



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 (virtual)
Mr JE Madden MP
Mr TJ Smith MP

Staff present:

Ms M Telford—Acting Committee Secretary
Dr K Kowol—Assistant Committee Secretary

PUBLIC BRIEFING—OVERSIGHT OF THE INDEPENDENT ASSESSOR

TRANSCRIPT OF PROCEEDINGS

Monday, 12 June 2023

Brisbane

MONDAY, 12 JUNE 2023

The committee met at 10.32 am.

CHAIR: Good morning. I declare open this public briefing. 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 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 here today are: Mr Jim McDonald, the deputy chair and member for Lockyer; Mr Michael Hart, the member for Burleigh; Mr Robbie Katter, the member for Traeger, who is appearing via teleconference; Mr Jim Madden, the member for Ipswich West; and Mr Tom Smith, the member for Bundaberg. This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. The purpose of today's briefing is to hear from the Independent Assessor and officers of the Office of the Independent Assessor about its functions, performance indicators and matters contained in its annual report of 2021-22, in line with this committee's oversight responsibilities.

Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation but I remind witnesses that intentionally misleading the committee is a serious offence. I remind committee members that officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. Please turn your mobile phones off or to silent mode.

I now welcome representatives from the Office of the Independent Assessor.

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 invite you to brief the committee after which committee members will have questions for you.

Ms Florian: I also would like to acknowledge the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. My name is Kathleen Florian and I am the Independent Assessor.

As we approach the close of another financial year, I can advise that councillor conduct complaint numbers continue to be at around 1,000 a year. We are currently at 856 for this financial year. To date, since the establishment of the Office of the Independent Assessor, 75 per cent of all complaints have been the subject of dismissal or no further action; five per cent of complaints have been returned to councils to deal with as potential inappropriate conduct; 26 per cent of complaints have been investigated as potential misconduct. After investigation, six per cent of complaints have advanced to a natural justice process, with four per cent or just 200 out of 4,644 complaints being referred to the Councillor Conduct Tribunal as potential misconduct following a natural justice process—that is complaints; not applications—and a further four per cent of complaints have been referred to the CCC as potential corrupt conduct.

As you are aware, the OIA commenced nearly 4½ years ago with 10 staff. In December 2020, we received a temporary FTE and funding commitment from the Deputy Premier to support eight temporary staff, doubling the number of the OIA's investigators from four to eight. Since that time, all backlogs in dealing with matters have been removed and time frames have continually reduced. I can

advise that for the 2022-23 year to date—and, of course, we are getting very close to the end of that—the assessment team has assessed and communicated outcomes for 94 per cent of all complaints within 21 working days. The investigators have reduced their average length of investigations to two months. The OIA currently has no investigation over three months old. The average length of time taken to undertake a statutory natural justice process is now just over four months, with all matters under six months old.

The remaining key driver for delays in investigations and natural justice time frames is the time taken by other parties to respond to requests for information or to respond to official notices, with often multiple requests for extensions and no responses by deadlines. Backlogs and/or delays, however, remain before the CCT and QCAT and remain a risk. The OIA has written to the department on 15 occasions to raise systemic issues, predominantly around building the capacity of councillors to deal with inappropriate conduct matters in councils, including those where there are entrenched divisions amongst councillors.

During this period, the department has appointed two local government advisers. As the committee would be aware, the department has carriage of the legislative changes in response to the recommendations arising from the inquiry into the Independent Assessor and the councillor conduct complaints system. However, the OIA has responded, where we could, to act on recommendations and has assisted other bodies in the councillor conduct complaints system to do the same until those legislative changes are known and enacted. Steps taken have included that we have written to all councillors who have matters backlogged before the CCT to make them aware of the CCT's new expedited process where misconduct is agreed and have provided information on potential orders if a finding of misconduct is made. All councillors are now aware of potential orders following a finding of misconduct by the natural justice process stage and we have also moved to update correspondence templates and our website in an attempt to try to reduce any fear factor.

