

This briefing took place in camera on 11 October 2021.

On 15 November 2021 the committee resolved to publish the transcript of proceedings.



STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr MJ Hart MP
Mr JE Madden MP
Mr JJ McDonald MP
Mr TJ Smith MP

Staff present:

Ms S Galbraith—Committee Secretary
Ms R Stacey—Assistant Committee Secretary

PRIVATE BRIEFING—OVERSIGHT OF THE INDEPENDENT ASSESSOR

TRANSCRIPT OF PROCEEDINGS

(Private)

MONDAY, 11 OCTOBER 2021

Brisbane

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The committee met in private at 11.01 am.

CHAIR: Good morning. I declare this private briefing open. Thank you for your attendance here today. I would like to begin by acknowledging the traditional owners of the land on which we meet today and their generations of elders past, present and future. My name is Chris Whiting. I am the member for Bancroft and the chair of the committee. The other members of the committee with us here today are: Mr Jim McDonald, deputy chair and member for Lockyer; Mr Michael Hart, member for Burleigh; Mr Jim Madden, member for Ipswich West; and Mr Tom Smith, member for Bundaberg. Mr Jon Krause, the member for Scenic Rim, has been granted leave by the committee to participate in today's proceedings.

The purpose of today's private 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 2020-21, in line with this committee's oversight responsibilities. I remind committee members that officers are here today 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.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Today's briefing is being held in private. The briefing is being recorded by Hansard and a transcript will be made available for the officers to review. The committee may decide to make the transcript public after this briefing. You will be given the opportunity to make a submission as to whether the transcript should be published before this occurs. If you take a question on notice, I ask that you provide the information to the committee by Monday, 18 October 2021. Do committee members have any declarations?

Mr KRAUSE: I want to declare that in relation to the Scenic Rim Regional Council area I represent that area. There have been various media reports about interactions between the OIA and media outlets in that area over professional association with those media outlets. It does not impact my ability, however, to take part in this proceeding.

Mr McDONALD: I declare that I am a former councillor of the Gatton shire and then Lockyer Valley Regional Council area. My brother is also a councillor in Toowoomba and the deputy mayor.

CHAIR: My declaration: I have been a member of the Caboolture shire council and the Moreton Bay Regional Council through which I had experience with councillor tribunals.

Mr MADDEN: I declare that I am a former councillor of Somerset council from 2012 to 2015. I did attend a hearing, not as a respondent but as a supporter.

BUTLER, Ms Nicole, Director of Media, Engagement and Prevention, Office of the Independent Assessor

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

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

CHAIR: Good morning and thank you for appearing before the committee today. I invite you to make an opening statement, after which committee members will have questions for you.

Ms Florian: I thank the committee for the opportunity to discuss the functions and the performance of the Office of the Independent Assessor, OIA. As the committee is aware, the OIA was established on 3 December 2018 having been recommended by the Solomon review. The review highlighted that as public office holders, councillors occupy positions of trust and that integral to public trust in local government is the expectation that councillors abide by high standards of behaviour, ethics, integrity, transparency and accountability.

During consultation, the review panel received overwhelming support for a centralised assessor objectively dealing with complaints and applying consistent standards across all councils. It also recommended that the assessor be equipped with appropriate investigative powers, noting that

the system that existed at the time was potentially limited in its capacity to investigate matters as thoroughly as required. The terms of reference suggested that a low incidence of prosecutions for serious offences was partly due to investigations yielding insufficient evidence. The OIA was established to centrally receive, assess, investigate and, if necessary, prosecute councillor conduct complaints.

Our recent annual report noted that in the 2020-21 financial year the OIA received 1,074 complaints, which represented a four per cent increase on the preceding year and the third increase on the three years that the OIA has reported on. This increase was not unexpected as this was the first full financial year with all 77 Queensland councils under the OIA's jurisdiction. However, the size of the increase indicates that complaint numbers are starting to stabilise, and this observation is supported by the figures for the first quarter of the current financial year. Between 1 July and 30 September the OIA received 221 complaints, which is slightly lower than the same time last year.

Ninety-two per cent of complaints were assessed within 21 working days of lodgement. Fifty-five investigations were commenced. Pleasingly, 110 investigations were finalised. As at 30 September there were 69 matters involving 33 councillors and 103 allegations before the Councillor Conduct Tribunal. A key plank in the councillor conduct framework is effectively addressing lower level conduct to operate as a barrier to escalating conduct. Dealing effectively with inappropriate conduct can prevent escalation to misconduct. In turn, dealing effectively with misconduct can prevent an escalation to corrupt conduct.

