



# **Inquiry into the Independent Assessor and councillor conduct complaints system**

**Report No. 28, 57th Parliament**

**State Development and Regional Industries Committee**

**October 2022**

## **State Development and Regional Industries Committee**

<b>Chair</b>	Mr Chris Whiting MP, Member for Bancroft
<b>Deputy Chair</b>	Mr Jim McDonald MP, Member for Lockyer
<b>Members</b>	Mr Michael Hart MP, Member for Burleigh
	Mr Robbie Katter MP, Member for Traeger
	Mr Jim Madden MP, Member for Ipswich West
	Mr Tom Smith MP, Member for Bundaberg

### **Committee Secretariat**

<b>Telephone</b>	+61 7 3553 6662
<b>Email</b>	<a href="mailto:sdric@parliament.qld.gov.au">sdric@parliament.qld.gov.au</a>
<b>Technical Scrutiny Secretariat</b>	+61 7 3553 6601
<b>Committee webpage</b>	<a href="http://www.parliament.qld.gov.au/SDRIC">www.parliament.qld.gov.au/SDRIC</a>

## Contents

<b>Chair's foreword</b>	<b>iv</b>
<b>Recommendations</b>	<b>v</b>
<b>Executive summary</b>	<b>x</b>
<b>1 The Inquiry</b>	<b>1</b>
1.1 Role of committee	1
1.2 Terms of reference	1
1.3 Inquiry conduct	2
<b>2 The need for an independent councillor complaints system</b>	<b>3</b>
2.1 Councillors in Queensland	3
2.2 Reform of the councillor complaints system	4
2.3 Fostering integrity and accountability	7
2.4 Is the framework operating as intended?	8
2.5 Committee comment	12
<b>3 The timely resolution of complaints</b>	<b>14</b>
3.1 Volume of complaints	14
3.2 The use of a triage system to improve timeliness	15
3.3 Complaints dismissed or subject to no further action	16
3.4 Timeliness of investigations and suggested solutions	17
3.5 Committee comment	19
<b>4 Councillor Conduct Tribunal</b>	<b>22</b>
4.1 Role and responsibilities	22
4.2 Matters under consideration or resolved	23
4.3 Timeliness	24
4.4 Challenges around resourcing and determining matters	25
4.5 Queensland Civil and Administrative Tribunal	27
4.6 Committee comment	28
4.7 Publication of decisions	29
4.8 Need for further practice directions	31
4.7 Ability to withdraw referrals due to changes in circumstances	31
4.8 Orders relating to former councillors	32
4.9 Notice provided to parties	33
4.10 The use of the Councillor Conduct Tribunal to investigate inappropriate conduct case	33
<b>5 Inappropriate conduct</b>	<b>35</b>
5.1 Defining inappropriate conduct	35
5.2 How complaints are assessed	35
5.3 Role of the local government in inappropriate conduct matters	36
5.4 Support measures in place for local governments	37

5.5	Issues in finalising inappropriate conduct complaints	37
5.6	Investigation costs	38
5.7	Committee comment	40
5.8	Should a central body determine inappropriate conduct matters?	42
<b>6</b>	<b>Misconduct</b>	<b>44</b>
6.1	What is misconduct	44
6.2	Assessing and investigating complaints of misconduct	44
6.3	Natural justice	45
6.4	Outcomes and costs of misconduct investigations	45
6.5	Acceptable request guidelines	47
6.6	Discretion to refer and redirect lower-level misconduct matter elsewhere	48
<b>7</b>	<b>Code of Conduct for Councillors in Queensland</b>	<b>50</b>
7.1	Requirements	50
7.2	Understanding what is required	51
7.3	Committee comment	51
<b>8</b>	<b>Local government monitors</b>	<b>53</b>
8.1	Use of municipal monitors in Victoria	53
8.2	Committee comment	54
<b>9</b>	<b>Conflict of interest provisions</b>	<b>55</b>
9.1	Definition of conflict of interest	55
9.2	Challenges	57
9.3	Committee comment	61
<b>10</b>	<b>Frivolous and vexatious complaints</b>	<b>63</b>
10.1	Definitions and processes for frivolous or vexatious complaints	63
10.2	Calls for tougher action on vexatious or frivolous complaints	64
10.3	Anonymous complaints	65
10.4	Increasing the visibility of vexatious complaints	67
10.5	Calls to extend provisions to include vexatious complainants	67
10.6	Committee comment	68
<b>11</b>	<b>Councillor Conduct Registers</b>	<b>70</b>
11.1	Committee comment	71
<b>12</b>	<b>A legal system, or a councillor conduct system?</b>	<b>72</b>
12.1	Is the system in legal overdrive?	72
12.2	Committee comment	73
<b>13</b>	<b>Social media and freedom of political expression</b>	<b>75</b>
13.1	What are councillors required to do on social media?	75
13.2	How does the Office of the Independent Assessor assess complaints about councillors on social media?	76
13.3	Committee comment	78

13.3	Implied right to freedom of political expression	78
13.4	Committee comment	80
<b>14</b>	<b>Apprehension and fear</b>	<b>82</b>
14.1	Councillor views	82
14.2	Steps taken by the Office of the Independent Assessor	83
14.3	Committee comment	83
<b>15</b>	<b>Training and advice</b>	<b>85</b>
15.1	Consistency in training and advice to councillors	85
15.2	Removing duplication in training and advice	85
15.3	Should training be mandated	86
15.4	Is the training achieving the desired outcomes?	88
15.5	The department as the trainer	88
15.6	Committee comment	89
<b>16</b>	<b>Role of the department</b>	<b>91</b>
16.1	Reaffirming the role of the department as policy lead	91
16.2	Tripartite forum	91
16.3	Committee comment	92
<b>17</b>	<b>The provision of authoritative legal advice</b>	<b>93</b>
17.1	Role of the Queensland Integrity Commissioner	93
17.2	Committee comment	94
<b>18</b>	<b>Enhancing oversight of the complaints process</b>	<b>95</b>
18.1	Existing arrangements	95
18.2	Strengthening oversight	96
18.3	Committee comment	97
	<b>Appendix A – Submitters to the inquiry</b>	<b>98</b>
	<b>Appendix B – Officials at public briefings</b>	<b>100</b>
	<b>Appendix C – Witnesses at public hearings</b>	<b>101</b>
	<b>Appendix D – Councillor Conduct Tribunal Decisions</b>	<b>104</b>

## Chair's foreword

Councillors play a fundamental role in their communities and Queenslanders expect high standards of behaviour from their elected community leaders. An effective, independent councillor complaints framework is vital to maintaining public confidence in local government and making a positive impact in building capacity across the sector.

The origins of this inquiry lay in the functions of the Independent Assessor. However, it became increasingly clear that there was an opportunity to improve the whole councillor conduct and complaint system. The committee embraced the opportunity to carefully examine and deliberate on how to improve the system and to help embed a culture of efficiency, fairness and transparency.

The committee was uniquely placed to conduct this inquiry, with 4 of the 6 committee members being former councillors with a total of 35 years of experience in local government.

The work that has gone into this report is considerable. The committee conducted 14 hearings in 9 towns and cities, heard from 47 witnesses and received 59 submissions. On behalf of the committee, I thank all those who participated in the inquiry for their valuable insights into the system and opportunities for improvement.

