STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:
Mr CG Whiting MP—Chair
Mr JJ McDonald MP
Mr MJ Hart MP
Mr RI Katter MP
Mr JE Madden MP
Mr TJ Smith MP

Staff present:
Ms S Galbraith—Committee Secretary
Dr K Kowol—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE LOCAL GOVERNMENT (COUNCILLOR CONDUCT) AND OTHER LEGISLATION AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 16 October 2023

Gladstone

MONDAY, 16 OCTOBER 2023

The committee met at 11.04 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023. My name is Chris Whiting. I am the member for Bancroft and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

With me today are Jim McDonald, member for Lockyer and deputy chair; Jim Madden, member for Ipswich West; Michael Hart, member for Burleigh; we will soon be joined by Robbie Katter, member for Traeger; and Tom Smith, the member for Bundaberg. This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. These proceedings are being transcribed by Hansard. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or on social media pages.

The Local Government (Councillor Conduct) and Other Legislation Amendment Bill 2023 seeks to make the councillor conduct framework more effective and efficient. The bill's provisions include, amongst many others, introducing a statutory preliminary assessment process, limiting the application of the complaint process to former councillors and altering the councillor conflict-of-interest requirements. The purpose of today's public hearing is to examine the bill's specific provisions and implications, not so much to discuss individual complaints or to make adverse reflections on third parties.

Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. At the end of the session, if you would like to speak could you register and give your name, position and email address. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. I ask you to turn your mobile phones off or to silent.

CLIFTON, Mr David, Councillor, Tablelands Regional Council

TULLY, Mr Paul, Councillor, Ipswich City Council

CHAIR: Councillor Clifton, would you like to make an opening statement of no more than three minutes before we move to questions?

Mr Clifton: I am a councillor with the Tablelands Regional Council, which is based in Atherton. It has a glorious piece of country around it, if I may add that. I am not going to speak as if I am a lawyer relating to the amendments because I am not capable of doing that, but I felt that there were a couple of shortcomings. I hope that you have in front of you a case that I put forward. I am not going to speak to the case; I am going to speak to the amendments that I seek to suggest to you. These amendments relate only to mayors, councillors and staff, not to the general public.

The first one that I am going to suggest to you is to establish what I call a reflective moment—the ability to have a reflective moment in the legislation. The second one is to suggest that the OIA needs to have powers to go beyond the declaration of vexatious complaints and needs actually to act against those people whom it deems to act completely inappropriately in the nature of being vindictive, in the nature of being bullying et cetera. I will speak to those two points, if I may.

We have a whole raft of CEOs. They are capable, professional and meant to be objective officers. I believe that if a councillor or a member of staff or a mayor wants to lodge a complaint in their own right, without altering their ability to enter the complaint in their own right there should be a mandatory process that requires them to seek advice from the CEO. From my point of view, what that would effectively do is cause them to reflect upon what they were thinking. As members of parliament you know that the table of council and the floor of parliament are essentially combative places where emotions can run high.

Further to that moment of reflection, the CEO's response to the potential complainant should be in writing and should be attached as a mandatory attachment to the complaint. It should have the effect, in my view, of taking the emotions out and bringing this back to the professional, objective standards we should be trying to attain. It may cause a lot of the sorts of complaints that I am certain the OIA is plagued with—and, in fact, if you look at my case you will see that I personally was plagued with—to be removed. You have to expect people to be emotional and you have to expect them to feel. If they are not feeling then they are not into it, if you know what I mean. If there can be that reflective moment—that is the first point I want to make. It is not a suggestion of veto and it is not a suggestion of the diminution of individuals' rights; it is injecting the reflective moment.

The second thing is that the difference between being vexatious and vindictive is very unclear. I believe that the OIA should be empowered to go to the next step. The vexatious recommendations are fine. It is based on the cry-wolf principle: if you do it three times, it is deemed to be silly; you do not have the right to say it again. But some people go beyond that. Some of these circumstances that I have experienced go beyond that. It is not appropriate.

As I said here, I do not believe it is appropriate or fair to expect a person who has been cleared of complaints to suddenly jump up and act on their own behalf. If they have been through a lengthy process, they have been drilled to the ground by the complaints process and defended themselves. To then react against it by saying, 'Well, you did it to me. I'm going to do it back to you,' is not kosher. It is not in the interests of good governance. It is not in the interests of good relationships. As well as that, the people who have been cleared of these complaints—and many of them are—are not in a position to know what the whole thing is about. They do not know. The OIA has the full realm of investigation available to it. They know whether it is vexatious or it goes beyond that. In my view, the legislation should give them the power to go beyond it as a final protection for those people who have been maligned by the system.

CHAIR: Thank you for that suggestion about a reflective moment in the legislation. It is proposed to bring in a different administrative system for the preliminary assessment within the OIA. Do you think that would give them a chance to reflect or better process some of those complaints that you are talking about?

Mr Clifton: If you study the flow—I have not studied it, but if you think about the flow of it, complaints come about because of misunderstandings or views at a very basic level. The quicker you can nip them in the bud and get them in the right perspective, without bogging down the OIA—sure, the OIA have that, but if there is an in-house statutory ability for the CEO to say, 'Come on, Boss. Come on, Councillor,' and then put it in writing—an ability to discuss it that is built into it—then it may stop it from getting to the OIA. I am thinking of the day of judgement when you decide whether you are going to put it in or you are not going to put it in.

Mr McDONALD: Thanks, David, for the succinct way you discussed both of those things. One of the things we have tried to do is minimise that legalistic issue. This bill is actually dealing with legislative changes involving 19 of 40 recommendations. A couple of other recommendations that we have made to government included advice from the department as a mitigating circumstance. Certainly, if a councillor in your scenario was getting advice from the CEO then I think we should be taking that on board through that preliminary assessment area so that you can see what a person's intent is. This is all about legislation, but we need to make sure that when it is being applied it is being interpreted that way.