Just 10 years ago, the then department of local government received two complaints about councillor conduct from CEOs across all of Queensland for one year. While the circumstances leading to and the transition to the new councillor conduct framework have naturally not been without pain and ongoing adjustment, there are positive signs of a strengthening integrity culture in local government including significant improvements in the reporting of councillor conduct by local governments year on year since the OIA commenced, increasing numbers of self-referrals received from councillors and a significant reduction in the number of complaints that the Crime and Corruption Commission is receiving about local government. With that, I would open to any questions that you might have.

CHAIR: Ms Florian, I am keen to talk about a number of the issues that you have in your annual report. I thought we might start with asking you to address one of the biggest issues you faced during the year, which is the issue with the Fassifern Guardian. Bearing in mind there are some ongoing issues with that, could you give us a comprehensive explanation of what happened in this incident?

Ms Florian: Between 13 and 21 August 2021 the OIA was a subject of media reporting on a matter associated with a particular OIA investigation. The OIA investigation which commenced on 15 July 2021 related to an alleged false or misleading statement made by a councillor to a regional newspaper. The OIA responded to journalist inquiries in relation to that matter in accordance with our media policy, which is consistent with the act. Essentially, we did not say very much because under the act we are limited as to what can be said in circumstances where a councillor has not been found to have engaged in misconduct. Having questions from our oversight committee provides us with an opportunity to address this thoroughly, which I welcome.

Firstly, the article appeared in the regional newspaper on 3 July and the councillor was quoted throughout the article, which included the following paragraph where the councillor is referred to as 'he'. It states—

... said he had spoken with the state's Independent Assessor, Kathleen Florian, as well as senior policy makers within the Department of Local Government who assured him that he was well within rights to advocate shifting the administrative boundaries of his electorate ...

This statement was made in the context of a councillor's decision to undertake a private plebiscite to determine the views of residents of the councillor's division about moving under a different local government area, and both the plebiscite and the possible changes to electoral boundaries were contested political issues about which the OIA might receive complaints. The Independent Assessor does not comment on political issues, as you would expect, as this is outside the IA's role and it may undermine the OIA's ability to independently deal with complaints.

Further, in this case, I and the Deputy Independent Assessor had agreed to the councillor's request for a meeting, which had happened a couple of months earlier. The purpose of that meeting was unrelated to the plebiscite or those issues. During the course of that meeting the councillor did discuss the plebiscite issue at some length, but I did not assure the councillor that he was well within Brisbane

his rights to advocate shifting the administrative boundaries of his electorate, as was reported in the media article. Unbeknown to the councillor, this meeting was recorded. The only statement that I made during the course of that conversation, which touched on the plebiscite, was—

Philosophically, you're quite different and opposed to the other councillors in the Scenic Rim and it's inevitable in that situation that there's going to be a to and fro, and I'm not interested—we're not interested in the politics of it. I don't care whether division 1 is in the Scenic Rim or if it's in the Gold Coast. All we can do is to look at it complaint by complaint and deal with them accordingly.

The false or misleading statements by a councillor can constitute misconduct if a statement is made knowingly or recklessly. When assessing such matters, we consider the context in which the statement was made. The three things that we consider in those circumstances are: was it made publicly or privately, for example in a small forum; was it about an important issue or something which is just peripheral; and was the statement clearly false and/or misleading or were there other reasonable interpretations?

At any given time the OIA is usually undertaking multiple investigations into allegedly false or misleading statements by councillors. The Councillor Conduct Tribunal and its predecessors have consistently held that public statements made by a councillor which are false and/or misleading may be misconduct. For example, a decision was handed down in a matter on 22 February 2021 where the CCT found that a councillor had engaged in misconduct when he had made a false or misleading statement to the media after he had appeared on a reality television program, and around the time the program aired the councillor was reported in the *Sunshine Coast Daily* newspaper and he also participated in an interview on ABC Radio. The CCT gave different weight to the media reporting. It found that the interview on ABC Radio carried substantial weight as it contained the councillor's own words, whereas the *Sunshine Coast Daily* articles carried less weight as they were not in quotation marks and they had paraphrased the councillor without direct quotation.

During the ABC Radio interview, the councillor had been asked about his appearance on the show. The interviewer asked: 'Who is the boss and what was that discussion like?' The councillor said, 'My boss, Tony Wellington, the mayor of Noosa, said, "You can choose to do whatever you like to do in your four weeks leave, Jess, so it's up to you."' The CCT found that the councillor misled the media in that it was demonstrably clear that the mayor did not give authority or support for him to appear on the program. The councillor was reprimanded and ordered to pay a pecuniary penalty.

There are many other decisions of a like kind including a decision involving the councillor in this matter who, according to a previous tribunal, was found to have engaged in providing false or misleading statements. That was substantiated and he was asked to make a public apology.