As Chair I wrote over 52,000 words across 15 documents as I assessed the feedback from inquiry participants, tabulated ideas and created policy responses to include in the report, writing five drafts of 'committee comment' and 'recommendations' sections to ensure they were workable and right for the sector.

The committee held many workshops to produce and consider the five drafts of the report. Each recommendation was considered, debated and refined. The committee authorised a further round of consultations with core stakeholders on potential recommendations and I take this opportunity to thank the work of the Department of State Development, Infrastructure, Local Government and Planning, the Office of the Independent Assessor, the Councillor Conduct Tribunal and the Local Government Association of Queensland for their thoughtful and frank responses to the committee's many requests during the inquiry.

It was a priority for me as Chair to conduct this inquiry in a non-partisan manner, and I thank all committee members for their full, constructive and enthusiastic participation, not only in hearings but also in creating the report. I thank the Deputy Chair for his hard work and astute contributions throughout this inquiry. I especially thank the members of the committee's secretariat, Stephanie Galbraith, Bryn Smith, Kelly Tremlett and Amanda Beem for the extraordinary and patient way they assisted the committee and drafted the report.

I commend the report to the House.



**Chris Whiting MP**

Chair

## Recommendations

### Recommendation 1

20

That the following target timeframes be applied to the complaints framework by the Office of the Independent Assessor and the Councillor Conduct Tribunal for all but the most complex or serious of cases:

- initial assessment or ‘triage’ of complaint completed by Office of the Independent Assessor within 7 days of receipt
- misconduct investigations including natural justice processes completed by Office of the Independent Assessor within 60 days of initial assessment
- determination of conduct matters completed by Councillor Conduct Tribunal within 3 months of the date of referral, unless the subject councillor requests an extension under the *Local Government Act 2009*
- adoption of a statute of limitation, to be determined by the Queensland Government with advice from the tripartite forum (Recommendation 38), to accept complaints unless they involve matters to be referred to the Crime and Corruption Commission.

### Recommendation 2

20

That the Office of the Independent Assessor publish its performance measured against the target timeframes in its annual report, and the Department of State Development, Infrastructure, Local Government and Planning publish the Councillor Conduct Tribunal’s performance measured against the target timeframes in its annual report.

### Recommendation 3

21

That the Queensland Government commit to allocating levels of funding provided in the 2022-23 Budget to the Office of the Independent Assessor on an ongoing basis so as to support the appointment of permanent positions and longer-term contracts for employees of the Office of the Independent Assessor.

### Recommendation 4

29

That the President of the Councillor Conduct Tribunal be appointed on a full-time basis to drive the performance of the tribunal and that a Deputy President be appointed on a part-time basis to support this work.

### Recommendation 5

29

That remuneration for Councillor Conduct Tribunal members be increased to Level 2 of the Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies.

### Recommendation 6

29

That future recruitment for the Councillor Conduct Tribunal members also focus on candidates with high levels of experience in the local government management sector.

### Recommendation 7

29

That a dedicated registry office be provided where Councillor Conduct Tribunal members can work, collaborate and conduct hearings.

**Recommendation 8** **29**

That the *Local Government Act 2009* be amended to allow one Councillor Conduct Tribunal member to hear and determine matters such as uncontested or expedited matters, and that a panel of 3 tribunal members continue to hear and determine complex, serious or contested misconduct matters.

**Recommendation 9** **29**

That the Councillor Conduct Tribunal resolve more matters quickly and efficiently, and on the papers, if the matters are not contested or involve an admission of fault.

**Recommendation 10** **31**

That the *Local Government Act 2009* be amended to require publication of Councillor Conduct Tribunal decisions in full, subject to appropriate redactions.

**Recommendation 11** **31**

That the President of the Councillor Conduct Tribunal develop and issue practice directions, in consultation with relevant stakeholders, to initiate change in practice and promote efficiency in determining matters.

**Recommendation 12** **32**

That the *Local Government Act 2009* be amended to provide that the Independent Assessor can withdraw a referral to the Councillor Conduct Tribunal, and that the Councillor Conduct Tribunal can decide to discontinue hearing a matter in the public interest.

**Recommendation 13** **33**

That the *Local Government Act 2009* be amended to require the Councillor Conduct Tribunal to provide a subject councillor with hearing details at least 14 days in advance of the hearing.

**Recommendation 14** **34**

That the *Local Government Act 2009* be amended to remove the ability for the Councillor Conduct Tribunal to provide investigation services for inappropriate conduct matters for councils.

**Recommendation 15** **41**

That the *Local Government Act 2009* be amended to require local governments to publish in their annual reports the number of inappropriate conduct matters referred by the Office of the Independent Assessor, the number of referrals that have been addressed and the average time taken to resolve the matter.

**Recommendation 16** **41**

That the Independent Assessor publish information on the number of matters referred to local government for resolution, the number reported back to the Independent Assessor by the local government as being resolved by local governments, and the number of matters that are currently unresolved or not reported.

**Recommendation 17** **41**

That the *Local Government Act 2009* be amended to remove the requirement for the Office of the Independent Assessor to conduct the section 150AA natural justice deliberation for inappropriate conduct matters as this process is duplicated by the local government on referral.

**Recommendation 18** **41**

That the Department of State Development, Infrastructure, Local Government and Planning review its model inappropriate conduct investigations policy to ensure alignment with the recommendations accepted in this report, and that all local governments review their inappropriate conduct investigations policy and processes to ensure matters are resolved expeditiously.

**Recommendation 19** **41**

That reports of external investigators appointed by local governments to consider substantiated inappropriate conduct matters be published by the local government with appropriate redactions.

**Recommendation 20** **42**

That the Department of State Development, Infrastructure, Local Government and Planning identify councils that are struggling to meet their obligations in relation to inappropriate conduct complaints, and provide targeted training.

**Recommendation 21** **47**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make it clear that dismissal of councillors for misconduct should and will only be considered in the most serious of circumstances or repeated breaches of expected standards of behaviour.

**Recommendation 22** **47**

That the Office of the Independent Assessor, Councillor Conduct Tribunal and other parties inform relevant councillors of the potential penalties of a finding of misconduct as early as possible in the process.

**Recommendation 23** **48**

That the *Local Government Act 2009* be amended so that a breach of a council's acceptable request guidelines is not a category of misconduct except in serious circumstances.

**Recommendation 24** **52**

That the Department of State Development, Infrastructure, Local Government and Planning deliver extended training and a range of educative materials on the interpretation and use of the Code of Conduct for Councillors in Queensland as part of its training program.

**Recommendation 25** **52**

That the Department of State Development, Infrastructure, Local Government and Planning review the working of the standards of behaviour set out within the Code of Conduct to create a clearer and unambiguous interpretation for all stakeholders.

**Recommendation 26** **54**

That the Department of State Development, Infrastructure, Local Government and Planning investigate the merits or otherwise of the use of local government monitors for capacity building purposes and to proactively encourage positive practices in councils.

**Recommendation 27** **62**

That the Department of State Development, Infrastructure, Local Government and Planning make training and professional development on the councillor conduct system, including conflicts of interest, compulsory for all local government councillors, mayors and senior council managers.

**Recommendation 28** **69**

That all stakeholders involved in the councillor conduct process use a consistent definition of vexatious and frivolous complaints and complainants, and the Office of the Independent Assessor continue to report annually on actions taken on these complainants.

