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, 9 October 2023

Brisbane

MONDAY, 9 OCTOBER 2023

The committee met at 10.32 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; Robbie Katter, member for Traeger; and Tom Smith, member for Bundaberg.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website and social media pages. I ask everyone to turn their mobile phones and computers off or to silent mode.

RUHLE, Mr Nathan, Manager, Intergovernmental Relations, Local Government Association of Queensland

SMITH, Ms Alison, Chief Executive Officer, Local Government Association of Queensland

CHAIR: I now welcome our representatives from the Local Government Association of Queensland. Would you like to make opening statements of no longer than five minutes before we start our questions?

Ms Smith: Thank you very much for inviting the LGAQ to speak with the committee today. I would like to acknowledge the traditional owners of the land on which we gather, the Turrbal and Yagara people, and pay my respects to elders past, present and emerging. The LGAQ is the peak body for all councils across Queensland. We have been in existence to provide support, service and advocacy for our members for 127 years. Thank you, again, for the opportunity to speak with you and take questions this morning, because this bill and the reforms that it proposes are very important to our members. For some, these reforms are going to make the difference between whether they will stand in next year's March council elections or not. As you are aware from the evidence that has been brought before you, the current threshold of complaints and the manner in which the OIA has conducted its operation has caused much grief, anxiety and frustration for members in recent years, particularly prior to the establishment of the parliamentary inquiry in 2021.

You will recall that our submission illustrated this with survey results of LGAQ members prior to the March 2020 local government elections. You would remember that in that survey both elected members and CEOs indicated that the integrity reforms were having a negative impact on their confidence as well as their ability to just do their job. 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 OIA in the survey, two in five believe the OIA was efficient and gave them a fair go. One in three did not agree the OIA was open and accountable or was good at resolving issues.

The LGAQ and the sector that we represent believes the system of local government needs to be fair, accountable, transparent, democratic, sustainable and efficient. Local government has a responsibility to comply with standards relating to applicable governance arrangements. The establishment of the inquiry in 2021, the bipartisan and collaborative manner in which the inquiry was

conducted and the ongoing intent of the state government has given many elected local government members hope. It has given them hope that the system will be recalibrated to what it should be not what it has become. Let's face it, every four years Queenslanders get to gauge the conduct of their local government sector at the ballot box, and that is democracy in its true workings. Thank you for your consideration of our recommendations and the bipartisan manner in which the inquiry has been conducted. Having four of the six members of this committee with local government experience has given the local government sector faith and confidence that the inquiry process has been undertaken with a strong understanding of what elected representatives face in their day-to-day job. Your work and your ongoing consultation on the proposed reforms is greatly appreciated.

That said, in our latest submission we have made 11 recommendations which we believe will further improve the operations of the bill and meet its policy intent. Our 11 recommendations go to the heart of helping ensure that people have trust in the system, have confidence in how conduct complaints are dealt with in the local government sector, and help ensure that good people will continue to put their hand up and run for office. That concludes my opening statement. We look forward to any questions you may have.

CHAIR: I will start with recommendation 1—recognising First Nations lore in law. Whereabouts in the bill would that fit? I know it is addressed very briefly in clauses 45 and 46 very. Where would you imagine that to be included and what would you like to see that recognition include?

Ms Smith: I will make a couple of comments and then throw to Nathan to add to it. We think it is terrific that this bill is proposing this recognition. It will further strengthen the provision in terms of including Aboriginal lore. As we know, this would be a new element going forward. We believe that it will have significant benefit and will also coincide with Path to Treaty reforms and provide an opportunity to cultivate a new relationship with First Nations people. We appreciate it being included; however, we respectfully suggest that the acknowledgement of traditional First Nations family and community obligations should be strengthened further than it currently is in the bill. It would be further strengthened if it ensured that preliminary assessment processes 'must' have regard to that factor as opposed to how it is currently stated which is 'may' have regard.

Mr Ruhle: Further to Alison's point, as we said in our recommendation, we strongly welcome the inclusion of an acknowledgement of the specific issue for elected representatives who are First Nations representatives. Clause 46(5) specifically refers to, as Alison mentioned, this being something that the assessor may consider. We are just suggesting in recommendation No. 1 strengthening that even further to something that they 'must' consider. As we have said in our recommendation, the cultural obligations of First Nations representatives are not something that they can opt in or out of. It is an ongoing concern for them. In terms of strengthening that particular provision—which we welcome—we would like to see it strengthened further to change the wording from 'may' to 'must'.

CHAIR: That is the extent of your recommendation.

Mr HART: Nathan, **c**an you give us an example of what might be in Indigenous lore that may affect someone's conflict of interest and should be taken into account?

Mr Ruhle: As it was described to me by First Nations representatives, they have an obligation to their community that is not recognised currently in the conflict of interest framework. Where the current provisions refer to family members and close associates, there is no specific acknowledgement beyond that to their community, to their particular traditional owner groups, that extend beyond that. It is a specific consideration that is ongoing in terms of how they operate as decision-makers in their community. As we have said in our submission, we strongly welcome the addition of this specific consideration and inclusion, and we recommend strengthening that further. In terms of a specific acknowledgement, I do not think there is anything specific other than just that general obligation that they have to their traditional owner group.

Mr HART: Does that make the conflict of interest tighter rather than looser?

Mr Ruhle: It actually acknowledges a consideration that they have that is currently not acknowledged. The legislation already describes family associates and other close associates that they have to declare, but it does not go beyond that. I guess it actually extends the framework to something that they have to consider themselves but it is not currently recognised, if that makes sense.

Ms Smith: Maybe a simple way of explaining it is that Aboriginal lore has particular complexities and obligations around social relationships, family and roles that are different to the day-to-day workings, as we know it, of the Local Government Act. Therefore, having this provision in there

will help them to navigate those circumstances when, for example, on a council you might have multiple family members of different hierarchy in a council that is different to their actual roles in the council.

Mr HART: Who is in a position to determine that that is the case? Who in the OIA is the expert on Indigenous lore?

Mr Ruhle: It is strengthened in the legislation in terms of acknowledging that that is an interest that they have which they need to consider as a decision-maker in their local government. I guess what we have advocated for in our submission—and it has been recognised in the legislation—is for that consideration to be acknowledged as a potential conflict when a decision is being made. I guess it is up to the individual decision-maker at the council to acknowledge that as opposed to the OIA itself.

Ms Smith: Further to that, how it has been explained to me when sitting around the table with various councils in our Indigenous communities and, indeed, at our Indigenous leaders' forums is that they would like the ability to recognise this and deal with it through Aboriginal lore so that it is then understood the reasons there may have been a particular conflict that was declared or not. If they were able to navigate that space with that recognition then that would be part of the explanation should a matter be brought before the OIA. At that point we would be hopeful that the provision of this clause, including the words 'must' rather than 'may', would better reinforce that and then enable the OIA to make a better informed decision.

CHAIR: I note that you have an Indigenous Leaders Forum happening at the LGAQ on Monday; is that correct?

Ms Smith: Correct, yes.

CHAIR: We would love to chat with them so they can explain to us a bit more about the importance of this. Your recommendation 3 is that there be a review within 12 months to see if these reforms are working. Can I have more detail on that? Would that be an inquiry by a parliamentary committee such as this one or something that is directed by parliament? Do you have any more views on that particular inquiry?

Ms Smith: We have asked for this review to happen within the first term and, ideally, within the first 12 months of the operation of the new legislation because we think, especially with a new cohort within the local government sector after the March elections next year, it would be very timely to assess how these reforms are indeed working and whether the intent of the legislation is meeting where it needs to get to. In terms of the mechanics of what we would like to see, we have simply said that the review should be in addition to the regular and ongoing oversight that this committee provides. We have not necessarily put forward a mechanism for the review. We are simply saying that we would like it to occur so that those checks and balances can be given to the legislation and how it is performing in practice.

Mr McDONALD: Alison and Nathan, the answers you were giving to the question around the traditional owner lore actually turned my mind to the whole councillor conduct requirements and declarations of personal relationships. Would that matter be fixed if the declarations for personal relationships, or what have you, were based only on material matters, business matters or business associations and not just family matters? Is that a different complication?

Ms Smith: I guess with where we got to with considerable reform in that conflict-of-interest space—and this is work that we did towards the end of 2020, to be honest—we were happy with where that landed because we felt that it had successfully navigated some of those pain points around relationships but particularly business interests and community interests that many elected members find themselves having. One of the reasons they get elected to the job is because they have such deep roots in much of what community activities are. Having said that, the Indigenous or the First Nations lore aspects came to fruition because our members told us that that did not go far enough so it needed to be additional to where we got to with the original conflict-of-interest provisions.

Mr McDONALD: I understand the issue of 'must' and 'may' for the OIA to take that into consideration. They still may make a determination that was contrary to that lore if the behaviour was somewhat worse than justified by the law, perhaps. If the law were all around family relationships, which is a relationship and not a business dealing, would that alleviate it? Again, if it were only in relation to material issues and business issues.