As the statement that appeared in the newspaper did not appear in quotation marks, it was possible that the comment attributed to the councillor had been paraphrased or not correctly reported. Consequently, an inquiry was made with the journalist whose by-line appeared on the article who, after checking his notes—he identified to us that he had made notes of it—confirmed that the comment had been correctly reported. The journalist and the newspaper editor also reportedly had conversations with the councillor to confirm the accuracy of that reporting which they relayed to us.

The OIA commenced an investigation into this matter on 15 July 2021. The OIA is the only agency with jurisdiction to investigate whether a councillor has engaged in misconduct. In this case the circumstances of the misconduct were uniquely within the knowledge of the OIA. Objective evidence existed of what was said during the conversation between the IA and the councillor, and there was informal advice from the journalist that the comment attributed to the councillor had been accurately reported. The statement could be interpreted as an attempt by the councillor to falsely use a statutory officer to support the councillor's stance on a political matter, and the OIA has an obligation to hold councillors to consistent standards having regard to the previous CCT decisions on like matters.

The OIA has authority to serve notices on potential witnesses to require them to provide information and participate in interviews. Section 150CH of the act allows an investigator to give a notice requiring the person to provide information which is reasonably necessary to investigate the conduct of a councillor. Section 150CJ of the act provides that an investigator may require a person to attend an interview and answer questions related to the investigation of the conduct of a councillor. It is a reasonable excuse for the person not to give information or answer a question if that might tend to incriminate them or expose them to a penalty. These powers are common in the legislation of investigative agencies or in agencies that have investigative powers. They are to be distinguished from the power to require a witness to attend a compulsory hearing, such as the CCC have, which the OIA does not have, and that requires the witness to give evidence on oath or affirmation.

Under section 150CK of the act, notices under section 150CH or CJ can be accompanied by a confidentiality notice, which can only be issued by the Independent Assessor and only if the Independent Assessor reasonably believes the notice is necessary to ensure that the investigation of councillor conduct is kept confidential. Section 150V(3) of the act says that the IA must conduct an investigation in a way that ensures the investigation is kept confidential to the extent practicable.

The policy intent behind these provisions is to ensure that complaints and/or investigations about misconduct matters are kept confidential until due process has been followed and natural justice has been provided. Generally, the fact that an investigation is undertaken into a particular councillor is only disclosed after the CCT independently determines that the councillor engaged in misconduct if that is the case. If misconduct is found then the CCT's decision is published. The outcome of all councillor conduct complaints must be published on the relevant council website, but the councillors are not identified unless they are found to have engaged in inappropriate conduct or misconduct.

In this case, the OIA served these notices due to the existence of the recording of the meeting with the councillor. The investigation into this matter was limited in scope to obtaining evidence about whether the councillor had been correctly reported, so it was quite narrow in its scope. The only persons with direct knowledge of this important aspect were the councillor himself and the journalist or the editor who had conversations with the councillor.

If a matter is subsequently referred to the CCT, this type of evidence must be in a form of either an affidavit or a statutory declaration. Conducting an interview is the first step in this process. The OIA did seek notes of conversations between the councillor and the journalist or the editor because from a discussion with the journalist the OIA believed the journalist had contemporaneous notes of the conversation with the councillor that led to the article. A check of these notes had confirmed that the councillor's comments had been correctly reported and both the journalist and the editor had also advised that they had had subsequent conversations with the councillor about the reporting which could be expected to either confirm or clarify the statements made.

The OIA did not ask the journalist to identify a source, so the reformation of the Australian shield laws is a topical and important public interest issue. Shield laws are a legal protection that allow journalists to claim privilege, as it were, to avoid disclosing information that could identify a confidential source. This is because confidential sources inform public interest journalism which, in turn, is an important accountability mechanism for government and other authorities. In this case, the OIA was not asking the journalist to identify a confidential source either directly or indirectly through their notes. The councillor had been clearly identified by the journalist—

Mr McDONALD: Point of order, Chair: I can see Ms Florian is reading from a prepared set of notes. In the identified time that we have, could we ask Ms Florian to table that response?

CHAIR: I am sure that we are coming to the end of it. I think it is important that Ms Florian read from that, but I am not keen to table that at this point.

Mr McDONALD: Would the chair take into consideration the extension of time through the inquiry then?

CHAIR: We will extend the time.

Mr McDONALD: Thank you.

Ms Florian: I would also like to make it clear that the OIA did not make threats to the media organisation or the media persons involved. Legally, notices must outline the consequences of noncompliance with a notice including the penalties set by the legislation. This caution is required by sections 150CH(3) and 150CJ(2) of the act so that recipients are aware of the legislative implications for noncompliance. This is a standard template for all such notices.