When the OIA commenced, it took over the assessment of complaints from CEOs in 77 local governments and dealt with increased complaints arising out of the introduction of new mandatory reporting requirements. With additional temporary staff, the performance time frames are currently lower than any other like agency in Queensland. This has taken an immense effort by the OIA's dedicated staff, both permanent and temporary.

I want to place on the record my appreciation for the dedication and professionalism of all OIA staff, both current and past, and for their daily demonstrations that high standards of integrity and unfailingly respectful interactions with councillors and complainants go hand in hand. I would also like to thank this committee for your assistance in improving the councillor conduct complaints system and for the extent to which you have acted in a bipartisan way. I am happy to take questions.

CHAIR: Ms Florian, can you also extend to your staff the thanks and gratitude of this committee. It is very clear that there has been an immense effort by everyone to make sure that those time frames have been reduced. It is very clear, from what you have said here, that you have worked hard on that and there has been a substantial output.

Ms Florian: I would be delighted to do so, thank you.

CHAIR: Please give them the committee's thanks. As I said, the information you have presented here has shown that marked improvement that certainly sets a benchmark that other bodies throughout Queensland could look at. One of the things that I find interesting—and I will not talk about the CCT; I will let others talk about that—is the inappropriate conduct process. In our report we talked about how the councils have to improve how they deal with that. We are not really seeing that flow back through to councils and back from councils in terms of a better process of dealing with those inappropriate conduct complaints that have been sent back to them. Is there some more information you can give on that?

Ms Florian: I might hand over to Ms Hodgkinson, who has some information on the inappropriate conduct update, such as we know.

Ms Hodgkinson: Basically, we have actually referred 52 complaints, so six per cent, back to 25 councils to investigate. That is in this financial year so far. There were close to 300 complaints of inappropriate conduct that we did dismiss as well. Noting, of course, that councils are not required to report back to us, we noted that we have 18 of those 52 complaints where councils have advised us. That was complaints referred in this financial year. I was looking to see those that were dealt with quickly, which is the whole purpose of that system. All that we had been told of was 18 of the 52 had been actually dealt with: eight sustained, six not sustained, four alternative dispute resolution. Separately, the Brisbane City Council's Councillor Ethics Committee resumed this year. They decided

10 inappropriate conduct matters on one day. That is what we have learnt so far. Obviously, with your recommendations that councils are required to let us know the outcomes, we will be doing more work on that for the end of June and the annual report statistics to look at matters in previous financial years that have been resolved.

Mr McDONALD: I want to follow up on that before I go to the other questions that I have. In terms of the system of referring matters back to the councils for determination, do you describe what similar offences of inappropriate behaviour might have resulted in so that the councillor has some sort of guidance and can understand what happened with similar behaviour, whether it be an educating sanction, financial or an apology? Do you outline that when you refer it back to them if it is upheld?

Ms Florian: As you know, we have the power to make a recommendation when we refer a matter back to local government about how it may be dealt with. Particularly where local governments have entrenched divisions and problems, we make our recommendations as extensive as we possibly can.

We do not go so far as to recommend what outcomes may be appropriate because the matters have not been investigated yet, but what we do say is that if it is one of those councils we recommend that it is independently investigated and we recommend that that independent investigator, based on the evidence after the investigation, recommends what may be appropriate in terms of orders. Previously when we had that prevention function we also provided a guideline that accompanied that, which gave an indication of if this was the first time and there was no disciplinary history this is the ballpark or the range, if this was the second time this is what you might be looking at. That is probably the best answer we can give to that at this point.

Mr McDONALD: Following up again on this, I think this is where we ended up with a lot of concerns and a lot of inconsistencies across councils for very minor inappropriate behaviour matters. I am just concerned that under this system now we are sending it back for them to do an independent investigation which could cost thousands of dollars for something that may be an apology or an educative sanction. I do not know whether you have turned your mind to how that system can be improved rather than having an independent investigation into something very minor.