Mr Clifton: I do not see it as being an onerous matter. I see it as being that the complainant, in putting forward his or her complaint, has to demonstrate that they have had a mandatory discussion with the CEO and received that CEO's advice, which is then attached. If on reflection it still goes ahead then it has cleared a lot of the air, in my view.

Mr McDONALD: Are you talking about that being after a complaint is made?

Mr Clifton: No, at the time.

Mr McDONALD: Good.

Mr Clifton: I have completed the thing, I am about to send it and I say, 'CEO, what do you think?' He, in a formal way, writes back, which I attach. It then goes to you, the OIA, or if I decide to continue it is an easy step to put in. It accepts that there are professional inputs at the very base level that we could be using. It also accepts, as I described in my notes, that the CEO already has a primary formal advisory role. Why not extend that to include the process there?

Mr MADDEN: Councillor Clifton, I am looking at your submission. The thing that occurs to me is the issue of training of CEOs if they are going to take on this role. I do not think we can assume that they automatically have the knowledge, particularly with amendments to the bill. My question to you is very simple: who do you think is best placed to do the training of the CEO, if we were to adopt your proposal?

Mr Clifton: I believe that the staff of the OIA should do that because they are the people who are going to run it. They are the people who need it. At another level, so much of the relationships that we have in our society generally are so sanitised that they do not have any reality to them. If you could inject the reality to it by having a relationship—a professional formal relationship and a training relationship—that would be good.

Mr MADDEN: You would suggest that the Office of the Independent Assessor would do the training for the CEOs. Would you foresee that there would be ongoing training each year and they would have to complete that training as part of their role as CEO?

Mr Clifton: I believe that to be the case. I am talking off the top of my head here.

Mr MADDEN: I am giving you the opportunity to add to your submission.

Mr Clifton: I believe that should be the case. The legislation and the role of these people cannot be starkly separated from the realities of the workings of the world. If they try to give it off to someone else like the LGAQ then they have broken the link. My intuition tells me that they should go together.

Mr MADDEN: That is my only question. Thanks again for your submission.

Mr HART: I will say this for everyone in the room: we have been investigating the OIA for a long time and making suggestions to the government on how to fix it, because I think we all understand that the system was broken. It was clogged up and there were issues with it, so we want to make suggestions in a practical way that will not bog the system down again. David, from the point of view of the malicious intent of someone making a complaint, who would determine that and what would the consequences be if, in a perfect world, we could go down that path?

Mr Clifton: I think the only people who are in a position to determine that would be the OIA or the Councillor Conduct Tribunal. I am not sure how it ideally works. The OIA would make a referral to the Councillor Conduct Tribunal that would then deal with it but on the basis that only the OIA has a full knowledge of the facts of the case because they have investigated it. The complainant will have a full knowledge, but the person who is being complained against hardly knows anything. They are not in a position to complain or take action on their own behalf because they do not know what is going on. So the OIA would then refer. If you like, in simple terms, the OIA is the magistrates court. If they deem that something is inappropriate beyond their powers then they give it to the county court, and that is the Councillor Conduct Tribunal. Finally, the CCC is the supreme court in that hierarchical relationship.

Mr SMITH: The concern is that not all complaints are going to be vexatious. Under your suggestion, does it not, in fact, make the CEO an extension of the assessor? Then what occurs if the complaint is related in some way to the interaction between the councillor and the CEO?

Mr Clifton: That will have to be dealt with differently.

Mr SMITH: But you said it would be mandatory, under your system, to seek advice.

Mr Clifton: I am not the drafter; I am just the provider of an idea. Of course there will be some times when the CEO, for example, as prescribed by his role, will have to make—and that would have to be put in the legislation, in exactly the same way if he finds himself in, as it were, a conflict of interest. That is what you are talking about, aren't you?

Mr SMITH: Potentially, yes.

Mr Clifton: Potentially, a conflict of interest with the CEO with respect to the way the OIA works as well. Why can't that be drafted?

Mr SMITH: More questions for later.

CHAIR: Thank you very much, Councillor Clifton, for your time today. We will now go to Councillor Tully. Thank you for your submission. After your brief presentation we will have some questions for you.

Mr Tully: I am Councillor Paul Gregory Tully. I was first elected to the Ipswich City Council in 1979 and will hit 43 years next month. You have before you, and it is available online, the six elements to the submission I made. I will make a preliminary comment that the draft legislation appears to

resolve many of the issues that have been at the forefront of local government for a number of years. There are particularly a range of issues: time limits for complaints, which I think is very important; the preliminary assessment by the OIA, and there are criteria that have been specified in relation to that; and also the exclusion of conduct by a councillor in a personal capacity. That might be a difficult issue to determine, but what councillors do in a personal capacity I think is a good provision to ensure it does not bleed over into matters of a personal nature.

In relation to the preliminary assessment I have made a suggestion, and there are a number of matters that you would be aware of in the draft legislation that would mean that a complaint was either determined to take no further action or dismissed. It relates to the personal capacity issue or conduct that occurred because the councillor complied honestly and without negligence with a guideline et cetera. I have suggested in my submission that there should be one overarching provision with the OIA if a matter relates to a matter that is inadvertent or of a minor or technical nature or otherwise relates to conduct generally considered to be reasonable in a local government environment that would be grounds for dismissal as well. The culture of the OIA I think is important—the culture of the organisation. That will be determined to some extent, but not completely, by the new legislation. I think there should be an overarching provision not necessarily about negligence but about whether or not the OIA should be investigating what is colloquially called 'rats and mice' stuff.