Following the email service of the notice, the OIA routinely records conversations with witnesses during which notices are more fully explained. This is done to ensure there is objective evidence of what was said should any issues like this subsequently arise, and the investigator who spoke to the journalist in this matter was respectful and professional at all times. I might leave it there and answer any specific questions.

CHAIR: Thank you very much, Ms Florian. On this particular issue, one of the things that stood out for me is that you said 'contested political issue'. Obviously you are avoiding that. That is one thing set aside from what you are doing—avoiding contested political issues. The issue of false and misleading statements, which can be an offence, as you said—

Ms Florian: Misconduct, not an offence.

CHAIR: Once again, it is those specific terms which are very important. You are saying that you had direct evidence of this or direct knowledge of something that may be that. Combining that with an obligation to investigate, you have gone down the track of, under section 150CH, 'please provide information' and, under section 150CJ, 'attend an interview'. You have a trail here of something that has potentially happened and you have an obligation, and you have acted according to those sections of the act. Is that a correct summation?

Ms Florian: That is correct.

CHAIR: What you have talked about there is quite extensive. Deputy Chair, do you have any questions?

Mr McDONALD: I will hand over to the member for Burleigh.

Mr HART: Ms Florian, that was a really comprehensive, detailed answer to the chair's first question. That begs the question: did you have any preknowledge that that question would be asked of you?

Ms Florian: Only that common sense would dictate that that question would be asked of me. If that is what you mean by 'preknowledge'—

Mr HART: Nobody in the government has told you they would be asking that question?

Ms Florian: Certainly not.

CHAIR: Member for Burleigh, can I point out once again that we knew what was—I am going to say that the Office of the Independent Assessor—

Mr HART: It is a straightforward question, Chair.

CHAIR: I think there are some imputations there. We are all very aware of the independence of the OIA.

Mr HART: I hope it is, for sure.

CHAIR: I would certainly caution you in making such an inference. I understand you have an answer to that. Do you have any other questions?

Mr HART: No. That was my question.

Mr McDONALD: While we are on that topic, I will hand over to the member for Scenic Rim.

CHAIR: Yes, we can do. Member for Scenic Rim, you said before—and it has piqued my interest—you had a 'professional' association with the media. In terms of parity, can you expand on what you mean by 'professional' association?

Mr KRAUSE: They report on issues in my electorate. I deal with them professionally—as a local representative to a local journalist and newspaper. That is what I mean.

CHAIR: Thank you very much. It just needed to be clarified exactly what you meant by that.

Mr KRAUSE: That is what I meant. Thank you, Independent Assessor, for your opening statement. In relation to the notice to produce, it took a Supreme Court application from the *Fassifern Guardian & Tribune* to see off that notice. Would you like to apologise to them and the communities they serve for that course of conduct that you entered into?

CHAIR: Member for Scenic Rim, I am going to rule that question out of order.

Mr KRAUSE: On what basis?

CHAIR: Firstly, you are asking—you have inferences and imputations of wrongdoing.

Mr KRAUSE: Not at all, Chair.

CHAIR: I think I will start on that basis. Do you want to rephrase your question perhaps?

Mr KRAUSE: I just make the point that there are no inferences at all. It is a matter of public record that there was a Supreme Court application and that is what saw off the notice to produce.

CHAIR: I think asking a public official to apologise for their action is highly irregular and unusual—

Mr KRAUSE: I think it is justified in this case, but I will move on.

CHAIR: I think there are imputations of wrongdoing. I have ruled the question out of order.

Mr KRAUSE: I will move on, Chair, if that is all right. Apart from that *Fassifern Guardian & Tribune* matter where there was a notice to produce issued, how many other journalists or newspapers or media groups or private citizens has the OIA issued such a notice to in, say, the last 15 months?

Ms Florian: I cannot say for the last 15 months, but I can cover the period of the last annual report.

Mr KRAUSE: Sure.

Ms Florian: As I said before, when the OIA was established we were provided specific investigative powers to address the issue that was previously felt to exist where there were insufficient powers to conduct proper investigations. We have power to issue notices requiring information. There were 119 such information notices issued in 2020-21. We have power to issue a notice requiring attendance at an interview. There were 14 such notices issued in 2020-21. We have power to issue a confidentiality notice. There were 28 confidentiality notices issued in 2020-21.

When issuing notices, as I said, we are legally required to outline the penalties. There are also three provisions which give the OIA power to undertake a search warrant in serious matters. No search warrants have been undertaken since the OIA commenced. We do appreciate the importance of ensuring that the use of power is balanced and appropriate to the matter under investigation. It is seriously considered whether there are alternatives to the issuing of notices.

Mr KRAUSE: The question was about how many other journalists or media organisations or private citizens have had a notice issued to them.