**Recommendation 29** **69**

That the Queensland Government consider adopting Recommendation 4.6 in the 2017 Independent Councillor Complaints Review Panel report regarding repeatedly vexatious complainants.

**Recommendation 30** **71**

That the *Local Government Act 2009* be amended to remove the requirement to record in councillor conduct registers matters that have been dismissed or deemed to require no further action by the Office of the Independent Assessor or Councillor Conduct Tribunal.

**Recommendation 31** **71**

That the Office of the Independent Assessor continue to publish the number of complaints dismissed or deemed to require no further action in its annual report.

**Recommendation 32** **74**

That the Office of the Independent Assessor consider recruitment of experienced former local government managers to provide a broader range of skills and outlook in the councillor complaint assessment process.

**Recommendation 33** **78**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make clear that moderating a social media account, including blocking certain individuals, is not a breach of the Code of Conduct. However, engaging in defamatory or offensive comments could breach the Code of Conduct and have wider ramifications.

**Recommendation 34** **81**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make clear that the Code of Conduct does not usually impinge on implied freedom of political expression. However, it is possible that some statements made by councillors could enliven Code of Conduct complaints and considerations.

**Recommendation 35** **90**

That the Department of State Development, Infrastructure, Local Government and Planning reaffirm and strengthen its lead role in training and capability building activities to build local government integrity and deliver these activities in conjunction with stakeholders such as the Local Government Association of Queensland.

**Recommendation 36** **90**

That responsibility for the delivery of training to councillors be removed from the Office of the Independent Assessor to enable the re-allocation of resources to core activities.

**Recommendation 37** **92**

That the Department of State Development, Infrastructure, Local Government and Planning be reaffirmed as the local government policy lead, steward of the councillor conduct framework, and 'point of truth' on how the legislation should operate, and that a memorandum of understanding between the department, the Office of the Independent Assessor and the Councillor Conduct Tribunal be created to clearly define roles and responsibilities and how the entities will interact.

**Recommendation 38** **92**

That the recently established tripartite forum, chaired by the Department of State Development, Infrastructure, Local Government and Planning and with representation from the Office of the Independent Assessor and the Councillor Conduct Tribunal, continue to meet on a regular basis and develop a formalised terms of reference and publish directions as appropriate.

**Recommendation 39** **94**

That the Department for State Development, Infrastructure, Local Government and Planning investigate the appointment of an independent local government integrity and conduct advisory service that can issue authoritative advice under the *Integrity Act 2009* to a councillor on integrity and conduct matters.

**Recommendation 40** **97**

That the relevant portfolio committee provide an annual report to the Legislative Assembly on the performance of the functions of the Independent Assessor and the Councillor Conduct Tribunal.

## Executive summary

### Chapter 1 – The Inquiry

The committee's task was to consider the functions of the Office of the Independent Assessor (OIA) and the performance of those functions, and identify any amendments desirable for the more effective operation of the local government complaints system.

### Chapter 2 – The need for an independent councillor complaints system

Queensland's councillors fulfil a fundamental role in their communities, providing leadership and delivering services worth billions of dollars. Queenslanders expect their elected officials to be accountable and the independent councillor complaints system is a key mechanism in providing this accountability and fostering integrity within the sector.

The reformed councillor complaints framework has been in place for several years and has been a significant cultural change for the sector. That said, all stakeholders strongly agree on the need for an independent councillor complaints system in Queensland.

The committee finds that the system is broadly sound but improvement is needed. Specifically, the system needs to more closely and efficiently align with the intent of the legislation and public interest.

Although much attention has focussed on the Office of the Independent Assessor, the complaints system is made of several independent bodies. The committee has found that each body can improve its processes in order to contribute to a better functioning councillor complaint system.

The committee has made 40 recommendations to adjust and refocus the framework, with the goal of achieving a simpler, streamlined and fairer system for all.

That said, it must be noted that the committee has observed real improvements to the complaints system during the course of the inquiry and all stakeholders involved should be commended.

### Chapter 3 – Timeliness of complaints processing

The issue that brought the greatest number of participants to the inquiry was dissatisfaction with the length of time to resolve complaints. All stakeholders agreed that timely complaint resolution is of utmost importance and improvements, if not large scale changes, need to be affected.

As a first step, the committee has recommended that target timeframes for the resolution of complaints be applied to the Office of the Independent Assessor and the Councillor Conduct Tribunal for all but the most serious or complex of matters.

### Chapter 4 – Councillor Conduct Tribunal

The committee's focus increasingly moved to capacity issues in the Councillor Conduct Tribunal (CCT). The CCT's current resourcing model and work structure is not conducive to the increased number of complaints being referred for determination and a backlog has developed.

The committee has recommended several reforms including that the President of the CCT be appointed on a full time basis to drive performance, and that matters be heard by only one member of the tribunal where the matter is uncontested. The committee has also recommended that the CCT no longer provide investigation services for councils in relation to inappropriate conduct matters.

## **Chapter 5 – Inappropriate conduct**

Inquiry participants widely canvassed the need for improvements to the inappropriate conduct component of the system. The framework is broadly sound, but it is not being used well by all councils.

The committee is of the firm view that inappropriate conduct matters should be resolved locally and that the capacity of councils should be developed to enable them to do this. The committee has also recommended that duplication in process be removed and that the Office of the Independent Assessor no longer be required to undertake a natural justice process prior to referring a matter back to the council where a natural justice process would be enacted.

## **Chapter 6 – Misconduct**

Incorrect characterisations of ‘misconduct’ are impacting stakeholder perceptions of the complaints framework with many feeling the term misconduct is a term akin to corruption. This has heightened apprehension within the sector and the nature of actions taken in response to a complaint of misconduct.

The committee has recommended that the Minister and the Department of State Development, Infrastructure, Local Government and Planning (department) make it clear that the dismissal of councillors for misconduct should and will only be considered in the most serious of circumstances. The committee has also recommended that councillors should be made aware of the potential penalties of a finding of misconduct as early as possible in the complaint process.

## **Chapter 7 – Code of Conduct**

The Code of Conduct was raised as a focus of confusion amongst inquiry participants with many acknowledging that it was open to broad interpretation. The committee believes better training and guidance is required to support a clearer and unambiguous interpretation for all stakeholders, along potential improvements to the Code of Conduct.

## **Chapter 8 – Local government monitors**

The committee has recommended that the department investigate the merits or otherwise of the use of local government monitors for capacity building purposes and to proactively encourage positive practices within the local government sector.

## **Chapter 9 – Conflict of interest provisions**

It is clear that councillors are struggling with the issue of conflicts of interest. It is important that councillors master the requirements and be provided with the training necessary to do this. The committee has recommended that conflict of interest training be made compulsory for all local government councillors, mayors and council chief executive officers.

## **Chapter 10 – Vexatious and frivolous complaints**

There is concern in the sector that the complaints system is being used improperly for politically motivated purposes. The committee finds that the OIA are doing an effective job in dealing with such complaints but that there is merit in considering regulatory change regarding vexatious complainants.

## **Chapter 11 – Councillor Conduct Registers**

The committee has recommended that the requirement for matters that have been dismissed or are deemed to require no further action, no longer be recorded on the council's councillor conduct registers.