I will talk about two examples. These have been resolved, so we are not talking about current matters. A complaint was made of a councillor being in a picture but it should have been another councillor who was the one in the picture with the local federal member. That is what I call really 'rats and mice' stuff, but it was characterised as a complaint in relation to the council's media policy. I had a complaint against me back in 2000 that I had abstained from voting even though the Local Government Act clearly states that you can abstain from voting and it is counted in the negative. They did not say that I was not in breach. They said, in fact, that breached my obligation to be actively involved in council decision-making. That is the sort of stuff where I think the OIA must lift its game. I think the opportunity is there, as I say, from a cultural point of view, not just with the legislation but because of the legislation and the changes in personnel, again. I think it needs to lift it one particular bar.

There is one provision I made that between the consultation draft and the final bill I talked about the withdrawal of complaints to the tribunal. That has been rectified now. Previously, once a tribunal hearing had commenced it could not be withdrawn, but that has now been rectified so that is no longer something that I am pursuing.

Some of the other things, to some extent, relate to future matters that could be looked at by the government or naturally by the committee. There is one thing that, where matters of inappropriate conduct are referred back to the council—and this is item 2—if it is a tied vote within the council on whether or not the person is guilty of inappropriate conduct then the mayor or the chairperson of the council has a second or casting vote. My view is that that is contrary to any notion of one person having two votes on a particular matter where it is a disciplinary matter. In some cases, that can run into thousands of dollars, with the councillor required to pay the cost or some of the cost of an investigation. My view is that the provisions of the legislation should make it clear that that casting vote cannot be used in that disciplinary sense, specifically in relation to an inappropriate conduct decision. That particular issue is not actually in the bill, but I think it is a very clear case that it is possible to have that included because that is what this is all about. This is about the operational issues of individuals that can cost them thousands of dollars.

I will raise, as a preliminary comment, a final matter. It is in relation to the provisions for the future where complaints are already in train, either with the OIA or with the tribunal. I guess it would be fair to say that there are generally no overarching retrospectivity provisions. There are some things that need to be resolved and dismissed and whatever. Say a complaint comes in today and it is handled in a certain way. Then when the legislation comes in, I guess now in November, another complaint is made against another person. Those two people can be treated quite differently. My view is that if it is good enough for this person to get the benefits of a dismissal of a matter because of the change in the legislation then the same provisions should apply. It is easy to say that that was already in train, but we are talking about people's rights. I think one right that people have is to be treated equally in respect of the same conduct. I might leave it at that. I am happy to answer any questions.

CHAIR: Thank you for that. That last point is a really good one. We are making a note to clarify that with the department: once the new legislation comes in, does it apply to those complaints that are currently in process? There will not be many, but there may well be some that it does affect. We are happy to chase that up with the department to establish exactly what they are thinking about that. Thank you for that.

Mr Tully: On that issue, in reading the bill and applying it back to the current legislation, it is a pretty onerous task to see exactly what it means. I think only some provisions kick in and others do not, so my comment is that they should be treated equally. The two people should be treated equally.

CHAIR: There is a long trend; there are many clauses on transition in this bill.

Mr HART: There are a couple of things there where cases can be dismissed whereas they cannot be now so that should fix a lot of those sorts of things.

Mr McDONALD: A lot of the 'rats and mice' stuff.

CHAIR: Paul, I refer to the preliminary assessment if it relates to a matter that is inadvertent or of a minor technical nature. Thank you for pointing out where it should go within the bill. As I am seeing it, currently it may be dismissed with no further action if the complaint is frivolous or vexatious, was made other than in good faith, lacks substance or credibility, is an unjustifiable use of resources or there is insufficient information. You have been very specific in adding in these clauses here. Can you tell us why, having looked at all of those things there, you thought adding this extra bit would be useful?

Mr Tully: I used the expression 'an overarching provision' because, based on experience of reading each clause, assessors who are with the OIA might say, 'No, it is not covered by this. It is not covered by that.' I do not say this as any form of criticism, but, with the harmony of the new legislation, the preliminary assessment, getting rid of the 'rats and mice' stuff, that overarching provision—and they are my words; legislative drafters could come up with something different but of the same tenor—lots of things are of a pretty minor or technical nature, such as who should be in a photograph, but they may not strictly come under 'act honestly and without negligence' and all those sorts of things. It is just an overarching provision that most people would think was a pretty reasonable provision.

CHAIR: Once again, that might be something we chase up with the department when we are briefed.

Mr MADDEN: Can I confirm that overall you accept the proposed bill, save for your recommendations?

Mr Tully: Absolutely. I think you had the original inquiry into the OIA, if I can call it that, and a lot came out of that. At the end of the day, it is about how things operate in practice. I think the preliminary assessment concept is very good, provided it is done in a proper way. I am not suggesting it is done in an improper way, but when you rely on strict technicalities of how complaints are couched and how they are put together, I do not think it should be regarded as something of a legal investigation. If anything, technicalities and minor matters should be able to be dismissed very quickly.

Mr MADDEN: Are you satisfied that the bill will take into account what Councillor Clifton talked about: a reflective moment where you make an admission as quickly as possible?

Mr Tully: One of the other new provisions is that the OIA can order training. As long as that is used for minor or technical matters, no-one in local government would complain; that is a pretty easy way forward for everyone. If it is a matter of misinterpretation or of a minor nature, some in-house training within the council would be a very good provision.

Mr MADDEN: Thanks again for your submission.

Mr McDONALD: It is something we spent a lot of time on. If you look at the original recommendations, No. 39 asks the department to appoint an independent local government integrity and conduct advisory service that can take people on the journey and mitigate for different circumstances. Equally, we asked the department to be the policy lead and steward of the legislation. That is a point of truth. If they are not interpreting what the legislators are putting in place and they are getting it wrong, we have a problem before we get to the OIA and CCT. It is vitally important that that loop is closed.