Ms Florian: I do not have the answer to that specific question about how many other journalists or private citizens. It is obviously not uncommon for private citizens or journalists to be the subject of notices. When you are investigating councillors, this is for two reasons: firstly, when false and misleading statements are made, they are often made to the media; and, secondly, when you are investigating the publication of information which is confidential to the local government, that is often made to the media as well. In those circumstances—

Mr KRAUSE: Are you able to take it on notice, for media and private individuals?

Ms Florian: Certainly.

Mr KRAUSE: You mentioned that the power of the notice to produce can be distinguished from the CCC's powers of compulsion, but your notices to produce have the pain of fines behind them, don't they?

Ms Florian: Yes.

Mr KRAUSE: Do you concede that that is a form of compulsion?

Ms Florian: It is. They are coercive notices, but they are not what is being termed as 'star chamber powers' where there are hearings conducted under oath or affirmation.

Mr KRAUSE: You mentioned also in your opening statement that you did not ask for a source with this notice to produce. Who else would the source be in this case?

CHAIR: I think you are asking for an opinion in that question, member for Scenic Rim. Do you want to rephrase?

Mr KRAUSE: I am trying to clarify a statement that was made.

CHAIR: You are asking for an opinion.

Mr KRAUSE: How so?

CHAIR: You are asking for an opinion if you speculate on who may have been the source.

Mr HART: No, he is asking for a response.

Ms Florian: I am happy to—

CHAIR: No, you are asking for an opinion.

Mr HART: Mr Chair—

CHAIR: Wait for it, member for Burleigh. Independent Assessor, I certainly give latitude in terms of answering or not answering that question.

Ms Florian: Mr Krause, I am happy to address that. The source in relation to this was the councillor who had been identified in the reporting itself, so this was not a case of protecting the identity of a confidential source, which is what the shield laws potentially relate to.

Mr KRAUSE: You also mentioned in answer to a previous question that the use of the power needs to be balanced against the severity of the allegations.

Ms Florian: Yes.

Mr KRAUSE: I can take it that you stand by the use of the power of notice to produce in this case in relation to the alleged misconduct allegation?

Ms Florian: We use powers such as the notice to produce information when we are investigating misconduct, and making false and misleading comments is an established matter for which misconduct can be made out if it is made knowingly or recklessly.

Mr MADDEN: I want to clarify with regard to my declaration. I do recall attending one hearing where a colleague from another council had a matter and I think she invited me along to provide moral support. I was a lawyer but I took no role in the hearing other than sitting next to her when the matter was being dealt with.

I am interested in exploring this issue of conflicts of interest. As a state member, my local council often raises with me that somebody left the room during a meeting because they had a conflict of interest and how it was their decision. I want to explore that issue. We are dealing with it in slightly the same sense with regard to this reporting by the *Fassifern Guardian & Tribune*. Where a councillor has a conflict of interest, can they be prosecuted when they advocate a certain way the council should go but do that outside of a council meeting? I think it is just as important not to advocate where you have a conflict of interest as it is not to vote on it. I want to hear your comments on that.

Ms Florian: It is certainly the case that not only is having an undeclared conflict of interest—because there is nothing wrong with conflicts of interest, per se, but an undeclared conflict of interest—a potential misconduct or an offence in certain circumstances but so is a matter of influence, which is in section 157(1) of the act. That creates a head of misconduct or an offence in narrow circumstances where a councillor with a conflict of interest then participates in influencing or discussing or attempting to influence a person who is participating in a council decision.

Mr MADDEN: And that could be discussions between councillors?

Ms Florian: It could, because a councillor is a person who participates in a council decision.

Mr MADDEN: Do you think we are getting the message across to councillors?

Ms Florian: Capacity building, I think, is an important feature of any councillor conduct framework. The department is focused on the capacity building around conflicts of interest. We have had a change to our functions where we are no longer engaged in that sort of capacity building, but before then we did work with the LGAQ to develop a conflict of interest app that allows councillors to go through the app and help determine whether they have a conflict of interest or not. In the event that they do, they can use the app to then report that conflict of interest to the relevant CEO, as required under the legislation.

Mr MADDEN: There is a requirement to report a conflict of interest?

Ms Florian: Yes. You either report it to the CEO ahead of the fact if you become aware of it, or if you only become aware of it in a meeting then you are required to report it in the meeting.

Mr MADDEN: Basically, as soon as possible you should report a conflict of interest once you become aware of it?

Ms Florian: That is right.

Mr McDONALD: I go to the issue of vexatious complaints. In your reports there were two matters in the life of the Office of the Independent Assessor that have got to stage 2 of the process. Has anybody been charged with offences regarding that?