Ms Florian: We recommend an independent investigator only in circumstances where there are divisions in the council to create some sort of sense of independence and trust in the outcome of an investigation. With many inappropriate conduct matters, an investigation is not really required, it is really on the papers. So even matters that are technically referred to investigation are often just for the purpose of making a recommendation to the council about whether there is sufficient there to meet inappropriate conduct and, if so, what may be the appropriate orders to try to build in as much guidance as we possibly can while still respecting that the legislation says that it is for local governments to determine whether inappropriate conduct is made out and it is for local governments to determine, if it is, what the order should be.

Mr McDONALD: I will continue to think about that. When we were conducting the inquiry and we were getting near the end, I think it was the department that outlined that a tripartite forum was occurring and having regular meetings. Have those meetings continued and have there been some meaningful outcomes from that forum?

Ms Florian: Yes. I can advise the deputy chair that those meetings have continued. They are occurring probably on about a six-weekly basis at the moment. There have been some very useful conversations and outcomes from that ongoing forum, including reaching out to QCAT as well to try to align efficiencies and outcomes in that respect.

Mr McDONALD: Has there been more clarity around interpretation across the three areas in terms of your understanding of each of the policies and yourselves as the assessor and the CCT?

Ms Florian: If you look at the terms of reference for that forum, it is not about discussing individual cases. I think there are a lot of improvements to process. I think there needs to be, and there continually is being, more conversations happening at the training and when we identify systemic issues we send correspondence back around trying to develop a consistent view on what is misconduct and what is inappropriate conduct and how to deal with it and I think that is increasingly aligning, yes.

Mr McDONALD: One of the specific recommendations from the committee was around social media and people's use of social media. How has that recommendation been progressing? Are councillors now able to moderate an account without fear of facing—

Ms Florian: Councillors have always been able to moderate their account without fear of facing that. We have always been very clear from the outset that councillors are not required to take inappropriate conduct from members of the public and they can moderate their account as they see fit. I think we have probably been over this.

Mr McDONALD: Have there been more complaints about social media or have those complaints dropped off because there is an understanding that people can moderate accounts?

Ms Florian: Interestingly there have been more complaints, but they were from councillors about councillors moderating their social media and not from members of the public.

Mr McDONALD: We have council elections coming up next year and I note in your report you are suspecting there will be an increase in complaints. Is there a system in place or do you have extra people available to be able to deal with those in a timely manner?

Ms Florian: The last time there was a local government election we put a whole strategy in place around that. That involved writing to all complainants who had matters both at the investigation stage and before the Councillor Conduct Tribunal requesting that they do not engage in acknowledging that in the media. We went out with a strategy with the CCC and with the Queensland Electoral Commission talking about indicia of vexatious complaints within the election period and the caretaker period, storing up complaints and making them at the last minute, publicising complaints—what would be all the indicia of vexatious activity—and we put in place a series of strategies. As a result of that, in the last election the number of complaints we received during the caretaker period was not substantially different to the number of complaints we received at any other time. The next local government election we do not have that prevention function anymore so to what extent we do that is something we need to look at.

Mr MADDEN: Thank you for coming in today. As you would appreciate, this committee's oversight of the Office of the Independent Assessor is of great interest to us, particularly given the large number of former councillors on this committee. My question relates to the information on page 244 of your report with regard to the number of applications before the CCT. I appreciate that you cannot answer questions specifically with regard to the CCT, but I recall asking you, Assessor, the last time you were here about the number of matters that were unheard before the CCT. I recall it was 75. With this information here it has dropped to 53. That is something to be celebrated. That is a drop of about 30 per cent in the number of matters unheard. I am concerned that there are three matters that are more than two years old. This is my question and this is what relates to the Office of the Independent Assessor: could you identify any major changes that you have made in your office that have led to the decrease in number of unheard matters before the CCT dropping from 75 to 53?