Coming back to the 'rats and mice' and the minor things, we want the new process and the new people in the new process to have local government experience—that is one of our recommendations—to be able to look at these things and say, 'Maybe they have made a mistake and there is an educational need.' I understand from some of the recent OIA reports to us that letters are already going out to people who have received a complaint to say, 'Okay, there is a breach and we are suggesting an educational sanction.' We understand that process is already being put in place, which I am encouraged by.

Mr Tully: Yes, absolutely.

CHAIR: Thank you very much for appearing.

Mr McDONALD: There will be more reviews to make sure we have got it right.

HAY, Ms Amanda, Councillor, Scenic Rim Regional Council

Ms Hay: Thank you for the opportunity to make an oral submission today. I will read it because I am not particularly gifted at public speaking, so bear with me. I have timed it; it is just under 10 minutes. If that is too long, give me the gong.

CHAIR: You will need to cut it down.

Mr McDONALD: Three minutes.

CHAIR: We will give you five, so you will need to cut it in half.

Mr McDONALD: You could table it.

Ms Hay: I will just give you a summary, then. I have read all of the submissions that have been made including the most recent, No. 14. I concur with the majority of observations and comments made in those submissions. I find that my views are most closely aligned with those comments made by Councillor Paul Tully, particularly in relation to the comments at paragraphs 1, 2, 4 and 6. My comments fall into three broad categories: vexatious complaints, declarations and loopholes; the recording of dismissed and NFA matters in the councillor conduct register; and the composition or constitution of the Councillor Conduct Tribunal, one-member panels. If I do not get through it all, it is in the submission.

I seem to have inherited the poisoned chalice of divisional representation. One recent submission makes reference to lived experience. By way of background, I state that I was elected in April 2023, so I am fairly new. This was by way of a by-election brought about by the resignation of my predecessor, who had publicly stated that he felt unable to continue in the role as the majority of his time was spent in responding to the approximately 75 complaints made against him, all but one of which I believe originated from within council. Not all of those complaints have been finalised in the eight months post his resignation, and I believe that to date a total of three complaints have been upheld out of 75. That former councillor's predecessor was the unfortunate councillor who had the complaint referred by the OIA to the CCT. However, there was no ability for the OIA to withdraw that complaint and a decision was not handed down until quite some time after that councillor had decided not to seek re-election in 2020 as a result of OIA complaint action against him.

I support the new provision in section 150AKA(1) which provides the ability for the Independent Assessor to withdraw an application made to the CCT in whole or in part at any time. Many, if not most, complaints against councillors originate from within council and are made under section 150R, which requires the local government official to notify the assessor about particular conduct, however minor or trivial that conduct may be. Largely, the result of that has been the clogging up of the OIA process, in my opinion.

It also encourages vexatious complaints from within council, usually channelled through the CEO to appear as arms-length complaints, without the fear of any action in relation to their legitimacy or motivation. The OIA has highlighted this apparent anomaly at issue 2 on page 26 of its submission, where it correctly stated that the vexatious declaration process applies only to members of the public and that it is not complainant behaviours of members of the public that are of primary concern. I point out that mayors are councillors. The OIA have concerns that it is not members of the public who are usually motivated to make complaints improperly and that is resulting in the redirecting of OIA resources away from dealing with substantive conduct matters. I agree with the OIA recommendation at page 29, which states—

> An offence that allowed the OIA to criminally prosecute members of the public and local government officials based on a course of complainant conduct would be substantially more effective in safeguarding the councillor complaints system from misuse and would be a far more efficient use of resources.

This would presumably require the assessment of three complaints on similar grounds, assessed and dismissed and with each resulting in a vexatious warning. This action is well overdue and would reduce the number of complaints significantly, in my opinion. It would also ensure that a level playing field is available for the first time since the OIA was created in 2018 and would go a considerable way to impacting the inappropriate weaponisation of the complaints system which we witness today.

There are no time frames provided within which a vexatious declaration must occur. However, there are proposed time frames for everything that must happen after that decision is made. It can take a year or two to get the declaration and then everything is done quite quickly after that. I raise that because this impacts me. The time taken to have vexatious complaints dealt with does impact on people's decision to seek re-election in the 2024 elections. Personally, I am not prepared to put my hand up while I have something outstanding, given that I will incur considerable expense in running a campaign and may well be found ineligible to run. So the timing is a problem.

The next most important one I feel is the recording of dismissed and no further action matters in a councillor conduct register. This has been addressed in several of the submissions made already; some are for and some are against. I am strongly against the removal of the requirement to report those decisions. In the instance of the councillor I mentioned who had 75 complaints against him, if that provision is enacted, only the three complaints that were upheld against him will be recorded. That would show a 'three for three' strike rate—or 100 per cent found guilty, basically. It does not indicate that that is three of 75, which is an extremely small percentage, and that sends the wrong message to the public.

CHAIR: If you like, we can take that and we will start with a few questions.

Ms Hay: Can I just say the last one very quickly?

CHAIR: Absolutely.

Ms Hay: In relation to the composition of the Councillor Conduct Tribunal, one-member panels, I support the introduction of one-member panels but only where a second member is not available and where the councillor agrees in relation to non-contested matters. However, I note that to date there have been very few of those. I do not agree that any misconduct matter, be it minor or complex, should be conducted by a one-member panel. That seems to be counterproductive, in my opinion. Such matters should be heard by a panel of at least two members, but not more than three members, chosen by the president. The Councillor Conduct Tribunal submission simply addresses the issues arising in the event that a one-member panel hears and determines other than non-contested matters and says that natural justice may not be achieved. I support that view.

CHAIR: Thank you very much. We will take that as tabled. I will lead off with a couple of comments. The point you made about the vexatious complaints process applying to people outside council has been noted by a number of submitters in terms of it being applied within council as well. That will be something that we talk about on this committee. I want to thank you for making that point.