Ms Florian: There have actually been three matters but only two matters in the last reporting year. With the earlier matter, we did not proceed to prosecution after receiving evidence that the person had a mental health condition at the relevant time and, in the public interest, it was not considered appropriate; I did not consider it appropriate to prosecute someone who had a mental health condition. Unfortunately, attempts are made to misuse complaints systems. That is the case in all levels of government and not only in Queensland. It is important that any complaint process has mechanisms for identifying and dealing effectively with vexatious and improper complaints.

We have two separate mechanisms, depending on whether it is a member of the public or whether it is a councillor or a local government official. For members of the public in particular, I think our three-step escalation process has been very effective in dealing with that. We had over 1,000 complaints last year. Only 34 complainants got to our level 2, where a matter was dismissed as vexatious or lacking in substance and an offence warning was issued, and only two matters got to step 3. The reason we have that escalating process is that then we have a course of conduct. If we do prosecute someone, we can demonstrate that course of conduct where the person has had the benefit of repeated warnings and then has obviously made the decision to continue to make complaints that are lacking in substance and improper.

Mr McDONALD: As in my declaration, I had 16 years in local government and I also spent many years as a police officer, including being a senior investigator regarding some disciplinary matters. I want to bring that experience to my follow-up question. One of the consequences from complaints is the impact on the individual, particularly when time frames go on for a long period. I recognise your report says that 89 per cent of the complaints were dealt with within a 28-day period, but many have stretched out for longer than that, over two years in some examples, resulting in outcomes including training and training only. I know the office was set up with very honourable purposes, as we have already discussed. How are you balancing the complaint with the frivolousness, the time frames and the outcomes? That is critical to the legitimacy ongoing, as well as the confidence councillors can have in this system. As a former police officer I know that when vexatious complainants are targeted as vexatious complainants it gives confidence to others that the system is working, at least in some part.

Ms Florian: I think it is something in the order of 51 per cent—and I will get a correction if that is not correct—

CHAIR: I notice that was in the annual report and I think it was 51 to 53 per cent.

Ms Florian:—of complaints are dismissed at assessment. That is within 21 working days and before a councillor even realises they have received a complaint. It is at that point that vexatious complaints will be dealt with or improper complaints because they are completely lacking in substance. It would not be correct to say that vexatious or improper complaints are then keeping councillors waiting for a couple of years.

If the OIA determines to investigate a matter, it is because a complaint raises a reasonable suspicion of misconduct or the matter is so complex that you really need to look into it in a bit more detail to understand where the things lie. It is those matters that take some time to resolve. There are some matters, as you would know, that are easier than others. I find false and misleading evidence matters some of the more challenging ones, because a lot of effort has to go into the investigation of such matters.

If matters are the subject of investigation that will take longer, but there is an important policy imperative that those investigations are undertaken because, at the end of the day, even if the matter is not substantiated or if it is dismissed or no further action is taken, a letter is received that includes detailed reasons for that. You would know that in local government there is often a situation where there are issues that hang over someone's head for a long period. Even addressing that issue and saying it is not, in fact, an issue is an important outcome.

CHAIR: I will correct that. You are right: on page 10 of the annual report it says 51 per cent of those matters. This ties in with when we talked about the issue last year.

Mr McDONALD: As a follow-up to that, on how many occasions has the opinion of the Councillor Conduct Tribunal on an investigation disagreed with the office in the last financial year?

Ms Florian: Are you asking how many times they have not substantiated—

Mr McDONALD: Not supported or disagreed with the investigation outcome.

Ms Florian: In the last financial year there were 12 councillors who were dealt with for misconduct and two were not sustained.

Mr SMITH: I have a couple of questions for clarification. A person makes a complaint about a councillor. Are they then allowed to discuss that in a public forum whilst the assessment is underway?

Ms Florian: There is no legislative impediment to a person making a complaint or a person who is the recipient of a complaint commenting on it in public unless the Public Interest Disclosure Act applies, but only in that narrow situation. In all our letters we ask all complainants and subject officers not to make comment on matters publicly. If people persist in making comment on matters publicly, we indicate to them that we will take that as a sign of them being improper or vexatious in their behaviours and we will be taking that into account in the assessment of further complaints if they are made.

Mr SMITH: Has the OIA ever had to go down that path where someone was continuously discussing and was contacted about that?

Ms Florian: Yes.

Mr SMITH: Is there a scenario where it would be determined that it is improper for a mayor or a councillor to delete comments or even block people from their own Facebook page? Is there a scenario where that would be considered improper at all?