## **Chapter 12 – A legal system, or a councillor behaviour system?**

The complaints framework is operating in a way that is more legalistic and complex than which was intended. This is having a number of detrimental impacts including time delays, angst within the sector and increased costs. All stakeholders have a role to play in returning the system to its original and intended purpose.

## **Chapter 13 – Social media and freedom of political expression**

The committee finds that the Code of Conduct does not adversely impact the implied right to political expression and has recommended that the Minister and the department take steps to ensure this is widely understood by the sector. The committee has also recommended that moderating a social media account, including blocking individuals, does not equate to a breach of the Code of Conduct.

## **Chapter 14 – Apprehension and fear**

Apprehension and fear amongst councillors about the councillor conduct system is impacting how they interact with the complaints framework and is leading to the unnecessary over-legalisation of the system. Councillors must be aware that just because information is requested by the OIA, it does not mean they are on 'trial'. A new emphasis on training and professional development complemented by increased familiarity with the framework will reduce apprehension within the sector.

## **Chapter 15 – Training**

Training is needed to build the capacity of councillors in several areas, particularly conflict of interest and conduct matters. The department is best placed to assume the central role in delivering this training, and advice from the recently established tripartite forum will be instrumental in this regard.

The committee believes that training should be targeted, active and scenario-based. Input from industry stakeholders such as the Local Government Association of Queensland (LGAQ) will be important in delivering and designing the training program.

## **Chapter 16 – Role of the department**

The department should take steps to reaffirm itself as the policy lead and 'point of truth' on the local government framework. This is fundamental to moving the complaints framework forward, identifying issues early on, and reducing confusion within the sector. The tripartite forum will play an important role in identifying training needs, areas for policy review, and importantly areas where differences in interpretation are occurring.

## **Chapter 17 – The provision of authoritative legal advice**

Advice previously provided by the Queensland Integrity Commissioner was greatly appreciated by all stakeholders. The committee has recommended that the department investigate the appointment of an independent local government advisory service that can issue authoritative advice on integrity and conduct matters.

## **Chapter 18 – Enhancing oversight**

The committee has recommended that the relevant portfolio committee report annually to the Legislative Assembly on the performance of the Office of the Independent Assessor and the Councillor Conduct Tribunal, as the complaints framework matures and adjustments arising from this inquiry are implemented.

## 1 The Inquiry

### 1.1 Role of committee

The State Development and Regional Industries Committee (the committee) is a portfolio committee of the 57th Parliament established by the Queensland Legislative Assembly in November 2020. The committee has portfolio responsibility for the area of Local Government, as established under Schedule 6 of the *Standing Rules and Orders of the Queensland Legislative Assembly* (Standing Orders).

The committee also has oversight responsibility for the Independent Assessor. Under Standing Order 194A, the committee can monitor and review the performance of the Independent Assessor in delivering its functions, and can report to the Legislative Assembly any matter concerning the Independent Assessor or performance of its functions as the committee considers appropriate.

The committee may also report to the Legislative Assembly any changes to the functions, structures and procedures of the Independent Assessor that the committee considers desirable for the effective operation of the entity or the Act under which it is established.

### 1.2 Terms of reference

On 27 October 2021, the committee resolved to conduct an inquiry into the functions of the Office of the Independent Assessor (OIA) and the performance of those functions, including:

- the performance by the Independent Assessor of the Independent Assessor's functions and whether it is consistent with the intent of the local government complaints system,
- whether the powers and resources of the Independent Assessor are being applied in accordance with the public interest, and
- any amendments to the *Local Government Act 2009* or changes to the functions, structures or procedures of the Independent Assessor considered desirable for the more effective operation of the Independent Assessor and/or the local government complaints system.

The inquiry followed correspondence from the Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning, and Minister Assisting the Premier on Olympics Infrastructure, the Hon Steven Miles MP (Deputy Premier), requesting that the committee exercise its functions under the Standing Orders following a period of media coverage and public commentary concerning the actions of the OIA in relation to several individual councillors.

The correspondence included letters from the Local Government Association of Queensland (LGAQ) and the Queensland Council of Civil Liberties which had each expressed concern about reported actions of the OIA.<sup>1</sup>

In the lead-up to the inquiry, the committee had held several routine briefings with the Independent Assessor as part of its general oversight responsibilities. These briefings also indicated that it may be timely to review the functions of the Independent Assessor and the operation of the councillor complaints system generally.<sup>2</sup>

---

<sup>1</sup> Deputy Premier, correspondence, 25 October 2021. Correspondence is available on the inquiry webpage.

<sup>2</sup> Queensland Parliament, State Development and Regional Industries Committee, *General Oversight of the Independent Assessor*, [www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=172&id=3127](http://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=172&id=3127)

At the outset, it is important to be clear that the committee did not seek to re-examine individual councillor conduct matters, or undertake a quasi-appeal process. This is not the role of a portfolio committee. Rather, the committee has sought to identify systemic issues and consider whether adjustment to the legislative and policy framework is necessary to ensure that the complaints framework is operating effectively, efficiently and in line with the overarching intent of the system.

Over the course of the inquiry, issues relating to the operation of the Councillor Conduct Tribunal (CCT) also came to light. The committee has chosen to consider these matters as part of its inquiry. The committee agreed to amend the inquiry name to reflect these broader considerations of the councillor conduct and complaint framework.

### 1.3 Inquiry conduct

The committee conducted a thorough consultation process to inform the recommendations in this report.



59  
written  
submissions



14 public hearings  
and briefings across  
Queensland



47 local  
government &  
community  
witnesses

The committee invited public submissions from targeted stakeholders and the general public. This included an express invitation to mayors and chief executive officers of Queensland's 77 local councils, with a request to circulate correspondence to their networks accordingly.

The committee received 59 written submissions, primarily from elected officials, council management and those representing their interests. Submissions were also received from several interest groups and individuals (**Appendix A**).

For various reasons, the committee resolved to keep certain submissions confidential. This was largely on request of the submitter, or because the submission concerned complaints still before the OIA or CCT or contained adverse reflections against third parties.

The committee conducted several public briefings with primary stakeholders including the OIA, the Department of State Development, Infrastructure, Local Government and Planning (department) and the LGAQ (**Appendix B**).

The committee also held public hearings in Brisbane, Townsville, Cairns, Karumba, Mount Isa, Bundaberg, Toowoomba and the Gold Coast between January and March 2022. Several video conferences were also conducted. Many elected officials and council officers took the opportunity to share their insights into the operation of the complaints system, and opportunities for further reform (**Appendix C**).

The committee also consulted core stakeholders on draft recommendations before finalising this report. This was considered an important step in testing the practical application and consequence of the recommendations.

All inquiry documents authorised to be published by the committee are available on the inquiry webpage on the Queensland Parliament website here:



[www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=172&id=4125](http://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=172&id=4125)

## 2 The need for an independent councillor complaints system

An independent councillor complaints system is a key component of Queensland's local government sector. It adds to the integrity, accountability and transparency of the system and establishes mechanisms for the consistent and efficient processing of councillor conduct complaints. The councillor conduct complaints system has been reformed over the last few years and these reforms have been in place long enough for the system's performance to be re-evaluated.

### 2.1 Councillors in Queensland

There are 578 councillors serving on 77 local councils in Queensland.<sup>3</sup> These councillors are democratically elected to serve their communities to make decisions on their behalf and in their interest. Councillors are ultimately accountable to their constituents through the ballot box.



