficient information provided by the original complainant, notwithstanding that the complaint may clearly:

- Be politically motivated
- Lack substance
- Constitute a very minor act of transgression – such as missing by 1-2 days the timeframe for updating a Register of Interests (which could more appropriately be dealt with by a warning from the OIA to the Councillor reminding them of their statutory obligations)
- Be irrelevant to a Councillor's performance of their duties and responsibilities as a Councillor
- Contain substantial errors of fact.

In the interests of reducing the impact on the resources of the OIA, achieving more timely attention and resolution of more substantive complaints and reducing the unnecessary impact on the resources of Councils and Councillors, it is considered that section 150T of the Act should be amended to provide a wider discretion to the OIA in relation to whether or not a complaint should be investigated.

In the interests of transparency, the Act could also be amended to require either the Independent Assessor or the Governor in Council to make and publish decision-making standards (with which the OIA must comply) for determining instances where the discretion not to investigate a complaint can be exercised.

#### Differing standards of treatment

What has become clear since the establishment of the OIA is that it has chosen – with no legal or statutory basis for doing so – to apply differing standards to the assessment of conduct relating to complaints made in relation to certain individual Councillors.

It is clear the OIA has chosen to apply a higher standard of conduct expectations to Mayors than that of Councillors – where there is no legal basis for the inequitable application of standards.

If the OIA is to apply differing behavioural standards to a certain class of Councillors (eg. Mayors), then at a minimum, this should be authorised by statute and published by the Independent Assessor in the context of assessment standards that the OIA will comply with in the assessment and investigation process.

At the present time, this is a clandestine approach that is openly acknowledged by staff within the OIA but not documented in any form and nor is it permitted currently under the Act.

#### Inappropriateness for the complaints regime to apply to Councillors in an election process – unless it relates to the conduct of the functions as an elected Councillor

As indicated above, the OIA spent eight months conducting an investigation of an allegation that a Councillor made a potentially false or misleading statement during the 2020 local government election campaign relating to the actions of a person who was managing the campaigns of five other candidates. The allegation was ultimately dismissed.

The current complaints regime in relation to Councillor conduct is discriminatory in one very particular sense - and that is where it enables the OIA to receive complaints and requires the OIA to investigate complaints made in relation to the conduct of Councillors during an election campaign. This is both discriminatory and unique for the following reasons:

- There is an uneven playing field established during a local government election campaign in that current serving Councillors remain subject to the complaints process established under the Local Government Act relating to misconduct, whereas no such jurisdiction exists in relation to the conduct of other candidates or persons involved in campaigns but who are not serving Councillors;
- The scope for blatant political misuse of this jurisdiction by candidates who are not current serving Councillors and their associated campaign staff, to discredit and raise questions about a political opponent during a campaign (when that opponent is a serving Councillor) is considerable and its misuse has already been demonstrated;
- In no other tier of government and no other local government system in the nation is there a misconduct complaints jurisdiction (as opposed to a corrupt conduct complaints jurisdiction) in place in relation to campaign activities of candidates who are currently serving elected representatives.

It is accepted that during an election campaign, a current serving Councillor will also still be undertaking their duties as a Councillor and that in performing those duties, the Councillor should continue to be subject to an appropriate complaints regime. For example, as Council meetings continue during election campaign periods, if a serving Councillor fails to properly notify the existence of a prescribed or declarable conflict of interest in a matter to be considered at a Council meeting, then the conduct complaints jurisdiction should logically continue to apply to that Councillor.

However, during the local government caretaker period, where a Councillor makes a comment about another candidate or a person who is publicly associated with the campaigns of other candidates, complaints about such matters should not be able to be received and assessed by the OIA.

#### **FEEDBACK FROM CAIRNS REGIONAL COUNCIL:**

In broad terms, we believe we share the concerns of LGAQ and the local government sector about the following:

- Duration of investigations. We have a live example of a matter than has been under investigation and review for over two years with no firm indication of a resolution date.
- The trivial nature of a large number of complaints
- Lack of communication and feedback relating to the progress or status of an investigation.
- The appropriate allocation of Council officer resources to provide the required information to the OIA
- Lack of clarity when there are a multitude of complainants about the same issue
- Consideration not given when multiple investigators are reviewing discrete complaints for the same Council, providing the same deadline. We have experienced some weeks that have required a FTE to manage the investigation/information gathering "load".
- Inconsistency in OIA views, when compared to DSDLGIP advice

We are of the view that improvements could be made in the following ways:

1. Dismissing trivial complaints in a more expedient manner
2. A quarterly status report or dashboard provided to Councils where the progress of investigations are clearly categorised (i.e. under review, assessment, information gathering, queued for tribunal etc)
3. An official route to provide Councils with capacity to appoint principal Council contact (other than CEO) to assist OIA investigators in information gathering
4. "Grouping" like complaints into the same investigation with the one reference number
5. Streamlining of multiple complainants re: similar complaint into the one investigation
6. Penalties considered for vexatious or nuisance complaints
7. More robust communication between the OIA and DSDLGIP to ensure consistent messaging and education to elected members.
8. A charter with designated timeframes committing to set response times

## Conclusion

The LGAQ again thanks the Committee for important opportunity to review the process of how councillor conducts are assessed and investigated in Queensland.