Ms Smith: I think it would be a great opportunity to, indeed, speak with the ILF during the Gladstone hearing. I think it would be good to get their direct evidence on that one.

Mr McDONALD: My next question turns to the public interest and the private interest of councillors and the recommendations you have made with regard to those. This is something that many councillors struggle to deal with. The inconsistencies that we saw across the inquiry that started this were probably clearer in that space than others.

Ms Smith: As we said in our submission, we very much welcome the fact that this consideration has been given to ensure that allegations relating to the private conduct are not viewed through the lens of the code of conduct. However, one of the things that we are still seeking is for there to be a clear definition of what is public as opposed to what is private. We are asking for that because we think that, without it, it is going to be challenging. It will be open to interpretation and it will be challenging particularly when so many of our members are part-time. Especially when you go west of Brisbane, rural and remote, north-west et cetera, you have part-time councillors and mayors who are elected by their communities. We agree that it should be as it is; however, we think that it needs a definition just to be able to allay any misinterpretation.

Mr McDONALD: I am going to ask the same question with regard to material issues. Again, a lot of these things are relationships. Community champions who are part of something have to declare a private interest versus a public interest. If the standards include some level of materiality in business dealings, would that alleviate that issue or make it clearer in terms of the difference between private business and public business?

Mr Ruhle: I think it is a tricky issue because people have the right to express their own beliefs outside of their workplace. You would all appreciate the challenging dilemma with being a public official who is elected to serve your community and the official role that you have but also living your lives as everyone else does. Whether it is commenting on social media posts or whatever it is, it is a tricky line to delineate. As Alison mentioned, while we strongly welcome the segregation and the acknowledgement of both public and personal roles that people have, it would be helpful to be a bit more clear in terms of a definition of where the line is drawn going forward.

Mr MADDEN: My questions relate to your submission with regards to mandatory training. You state—

> The LGAQ would appreciate the opportunity of being further consulted on the development of the regulation on mandatory training requirements.

My interest in mandatory training, and I hope you can clarify this for me, is about the current arrangements. As a former councillor I did training, but I do not know if I had done a second term whether I would do more training. I expect it would be different training in a second term and subsequent terms. Training is going to be a very important issue because it is one of the possible orders that could be made by the Councillor Conduct Tribunal, where somebody commits an indiscretion and they are ordered to do training. I want to give you the opportunity to have an input with regard to those three types of training: training for a newbie councillor; training for an experienced councillor and whether it should be mandatory to do training in subsequent terms; and also the training that might be specific to an indiscretion. I want to give you the opportunity to talk about those three forms of trainings. Clearly, from your submission, you want to have input in the regulations with regard to training. I will leave that with you.

Mr Ruhle: I think this goes back to the previous inquiry and discussion around training. For many of our members and anyone who wants to contest the elections in March, you have to do a course as part of that. It is called, 'So you want to be a councillor?' This is very topical right now. On the other side of that is looking at the best way to induct both new and returning councillors in the next term of local government elections. Something that we regularly discuss with our members is how best to support and assist them. Over the years the feedback has been that the training that is provided is improving. There are still opportunities to refine that and look at ways to help to support and maybe differentiate the training that is provided to both experienced councillors and mayors who have been returned and also new councillors.

In terms of the opportunities and the requirements to do training, I would refer to the fact that the legislation is always evolving, whether it is the Local Government Act specifically or other acts that people have to be aware of in doing their job. We think it is important and, as an association, we provide a range of different training opportunities to our members each year, whether that is workshops within councils or specific requests that they have on tasks whether it is advocacy or governance or communications—there is a range of different issues from the operational level of councils to elected representatives. The comments in our submission simply acknowledge the regulation that is being prepared in relation to the issue of mandatory training and our interest in being further consulted.

While we are talking about consultation, I should say that the consultation on the bill has been very thorough. As has been acknowledged by the department in the explanatory notes, we have had a number of opportunities to provide comment and feedback throughout the development of the bill. Our recommendation that we would like to be consulted is by no means an acknowledgement that there has been poor consultation; it is the opposite. It has been very good. We are regularly consulted by the department on a range of different issues that obviously impact the sector. I hope that answers your question.

Mr MADDEN: I am aware that the LGAQ has ongoing training and conferences. All of that is training. I am seeking comment on the differentiation between what you might call general training and training as ordered by the tribunal. Do you have any input on that and whether the department or public providers should do it?

Ms Smith: That is an intriguing question to consider. When it becomes—I think your words were—specific to an indiscretion—

Mr MADDEN: I was being general.

Ms Smith:—I would not see any real alternative than the department. It is the department's role with the legislation so having that compliance come back to the department would be ideal.

Mr MADDEN: That is great. You have covered what I wanted to know.

Mr HART: I want to make sure there are no unintended consequences to some of the things that have been suggested. Going back to Indigenous lore, if we were to change 'may' to 'must', have you considered what effect that may have on non-Indigenous councillors or non-Indigenous councils, as in non-Indigenous councillors using that as an excuse for their behaviour?

Ms Smith: Our understanding is that Indigenous or First Nations lore is only applicable to those individuals.

Mr HART: If that is not in the bill then where is that understanding at as far as legislation goes?

Ms Smith: Perhaps it could require a definition to be inserted in clause 46, which we are talking about, to be able to tighten that provision and make it entirely clear as to who it pertains to.

Mr HART: Would that then come down to self-determination, as to whether or not it applied to you?

Mr Ruhle: As I understand, yes. I think that is how it is applied across all forms of legislation. Specifically, the example in clause 46 at proposed subsection (5) states—

> Without limiting the matters the assessor may consider in making a preliminary assessment, the assessor may have regard to ...
>
> (a) any reasons for, or factors relevant to, the conduct—

It then uses the examples 'the Aboriginal traditions or island customs of the councillor'.

Mr HART: I am worried that if that is changed to 'must' it will shift that as an excuse to someone to whom these Indigenous laws do not apply. This is just a thought process. On the subject of unintended consequences, I am now a bit worried about the shedding of complaints by a councillor by leaving office and that complaint only having 12 months to be reinstated. A councillor could use that as a way of getting out of a complaint—resigning for a period of time and then trying to get re-elected.

Mr Ruhle: That relates to clause 44 of the bill, which is effectively trying to close off that potential unintended consequence as it now stands. I note submissions from others around this particular clause. We support the clause as it is drafted. We cannot think of any specific examples that this would relate to. It is obviously dealing with a misconduct complaint of a councillor and in the circumstances you are talking about, whether they vacate office—and there is a range of ways they can vacate office—whether they resign and do not contest an election or they contest an election but are unsuccessful.

The best way to allay concerns around this is to say that we do not believe the penalties available under the provisions around this particular element of conduct substantiate someone trying to subvert the system by resigning and then getting re-elected just so they can escape a misconduct complaint. As I said, we are not aware of any specific circumstances where this has happened that this is responding to. We are acknowledging that it is potentially looking at unintended consequences and trying to get ahead of them.

Mr HART: Maybe the benefits outweigh the consequences? Just to be clear, I am talking about not pursuing a councillor who is no longer a councillor.

Ms Smith: For us, just to be clear, we really support the provision as it is written. We think it makes total sense. It is dealing with matters when councils are there and not leaving it till years later to pursue them. At the end of the day, it is dealing with matters that are about conduct, not about corruption, which is a whole different ball game.

CHAIR: We will extend this session by about 10 minutes because we still have a number of issues to deal with.

Mr SMITH: I will go to recommendation 2 of your submission. That is around clause 86 and you wanting to include anonymous complaints unless the committee agrees to your recommendation 10, which relates to the OIA's general reporting. Noting that you are representing the membership, could you give some explanation as to why your membership would like the report to clearly state the data around the anonymous complaints?

Ms Smith: As you say, we have these two recommendations. Recommendation 10 is our preferred position because it is about not accepting anonymous complaints. From our members' perspective, the reason we have this as a very strong recommendation is because of the workability—trying to marry the intent of the legislation with how it is delivered on the ground. The reason we are saying that anonymous complaints should not be received is they undermine or jeopardise the intent of the bill, which is looking at the provision around vexatious complaints and, more importantly, vexatious complainants. Currently, the bill is proposing 'three strikes and you are out' for vexatious complainants. We propose it is very hard to assess whether anonymous complaints are from one and the same person. Hypothetically, if someone made two complaints that were deemed to be vexatious, what would then stop them from making 20 anonymous complaints that could not be traced back to that person and therefore the third strike could not necessarily come down? We are strongly recommending and urging that anonymous complaints are not put forward because how would you be able to meet that 'three strikes and you are out' component? The other element is the whole bill and the process with this reform comes down to ensuring that the OIA is rigorous and transparent in its workings. How would it necessarily be that rigorous if it is not able to match a complaint with the person who put it forward? We find this challenging in terms of the purported intent of this bill. That is why we are saying no to anonymous complaints.