Councillors have a broad range of responsibilities. They consider development applications, approve infrastructure projects, award significant contracts for goods and services and make decisions about the allocation of commonwealth and state funds. Collectively, Queensland's local government sector manage assets, receive revenue and purchase goods worth billions of dollars in order to deliver services for their communities.<sup>4</sup>



Councillors come from an array of backgrounds and bring different skills and expertise to their positions. While some hold full time positions, many conduct their role on a part time basis. The issues they face are also diverse, impacted by geography, population density, available resources and the local economic and social conditions of their communities.

Regardless of their situation, mayors and councillors must make open, transparent decisions and ensure strong governance and accountability. This includes committing to standards of behaviour that

<sup>3</sup> Electoral Commission Queensland, 2020 Local Government Elections, Saturday, 28 March 2020.

<sup>4</sup> Queensland Audit Office, *Local government 2021* (Report 15: 2021-22), pp 15, 17.

are set out in the *Local Government Act 2009* (*Local Government Act*) and the Code of Conduct for Councillors in Queensland (*Code of Conduct*).

## **2.2 Reform of the councillor complaints system**

In 2018, significant changes were made to the councillor complaints framework as part of reforms to strengthen the integrity, accountability and transparency of Queensland's local government sector.

### **2.2.1 Independent Councillor Complaints Review Panel**

The changes to the complaints framework were informed by a comprehensive review conducted by the Independent Councillor Complaints Review Panel (Review Panel) chaired by Dr David Solomon AM. The Review Panel was tasked with examining the effectiveness of the existing framework and making recommendations to improve it.

The review was initiated in part due to concerns raised by the Local Government Association of Queensland (LGAQ) and the Local Government Managers Association (LGMA) about the effectiveness of the framework at that time.

Primary concerns included the role of council chief executive officers (CEOs) in assessing complaints, in conjunction with their responsibility to monitor registers of interest and prevent corrupt conduct. It was a widely held view that this put CEOs in a conflicted position where perceptions of bias were common. This had a detrimental impact on relationships between CEOs, mayors, councillors and ultimately the operation of councils.<sup>5</sup>

Concerns about a councillor's inability to seek a review of or appeal a decision about a conduct complaint and the need for better natural justice processes for all parties were also raised.<sup>6</sup>

The Review Panel's report *Councillor Complaints Review: A fair, effective and efficient framework* found 'fundamental changes' were required to improve the fairness, effectiveness and efficiency of the complaints system, and to make it more responsive and accountable.<sup>7</sup>

The Review Panel made 60 recommendations. The Queensland Government supported, supported in principle or partially supported 50 of the recommendations and implemented its response through the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*.

### **2.2.2 Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018**

The Local Government (Councillor Complaints) and Other Legislation Bill 2018 (LG Complaints Bill) was introduced into Parliament in February 2018 by the then Minister for Local Government, the Hon Stirling Hinchliffe MP. In May 2018, the then Minister spoke to the objectives of the LG Complaints Bill during the second reading debate:

Queenslanders expect and deserve good government—government that is transparent and accountable. It is on these very foundations that all good governments are built...

---

<sup>5</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 12 November 2021, Attachment 1, p 1.

<sup>6</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 12 November 2021, Attachment 1, p 1.

<sup>7</sup> Independent Councillor Complaints Review Panel, *Councillor Complaints Review: A fair, effective and efficient framework*, January 2017, p 10.

The bill's policy objective is to provide a simpler, streamlined system for councillor complaints. The bill represents the implementation of the government's response to the independent Councillor Complaints Review Panel's report titled Councillor complaints review: a fair, effective and efficient framework.

The bills are not designed to catch those who make genuine mistakes but rather to deal with those few councillors not living up to their communities' expectations. The legislation will face ongoing review to identify more opportunities for reform and ensure the public can have ongoing confidence in councillors upholding the highest ethical standards.<sup>8</sup> ...

I know that so many people in the community do place trust in their councils right across the length and breadth of the state because so many people in councils do very good work on behalf of their communities and in delivering good governance. The matters that are before the House today are, sadly, to deal with the minority. However, those standards must be high and they must be maintained.<sup>9</sup>

### 2.2.3 Strategic changes introduced

The LG Complaints Bill proposed several strategic changes to the councillor complaints framework, including:

- establishing **the role of an Independent Assessor and Office of the Independent Assessor (OIA)** to investigate and deal with complaints about the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the Independent Assessor by the Crime and Corruption Commission (CCC), corrupt conduct
- **providing for local governments to investigate and deal with suspected inappropriate conduct** when referred to a local government by the Independent Assessor and to take disciplinary action against councillors for inappropriate conduct
- reallocating functions of the Local Government Remuneration and Discipline Tribunal and the Regional Conduct Review Panels by **establishing the Councillor Conduct Tribunal (CCT) to conduct hearings on a councillor's alleged misconduct, decide whether the councillor has engaged in misconduct and what, if any, disciplinary action to take**, and at the request of a local government investigate the suspected inappropriate conduct of a councillor
- **repealing the declaration that a decision is not subject to appeal**, allowing certain review rights for decisions about councillor conduct
- strengthening administration and governance matters including requiring:
  - **a code of conduct, made by the responsible Minister** to set appropriate standards of behaviour for councillors in performing their functions
  - the chief executive to make **model procedures for the conduct of meetings** of a local government and its committees
  - local governments **to maintain a councillor conduct register** recording particular orders and decisions
  - **the Independent Assessor to give the Minister an annual written report**

---

<sup>8</sup> Queensland Parliament, Record of Proceedings, 15 May 2018, p 1,102.

<sup>9</sup> Queensland Parliament, Record of Proceedings, 15 May 2018, p 1,107.

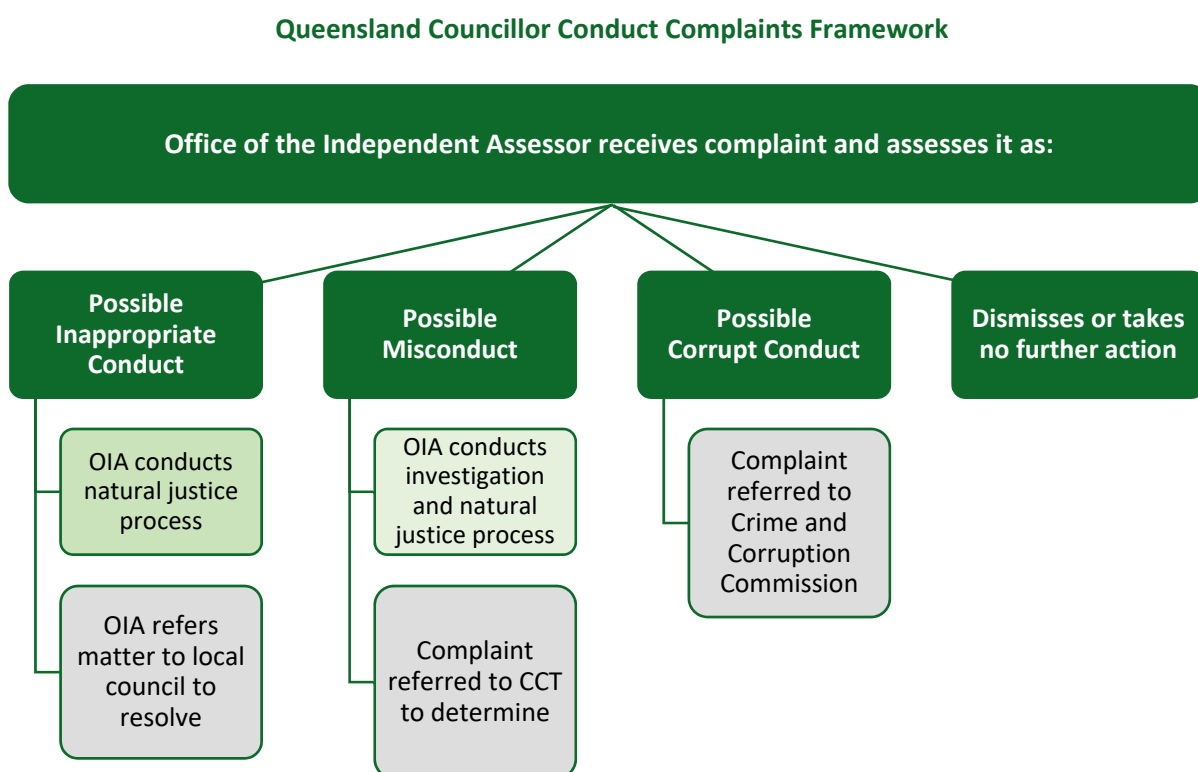
- strengthening **offences to support the new system**, including providing protection from reprisal for local government employees and councillors who make complaints against councillors, discouraging frivolous and improper complaints and ensuring confidentiality of investigations.<sup>10</sup>