Ms Hay: I feel that is a very significant point.

CHAIR: Our experience is that it is certainly an issue we need to discuss. The other part is timing. We want to get our report done as quickly as possible. We would certainly like to see the renewed system in place in time for that next election, and I am sure it could be. Thank you: the point you have made about timing is a really important one. I do not have any direct questions for you, but I will open up to the deputy chair for questions or comments.

Mr McDONALD: Did you make a submission to the inquiry—

Ms Hay: I did. I did ask for it to be—

Mr McDONALD: Is this the same submission?

Ms Hay: No, I made an original submission at the beginning and it was treated as confidential; it was not published.

Mr McDONALD: Good. I have seen that. Did that disclose to us the circumstances that you find yourself in at the moment? I am concerned that you are making a decision about not contesting another election because of the process. Did you disclose that through that?

Ms Hay: I believe when I made that decision I was not a councillor. Since then I have one live and one finalised OIA complaint, so I am doing well in comparison with my predecessors.

Mr McDONALD: I do not want you to breach any arrangements there. I was just seeking clarification.

Ms Hay: Yes, that does influence my decision as to whether or not I will subject myself to the very unpleasant OIA processes that I have experienced so far.

Mr McDONALD: It is certainly something that we are very mindful of. We want to encourage people to be a part of local government, not dissuade them due to a legalistic process.

Mr SMITH: Councillor Hay, just going to the three of 77, obviously those three matters have been resolved. Were they for inappropriate conduct or misconduct?

Ms Hay: Inappropriate.

Mr SMITH: So your argument is that 74 of the complaints should be published regardless, along with the other three. Surely three acts of inappropriate behaviour are three acts of inappropriate behaviour regardless of how many other allegations you have had. Does it really reflect any better on an individual?

Ms Hay: Absolutely it does, particularly where the individual is willing to have their name attached to the NFA or dismissed decision. It then shows a pattern of behaviour from within council targeted at one particular councillor. By publishing just the three upheld matters, it shows that the person with his name published was guilty of three offences out of three, and that is sending the wrong message. I think one of the submissions did say that this would inhibit transparency, and I agree with that entirely.

Mr SMITH: So it is a better public perspective to only be seen to breach the code of conduct several times instead of every time?

Ms Hay: But he has not breached the code of conduct. There have only been unsubstantiated allegations.

Mr SMITH: So it is better to be found to have breached sometimes, not every time? Is that what you are suggesting?

Ms Hay: Absolutely, particularly given the volume of complaints that were made against that one particular councillor.

Mr SMITH: In Queensland we have non-jury trials, where a court will be determined by a judge and the matter is before the judge and the judge has that responsibility. Do you think that is too great a responsibility for a judge, in your own opinion?

Ms Hay: To do what?

Mr SMITH: To preside over a murder trial, for instance, with no jury. I am just relating to your comment where you are saying it would be inappropriate to have one member of the CCT.

Ms Hay: I do not quite get the context of that question in relation to local government, I am sorry.

CHAIR: We will move on.

Mr HART: Maybe I can explain some of this. The reason we made some of the suggestions we made was because things were clogged up in the OIA. The OIA is there to assess things and then pass it through. What they were doing was passing through things to the CCT to get a common law position so they could go back and then assess everything else, and that held things up. The CCT is sitting there with non-permanent members. Even the president only works part-time. We thought if we put a permanent president in there and there were more available CCT people we could speed up that process. That was the way we were thinking about this.

From my point of view, I am an elected representative, just like a councillor, and I think what applies to me should apply to you and it does not, so we are trying to fix some of those things. Hopefully that assists in some way. We do not want to get bogged down in the nitty-gritty of all of this. We want to move on and get some resolution to the issues and leave things in the past because there is really no benefit to prosecute some of these things. Does that make sense?

Mr McDONALD: We did have a number of submissions that were actually strongly supporting us not publishing matters that have been dismissed.

Ms Hay: Yes, I read that. In relation to your comment, Michael, the issue with a one-person panel—and it was mentioned by someone earlier—is, as one of them stated, that the panel members are not necessarily across local government matters. If you end up with one panel member who is absolutely great at planning and environment matters but has very little exposure to local government, that is when this system could fall down with one panel member, in my opinion.

Mr HART: We want more local government experience in there as well and for the president to decide how complicated things are and then he or she can decide how many people sit on the matter.

CHAIR: Thank you for your time.

FLANNERY, Mr Peter, Mayor, City of Moreton Bay

IRELAND, Mr Andy, Mayor, Livingstone Shire Council

PENNISI, Mr Vic, Mayor, Southern Downs Regional Council

SHIPWAY, Ms Jodie, Deputy Mayor, Moreton Bay Regional Council

CHAIR: Welcome. I invite you to make a short opening statement. Vic, would you like to start?

Mr Pennisi: I am mayor of Southern Downs. If you do not know where that is it is in Queensland's coal country, where we can turn water into wine and meet the maker.

CHAIR: You have been practising that line for a while now, haven't you?

Mr Pennisi: I begin by thanking you for doing what you do. Whilst there may still be some flaws and we really will not know that until we give it a run, it has been an improvement. I would like to talk a bit about some of those improvements. Twelve months ago we were here at the LGAQ conference and there was a lot of debate. The OIA was present. As a result of some of that debate, I think some of those concerns have been taken on board.

The time taken between when you get a complaint and when you get notification has certainly improved. Normally the first notification you get is that it has been kicked out, that there is nothing to answer for, which is great. That is opposed to what we had, where you would get notified and then you waited and you did not know what was going on for a long time. Often you do not even know that it has been lodged and it gets kicked out. Having had quite a few myself over time, I think that is a big improvement—you can get on with your job without having this hanging over your head.