Mr Ruhle: To add to that, we are not suggesting that the subject of the complaint needs to know who the complainant is, but we are suggesting the OIA at least should know. To the point of the member for Burleigh, we think this is a loophole, if you like, around the three strikes declaration process for vexatious complainants. In relation to recommendation 2, which relates to this recommendation around the new reporting requirements in the annual report for the OIA, we are suggesting that the bill in relation to anonymous complaints—and that is that the OIA will continue to accept them—should have a range of extra reporting obligations so that the public, the sector and anyone else who is interested in or needs to know how complaints are being dealt with can see how many anonymous complaints are being received and how they are dealt with. We can then see if there is a potential loophole being exposed.

Mr SMITH: Would it be fair to say that recommendation 2 in asking for the data around anonymous complaints being made public is a possible way for members in future to launch an argument that anonymous complaints should be done away with if it is shown that most anonymous complaints do not go beyond the OIA's preliminary action? Is this a method whereby members are seeking to possibly mount an argument against it in future based on the data around anonymous complaints?

Ms Smith: At the end of the day our stronger recommendation is for recommendation 10 of our submission because it addresses what I spoke about before and what Nathan has touched on. If that were adopted, then recommendation 2 becomes redundant, so to speak. In terms of what you are suggesting, it is hard to tell; that is hypothetical. However, I would also reinforce to the committee that councils also have their own whistleblower systems. They already have an ability for anonymous complaints to be made to the council for the council to investigate. That provision still exists. We are just talking about how it does not meet with the intent of this bill for the OIA to be looking at anonymous complaints.

Mr SMITH: How would your membership consider the weight of 10 anonymous complaints of a vexatious nature against one anonymous complaint that does find a councillor has breached the code or has committed misconduct or potential corruption? What is the weighting between 10 complaints of a vexatious nature, which are stressful and frustrating for a councillor, versus the importance of an anonymous complaint finding a councillor has acted with misconduct? How do you justify the weighting?

Mr Ruhle: The best way to respond to that is to say it does not have to be one or the other. All complaints can be made and the identity of the complainant can be protected but still lead to an improved and more rigorous assessment process for all complaints. We are saying the same rules should apply for all complaints and there are obviously certain thresholds that need to be met whether in relation to misconduct or corruption complaints, which are obviously under the CCC's remit. That is probably the best way I would respond.

Mr SMITH: I turn to recommendation 4. Do recommendations 5 and 6 relate to that? Are they related to clause 43, or is it just the way it reads?

Ms Smith: Sorry, do you mind repeating the question?

Mr SMITH: Recommendation 4 talks about amending clause 43. I was wondering, because of the way that recommendations 5 and 6 read, are they related to clause 43 as well?

Mr Ruhle: Recommendation 5 relates to clause 46.

Ms Smith: As does recommendation 6.

Mr Ruhle: As does recommendation 6.

Mr SMITH: I will go to recommendation 4, which states—

... amending clause 43, to allow an opportunity for mitigating circumstances where a reasonable excuse can be justified.

There is a bill currently before the House—and I will not go too much into it. If service stations cannot meet the amount of ethanol they need to sell, the bill's clauses give outs, for example, as long as they advertise and they took all necessary steps. Is that similar to what LGAQ members are asking for here, which is that in section 150L you are asking for stated reasonable excuses against breaching the act? What are you exactly looking for there?

Ms Smith: Just to be really clear, there are a couple of things in relation to this part of the legislation. We think it has been a positive step to remove the wording 'breach of trust placed in the councillor'. What we are saying in our recommendation is we are concerned, however, that there has been a further removal of words from the bill that talks about 'either knowingly or recklessly'. We are concerned because if the bill is passed as it is drafted, a councillor would automatically come up for misconduct if they failed to comply with a statutory obligation. In the past it included the words 'knowingly or recklessly' and we think that is a nuance that—going to the member's question around unintended consequences—should be brought back into this draft. Instead, what we are proposing is more of a practical approach to still uphold the intent that is given here. That practical approach would be around allowing for mitigating circumstances, and we have suggested the wording 'unless the noncompliance was not been done knowingly or recklessly', which is similar to how it used to be worded in the bill and that there is a reasonable excuse for the noncompliance.

Mr SMITH: Would that suggestion be to say, 'Therefore, we will not find guilt in that breach of conduct', or would it be more a case of, 'Yes, there was a breach of conduct. However, the mitigating circumstances mean that instead of a fine it is just an apology and training'? Is the LGAQ looking for an out clause or are they just saying, 'Yes, we would accept that. It is a conduct breach. It was not knowingly. Therefore, that should be taken into consideration around a sentence,' for lack of a better term?

Ms Smith: Ultimately, what we are looking for with our recommendation is consideration of broader circumstances.

Mr McDONALD: In relation to these anonymous complaints, you mentioned earlier that the councillors have a requirement to consider anonymous complaints; is that right?

Ms Smith: I was saying that councils have whistleblower schemes. Is that what you were talking about?

Mr McDONALD: Yes.

Ms Smith: They have their own individual whistleblower schemes like we have at LGAQ so that internally anonymous complaints can be raised in that council environment for the council to investigate.

Mr McDONALD: The contention is that you have that forum already to deal with anonymous complaints as opposed to giving them another opportunity in the OIA forum?

Ms Smith: Correct.

Mr McDONALD: I agree that anonymous complaints are challenging to deal with. I remember one of us asking a question about the OIA and the answer given regarding anonymous complaints was that they would only deal with the evidence contained within that complaint. Obviously if you do

not have a person to check things with it is challenging to get the evidence and so the statistics of the number that they dismissed in the first pass were very high. Do you have any thoughts around that? Is there an opportunity that I have not thought about to link it back to that anonymous complainant in the council arrangement?

Ms Smith: If I could answer and if Nathan has anything further Nathan can speak to this. The issue is councils have their whistleblower schemes so if there is evidence within an anonymous complaint that gives rise to investigation, or indeed referral, there is that element. However, when you talk about the rigour of the system as it is being proposed we struggle to understand how sending anonymous complaints through to the OIA enables them to then deliver on the vexatious complainant element which has been such a strong focus in all of the hearings that this committee has had around the state.

Mr HART: How would they contact the person to find out who they are if these are anonymous complaints? That is part of what we struggle with.

Mr Ruhle: That is the thing, they can only deal with the substance of the complaint because they have no ability to contact the complainant to ask questions, check the veracity and substantiate what the complaint is. It actually makes for a better complaint system ultimately in that you can properly assess what has been brought forward. It gives you no ability at all when you cannot contact the complainant.

CHAIR: Thank you very much for your evidence before us today. We do not have any questions on notice. We look forward to seeing yourself and your members next week.

FLORIAN, Ms Kathleen, Independent Assessor, Office of the Independent Assessor

HODGKINSON, Ms Jane, Director, Media and Engagement, Office of the Independent Assessor

KOHN, Mr Charles, Deputy Independent Assessor, Office of the Independent Assessor

CHAIR: I now welcome representatives from the Office of the Independent Assessor. Would you like to make an opening statement of no more than five minutes before we move to questions?

Ms Florian: Firstly, I would like to acknowledge the traditional owners of the land on which we are meeting today and the elders past, present and emerging. My name is Kathleen Florian. I am the Independent Assessor. I do not propose to make an opening statement because the submission that we have made is quite detailed and I want to make sure that we use as much time as possible on questions.

CHAIR: I will go straight to one of your recommendations regarding section 150(1)(b)(i)—dealing with issues that are noncompliant. The CCT had a similar recommendation—noncompliance with this act or other acts. Can you describe what the impact of that change would be?

Ms Florian: At present, the recommendation is that the way that that is phrased is unclear about whether it is intended to capture breaches of just the Local Government Act or breaches of the Local Government Act and other acts. In circumstances where the misconduct definition articulates a series of other specific provisions of the Local Government Act it could be read down to refer to a breach of another act only. If that were to happen then the local government principles will become unenforceable in the Local Government Act. The submission that we made is that if it is intended to change that definition, and I understand that there is a concern about breach of trust, and there is a wish to step away from breach of trust, and if that is the case then at least I think there should be a recognition that it is a breach of the Local Government Act or another act to make that clear.

CHAIR: One of the things that has come through strongly in your submission is making sure that corrupt conduct or potentially corrupt conduct is caught up. I have noted a number of new parts of the act that I think would take care of that potentially corrupt conduct. The question is whether that is enough. I have looked at clause 150SD—there are a number in 150SD(2)(b), (c) and (d)—that should capture potential corrupt conduct. I understand that you are saying that that may not be enough and that more elements may need to be added to carve out how to chase up potentially corrupt conduct. Do I have that right? Is there enough in there or are you looking for more?