The explanatory notes to the LG Complaints Bill indicated broad support for the reforms. The LGMA supported the amendments, in particular removing CEOs from the process of deciding councillor conduct complaints, including penalties to deter poor behaviour.<sup>11</sup>

The LGAQ, while largely supportive of the Bill's intent, raised some concerns. The LGAQ's preference was for inappropriate conduct complaints not to be referred to the council, as this was a significant departure from the previous regime which required the mayor (not the council) to deal with allegations of inappropriate conduct.<sup>12</sup>

The new councillor complaints framework commenced on 3 December 2018 and applied to all Queensland local governments other than Brisbane City Council. On 30 March 2020, the councillor framework was wholly applied to Brisbane City Council, ensuring the same behavioural standards, offences, penalties and investigating and hearing bodies for all local governments and councillors.

A summary illustration of the reformed councillor complaints framework is set out in the figure below.



<sup>10</sup> Explanatory notes, Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018, p 2.

<sup>11</sup> Explanatory notes, Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018, p 34.

<sup>12</sup> LGAQ, submission 51, p 10.

## 2.3 Fostering integrity and accountability

The *Local Government Act 2009* (*Local Government Act*) is the principal legislation governing the establishment and operation of local governments in Queensland. Brisbane City Council is primarily governed by the *City of Brisbane Act 2010* (*City of Brisbane Act*).

Both the *Local Government Act* and the *City of Brisbane Act* seek to foster a culture of integrity and accountability for elected officials consistent with community expectations, and are founded on 5 key principles with which councillors must comply. These are referred to as the Local Government Principles and are:

1. Transparent and effective processes, and decision-making in the public interest
2. Sustainable development and management of assets and infrastructure, and delivery of effective services
3. Democratic representation, social inclusion and meaningful community engagement
4. Good governance of, and by, local government
5. Ethical and legal behaviour of councillors, local government employees and councillor advisors.<sup>13</sup>

The *Local Government Act* requires the responsible minister to make a Code of Conduct.<sup>14</sup> The *Code of Conduct for Councillors in Queensland* (the Code of Conduct) sets out standards of behaviour expected of councillors and mayors when carrying out their duties. Each standard of behaviour includes, but is not limited to, several examples to guide councillors in complying with the Code of Conduct.<sup>15</sup>

The **Code of Conduct** is summarised as the ‘three Rs’ and requires councillors to:

- Carry out **Responsibilities** conscientiously and in the best interest of the council and the community
- Treat people in a reasonable, just, **Respectful** and non-discriminatory way
- Ensure conduct does not reflect adversely on the **Reputation** of council.<sup>16</sup>

Further, and of particular relevance to councillor conduct and dealing with conflicts of interest, the *Local Government Act* expressly states that the purpose of conflicts of interest provisions is ‘to ensure that if a councillor has a personal interest in a matter, the local government deals with the matter in an accountable and transparent way that meets community expectations’.<sup>17</sup>

The consequences of failing to comply with the standards of behaviour may result in a complaint against a councillor’s conduct and can result in disciplinary action under the *Local Government Act*.<sup>18</sup>

---

<sup>13</sup> *Local Government Act 2009*, s 4.

<sup>14</sup> *Local Government Act 2009*, s 150D.

<sup>15</sup> Queensland Government, *Code of Conduct for Councillors in Queensland*, Approved 4 August 2020, p 6.

<sup>16</sup> Queensland Government, *Code of Conduct for Councillors in Queensland*, Approved 4 August 2020, pp 6-7.

<sup>17</sup> *Local Government Act 2009*, s 150ED.

<sup>18</sup> Queensland Government, *Code of Conduct for Councillors in Queensland*, Approved 4 August 2020, p 8.

## 2.4 Is the framework operating as intended?

By the start of the inquiry, the complaints framework had been in place for around 3 years and more than 3,500 complaints had been submitted to the OIA about the conduct of Queensland councillors. A broad range of views were presented by inquiry participants on whether the framework was operating as intended and in line with the public interest.

High-level observations from core inquiry stakeholders are set out below.

### 2.4.1 Office of the Independent Assessor

The OIA recognised that the reforms have caused a significant cultural change for councillors in a short amount of time and that there is potential for the system to be improved. That said, the OIA submitted that there is also evidence that the system is working, stating:

There is no longer significant under-reporting of councillor conduct allowing a genuine focus on integrity and intervention to prevent conduct from escalating. Ten years ago, there were only two complaints about councillor conduct in Queensland received by the then department. In the year before the OIA commenced, 162 complaints were lodged. In the past two financial years the OIA received more than 1,000 complaints a year.

Those complaints have been centrally and consistently assessed applying the same legislated and Code of Conduct standards to all councils.

An increasing number of councillors are referring their own conduct. Prior to the establishment of the OIA, six self-referrals were made between 2012- 2018. Since then, 56 councillors have referred their own conduct to the OIA.

The number of complaints made by the local government sector has risen from 11 per cent of all complaints lodged in 2018-19, to 51 per cent of complaints between 1 July and 18 November 2021.

Significantly, this rise has been offset by a decrease in corruption allegations made to the Crime and Corruption Commission whose 2020-21 annual report recorded a sharp drop in corruption allegations about local governments.

Following enhanced natural justice processes, more matters have been referred to the Councillor Conduct Tribunal by the OIA and more matters are being sustained. Now all stakeholders have visibility of Tribunal decisions with a published summary of the reasons clarifying how conduct standards are being applied.

While complaint numbers have risen, the cost of misconduct investigations has dropped. In 2020-21, the average cost of an OIA misconduct investigation was \$2,704, significantly less than investigation expenses recorded in the Councillor Complaints Review (Solomon Review) and those which are still being incurred by councils when lower-level inappropriate conduct is investigated.<sup>19</sup>

The OIA added that:

[T]he OIA has been far more proactive in applying the councillor conduct complaints system than the legislation requires. This was achieved by inserting in an early assessment decision point and self-imposing a reasonable suspicion threshold for commencing a fuller investigation.<sup>20</sup>

The OIA also advised that powers provided to the OIA under the *Local Government Act* were being used appropriately and in the public interest:

---

<sup>19</sup> OIA, submission 5, pp 5-6.