Ms Florian: Thank you for your question. There has not been a drop. Previously what we did was we identified the number of complaint matters that have been referred to the CCT. That is 107. The number of applications is 53. In real terms there has not been a drop.

Mr HART: Ms Florian, it sounds like you are making real progress from when we first started this. It seems to me that you have a lot of extra staff on board to do that. Funding runs out at the end of June, is that correct?

Ms Florian: There are obviously matters which would be cabinet-in-confidence which I am not in a position to discuss.

Mr HART: I understand that. My concern, I guess, is if those numbers fall away whether this will continue. I think it is important that you have more staff. I will leave it at that. The staff that you put on, the eight full-time extra employees, what sort of experience did those people have? Were there any former councillors or managers of councils? What sort of level of experience do they have?

Ms Florian: Just to make it clear, we started off with 10 permanent staff. That went up to 11 permanent staff the year after and then we have eight temporary staff. I have taken a risk-management position to appoint five of those staff to permanent to retain them. They come from a range of backgrounds. Some have previously worked in councils, but not as councillors. They also have investigative backgrounds and/or legal backgrounds as appropriate.

Mr HART: What about council backgrounds? Are there any councillors?

Ms Florian: Not councillors.

Mr HART: We any managers of councils or CEOs?

Ms Florian: I am not sure whether you know what a CEO is paid, but a staff position at the OIA is unlikely to be attractive to a CEO.

Mr HART: Fair enough comment.

Ms Hodgkinson: We do include specific lines in all of our recruiting that applications from anyone with a council background are most welcome.

Mr HART: When we first started this you talked about needing case law to make your decisions moving forward. Has that improved since we started this inquiry? Are you confident that you now have enough information or case law to decide these things quickly?

Ms Florian: I think that is improving all the time. When matters start getting heard before QCAT that will continue to contribute to that knowledge, not only for the OIA and the Independent Assessor but for legal representatives and councillors and the department. I am confident that that is improving all the time and will continue to do so as with any disciplinary system which fundamentally rests on that.

Mr HART: When you were talking about the next election and what councillors' responsibilities are, do you have any concern about councillors having to comply with all of the conditions that are enforced on them under local government laws but candidates not so much having to, and how do you intend to deal with that? Do you have any power to deal with that?

Ms Florian: One learning which we did get from examining how the last local government election process went is that people who were already engaged in the councillor complaint system who we were able to write to responded well and the councillors responded well. Candidates are outside our jurisdiction and the percentage of complaints that we received from candidates and/or their spouses was something like 20 per cent, if I recall, of all complaints received during that period. The only way we would have jurisdiction over a candidate making a complaint is if that complaint were vexatious. That would be the limitation. We have spoken previously about the vexatious complaint offence and those issues.

Mr HART: I am wondering about the First Nations councils. Do you have any issues or anything that you take into account around First Nation laws as they would apply to councillors and reflecting that in your decision-making process?

Ms Florian: Absolutely. In fact, that is part of what we need to take into account under the Human Rights Act in making any decision. That is one of the human rights that you need to consider—the cultural implications. That is very much a feature in our First Nations communities, particularly, I must say, around things like conflict of interest where relationships have a whole different cultural meaning in some respects. Some relationships that we might see as close are not necessarily so and others that we might see as not close it goes the other way. It is very much taken into account as part of our decision-making. We also try to take into account the particular issues that First Nations councillors experience in terms of being able to communicate with us. We have put in place measures such as First Nations councillors, if they are responding to a notice, do not need to respond to us in writing. We can arrange a time for them to ring up and we can get a verbal response. It is often the case that there are technical challenges for First Nations councillors to be able to communicate as well so that is taken into account with extended time frames for responses.

Mr HART: It seems to me that the OIA's systems have improved and things are moving quicker. Do you get the view that the CCT process and the QCAT process has improved or are they still where they were?