Ms Florian: With respect, we are looking for more. The reason for that is that the corrupt conduct definition is included in some sections but not in others. For example, it would allow the OIA to investigate certain matters where it raised a reasonable suspicion of corrupt conduct, but never to refer those matters to the CCT. Importantly, the issue is it has been omitted from the transitional provisions so any matters currently before the CCT which contain suspected corrupt conduct will at present be required to be mandatorily dismissed and, in addition to that, 150AKA(2) would prevent any such matters being referred to the CCT in the future. To have it in some areas saying you can investigate it but effectively you cannot do anything with it at the end of it makes it an exception which is not very effective.

The second aspect of that—and this relates to the corrupt conduct exception as it relates to the time limitations that have been raised—is that there is a provision which says that there is no longer a requirement to refer complaints or notifications that are any longer than one year old or, in certain circumstances, two years old, but then on assessment there is a corrupt conduct exception. If the complaints are not coming, having the corrupt conduct exception at assessment is not a thought through aspect.

Mr McDONALD: The further we get into this the more we get into a legalistic position, which is something we are trying to go away from. In terms of the anonymous complaints—the LGAQ has raised this matter with us again—particularly around your assessment of anonymous complaints, I remember that you told us that when you assess those complaints you did so on the material contained in that complaint and obviously you could not follow that up. Their connection was to the frivolous and vexatious complaints and linking that anonymous complaint to those situations—obviously you cannot identify the person—and the anguish that can be created by those things. Can you talk to us about your thoughts around anonymous complaints to get that clear in our minds?

Ms Florian: Certainly. The OIA has consistently received about 11 per cent of anonymous complaints every year. If we have details of a complainant then we will not treat it as anonymous and if we do not have the details of the complainant we will not follow up with any outcome if someone is an anonymous complainant. If it is an anonymous complainant there is no-one to go back to so you are required to assess the material purely on the basis of whatever that complaint is or what independent inquiries may be able to be undertaken as a result of that. Consequently, not many anonymous complaints get past the assessment stage. Anonymous complaints, however, can be an important indicator of misconduct or suspected corrupt conduct. The highest percentage of anonymous complaints that we receive are actually from First Nations communities. That is in circumstances where, in those remote communities and with the close relationships in those communities and knowing the people in those communities, putting your name to a complaint raises the stakes a bit more. It is the case that a very small percentage of anonymous complaints get through. There were three matters that have got through to the CCT in the last year and two of those related to First Nations communities.

Mr McDONALD: We are actually talking to those Indigenous communities on Monday. That might be a further conversation.

Ms Florian: You would have seen in the case studies that we included in our brief perhaps one of the most serious ones that we have ever received was, in fact, an anonymous complaint.

Mr McDONALD: Turning your minds to the issue of personal conduct and the definitions around that, I think there are some great points that you made in the submission. I think when you read material you can 95 per cent work out very quickly whether it is in a private capacity or public capacity. Would you like to share with the committee any more thoughts around personal conduct and the definition of it?

Ms Florian: I think it is important that there is a shared understanding of personal conduct. My time as the Independent Assessor is coming to a close, but in the interests of the new Independent Assessor I think that there are a number of stakeholders who take very different views of what is and what is not personal conduct and it places the new Independent Assessor in a very difficult position. In addition to that, I think that if it is the case that one of the legislated responsibilities of a councillor is to provide high-quality leadership to the council and to the community then there needs to be some consideration about how that sits with personal conduct and the implication that that may have on personal conduct in particular circumstances.

There is a view that councillors should be treated in a way which is separate from other disciplines, but I think in circumstances where councillors are civic leaders and where personal conduct is something which applies to people in a whole lot of other circumstances and situations, including police officers, including all public servants, including all registered and unregistered health practitioners, then councillors should not be held to a different standard. While state government ministers are subject to a different regime—and that is not a disciplinary regime in many circumstances, including the ones I have outlined—they have, in fact, suffered a greater consequence than would ever have occurred for a matter going to the Councillor Conduct Tribunal.

The important thing to bear in mind is when we are talking about criminal conduct, there is a distinction between dealing with someone criminally, the purpose of which is to enforce the criminal law of this state, and dealing with someone from a misconduct perspective, the purpose of which is to enforce a standard expected of leaders within the community, and it is up to you to set that standard. Ultimately, if the standard is high-quality leadership to their communities, then I think the existence of that in the act, together with some of the statements that have been made, makes it difficult to see where that lands, and may place the new Independent Assessor in a difficult position.

Mr McDONALD: I understand. In challenging high-quality leadership sometimes you have to make unpopular decisions. It could be good leadership, but it might be contrary to somebody else's opinion, so it could be back in the same boat again.

Ms Florian: Bear in mind that this is a disciplinary scheme and the OIA is one part of that scheme. A matter may go to the tribunal and the tribunal may take a different view, and that is how it exists. It is only reasonable satisfaction that gets matters to the tribunal. Consequently on review, a different view may be taken again. That is the purpose of a disciplinary scheme.

Mr McDONALD: When you answered the question before and you talked about the difference of opinion about what is private and what is public that was of great concern to me. We talked a number of times about the point of truth, being a department. How often are the tripartite meetings? Are they still occurring between the department, the CCT and yourself?

Ms Florian: The tripartite meetings were occurring earlier this year on about a six-week basis, but they have fallen off in the last number of months.

Mr McDONALD: Is that the forum, do you think, that could be used to resolve these differences of opinion regarding private and public?

Ms Florian: I think the legislation needs to be clear on what is intended.

Mr MADDEN: My question relates to clause 97 with regard to councillor training. When I read clause 169A, councillor training, it suggests to me that this is the training that councillors must undertake when they want to be a councillor, or they want to recontest. My question relates to the training that might be ordered by the tribunal as a result of an indiscretion. Do you think that the amendments to section 169A adequately deal with that specific sort of training? I presume it would be conducted by the department.

Ms Florian: Yes. I gathered that training is conducted by the department. From memory, I think the act is silent on that, as it is on the training that can be recommended by the Independent Assessor in dismissing a matter. There is no requirement that if such a recommendation is made that the training is actually done or no follow-up on that either.

Mr MADDEN: Is this something that you think the committee could look at, expanding that clause to deal with both sorts of training?

Ms Florian: Yes.

Mr MADDEN: The training prior to becoming a councillor, as distinct from the training that might be ordered by the tribunal?

Ms Florian: Yes.

Mr MADDEN: Do you have any comments to make on that second aspect—training that might be ordered by the tribunal?

Ms Florian: No, I do not think so. Training is one of the orders that can be made by the tribunal that recognises that matters can and are taken to the CCT where training is an outcome. It is appropriate where that training occurs that there is follow-up. If there is not follow-up in relation to a tribunal training, then it is a breach of an order of the CCT which in itself can be misconduct, but that does not apply to where matters are dismissed on the understanding that someone might undertake training.

Mr HART: Referring back to your concerns around having to withdraw applications to the CCT about former councillors, even if what has happened is considered corrupt behaviour, what happens presently now? You refer these to the CCT, but do they also go to the CCC?

Ms Florian: To be clear, the matters that we are referring to are matters that have been referred by the CCC to the OIA to deal with. As you would understand, under the Crime and Corruption Act, they receive a large number of complaints including in relation to mayors and councillors. They investigate approximately one per cent of their complaints, but they do not dismiss all the rest. There is the devolution principle under that act. When it comes to mayors and councillors, those matters are devolved to the OIA to investigate in certain circumstances, including under the continued audit or supervision of the CCC. It is these matters that presently, under the transitional provisions, require mandatory dismissal, and it is these matters which cannot be referred to the CCT in future under the section that I referred to.

Mr HART: The CCC has oversight of the process going through the OIA to the CCT. Will not the CCT take back control of that again? I am just trying to get to the bottom of what the process might be. I take your point.

Ms Florian: It would be a matter for the CCC, but they use the devolution principle to be able to deal with matters within their resource base.

Mr HART: If the CCC decides—you might be able to provide some background—that there is corrupt conduct there, is that then referred to the police or the prosecution, or back to the CCC?

Ms Florian: To be clear, when matters are referred back to us by the CCC, we are dealing with them then as misconduct. The CCT will deal with them as misconduct. There have been a small number of occasions where, during the course of dealing with the matter, the CCT has formed a view that there is corrupt conduct, in which case when they publish the decision, they also make that known to the CCC.

Mr HART: So the CCT can publish and report, but the CCC cannot, at the end of the day?

Mr McDONALD: They can. These are matters that have been assessed as being corrupt—

Mr HART: Corrupt conduct.

Mr McDONALD: No, they were corrupt and they have been assessed as being misconduct.

Mr HART: So there is an unintended consequence here?

Ms Florian: To be clear and to be fair, the CCT publish a report because there is a disciplinary finding, so this is distinguishable from the situation to which I think you are referring.

Mr HART: It is like a never-ending circle here, by the look of it. To whom should we be asking questions about this?

Mr McDONALD: The CCT.

Mr HART: The CCT or—

CHAIR: Member for Burleigh, Ms Anstee from the CCT is our next witness, so you can probably ask her.

Mr HART: I am completely confused now.

CHAIR: You confused all of us, member for Burleigh.