We trust these 17 recommendations will improve the operations of the OIA or which body is tasked with independently reviewing complaints.

It is important that people have trust in the system of local government.

It is also important that there is confidence in the system of how conduct complaints are dealt with, from the community and the local government sector as a whole.

Regulating councillor conduct is critical, but the current approach has gone too far and is becoming counterproductive and unworkable.

Elected local government representatives are unsure of their obligations and, in many cases, afraid to do their job effectively and as they were elected to do, to represent their community at the local government level.

On behalf of the local government sector, we thank the Queensland Parliament for their consideration and focus on this important issue and would be more than happy to speak to our submission at a further public hearing.

We would also encourage the Committee to speak with individual councillors about their respective matters.

What would also be of benefit is for the committee to conduct regional hearings and speak to members of those communities about how they want their councillors to represent them.

## Contact Details

Please do not hesitate to contact Nathan Ruhle, Lead – Intergovernmental Relations via email [nathan\\_ruhle@lgaq.asn.au](mailto:nathan_ruhle@lgaq.asn.au) or phone 0411 787 068 should you wish to discuss any aspect of this submission.

# Appendix

## LGAQ Policy Statement

The LGAQ Policy Statement<sup>21</sup> is a definitive statement of the collective voice of local government in Queensland. The relevant policy positions of local government in the context of integrity and transparency are as follows:

### 1.6 Governance Arrangements

1.6.1 To ensure the system of local government is accountable, democratic, efficient, sustainable and transparent, local governments have a responsibility to comply with appropriate standards relating to applicable governance arrangements. This includes boundaries, electoral arrangements, financial accountability and reporting, integrity and ethical standards, and oversight by independent bodies including the Queensland Audit Office, Integrity Commissioner, Ombudsman, Remuneration and Discipline Tribunal, and the Crime and Corruption Commission.

1.6.2 The governance arrangements that apply to local government should, where appropriate, be consistent with those applying to the state government – the obligations placed on local government will generally not be higher or lower than those applying to the state government.

1.6.3 Local governments have a responsibility to comply with any applicable legislative, industry or professional requirements to ensure that appropriate standards are maintained for the benefit of the entire community. Wherever possible, local governments should have the ability to tailor regulatory regimes to suit local conditions and interests while still achieving the desired performance-based outcome.

### 2.3 Representing the Community

#### 2.2.8 Community Engagement

2.2.8.1 Local governments recognise that community engagement is vital to the democratic process and contributes to building balanced healthy communities.

2.2.8.2 Local governments understand that community engagement contains the core elements of information, consultation and participation, which will be applied, where appropriate, to facilitate meaningful community involvement in the decision-making process.

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<sup>21</sup> <https://www.lgaq.asn.au/downloads/file/183/2019-lgaq-policy-statement>

## LGAQ Advocacy Action Plan/Annual Conference Resolutions

The LGAQ is committed to member driven advocacy and working with members to build stronger local government and more resilient local communities.

The Local Government Association of Queensland's Advocacy Action Plan (AAP)<sup>22</sup> is a roadmap designed to highlight the top policy positions and funding priorities councils believe are critical to ensuring Queensland flourishes and our communities thrive.

LGAQ Annual Conference Resolution 50 in relation to anonymous complaints is detailed in this submission. It was passed at the LGAQ's 125<sup>th</sup> Annual Conference held in Mackay in October 2021.

Relevant Advocacy Action items to this submission are:

**AAP 117** – *The LGAQ is asking the State Government to monitor, review and support the implementation of all integrity reforms to ensure they lead to increased transparency and accountability in practice, are proportional to the issues to be addressed and maintain local government as a high-functioning, responsive and flexible system of government that reflects the diversity of council operations and communities of interest.*

**AAP 119** – *The LGAQ is asking the State Government to increase funding for the Office of the Independent Assessor, Integrity Commissioner and Queensland Ombudsman to ensure timely outcomes for communities.*

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<sup>22</sup> <https://www.lgaq.asn.au/downloads/file/383/advocacy-action-plan-2021>