One of the other big things where there has been an improvement is ultimately the legislation is as a result of the department, the act and the interpretation. That was a conversation that was had here at the LGAQ last year, and I believe there has been a lot more liaising going on between the department and the OIA and understanding the intent—rather than leaving it up to councillors, the public, legal people, the OIA and the department to have five different views of what it is. Honing that has been a plus.

Another thing I experienced myself recently was that the OIA wrote to the person lodging a complaint saying, 'This is vexatious and you need to be careful because we won't be accepting any from you any longer.' That is great. From where I sit, not that I know who it was, I think that is a big improvement.

Having read some of the new proposal, I think where there needs to be more clarity is the normal business of council. I believe that needs to be expanded more. For example, sewerage is a core business of council. Every urban centre around has sewerage in some description and it should be a normal business item of council. Urban water should be a normal business item of council but they are excluded at the moment. I think there should be a broader spectrum of those sorts of things. At the end of the day, what benefit am I going to get if we approve sewerage or water? It affects a big component of the community and as such, in my view, those things should be there.

The other thing that I think could be improved in the act is the clarity. Because of the bigger scrutiny in relation to complaints, the clarity of the mayor's role in meetings outside of a formal statutory meeting needs to be expanded a bit. With the things that are referred back to council, I have some reservations. I think it could be problematic in two ways. If you allow your colleagues to judge on you, I think animosity and, let's call it, hatred only builds. It makes it worse, in my view, if it comes back. If you get someone independent to do it, it is a cost burden on council. Until that runs for a while, I am not sure that is the way we should go.

One of the other things from our point of view is: where do we as councillors get advice from? If we want some advice, where do we get that? Where do we go? If we go to the OIA, they will say, 'Go to the Integrity Commissioner.' If you go to the Integrity Commissioner, there will be pages of legal documents and then the Integrity Commissioner will say, 'And make sure you get your own legal advice.' If you get legal advice, it is going to cost money. I have heard about going to the CEO, but is there someone independent where you can go and say, 'These are my concerns. What are your thoughts on this?' We have employed someone to give us that in local government. He is someone independent we can go to and run some of those things past, but I think that could be an improvement.

CHAIR: That was quite comprehensive, so thank you. You have obviously studied the bill. We will allow you all to have a say and then we will go to questions.

Ms Shipway: I want to commend the member for Burleigh for his comment earlier about seeking some parity in terms of what is good for state government should be good for local government. The chair knows my opinion on that. Our concern is more concentrated on the Local Government Act but could ultimately end up in OIA complaints. I had been speaking to the chair about this, so thanks for the opportunity today.

I would like to see some clarity on the intent of some sections of the Local Government Act, and I would like to talk to a recent personal experience. In development applications there are submitters and the developer, and obviously we have to declare if there are any conflicts. A recent submission on an application by my mother, God love her, has seen me have to declare a prescribed conflict. That means I obviously cannot be in the room. I want to know why on these occasions that cannot be declarable, where it is up to the room to decide whether you can stay and whether you are part of the debate or part of the voting. I just feel what we are doing is essentially discouraging members of the community from putting in submissions. The whole idea of submissions is the transparent nature on which we want to run our business. If we discourage submissions, we are encouraging those backdoor conversations which will ultimately end up in OIA complaints. I have spoken to the chair about this and I thought this was something we should raise with you.

Mr Flannery: Thank you, committee. I want to congratulate the government on the progression they have made. I have been a councillor for 15 years. I have been through the whole Belcarra CCC, the whole OIA experience. It is good to see that things are moving in the right direction. These last lot of amendments are also an improvement to the process I think. Originally with the OIA complaint system you were guilty first and then you had to prove your innocence as you moved forward. The first thing you would get was a letter. Hopefully that process is going to change. Where a complaint was put in against you—it could be misbehaviour or it could be misconduct, whatever it was—you then had to go and prove that was not correct. There was no preliminary investigation undertaken to identify whether that was a reasonable complaint or a feasible complaint and not a vexatious complaint. It puts undue pressure on you. A lot of fellow councillors over the past five or six years have felt that pressure when those letters come. I congratulate them on changing that process and now vetting out some of those complaints when they come in.

I think the present idea is a good idea with somebody with local government experience, because even dealing with the CCC and the OIA in the past, they had no idea really on how local governments work in comparison to state governments, which is very different in some respects, and our expectations and the community's expectations. Having somebody with local government experience—as mentioned before by some of the councillors, it may have been a slip up, it may have been inexperience, it may have been an unintended comment or action they have done which has then landed them in the situation they are in, and it may mean further training through an education process. You do not need to drag it out through a whole investigation process, get lawyers involved and try to defend yourself when it could be simply re-educating or training that person upfront and dealing with the process. I support some kind of process in there that deals with those rats-and-mice issues. My example was I had a complaint against me because I liked somebody's Facebook post. Those kinds of things can be dealt with upfront to save everybody's time and money.

The other point I would like to make is about anonymous complaints. I heard the LGAQ's proposal and I support the 11 points they have put forward on anonymous complaints. You are suggesting a three-strike system at the moment to eliminate people from continuous vexatious complaints, which I totally support. As raised by the CEO, if somebody got to the No. 2 complaint they then could just keep submitting anonymous complaints forever and a day and still have the same effect they were trying to achieve early in the business. I agree that the Privacy Act could cover the issues of keeping those details of the submitter anonymous as far as the process goes, but there should be some accountability upfront to put your name to a complaint if you think it is justified and for further clarification of the process down the track because otherwise ludicrous allegations can be thrown out there and you have to defend yourself against them without further evidence to support the allegation. I think there needs to be some kind of identification at the start of the process to make people responsible for it. I do not support people having to pay to lodge an application which has been submitted. I think that goes against the purpose. I think there needs to be some responsibility for people to put their name to a complaint upfront.