Ms Florian: Councillors navigating their social media profile can be a matter that is fraught, particularly given the terms of the Queensland councillor code of conduct. To try to proactively address that, the OIA worked with the LGAQ to develop some social media guidelines to balance the situation where you want members of the public to be able to engage with you in a way that is negative or positive or neutral, as long as it is constructive. You also do not want councillors held hostage to really inappropriate behaviours, and we do see councillors being subjected to quite inappropriate social media behaviours. Those guidelines were developed to help councillors navigate that difficult territory. It could be a breach of the code of conduct to delete or block members of the public if they are constructively trying to engage and are not falling foul of the rules of the impressum, which should appear on all elected representatives' 'About' page.

Mr McDONALD: Following up on what I was talking about before about time frames, what is the longest time it has taken the office to resolve a complaint? Were there time frames taken in the last three years? Is there a benchmark that the office is working towards?

Ms Florian: The longest time frame applies to a councillor we received complaints about when that councillor was no longer a councillor and they belonged to one of the councils that had been dismissed. We did not proceed with investigating the complaint at that time; we parked it. Were it the case that that councillor had been dealt with otherwise or not re-elected then there would be limited public interest in spending time and resources on that complaint. Those sorts of complaints are re-enlivened or unparked, however, if a councillor is subsequently re-elected. We do have one matter that falls into that category and has taken a quite a significant time for that reason.

Mr McDONALD: Is that four years?

Ms Florian: No, we are only three years old. It would be less than that.

Mr McDONALD: Is there average-time data or benchmarking? Perhaps you could take that on notice.

CHAIR: That may already be in the—

Mr McDONALD: I did not see average time or benchmark.

CHAIR: Any information you can furnish would be useful.

Ms Florian: The benchmark is that we aim to have matters done within 12 months. At the moment we have seven matters which are in excess of 12 months. Our focus for this year is to try to get that down to less than 12 months. There is no doubt we have had delays in investigations and referring matters to the tribunal and delays before the tribunal. That has been a product of the volume of complaints that have been received. It was a system expected to receive 160 complaints a year. We have received over 1,000. Pleasingly, we are seeing a stabilisation of complaints now. I think we will start to see some reductions in time frames involved, which is appropriate and necessary.

Mr HART: Following on from the member for Bundaberg's question about complainants broadcasting their issues in the media and possibly politicising complaints through your office, why are details of the complaints published on a register when the councillor has not been found guilty of the claims?

Ms Florian: The answer to that is that they are not. There is a summary which goes on the register, but that summary does not identify the councillor directly or indirectly. That is the intent. If, however, they are found to have engaged in inappropriate conduct or misconduct then that is identified on the register.

Mr HART: The summary that is put on the register is not enough to identify them? Are you careful about that?

Ms Florian: It is a matter for the councils to do that summary. To try to overcome that very issue you have identified and to ensure there is a consistent approach to it, we make a recommendation in each letter to the CEO where we dismiss or NFA a matter about what that summary should be so it does not identify them.

Mr HART: Does your office take into account the human rights legislation that this parliament passed a couple of years ago with regard to privacy and reputation when it discusses with council what should be on that register?

Ms Florian: The human rights legislation codifies important rights, but it is subject to legislative provisions. From a policy perspective, specific things have been put in place to identify the circumstances in which someone is identified and that is only when they are found to have engaged in inappropriate conduct or misconduct. People inappropriately releasing that information, either as a

subject councillor or as a complainant, is something that we grapple with. That is not something that is addressed in legislation but is certainly something that has been the subject of a lot of consideration between the LGAQ and the CCC over the years.

CHAIR: Looking at the staff profile, we see you have 19 full-time equivalents and have done 1,074 complaints. That means each person deals with 56 cases a year. They are broad numbers, but each person in your organisation basically needs to deal with a case every week—that is, accept and process the complaint. I am using that as an illustration of the workload. What is the general background of people working in the OIA? Is it a law enforcement, legal or public sector background? It is an enormous amount to get through. I am wondering what skills they bring to that.

Ms Florian: The amount per officer is actually much higher than that, because we do not just have investigators. We have prosecutors—lawyers—who are prosecuting the matters before the Councillor Conduct Tribunal and QCAT on review. We have people working in assessment and we have administrative people who are inputting complaints and also doing invoices, procurement and all sorts of things like that. That means we have to be as effective and efficient as possible. We have done a lot of work on our processes to make sure we get the biggest bang for the buck.

It also means you need to invest in good people. We have excellent people. From the point of view of investigators, we have investigators with backgrounds in the QPS and other disciplinary schemes such as health, from ASIC and from the CCC. People with investigative skills is the first thing and the second is we like experience in a disciplinary context. We are looking for people who are measured as well so that they are not looking at everything like it is an indictable offence when you are dealing with councillors, the majority of whom are trying to do the right thing and you want to keep and not overrate the system.