Mr SMITH: I have some questions here, but I want to jump to something around the anonymous complaints.

Ms Florian: Certainly.

Mr SMITH: You may have seen the LGAQ submission, or you may have heard when they were in before, that their membership is very much opposed to anonymous complaints coming forward. I want to clarify one thing: if a complaint is made about a councillor, does the OIA immediately let that councillor know a complaint has been made, or do you deal with a preliminary process first, determine whether or not it is vexatious or valid, and then you let a councillor know afterwards, or is every complaint known?

Ms Florian: No. As soon as we receive a complaint, we undertake a preliminary assessment and, based on that preliminary assessment, 65 per cent of complaints are dismissed and communicated to the councillor, which will be the first time they know of it, within 21 working days of the OIA receiving a complaint. Ultimately, 95 per cent of complaints and notifications do not make it to the CCT. Ninety-five per cent is obviously a very large number of complaints and notifications which are not making their way through to the CCT. The effect of this legislation, in essence, will make it a larger number again, so whether that is 97 per cent of matters will not go to the CCT or 99 per cent, but I guess the point becomes what is the balancing point on that.

Mr SMITH: If a complaint is put forward, the preliminary assessment happens, and it is found that it is worth the OIA's investigation, the councillor is therefore notified about that. It is just as valid as whether the complaint was anonymous or named, is it not? There is no difference; the process will still occur whether someone's name is told or not, is it not?

Ms Florian: We are obviously going to look at the complaint, whether it is anonymous or not, but if it is anonymous then there is no-one, as part of a preliminary assessment process, to go back to and say, 'What are the further details on this? This is a bald statement. What is behind this?' It is for that reason that unless it is in specific detail and you can undertake other independent inquiries, most anonymous complaints are dismissed. We already report on this to a significant degree in all our annual reports. In the last financial year, 72 per cent of all anonymous complaints were dismissed or NFA-ed on assessment, 22 were investigated, one was referred to the CCC, two were referred to councils as potential inappropriate conduct, and nine were dealt with as inquiries only. I also mentioned earlier that three made their way to the CCT and two of those related to Indigenous communities.

Mr SMITH: If a complaint gets to the point where the OIA believes that, yes, it is worth investigating and it is necessary, it is equally as valid as to whether someone has put their name to it or they have not because the OIA have made a determination that, 'There may be something here to investigate.' Councillors could not make an argument that an anonymous complaint is less valid than a complaint that is named if it gets to that point where the OIA determines an investigation is warranted?

Ms Florian: That is correct.

Mr SMITH: I will quickly go back to personal conduct. I note here that we are talking about ministers and responsibilities and code of standards and then members of parliament, but ultimately if a motion of no confidence is moved against a minister in the House, they do not have to stand down, they do not have to resign; it is the will of the Premier or, in the case of the Ethics Committee, it is at the discretion of the Ethics Committee.

Ms Florian: That is right.

Mr SMITH: Is there an argument that personal conduct should, rather than go to the CCT, go back to the council given the council are the civic leaders? Theoretically, they are the representation of a community's expectation of what leadership is, so therefore they would be best to determine and not the CCT?

Ms Florian: The difficulty with that is that personal conduct is often misconduct. Sometimes it is inappropriate conduct and it can be referred back to the council, and the council will deal with that as they will. However, where the personal conduct is potential misconduct, there is no provision or discretion under the act to refer that back to councils to deal with.

Mr SMITH: I suppose it is a subjective determination, in a sense. If the councillor commits a driving offence and they have done it in a council vehicle, then there is probably more in terms of misconduct because they are using a council vehicle, whereas if they were to commit a driving offence in their own vehicle, there is a difference there between potentially what is inappropriate conduct and what is misconduct because of the council asset or lack of council asset?

Ms Florian: There are a number of criteria that we look at on assessment in making a determination about whether something is potentially personal conduct or not. The questions that we ask are: has the conduct impacted in a measurable way on the reputation of the council or the standing of the councillor in terms of their ability to undertake their role; did the councillor identify themselves as a councillor when undertaking the conduct or were they identified as a councillor; did the councillor invoke their position or authority as a councillor in that personal context; and did the conduct involve the use of and/or damage to council assets? We are looking for a link between the roles or responsibilities of a councillor and the conduct. If there is no such link then that is the end of it. If there is a link then you would go to the next step to see—

Mr SMITH: Are those the criteria that the OIA has placed on itself as an organisation or is that legislated?

Ms Florian: That is right.

Mr SMITH: Could the OIA not still continue to assess based on that with these amended changes?

Ms Florian: Yes, it could; but is there agreement that that is representative of personal conduct or not?

Mr SMITH: That is a fair point. I suppose that is also why we are at this stage of amending because that argument currently exists.

Mr McDONALD: I have a follow-up question around the conversation we were having regarding private behaviour. You said it should be included in legislation. Of the four or five tests that you have just outlined, which are you tests, are you suggesting that we ask for those to be included in legislation or something similar to that?

Ms Florian: That is one option, but I would also like to point out in terms of the case studies that we have used, at present personal conduct must be dismissed on assessment, based on the material available on assessment and without having regard to investigative powers. As you would see in many of the case studies, nearly all of these matters would have been dismissed because it is not until you look at the matter that you can determine whether there is that requisite link. The same applies to the corrupt conduct issue as well. Often when you receive a complaint sometimes it can be a serious complaint but there is not a great deal of information there, but it is so serious that you think that this is something that we should at least look at. It is only when you investigate such matters that you may identify suspected corrupt conduct. Again, dismissing those matters mandatorily on assessment does undermine the ability not only to identify potential corrupt conduct but also to identify matters which are properly within this bill as well.

Mr McDONALD: In relation to the conversation we were having before around matters being assessed by the CCC referred back to the OIA as misconduct, going to the CCT and the CCT making a determination that it was corrupt conduct—

Ms Florian: No. The CCC get corrupt conduct complaints in two ways. They may get them referred from us or they may be received from members of the public. They will assess those complaints. They would deal with the ones that they can deal with. The ones that they believe require investigation and dealing with but they cannot do, they refer them to the OIA to do. When we would deal with those matters we have two choices. We could deal with them criminally using sections such as 201D, but 201D is a very high bar for criminal conduct, so very few matters would ever reach that

bar. In fact, it would be much easier to prove a fraud under the Criminal Code. The other alternative is that we deal with them as potential misconduct. That is what we refer to the CCT. The CCT are not determining whether corrupt conduct has occurred; they are determining whether misconduct has occurred, but are determining that in matters assessed by the CCC as potential corrupt conduct. That is why you will see some matters that you will look at and think, 'This is criminal conduct; why is the OIA dealing with it?' It is because it has been referred by the CCC.

Mr McDONALD: Devolved I think was the word you used before.

Ms Florian: Yes.

Mr McDONALD: In terms of the CCT finding, they actually also impose the sanctions as well, do they not?

Ms Florian: They do. The CCT may not necessarily know what matters have or have not been assessed by the CCC.

CHAIR: You make a strong point that the vexatious complaints process should also apply to councillors as well as the public. Can you talk a bit more about the benefits of that particular recommendation?

Ms Florian: To be clear, the vexatious declaration process is quite a complex process and it is going to be a very resource intensive process. The process only applies to members of the public. On the one hand, we have members of the public potentially being the subject of up to a four-year declaration that they are vexatious and cannot make complaints, but, on the other hand, misconduct on the part of a councillor that has occurred more than 12 months ago cannot be dealt with as misconduct. There is a balance issue there, I think. Importantly, if it is the view that this new vexatious declaration process is intended to address candidate conduct at the 2024 local government elections, we have set out in the submission the complexity of that process. There are three separate points in that process where after internal review it can be externally reviewed to QCAT. Nothing is going to happen quickly with that process. It is a process which more than anything has the potential to divert OIA resources away from what it is meant to be doing, which is assessing, investigating and dealing with misconduct.

In some of the case studies that we have shown you, there are certain members of the public who may qualify in here but, if the OIA were to take this position, it would just be locked in constant litigation with these people. This legislation has been drawn from the Invasion of Privacy Act. Having contacted the Office of the Information Commissioner and reviewed its annual reports in terms of how effective this has been, we found that they have made one application since 2009. Several other applications have been made on behalf of other agencies that have done the work for that.

Ms Hodgkinson: It took four of their staff to do one. We do not have that many staff.

CHAIR: I appreciate that.

Mr HART: This has been a long, complex investigation by us and obviously you and the government has put legislation in place. I understand you have concerns with some of it, but is there anything in there that is completely unworkable in your view or you are not going to be able to cope with?

CHAIR: That is going to be difficult to answer.

Mr SMITH: What preferred recommendations would you make?

Mr HART: I think you have probably had enough time to study it now to tell us if there is anything in there that you are not going to be able to deal with at all.