Ms Florian: I can indicate that I think the CCT processes are improving all the time. It is not a matter for me to respond to, but that is obvious from my perspective, and also there has been engagement with the QCAT president who has been very responsive, taking into account the significant impact on QCAT as well in terms of a very large jurisdiction.

Mr SMITH: Since our inquiry has been undertaken, what methods have you put in place to ensure more efficiency and timely investigations by staff members within your office?

Ms Florian: Really the turning point for us was December 2020 when the Deputy Premier committed to eight temporary staff for us because that allowed us to double our investigators from four to eight. I think that that has been the major contributor to a reduction in investigations. Since then you would see, virtually quarter by quarter, those investigations have gone down. At one point we had to put a lot of investigations on hold because we had too many investigations for staff members and those on-hold numbers were reduced in the first instance and then from that point we were able to reduce time frames substantially. I think that there has been a slight reduction in the number of investigations that we have commenced. There has been a slight increase in the number of matters that we have referred to local government. I am concerned that if there is an expectation

of assessment time frames coming in further that that will actually result in an increase in investigations again because there is a limited time frame in which to get the information to make a proper assessment and that could drive increased numbers into investigations. I hope that answers your question.

Mr SMITH: Partly. Obviously more staff will theoretically create a more productive workspace. What actual internal training and professional development is undertaken by staff in the OIA?

Ms Florian: We provide internal training and professional development to all staff, including investigators, who go to a range of courses and have gone to a range of courses. Respectfully, the issue is never about the training or expertise of our staff. Our staff have been excellent.

Mr SMITH: That is fine, but I would like to know what the professional development is? What do they go through? Do they go through different ways to de-escalate conversations? What kind of training and development is undertaken?

Ms Florian: Many of the investigators have previously worked as investigators. Many of them have also completed the government investigations course, which goes through all aspects of investigation. In addition to that we send them to other training that is offered through PSC. Did you want to add anything to that?

Mr Kohn: Specifically we have provided training in relation to dealing with public interest disclosures with the ombudsman's office. We have sent some of our staff for training with the Institute of Management to learn how to interact with people as an investigator and work as a team. That is about it. In the selection process we do very closely look at experience that people have previously got, so they come to us with a lot of experience.

Mr SMITH: Do you have staff come together and review case studies and make their own assessments and then compare assessments and investigations with each other so there is some peer learning as well?

Ms Florian: The way the process is set up involves a lot of interactive learning throughout the process. Investigators come into assessment, for example, where each complaint is received, further information is obtained, the facts are discussed as it applies to the standard and that is a significant learning experience. Once investigations are underway there are regular meetings between the investigators and the team leaders and with the Deputy Independent Assessor. When an investigator hits a point where they are not sure about how to proceed or it is the end of an investigation and either the matter is recommended for dismissal or potential referral, then we have a case review meeting which is multidisciplinary and we have investigators and lawyers and myself and the Deputy Independent Assessor and we go through each of those cases and pull them apart. So built into the structure of our dealing with investigations, from assessment through to referral, there are real learning opportunities which allow investigators who come in with external expertise to develop, over a period of time, a sophisticated understanding of how investigations apply in a local government context, particularly where we have legislation which is quite complex and has changed and the dates of those changes have significant implications for the investigations.

Mr SMITH: Obviously when an assessment is made it is a judgement against the legislation, but also some sort of personal interpretation as well because we are all individuals. How has your interpretation of political expression perhaps developed over the course of the inquiry from where we started to where we are now?

Ms Florian: My position has always been that councillors as elected officials have a right to, and indeed must, make statements which are necessary for people to understand what they represent and what views they represent so that when people are electing councillors they understand who it is that they are electing or not. However, there are times when statements are made which then can cross what the conduct standards are and when that happens then there needs to be a determination, taking into account the relevant rights, whether a matter is potentially inappropriate conduct or misconduct. At the end of the day we are not the decision-makers and it gets referred either back to local government or to the Councillor Conduct Tribunal for that determination to be made. I cannot recall any matter that has gone before the Councillor Conduct Tribunal that has not been sustained because a call has been made about the freedom of information inappropriately.