CHAIR: I apologise for that very rough calculation, but I was using it for the purpose of illustration.

Mr KRAUSE: Chair, may I ask a question?

CHAIR: Very briefly.

Mr KRAUSE: I have a question in relation to source of complaints. I refer to Insight from 30 June 2021 which indicates that 53 per cent of complaints—if that is the right term—come from local governments.

Ms Florian: Yes.

Mr KRAUSE: I am also aware that, in relation to a request for information from a resident of mine, the eventual outcome was that the OIA was unable to provide information to that resident about the source of complaints in relation to the Scenic Rim Regional Council area. If we can get it for the overall number of complaints for local government, can you also please provide that information for Scenic Rim Regional Council related complaints—that is, how many complaints originated from council?

Ms Florian: With the matters that appear in Insight and in our Resolve system that are captured, there are two ways that complaints get to local government. There are ones which originate within local government and then there are ones which come from members of the public and are sent to local government, and local government has an obligation to refer to complaints.

Mr KRAUSE: I am happy for you to particularise all that.

Ms Florian: The number you see in Resolve or you see in Insight is the overarching one.

Mr KRAUSE: If you are able to take that on notice and provide those particulars, it would be appreciated.

CHAIR: Member for Scenic Rim, are you asking for a breakdown of complaints per council?

Mr KRAUSE: No, I was just asking in relation to Scenic Rim Regional Council.

CHAIR: Can it be broken down, because obviously there are a number of other councils—

Ms Florian: The reason we did not respond to that RTI request is that it requires a significant exercise to break that down. We would need to go into each matter one by one to find out whether it is 150O or 150R—that is, whether it has come from a member of the public or whether it has originated from local government.

CHAIR: So that information has already been subject to an RTI request?

Ms Florian: That is correct, and which has been denied.

CHAIR: That is a crucial bit of information.

Mr KRAUSE: Certainly 187 of them and—

CHAIR: You cannot use this forum as a way to get around an RTI request. It is a bit cheeky.

Mr KRAUSE: The question was not answered in an RTI request.

CHAIR: It may not be answered in this way as well.

Mr KRAUSE: I thought committees were meant to be about scrutiny, Mr Chair.

CHAIR: They are, but they are also not to be used as a tool for getting around things.

Mr McDONALD: I have a number of other questions. I understand that the time for today has passed. I apologise that we have not been able to give you more time today. I think a public hearing would have been a better outcome. Would you be opposed to us writing to you with those questions?

Ms Florian: No problem at all.

Mr McDONALD: Would you be happy—like the transcript of this proceeding will be—to see the follow-up questions published as well?

CHAIR: If you want to flag the questions you have now, we can see whether we can follow those ones up.

Mr McDONALD: With reference to own-motion investigations, how do you determine the basis of those own-motion investigations? Do they go through a natural justice process and the usual process that you have? On average, how long do those own-motion investigations take? In line with my earlier question, what is the nature of the penalties that have resulted from those own-motion investigations, balancing again the seriousness of the consequences of delays? Has any work been undertaken by the office with regard to assessing the cost to councils of dealing with inappropriate conduct complaints—the cost of responding, the time taken at council meetings addressing that as well as the time taken at council meetings addressing disclosures and conflicts of interest? I have a couple of other questions.

CHAIR: They may not be in the transcript. Can I suggest that we get those questions in writing and the committee will pass them on?

Mr McDONALD: I am happy to do that.

CHAIR: I did not realise you had so many.

Mr McDONALD: I did a lot of homework.

CHAIR: You did indeed.

Mr KRAUSE: Would you like to extend the time, Chair?

CHAIR: No.

Mr KRAUSE: I would be happy to stay through lunch.

CHAIR: I bet you would! What is appropriate now is that the committee decide what further questions we have and write to the OIA and it can respond as is appropriate.

Ms Florian: Certainly.

CHAIR: The time allocated for this private briefing has now expired. We will write to you with the further questions we have. We have one question on notice around how many media and private individuals' notices to produce there have been. Could you provide that by Monday, 18 October? We will send on a number of other questions.

Mr McDONALD: There was a thought I had earlier that there is a range of offences that can apply to issues of complaint. Is there anywhere that actually aligns the range of offences to penalties? At the moment they are in different sections.

Ms Florian: Section 201D.

Mr McDONALD: All of those can apply to all of those offences?

Ms Florian: They are mostly the offences that are left in the act now. It captures a whole lot of misconduct which in certain circumstances can be an offence and applies a penalty to that. It is 201D.

CHAIR: Thank you all for your attendance at today's briefing. A transcript of these proceedings will be forwarded to you in due course. I declare the briefing closed.

The committee adjourned at 11.58 am.