Ms Florian: I must make it very clear that there is a lot of material in here which is very good. We have highlighted in the material all the things that will assist us to be able to deal with things in a more effective manner such as not having to communicate with the local government on each occasion, not having every dismissal needing to go into a conduct register. There are a series of provisions in here which are very useful. The ones which raise some concerns are the key issues which have been addressed in these submissions. All we can do is identify those issues. It is a policy matter how they are dealt with.

Mr HART: There is nothing unworkable there; you can work around the majority of it. Is that fair enough to say?

Ms Florian: I think it depends, at the end of the day, what you want from a councillor conduct system. The key issue here is that already 95 per cent of complaints and notifications are not making their way to the CCT. Some 90 per cent of sitting councillors have had no experience with a CCT

matter. The issue is if there is a view that only the most serious matters should be going to the CCT, what happens to the rest? We are sending low-level conduct to the local governments to deal with. They are dealing with them with mixed success. Some of them are applying penalties which are higher than the CCT. You have matters at a lower level that are being dealt with. You will have a small number of matters at a high level being dealt with, and then a swathe in the middle that are being dismissed. How does that balance? Is that an effective and fair system?

Mr McDONALD: You mentioned that the vexatious legislation was based on invasion of privacy legislation?

Ms Florian: Yes, the Office of the Information Commissioner.

Mr McDONALD: Is there a better model of legislation that you can tell us about? I am sorry, my computer has shut down so I could not go back and check. Is there a better model that you are aware of?

Ms Florian: Really, my mind returns to the Solomon review and the recommendation which was made there—that is, to allow a prosecution not based on an individual vexatious complaint but on a course of conduct. I think that could be far more effective in deterring behaviour.

Mr McDONALD: I understand that.

CHAIR: That concludes this session. We do not have any questions on notice. Thank you very much for your attendance and for your evidence today.

ANSTEE, Ms June, President, Councillor Conduct Tribunal.

CHAIR: I now welcome President of the Councillor Conduct Tribunal, June Anstee. Could we ask you to make a brief statement of about five minutes and then we will have some questions for you.

Ms Anstee: Before I begin today, I respectfully acknowledge the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. I would like to make some—hopefully—brief remarks. All of the remarks really underpin the response you have which was narrow. It is limited to three aspects. I am more focused on the spirit and principles of the act.

As you know, the tribunal was established in response to concerns about councillor integrity and as a measure to better meet community expectations of high standards regarding transparent decision-making and accountability of local government councillors. The Local Government Act 2009, upon which this current act is based, introduced a principles-based framework. This principles approach, as opposed to a legalistic approach, was designed to replace a detailed prescription of roles and responsibilities and to make a separate code for councillors redundant. I am quoting from the explanatory notes. It was a deliberate shift away from the codified system of conduct.

A stated objective of this principles-based approach was by requiring entities, including councillors, to comply with the spirit rather than the letter of the law. It was stated at that time that they, councillors and entities, must come to terms with the reasons behind the law. To codify the law as it appears we are trying to do is to have an endless list—an ongoing, ad infinitum list—with councillors not becoming aware of what is behind the law and what the intention of it is. If they were aware of the intention, they would not be making as many errors. They would be complying with the spirit of it.

My role as president has been to implement these standards captured by the purpose and principles of the Local Government Act—and the amendments of 2018 which build upon that—to assess the conduct of councillors in relation to these standards and to adopt disciplinary measures prescribed by the act intended to uphold the integrity principles and reinforce these standards. As a lawyer and as president of the tribunal, I have taken this role seriously. The role was set up to be at arm's length from executive government or any influences.

When the CCT was established, it was established to have a maximum of three members to hear and determine matters—there are good reasons for that, particularly the complex and disputed cases—or for less complex matters two members. We could never place one member on a misconduct matter. That procedure and the current procedure prior to the amendment are an accordance with the definition of a 'tribunal'. The definition of a tribunal is that it is a decision-making body that allows for deliberation by more than one person to consider the evidence and allegations and implement a balanced, procedurally fair and impartial decision-making process, which I am sure all councillors want if they are unfortunate enough to be involved with this process.

A tribunal is intended to be less formal than a court, as you all know, with matters intended to be undertaken as swiftly as possible, while providing sufficient time to ensure parties are afforded natural justice and members have a reasonable opportunity to collaborate before reaching a final decision. Obviously, achieving this goal requires appropriate resourcing. The former local government panels, which arose in 2009 and which really provided the foundation for the establishment of the tribunal, operated between 2009 and 2018, operated in effect as part of the executive arm of government, which is unlike the tribunal, where the departmental officers investigated and provided the evidence to the members, managed and operated the functions of the panels and provided hearing facilities with only the final decision being determined by the panel.

I stress that, over the past five years of the tribunal, I believe that everyone in the tribunal and in the department of local government has tried to respect and observe the independence of the tribunal, but it is a difficult path to walk under the current structure. On reflection, it is my humble opinion that when the tribunal was established it could have been appropriately placed under the Department of Justice and Attorney-General to prevent this sort of tension. I also believe the Department of Justice and Attorney-General would have benchmarks and protocols for resourcing independent tribunals so that they can complete hearings and deliberations as swiftly as possible, which I understand is our concern and is everyone's concern. Obviously the committee spends a lot of time looking at this.

In terms of the committee's recommendations, there is the common theme in relation to the tribunal that the intention of many of the recommendations is to speed up the tribunal process and clear cases more swiftly. As I presented to this committee on 9 February 2022, it is my view that the backlog of matters—and currently that backlog is 40; that is attached to the submission—can be

cleared easily and without too much cost to the government. The problem can be resolved simply with the appointment of a pool of a minimum of 12 members, preferably up to 15 casual sessional members, who all are available for up to two days a month, together with your recommendation of a full-time president. That sounds expensive, but that is not expensive because those 12 casual sessional members do not receive a dollar unless we allocate a matter to them. To clear that backlog of 40 cases it would require paying them a fee for the time they spend on that matter only. They do not receive income other than that under the present structure. Everyone is casual and sessional, including my position at the moment.

For the past 18 months the tribunal has been functioning with only six members. Some 50 per cent of those members are available on average for no more than four to eight hours a month. The other 50 per cent are available on a weekly or fortnightly basis but only for four to eight hours per fortnight. You can see from that calculation that we cannot clear that backlog with the appointments that we have. Tribunal members have been depleted for many years, but particularly the last 18 months. It is important to place on the record for the committee's understanding that even the simplest disputed misconduct matter requires at least 40 hours of time by the chair and approximately 20 hours for each member. That will sometimes vary, but that is the simplest matter. A complex disputed matter with perhaps 10 to 20 allegations with multiple witnesses can extend the time taken by the chair and both members collectively to in excess of 200 hours. That is not per member; that is the three of them.

The time taken for those matters is what is required to fulfil the obligations and requirements under the act. To shorten that, you have to change the act. It takes that time to give councillors procedural fairness to ensure they have natural justice, to give them adequate time to respond to the evidence that has come in and to give them adequate time to respond to submissions that we require before a hearing can even commence. Just those stages can spread out from anything from eight weeks minimum to up to probably four months if the councillors' require extensions or their legal representatives require extensions of time to get that information in. I am happy to throw this open to any questions, and I am sure you have a few in relation to our submission.

CHAIR: I mentioned earlier the OIA's recommendation—and this is reflected in your recommendation—about expanding new section 150L(1)(b)(i) to apply to noncompliance with this act or other acts. You added to that 'and the principles of the Local Government Act', which I will come back to in a moment. Can you detail the positive impact of making sure that noncompliance with this act also extends to other acts?

Ms Anstee: The amendment as drafted in the bill—and I know this is a proposed amendment—could technically cause confusion because it is not referring to the Local Government Act; it is referring to 'an act'. That could be any act in Queensland. It could be the Local Government Act, but it is leaving it open for ambiguity. The main problem I had with that and why I added 'local government principles' was that, if the government's intention is to remove the requirement for councillors or elected officials to not be disciplined over breaching the public's trust, which is what that means—the constituents that elect councillors or government officials generally—and if they are not going to be required to observe that, which is a big shift because as I said in my opening the principles-based approach to this legislation commenced in 2009 and there has been no shift or change to that approach, the explanatory notes and even the introductory speech of the honourable Deputy Premier did not refer to removing breach of trust placed in the councillor from the Local Government Act. That is what that in effect is doing.

If you remove that, as a decision-maker it makes it difficult to jump back to the local government principles because in a way the local government principles are a general statement. They are the principles. That is the spirit of the act. If you do not have a provision that is saying, 'It is misconduct if you break the spirit of the act', in the interests of making it a codified act—and principles-based legislation does not do that—I find it difficult to see how we are going to be able to enforce the local government principles which are the principles under which councillors have been conducting themselves in a legal and ethical manner. If 'legal and ethical' are not there, it makes it difficult. From my perspective, over the next few years we are going to have to keep adding to the list of breaches of conduct, because the overall catchall phrase 'breach of trust placed in the councillor' has been removed from the act.