Mr SMITH: And vice versa in terms of councillors not wishing to engage with the political expression of others or their constituents? Your interpretation of whether or not councillors need to accept political expressions by others such as blocking on Facebook and so forth, has that changed?

Ms Florian: Again our position has always been that members of the community should be able to engage with their elected representatives respectfully and constructively. That is why they are elected representatives, they are there to serve the people, but if they engage with elected representatives in a way which is not respectful or constructive then elected representatives should be able to close that down.

CHAIR: The member for Traeger does not have any questions so we will move to the deputy chair.

Mr McDONALD: Just turning my mind to the uneven playing field with councillors and candidates who are not under your jurisdiction in terms of their code of conduct, do you have any solution for that? Is there something that we can turn our minds to? It is certainly not right that somebody can just say or do what they like as a candidate. Is there a time when they become a candidate that would allow them to fall under your remit?

Ms Florian: I think that that is a potential policy solution that probably would not be in my remit to comment on.

Mr McDONALD: I was just thinking about turning it around the other way, an even playing field when councillors become candidates.

Ms Florian: One thing I am reminded to say is that what we do do during an election period is monitor. From the time that people start declaring their nominations and their candidacy, we track all that in the media. Having worked in this space for 4½ years now we have quite a sophisticated understanding of the relationships between some people and candidates in areas and we do monitor that and have an understanding of that and they are factors that can also be taken into account in terms of assessment. We understand the perspective.

Mr HART: At the end of the day you do not have any power to act on it though, do you?

Ms Florian: Not unless we can demonstrate that a complaint has been made for an improper, vexatious or frivolous purpose.

Mr McDONALD: If that is the case then you obviously have opportunities to take action. I am wondering if your process in that could highlight the issue of candidates receiving advice early on so that they act accordingly.

Ms Florian: I think it is reasonable to say that if there was a basis to proceed on a vexatious complaint regarding a candidate then that would be done. We have consistently undertaken investigations into vexatious complainants. For the reasons I have described we have not been able to institute a prosecution of a vexatious complainant. At any given time we have a number of those investigations ongoing. We currently have one which is with senior counsel, because it would potentially be our first one, getting advice on whether that is a matter which reaches the threshold and has successful prospects for prosecution and public interest considerations.

Mr McDONALD: I guess within that election period timeliness is very important. If there is somebody who is an improper or vexatious complainant, how long would it take you to deal with that matter?

Ms Florian: There is no way that that could be done within the time frame. This is a perennial problem that we see with any complaint system. I know from my time with the CCC that people who understand the system can play it by trying to make complaints, often about historical things, but at a time in the process where it is very difficult to get an assessment through and an outcome communicated that can redress the reputational damage that can be done. I think what is important to understand here is that complaint systems can sometimes wear the deficiencies that can exist within systems which are not of our own creating. I would encourage this committee to be considering what can be done from a policy perspective to address those issues, but bearing in mind the very realistic scenarios that we are working with and the time frames.

CHAIR: The letter of 28 November, which describes the interpretation of the Local Government Act regarding conflicts of interest and how that has affected the time frames of your assessments, can you give us a little more information about the impact of those conflict of interest provisions?

Ms Florian: Consistent with our strategic report and the commitment that we made following the last inquiry, we are raising with the committee strategic issues where they need to be raised so that you have an understanding of the background to that. Some issues were identified in relation to potential drafting. The department has that under consideration. The implication of that though has been that fewer matters have proceeded through to investigations around conflicts of interest as a result of those issues. That was something that we needed to make sure that you understood in terms of that statistic that you could see reducing.

CHAIR: I appreciate that. That concludes this briefing. Thank you to everyone who participated today. Thank you to our secretariat and Hansard. Thank you everyone from the Office of the Independent Assessor for helping us today. We do not have any questions on notice. I declare this briefing closed.

The committee adjourned at 11.15 am.