I also support that this be reviewed in 12 months to see how it is going, and be continually reviewed as we grow and go through the process. The pendulum did swing dramatically one way. It is now coming back to a more reasonable area, and I think we need to keep reviewing it to make sure we have the right processes in place. If we can fine tune things moving forward in terms of the job, the responsibilities and accountability and transparency then you will have councillors who are willing

to put their hands up again and stand for election rather than have, as we have seen, the vast movement of people away from local government because of the requirements. I am happy to answer any questions.

CHAIR: We will go to Andy and then we will open up for some questions.

Mr Ireland: Thank you, Mr Chair. I think most of the commentary I was going to make has been made by my colleagues up and down the table predominantly around the presumption of guilt rather than innocence, particularly in terms of initial approaches. Also, I am very pleased to see the preliminary assessment process being introduced simply because I think that will get rid of a lot of the vexatious complaints—or hopefully get rid of the vexatious complaints quite early. In respect of timing, I am very pleased to see that provision. Some of my colleagues on council have matters still outstanding after three years. It is totally and utterly unacceptable. From our perspective, we are pleased to see that time frame come in—that time limit.

My personal view on this is that I have always thought that having regional assessment panels was a good idea. It brings local knowledge into the situation—an understanding of local customs, cultures and perhaps the individuals concerned. It is something that the Livingstone Shire Council was going to put forward as part of its submission.

CHAIR: That is a good suggestion. There is a mindset that it is something that happens in an office in Brisbane. What you have pointed out is quite a good suggestion and a return to what has partially existed in the past. You talked about the source of advice. I want to point out, and this is something we need to talk to the department about, that under the preliminary assessment part of the bill it must be dismissed if the subject and complainant acted according to a guideline made by the department's chief executive. We will be talking more to the department because it may be that they are looking at a source of definitive advice—a service that would perhaps come close to what we put in recommendation 39. We do not know exactly because that may flow from the bill, but I am quite heartened by that. That may indicate a potential source of advice that can help you out.

Mr Pennisi: I am talking about advice leading up to a council meeting on whether you believe you have a conflict or do not have a conflict. The deputy mayor suggested her mother had put in a submission. If she could have phoned someone in advance to say what do you think, do you think this is this or that—had that sort of a conversation in advance.

Mr HART: The problem we had was you need some advice you can rely on that has legal standing. If you rely on that advice you have not done anything wrong. The only place you can do that with is the department of local government because they are ones making the rules. If you ask them for advice and they say left or right, you can rely on not being prosecuted because they told you that.

Mr McDONALD: And at the bottom of the advice from them it should not say you have to get your independent legal advice because they are the point of truth.

Mr Pennisi: The challenge with the department is because they have been in the crossfire so much I guess they are a little bit tentative.

CHAIR: There is the timeliness. They cannot give that advice on the day. You might want to call them before you go into the meeting, but you are not going to get an answer.

Mr Pennisi: Or a week before. Even a week sometimes is not enough.

CHAIR: On that becoming a prescribed conflict, from my point of view that is certainly not the intent.

Ms Shipway: That is what I raised with you, Chair: the intent of the legislation. It feels like we are discouraging submissions and we do not want to do that. Obviously I do not talk about it with her because I did not even know she was a submitter until I went through the list, do you know what I mean? It is ridiculous.

Mr Flannery: I think that the way the act is written, that it is a prescribed conflict if it is 'da, da, da', and if it is a submission it automatically puts it into that category. It would be great if you could take it out of that category and put it into the other category to give the councils around the table the opportunity to make that decision.

CHAIR: Certainly the intent is that we do not want to clog it up with these and knock people out of the room.

Mr MADDEN: Just to explain, this bill arose out of an inquiry by this committee, report No. 28 of the 57th Parliament, *Inquiry into the functions of the Independent Assessor and councillor conduct complaints system*. It is not always like that. Most bills just come from the department. The first time

we see them is when they are tabled. This bill is different. This came out of an inquiry. I want to ask you about one of the recommendations from that inquiry, which was to make sure that natural justice requirements in relation to suspected conduct breaches be provided for. This is a question for all of you: do you believe this proposed bill satisfies the rules with regard to natural justice? It is just a general question. You do not have to make comment if you do not want to. I think it is pretty important that we apply the rules of natural justice, that people get a fair hearing, people are informed.

Mr Flannery: I think the assumption of innocence until proven guilty should be the starting point.

Mr MADDEN: That is a pretty big one.

Mr Flannery: Rather than if this did occur you are guilty. It is changing that aspect of it.

Ms Shipway: One of our other councillors raised this: when someone makes a complaint against you, they go off and they research it before you even know. It would be good if the person who the complaint is against could make a submission to that immediately because sometimes that could get rid of the rats-and-mice issues really quickly. That is what we are getting at. I feel like if you are going to investigate something don't you need both sides of the story?

Mr Flannery: That is not how the process works. The letter comes to you saying if you have done this you are guilty so tell us what happened.

Mr MADDEN: That is going to be changed.

Mr Flannery: That is why I disagreed with that process. My view is that it could be filtered out even before it gets to council. It may not even need council to be aware of it if it is a vexatious or a rats-and-mice kind of issue.

Mr MADDEN: Are we agreed that we have improved natural justice with this bill?

Ms Shipway: It has improved.

Mr Ireland: One comment I would make to the committee is that the great thing about democracy is we have elected representatives from all walks of life coming into councils and state government. Some of those have different skill sets though, so when something of this nature comes before them by way of complaint and they are asked to respond, some people have the capacity to do that and some people do not. Ultimately those people who do not have that capacity are finding themselves having to engage legal counsel at a cost. That is something that I would ask the committee to take into consideration.