We are going back to noncompliance with an act; that is what has been proposed. Noncompliance with an act in effect means, 'Well, tell us what provisions in this act you are not going to comply with.' As part of the definition you have another two sections there where they do name and specify the sections of the act that they must comply with. To me, the first provision could create problems. That is my view. It is the view of all courts. No court has ever been able to define—and does not want to deliberately define—breach of trust, because breach of trust is a broad concept, a

catch-all phrase and it is the spirit of the legislation. That is why they are elected to represent the interests of their constituents, in a way. I understand there will be checks and balances within council about whether this is in this or that section of the community's interest, but that is another issue. That is resolved reasonably easily and effectively by politicians.

CHAIR: That covered the second part of my question as well. Certainly, once you have performance-based systems or principle-based systems there is always that conflict with people saying, 'Can you be more specific?' That is one of the problems, without wanting to go too far into codifying everything. Pointing constantly to those principles and those performance standards works well in theory and, we would hope, in practice.

Ms Anstee: Fair, effective and transparent—the report in 2017 alluded to that confusion of people with the principles-based legislation. There was a suggestion in that report by that committee—not necessarily a recommendation; I would have to check that—that for definitions of misconduct it can stay broad but you can give examples. For example, misconduct is (a), (b) and (c), but that does not make it prescriptive. The act already does things like that. Section 213 of the act provides that 'the tribunal may for instance disregard the rules of evidence'—and there is a whole lot of examples that we may or may not do, but it is not an exhaustive or a closed list; it is a broad general principle. Removing that principle to me is not consistent with the rest of the act, but the spirit of the rest of the act. If the government wants to remove it then they need to be aware that there could be complications, inconsistencies and difficulties in applying those principles.

Mr McDONALD: You raise some issues that have created more concern for me around some of the legislative changes. You said that it takes 40 hours for a simple matter to ensure procedural fairness and what have you. Can you take us through the process? A matter is assessed by the OIA. They determine that it needs to be dealt with by the CCT. Is any of the work that they do—the procedural fairness and preliminary inquiries—before it comes to the CCT considered by you, or are you doing that whole process again with natural justice?

Ms Anstee: I think I understand your question.

Mr McDONALD: You talked about 40 hours for a simple misconduct matter. To me that seems like a very large amount of time for a simple matter.

Ms Anstee: Basically with what the CCT does, we have nothing to do with that. That is totally a separate entity until they file a misconduct application with us and provide the evidence that they have that they believe justifies their application. That is filed under section 150AJ of the act. At that point we start looking at what they have provided to us. We have to review that. Sometimes the evidence that comes in from the IA can be up to 2,000 pages of evidence. When you say that it seems a long time, the 40 hours of the chair, sometimes it takes you many hours to read and sift through those sorts of documents. I do not wish to comment on those documents but I am just trying to explain, as an example, why this is time consuming.

Two thousand pages of evidence will not be a simple matter, for a start. There is a lot of evidence that comes in. Then, if we have enough panel members available, we will constitute a tribunal. The chair of that tribunal will then issue directions to the councillor and to the IA, who is now a party. Those directions have to observe natural justice. Usually we try to give everyone a minimum of 14 days to complete each step and they are not consecutive. We will give the IA 14 days. That could vary but it is generally 14 days. They respond with their information. Then the councillor has 14 days to respond. The councillor's legal representatives might not be available so they will seek an extension of time for another two weeks or the councillor does, or the IA does not have staff available and they seek an extension of time so suddenly we are up to over two months.

Once all of that comes in we then ask the parties to give us—if this is not going to be an oral hearing—submissions in writing on the disciplinary measures they think are appropriate should a finding of misconduct be made. They have 14 days to do that and then the other side has 14 days. Then we take those, for instance, 2,000 pages of evidence that has come in plus all the additional information and the tribunal starts processing that information before they can conduct a hearing. Then a decision is reached by the tribunal. Then the chair has to commence, when the chair has time—because, remember, no-one is full time so they cannot say, 'We'll start this tomorrow or the next day,' because they all have other careers. Then the chair starts writing up the evidence. The evidence has to be written in a form so that when it is read at the moment by QCAT they have a record of everything that we have looked at—a complete and accurate record. That all has to be put into the front of the report. Just doing that can take days.

Then the actual decision has to be written up and justified, and it has to comply with the principles of natural justice and procedural fairness and other issues in the act. The decision is made and that report then goes back to the one or two tribunal members who are on that matter for them

to approve that report. That report could be 8,000 words or 12,000 words. They have to find the time to sit down and read that report when they are not at work. I do not know if you have read a 12,000-word report but you cannot do that in two hours either.

Mr HART: We have read plenty of them, don't worry.

Ms Anstee: You might be very good at it. That then comes back to us. That is well over a 40-hour time commitment by the chair, not by the members. The members do not write it up but they still have to review it and pick up errors and things like that.

Mr McDONALD: In writing up the decision so that it complies with the QCAT—

Ms Anstee: QCAT has a guide if it goes on merits review.

Mr McDONALD: How many matters go on merits review?

Ms Anstee: I do not have the figures with me and I do not have an assistant here. He is caught up in court at the moment. I think there are 16 currently.

Mr McDONALD: Out of how many?

Ms Anstee: At the back of that submission I think I have the list, on the last page. I will just have a look at it, actually. Total matters received in the period 3 December to 27 September 2023 is 174; 137 of those are misconduct matters; 37 are inappropriate conduct investigations. Of the 137, we have finalised 86 matters so 16 of those 86 matters have gone to QCAT on review.

Mr McDONALD: I have two questions. Would it be better to have a more streamlined process for all the matters and only deal with the ones that need to go to QCAT for review? I am trying to think of how this process can be streamlined rather than investing in a QCAT compliant review for all matters. That is one question. The other question I would be interested in your feedback on is this: would making your position a full-time position improve the performance of the CCT in terms of having to get chair people to deal with these matters on a part-time basis?

Ms Anstee: I will deal with question 1 on the QCAT matters. We never know if that is going to go to QCAT; it is only when the councillor receives the decision and the report and says, 'We don't agree with it.' All councillors are given a notice, at the end of our hearings and once the report is released, to say, 'You have a right to go to QCAT if you want to have this matter reviewed.' I think of the 80-odd matters that I mentioned earlier, only 16 have gone to QCAT. I do not think you can predict that. The tribunal is not in a position to predict who is going to seek a review and who is not. I hope that answers that question. We cannot predict it. It is impossible.

Mr McDONALD: I would not ask you to predict it, but I am thinking about streamlining the process so that these matters are being dealt with but not to a legalistic standard for QCAT in every matter.

Ms Anstee: I see. I think that is going to be difficult because we have the IA doing the investigation and putting in the evidence, and the IA then becomes a party to our hearings so we have all of those documents. We do not have the sort of role to say, 'We don't want that information.' Also, some of that information is crucial to the allegations. You would not be able to establish one way or the other whether they should be sustained or not sustained if you did not have that information.

In answer to your question, in the current process I do not think that is possible. Under the amendments, QCAT matters are being transferred to the IA to assist QCAT in the QCAT hearings. That will assist us to a limited extent, but I really do not think it is the QCAT—sure, we could change our reports a little, but it is still writing up the whole decision and justifying, under the principles of the act and the law, whether somebody has engaged in misconduct or they have not to the civil standard on the balance of probabilities. Because it is a civil standard and because it is the balance of probabilities, you have to weigh up and balance everything. Unfortunately, we are at the end of the line and I think that is just what happens in decision-making.

In terms of the second question, would the position of full-time president assist: yes. Although I am casual as well and sessional, I mentioned in my opening address we took over the local government regional conduct review panels that were managed basically in-house by one of the departments. All of that management—allocation of panels that the department used to do, sifting through the evidence or allocating the evidence to members and reading it and ensuring we have all the evidence and assisting members and training members as to how to manage the panels—is now my responsibility and that has been my responsibility ever since I became president. That is time consuming. A full-time president would at least acknowledge the amount of resourcing needed for that type of management role for a tribunal.

The tribunal, as I said, needs a minimum pool of 10 to 12 people. It should never drop below that and, if it does drop below that, the department or the government needs to recruit a new replacement member straightaway. At the moment, we have been waiting three years for appointments to fill the gaps so we have been operating in an incredibly under-resourced fashion for a long time. Those sorts of minor amendments would assist the clearing of these cases. I know the appointment of 10 to 12 tribunal members, as a minimum, sounds expensive but, as I said earlier, it is not expensive; it is efficient and it will help clear the backlog very swiftly.

Mr MADDEN: I must say, as a former lawyer, your explanation for how the tribunal operates is enlightening to me. I find it extraordinary that even you operate on a casual basis as the president of a tribunal.

Ms Anstee: It is extraordinary and it creates a lot of—basically, I will leave it at: we are under-resourced and it has not been addressed. We have this probably very efficient system running with the Independent Assessor and the councils, but it all backlogs up at the tribunal and we are powerless to do anything.

Mr MADDEN: Whereas the Independent Assessor is a full-time position, yours is not a full-time position.