<sup>20</sup> OIA, submission 5, p 26.

The OIA's powers are being used in the public interest and in line with the intent of the legislation. The OIA has used its powers judiciously and lawfully. It is significant that the most intrusive of the powers provided to the OIA, such as to execute search warrants, have not been exercised.

The OIA only uses its powers to issue a notice to obtain relevant evidence from the media if a councillor has already been identified as the source in the media story...

The OIA has used every strategy to work within its resourcing to progress the workload and finalise complaints in the best interests of councillors and complainants, and in the face of a continuing yearly rate of 1,000 complaints. It is value for money when compared to previous systems.<sup>21</sup>

The OIA suggested several opportunities for reform which are set out in its submission and which the committee has considered as part of this inquiry.

#### **2.4.2 Local Government Association of Queensland**

Conversely the LGAQ, while recognising the value of an independent councillor complaints system, submitted that there is concern in the local government sector that the OIA is not functioning as it should be.

The LGAQ stated:

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

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

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

While the introduction of the OIA has increased scrutiny of the local government sector, the LGAQ submits that it has not necessarily enhanced integrity outcomes.

There have been a number of high-profile cases the LGAQ believes demonstrates overreach by the OIA in their determinations and in the application of its significant powers under the LG Act.<sup>22</sup>

The LGAQ believes that in its current form, the system is hampering the ability of mayors and councillors to carry out their duties as elected representatives.<sup>23</sup> The LGAQ also contended that actions of the OIA were deterring community-minded people from entering local government:

It serves nobody when elected representatives operate in an environment of fear and intimidation. The integrity agencies established to ensure the sector is open and transparent were designed to prevent misconduct and corruption.

They were designed to focus on the minority of elected members doing the wrong thing. They were not designed to make things harder for the majority of elected members who do the right thing. If balance is

---

<sup>21</sup> OIA, submission 5, p 34.

<sup>22</sup> LGAQ, submission 51, p 12.

<sup>23</sup> LGAQ, submission 51, p 4.

not restored to the system, then good people will continue to be lost from local government and Queensland's local communities will be the poorer for it.<sup>24</sup>

The LGAQ surveyed its membership in March 2020. It found:

- Both councillors and CEOs indicated the integrity reforms were having a negative impact on their confidence levels and on their capacity to effectively do their job.
- Further, of those elected members who indicated they were not likely to stand for re-election, 59 per cent stated their decision was strongly impacted by the integrity reforms.
- When asked directly about the OIA, just two in five believed the OIA was efficient and gave them a fair go.
- One in three did not agree the OIA was open and accountable, nor did they agree the OIA was good at resolving issues.
- Members believed an independent assessor would be a more accountable and transparent alternative to having responsibility for assessing such complaints continuing to fall on council chief executive officers, mayors and the Department of State Development, Infrastructure, Local Government and Planning.<sup>25</sup>

### **2.4.3 Individual councillors and legal representatives**

Several individual councillors and their legal representatives submitted similar views to the LGAQ. Cr Glenda Mather expressed the view that the current system was onerous, intimidating and costly:

Under the current structure and process of the OIA, local government is not a recommended career choice, or an enjoyable place to work anymore. The current system is onerous, intimidating and costly when a lay person feels the need to employ a legal representative to understand and respond on behalf of his/her client in a meaningful way.<sup>26</sup>

King & Company, a legal firm representing many councillors involved in the complaints system, submitted that the introduction of the new scheme has had several negative impacts on councillors and council chief executive officers (CEOs) and that this posed a risk to the efficiency, effectiveness and sustainability of local government and its functions. Impacts included:

- A great deal of stress and distress faced by councillors as a result of an OIA investigation commencement of CCT proceedings. Many councillors have expressed the strain and distress that they and their families have experienced as a result of an investigation and/or tribunal proceedings.
- Confusion surrounding the application of the conflict of interest provisions.
- An overly cautious approach by councillors with respect to application of the conflict of interest provisions.
- The complaints system being used for improper purposes such as political or personal gain.
- Loss of confidence in, and respect for, the IA and the OIA by councillors and council staff.
- Loss of confidence, and appetite to participate, in the local government system by councillors. We are aware of at least two councillors who have resigned as a result of the current complaints process.

---

<sup>24</sup> LGAQ, submission 51, pp 7-8.

<sup>25</sup> LGAQ, submission 51, p 8.

<sup>26</sup> Cr Glenda Mather, submission 24, pp 1-2.

Many other councillors have expressed to us their dismay and frustration at the process and a loss of appetite to either run again or stay in the role.

- In fear of unwittingly contravening an obligation, the feeling of many councillors that they are unable to adequately and properly function given the level of scrutiny and the ramifications of that scrutiny.<sup>27</sup>

Inquiry participants put forward observations on the causes of these impacts, and recommended various reforms to better re-align the complaints system with its overarching intent. Many of these suggestions are discussed in the following chapters.

#### **2.4.4 Councillor Conduct Tribunal**

The President of the Councillor Conduct Tribunal observed ‘teething issues’ and that perhaps these were understandable given the extent of the reforms to the system:

There exist some understandable teething issues that have arisen. These issues are to some extent to be expected with the implementation of a vastly different reporting and investigation process regarding complaints made about councillor conduct and including the prosecution of those complaints by the investigative body.

The establishment of the tribunal also represented a significant change to the previous system and took over those functions, as I mentioned earlier, of the conduct review panels and many of the functions of the Local Government Remuneration and Discipline Tribunal.<sup>28</sup>

#### **2.4.5 Department of State Development, Infrastructure, Local Government and Planning**

The Department of State Development, Infrastructure, Local Government and Planning (the department) reviewed the complaints management system in 2021 to better understand how the existing arrangements were operating and identify any emerging issues.

In broad terms, the department found that while the framework ‘is fundamentally sound’, there is ‘significant scope for improvement in the framework’s ability to deliver’ the government’s intention of a simplified, streamlined complaints management system.<sup>29</sup>

The overarching finding was ‘that the implementation of the framework is creating unintended complexity, consequences and confusion’. Six main issues were identified:

- A lack of clarity and understanding of respective roles and responsibilities, particularly the department’s role as the policy lead
- A shift from the policy intent of the framework to separate the delivery of the training and capability building functions (the department) from assessment, investigation and prosecutions (OIA) and discipline (CCT) functions
- The application of the councillor complaints system as defined under the *Local Government Act* is leading to overly legalistic, complex and adversarial practices not anticipated or intended by government
- Gaps in the provision of advice to councillors on conduct matters

---

<sup>27</sup> King & Company, submission 49, pp 3-4.

<sup>28</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 2.

<sup>29</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 13.

- Resourcing and remuneration constraints
- Inefficiencies in administrative processes and complex working arrangements between the CCT and the Department of State Development, Infrastructure, Local Government and Planning.<sup>30</sup>

Several key strengths were also identified. These included independence from councils and the department in the management of complaints; the ability to quickly close off trivial, frivolous or vexatious complaints; and increased consistency and transparency in dealing with complaints.<sup>31</sup>

The department made several recommendations within the internal review, which have been considered by the committee in the remainder of this report. Many submissions to the inquiry provided weight to the findings and recommendations of the department.