Mr Pennisi: In my view, I think it has improved, being a recipient of quite a few in my time—in fact, the Australian cricket team called me up the other day. They reckon I made the quickest 50. If you see the tone in the last term and the tone certainly in the last 12 months, it has changed considerably. I think it has gone in the right way. In relation to what Andy said before, I still think there are some that are outstanding for a long time. One of my councillors who had a complaint made against them very early in the piece in this term still has that outstanding. I had one cleared just a few months back that had been outstanding for four years. The other thing about that, which I had a conversation with that councillor about recently, is that you really do not know sometimes what the complaint actually is until you are asked to respond and that could be three or four years down the track. You know that there is a complaint lodged, you know it is about that glass of water, but you do not really know what the allegation is until really late in the piece. Personally, I think that should be improved.

Mr MADDEN: Currently we are dealing with the existing legislation. This bill will eventually go back before parliament, we will debate it, hopefully it will be passed, there may be amendments made by the minister, and then the Governor will put the stamp on it and then it becomes law.

Mr Pennisi: We will not know what it is like until it has had a run.

Mr MADDEN: That is right: performance testing.

Ms Shipway: Just on that point, the chair mentioned how it would be great if we could look at the existing complaints as well. We have one in our council that is five years old. It is not acceptable. If we could grandfather these that would be ideal.

CHAIR: That is a good point.

Mr SMITH: To expand on what Jim was talking about in relation to natural justice, one of the key expressions that came out early in our inquiry was political expression and freedom of political expression and then we talk about the intent of the legislation, the intent of the bill, then the interpretation of that intent of the bill by the OIA. It may be hard because maybe you have not had a

complaint made against you on this particular one, but do you believe that the interpretation of political expression within the OIA has become more appropriate to local government? Are there still elements that you feel need to be introduced into the legislation?

Mr Pennisi: What do you mean by 'more appropriate'? Do you mean more appropriate recently?

Mr SMITH: Something more fitting to what is actually being an elected representative. For instance, if we go back to one of the key instigators of this—political expression around the rollout of vaccines throughout a community—an expression was made that caught the interest of the OIA. Do you believe that throughout this inquiry—and this, I guess, shift in legislation—you as councillors have a greater level of confidence in the OIA's interpretation of what is political expression and what might be the blocking of political expression, or is it something where you feel as though there is still some way to go? It is a challenging one. We can take it on notice if you want.

Mr Ireland: I have personal experience in this one because when the mandates came out during COVID in relation to a lot of the businesses within our community Livingstone Shire Council had a public forum where we had over 200 local business people come and express outrage at those particular mandates. We as a collective council felt it was our duty, I suppose, to represent that in terms of a motion to the Premier basically pointing out that this community did not support those mandates. I was reported to the OIA as a result of that, and the OIA dismissed it pretty much out of hand.

Mr Flannery: I think it is a move in the right direction from where it was three, four, five or six years ago to where it is now. From what I have seen, there has been a lot of miscellaneous or unjustified complaints that have been dismissed. It is good to see that. You do not find out until after they have been dismissed. It seems to be moving in the right direction.

CHAIR: Thank you.

Mr HART: In terms of your comment about the mayor having a different role outside of a normal council meeting, can you give us an example where that may catch you out or cause you an issue?

Mr Pennisi: My personal view is that a mayor should be able to issue an order of unsuitable meeting conduct at a briefing session or at an information session. That is my personal view because I think a lot of complaints arise from that particular setting. I think you would overcome quite a lot of that nitpicking in that environment if the mayor was able to do that.

Mr HART: Would that start to get political, though?

Mr Pennisi: The mayor is not beyond reproach. The mayor could be the one who gets the complaint. It could be dissent against the mayor's decision. There is that opportunity to question the mayor in those situations.

Mr HART: I would be interested to see what some of the councillors think about that, but I will leave it there.

Mr McDONALD: Peter, it is certainly our intention that that preliminary inquiry would have natural justice processes and that right of reply. We want to make sure that happens. We can highlight that in this report because, as the chair said, we will produce another report. Thank you for the input. Vic, you talked about the normal business of council. I take it that you are talking about exemptions where you do not have to declare? It is the business of council, whether it be rates, the planning scheme or what have you. It does not matter what your business is, you stay in the room for those things. Is that what you mean?

Mr Pennisi: Yes.

Mr McDONALD: Including sewerage and water, and I dare say that would include the mayor's role or appointed roles in external bodies on behalf of council as well?

Mr Pennisi: That is captured now. If you are appointed by council, that is captured now. The things that are not are water, sewerage, roads. You are captured in the town planning scheme, captured in the budget and those sorts of things. I think you need a bigger net. That is my personal view. Urban water is a core business item of council. We deal with it every single day. Sewerage is as well. Roads are as well—those sorts of things. 'Core council business' might be a better term. Maybe the terminology needs to be changed.

Mr McDONALD: I understand. We can talk further to the LGAQ about that. Andy, I appreciate, as the chair highlighted, that regional assessment panel and turning our minds to that. Many of the submissions talk about making sure we have independent assessment through this process. I look forward to further advice that you might have about your ideas on that. Do you have that now or can you can put something to us?

Mr Ireland: No, I am happy to put something to the committee.

Mr MADDEN: As I mentioned, this bill came out of a report that was prepared by this committee. When we finish this process, another report will be prepared. It is only after that report is tabled in parliament that the bill can be debated. There is the possibility that our committee may make recommendations in that report. I just want to let you know that. You should be keeping your eyes out for that report.

CHAIR: It is due 24 October.

Mr MADDEN: That is it. It is a very important document.

CHAIR: Thank you all very much.

Mr Flannery: I thank the committee as well for all of your work.

Mr Pennisi: Thank you for the opportunity and the work you have already done. It has been fantastic.

The committee is seeking further advice about the publication of a portion of this transcript.