Ms Anstee: That is right and we do not have accommodation—all those things.

Mr MADDEN: We are drifting into commentary now—

Ms Anstee: That is right.

Mr MADDEN:—and I am here to ask a question. My question relates to clause 97 of the bill, proposed new section 169A, which deals with councillor training. It is two pages. There is a lot of talk about councillor training. I raised with the Independent Assessor whether this section was dealing with the training that is required of a councillor before they become a councillor—the mandatory training—or also deals with the training that is ordered by the tribunal. Her response was that this proposed section just dealt with the former and that it was silent with regard to training ordered by the tribunal. Do you agree with that? On my reading of it, it could apply or it may not apply. Do you agree that it is silent? I am not saying that in a bad way. Being silent gives the tribunal discretion, not bound by the act.

Ms Anstee: That is right.

Mr MADDEN: On your reading of proposed new section 169A, do you see it only applying with regard to prospective councillor training, ongoing training and that sort of thing, purely with regard to that side of councillor training?

Ms Anstee: I must admit I had not read that and thought of those issues. When I read that I thought that the department of local government is seriously focused on training councillors. I think there has been a problem because, over time, if we make a training order that actually does sometimes tread on the toes of the department, although the act makes that an order. Our orders are prescribed by the act. We cannot just go and make up orders. There is a list we follow. One of them is a training order. Depending on the circumstances of the case, if we ever make a training order it might be very clear to us that even if a councillor has attended the training—and most of the time they have; I would say 80 per cent of councillors have attended training—it is clear that the councillor did not quite comprehend the training, did not understand the training or if it was in relation to provisions in the act, they definitely did not comprehend that. I am not saying that is the councillor's fault, I am just saying the training must address these issues.

If we are going to have mandated compulsory training, and no doubt the department will want the tribunal to look at the guide when we are making decisions, the training has to be very detailed and rigorous to ensure that the councillors do understand the practical application of the provisions of the act. I cannot really say whether that is silent or not. The tribunal can make training orders at any time in relation to the submissions given to us by the councillors or their legal representatives or the IA. If we think those submissions are valid and justified we might make a training order. I do not know if that answers your question. I think it probably might be silent. I would have to look at that again in detail. I can take that on notice if you wish.

Mr MADDEN: If you could. Perhaps I will ask you this question: when you do make a training order—and I have never seen an order made with regard to training; I probably should have but I have never seen it—do you quote the section of the act that you are relying on when you make that order?

Ms Anstee: It is under section 150AR, the disciplinary provisions. That is where it is. It is a general order that councillors can be ordered to attend training. We can specify who makes the training. We have actually had a preference to say the department undertake the training, but that might not be a popular order. That is because we know the type of training the department provides. There were a number of training providers and we were not really aware of what information was being conveyed.

Mr MADDEN: I do not think you need to take the question on notice because in answering my question you have identified there is a specific section of the act. Was it 150?

Ms Anstee: It is150AR. I hope I am right. If it is not AR, it is AS, but I think it is AR.

Mr MADDEN: You do not need to take the question on notice. You have answered my question in saying there is a specific section that deals with training ordered by the tribunal for indiscretions as opposed to training ordered by the act for prospective councillors and ongoing training. I think you have clarified that. I very much appreciate you outlining how the tribunal works. I found it enlightening. I appreciate your answer to my question.

CHAIR: We are looking at clause 97 where it seems to be covered in the bill.

Mr HART: I am wondering if the department has provided you with their response to your submission.

Ms Anstee: The department?

Mr HART: Yes.

Ms Anstee: No.

Mr HART: The department has provided the committee with a response. Chair, can I talk to that response? We have not published that response yet.

CHAIR: I think we made a resolution to that effect earlier.

Mr HART: With regard to your concerns about numbers of members who are required for each investigation, the department has come back and said that basically it would be up to the president to determine how serious the situation is and therefore how many members should be allocated to it. While there is no requirement for there to be those members, they are saying the legislation leaves it to you to determine; is that your understanding?

Ms Anstee: To determine how many members? Not how many members of the tribunal, but how many members sit on a panel; is that right?

Mr HART: That is right, yes.

Ms Anstee: Yes, it is up to me to determine how many members sit on a panel. However, the current act limits that to a maximum of three and I cannot imagine we would need any more members than three on any misconduct matter in any case. That is already stipulated under the act. I did not raise that in my submission. I was raising the constitution of the tribunal.

Mr HART: They have removed the limit of two.

Ms Anstee: That is right, to one. That is of concern because the way the new amendment is drafted, that leaves it open to one member being appointed to complicated matters. It leaves it open for the president, acting president or deputy president, to appoint one member to hear a complicated matter with 200 pages of evidence, with 14 witnesses, with 20 allegations. That is not, as I said in my opening, the definition of a tribunal in this context with principles-based legislation where everything can be subjective, everything is determined on the balance of probabilities and you need a balanced decision-making process. One person might be able to do that, I agree, on non-disputed matters. That is possible.

Mr HART: It comes down to the quality of the president or the person making that decision.

Ms Anstee: It has been mandated for the last 10 years.

Mr HART: The concern that the committee has had is that there is a backlog in the CCT.

Ms Anstee: I understand that is the reason and I think I tried to say that pulling apart the legislation to clear a backlog of 40 cases seems to be—

Mr HART: That is not our intent.

Ms Anstee: I know it is not your intent, but what is happening is we have a backlog of 40 cases, we are depleted of members and now there is going to be a full-time president and you need a regular pool of members available. Even though we might have six members, in effect we have over a year less than one in terms of the time available.

Mr HART: Your main concern is you do not have enough members.

Ms Anstee: We definitely do not. That would swiftly resolve the backlog.

Mr HART: On another point you made, you are concerned that the Local Government Act and other acts are not specifically mentioned in the legislation; is that correct?

Ms Anstee: No. What I was saying is that the 2009 act and the 2018 act were based on a principles-based framework where councillors are required to observe the spirit of the act, which is supporting the constituents and the public interest by the trust principles.

Mr HART: The department's response says the CCT states that it is not clear from the new provision whether the local government principles section or the LGA remain enforceable.

Ms Anstee: That is right and that is what I was talking about in my opening address. What do they say?

Mr HART: The department is of the view that the current drafting of the section 150(1)(b)(i) captures the LGA, the COBA and other acts that impose obligations on councillors. I would be interested to see your response to the department's response to your submission.

Ms Anstee: I was not even aware that they had done a response.

Mr HART: Is it not normal for the department to give you a copy of their response that they send to a committee?

CHAIR: No, until we publish it no-one sees it.

Ms Anstee: That is right.

Mr HART: It makes it difficult for us to discuss it with the person on the other side if they have not seen what we have seen.

CHAIR: What we can do is resolve to send a letter to the CCT asking for a specific response. If you want to make a note of what you want to follow up we can put that in writing.

Ms Anstee: I should say too the department has advertised for a full-time president and I understand they are interviewing. My term expires at the end of October and I have not sought a re-extension of that. I only have a limited time to respond.

Mr HART: The end of October?

Ms Anstee: 31 October, my appointment period—I think it was four years—expires.

Mr HART: I would like your response, if you have time before the end of October, to the government's response to your submission.

Ms Anstee: I will respond in writing, but I did address that in my opening and I did not even know they had put in a response. Could you tell me the date that was published?

CHAIR: It was published today.

Mr HART: It has only come to us in the last few days.

Mr SMITH: I have two very rapid-fire questions. To your knowledge are industrial relations commissioners in Queensland employed full-time?

Ms Anstee: Yes.

Mr SMITH: Does Queensland have non-jury criminal trials where judges make the determinations in complex criminal matters?

Ms Anstee: Yes.

Mr SMITH: Could you take this on notice: how many matters before the CCT have resulted in non-unanimous decisions—so where it has been 2-1 or 1-1?

Ms Anstee: Where we have not had a majority of views? I think we have had one matter where a dissenting position was adopted by a member after collaboration and consultation. To the best of my knowledge there was just that one. Occasionally we might have a few comments in a decision saying that one member did not agree with this aspect, but not the decision, of how we reviewed the evidence or how we resolved a problem.

Mr SMITH: Could I ask you to please go back and have a look at the figures and identify anything that is 1-1 or 2-1?

Ms Anstee: I can definitely confirm that we have only had one dissenting written reasons for a decision. It is only officially one and then there will be a few comments throughout. It is not many decisions. I would say there are probably three or four others where there is a bit of a comment.

Mr SMITH: If you could confirm on notice how many times a matter before the CCT has never been 2-0 or 3-0, how many times has it been two to one.

Ms Anstee: I can tell you 2-1 is once.

Mr SMITH: Thank you.

CHAIR: Thank you very much for your time. In relation to the question from the member for Burleigh, we will write to you. That concludes this hearing. Thank you to Hansard and thank you to the secretariat. A transcript of these proceedings will be on the committee's webpage in due course. I declare this public hearing closed.

The committee met at 12.41 pm.