## 2.5 Committee comment

All committee members share the strong opinion, along with the rest of Queensland, that councillors fulfil a crucial and fundamental role in their communities.

We recognise and acknowledge the significant cultural change experienced by the local government sector in recent years as a result of improved accountability and behavioural standards and practices. Nevertheless, we strongly support the operation of an effective complaints system as an important accountability mechanism.

The intent of the reformed complaint system is clear – to provide a simpler, streamlined system that is fair, effective and efficient.

At the outset we make clear our finding that the councillor complaint system is broadly sound and working well, but improvement is needed. Specifically, the councillor complaints system needs to more closely and efficiently align with public interest and the intent of the legislation.

The system must be capable of resolving complaints in a timely and cost-effective manner. It should lead to improvements in service delivery or councillor performance, and importantly, it should strengthen public confidence in local government.

In recent months, broader perceptions about the councillor complaints system have focused on higher-profile cases such as the Mayor Dillon and Fassifern Guardian matters. We have carefully considered feedback from stakeholders on these matters. In-depth examination has revealed not only the differing claims and perspectives that make up all sides of these matters, but also how the system itself can be improved in the future.

The committee makes 5 initial points.

Firstly, although much attention has focused on the OIA, the complaints system has several independent bodies. Each of these bodies can improve their processes in order to contribute to a better functioning councillor complaint system.

Secondly, we have observed noticeable improvements to the councillor complaint system during the course of this inquiry. All stakeholders involved should be commended.

---

<sup>30</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 3.

<sup>31</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 7.

Thirdly, the need for an independent system is agreed by everyone. As the LGAQ said:

we want an assessment agency that is independent of local government, provides that important check and balance on councillor conduct, specifically allegations of misconduct, and we want it to be consistent in its assessment of what should be investigated and what should not be.<sup>32</sup>

Others agreed. Mayor Kerr, Douglas Shire said 'I do not believe there is a councillor out there who does not agree that we need an Office of the Independent Assessor. We absolutely do'.<sup>33</sup> Mayor Pennisi, Southern Downs echoed this view as did Cr Pyne, Cairns who said:

I found the OIA pretty good. ... My experience with the OIA has been a fairly good one. Even though I have had complaints against me, I have not felt as though I was unfairly targeted. I have found the process to be user friendly.<sup>34</sup>

Fourthly, there are different interpretations of the aims of the complaints system from stakeholders. Some elected officials believe that the complaint system should also *shield* them from complaints.

For example, Mayor Kerr said: 'I believe, [process and legislation] has failed the councillors in its intent to *protect us* because it has not, *it has not protected us*' [emphasis added].<sup>35</sup> Mayor Bawden, Carpentaria said 'there is a public entity ... that is supposed to be *looking after your welfare* [emphasis added] or whatever and you find out that they are not handling complaints at all'.<sup>36</sup> Deputy Mayor Barwick, Mount Isa also asked '[w]hose side is it on? Why are we subjected to this harassment?'<sup>37</sup>

Lastly, stakeholders recognise that all parties are adjusting to the new system. The OIA said:

It is a culture shock. Councillors have not experienced this in the past. They have only had this for three years. ... Many councillors who have been through the system I think are more likely to feel comfortable ... they have seen that, at the end of the day, this has not turned into something which has destroyed their election prospects and they have not been pilloried in public.<sup>38</sup>

However, it is clear that some stakeholders are experiencing a more difficult adjustment than others. The committee was aware that during our hearings, we heard from 6 of the 8 councils that account for 33 per cent of all complaints and 46 per cent of all matters referred to the CCT.<sup>39</sup>

We reiterate our finding that the councillor complaint system is broadly sound and working well, but improvement is needed. Accordingly, we have recommended several legislative and practice adjustments to reposition and redirect the range of resources and entities within the complaints system to ensure that the objective of a simpler, streamlined and fairer system for councillor complaints is achieved.

---

<sup>32</sup> LGAQ, public hearing transcript, Brisbane, 22 March 2022, p 31.

<sup>33</sup> Mayor Michael Kerr, public hearing transcript, Cairns, 1 March 2022, p 12.

<sup>34</sup> Mayor Vic Pennisi, public hearing transcript, Toowoomba, 18 March 2022, p 7; Cr Rob Pyne, public hearing transcript, Cairns, 1 March 2022, p 1.

<sup>35</sup> Mayor Michael Kerr, public hearing transcript, Cairns, 1 March 2022, p 12.

<sup>36</sup> Mayor Jack Bawden, public hearing transcript, Karumba, 2 March 2022, p 4.

<sup>37</sup> Deputy Mayor Phil Barwick, public hearing transcript, Mount Isa, 2 March 2022, p 6.

<sup>38</sup> Independent Assessor, public hearing transcript, Brisbane, 28 April 2022, p 6.

<sup>39</sup> Independent Assessor, public hearing transcript, Brisbane, 28 April 2022, p 7.

### 3 The timely resolution of complaints

The issue that brought the greatest number of submitters to the inquiry was dissatisfaction with the length of time needed to resolve complaints against councillors. Whilst it was universally agreed that delay to the resolution of complaints was unacceptable, the inquiry also identified the source of these delays, and has recommended several practice reforms.

#### 3.1 Volume of complaints

The Office of the Independent Assessor (OIA) has provided context to the matter of timeliness by highlighting its workload. The agency has dealt with more than 3,800 complaints since it was established.<sup>40</sup>

In 2021-22, the OIA assessed 881 complaints. Of these:

- 64 per cent were assessed and dismissed or no further action taken (NFA)
- 5 per cent were referred to councils as potential inappropriate conduct
- 18 per cent proceeded to a full misconduct investigation following assessment (291 investigations completed)
- 3 per cent were referred to the Crime and Corruption Commission.<sup>41</sup>

The OIA was established with the staff and resources to assess 160 complaints a year. This number was exceeded within 11 calendar days of the OIA's commencement, resulting in delays in investigations and in referring matters to the Councillor Conduct Tribunal (CCT).<sup>42</sup>

The OIA was established with 10 staff.<sup>43</sup> Since then, staffing levels have grown year-on-year in response to the number of complaints and with support of the Queensland Government.

At 31 October 2021, the OIA's workforce was made up of 11 permanent and 8 temporary staff. This included 2 assessment officers, 8 investigators and 4 lawyers. The Independent Assessor advised that 42 per cent of staff were employed on a temporary basis until June 2023 and that this had resulted in difficulties in retaining staff.<sup>44</sup>

The OIA confirmed that this reflects the maximum staffing levels approved for the entity and that a budget of \$3.407m has been allocated for the 2022-23 financial year.<sup>45</sup>

The 2022-23 Queensland Budget identifies departmental expenses in the region of \$9.2 million for the Independent Assessor, and a staffing complement of 27 FTEs. The difference between these figures and those outlined above is due to costs and positions attributed to the OIA to cover corporate

---

<sup>40</sup> OIA, correspondence, 14 September 2022, p 2.

<sup>41</sup> OIA, correspondence, 14 September 2022, p 2.

<sup>42</sup> OIA, submission 5, p 6.

<sup>43</sup> OIA, submission 5, p 30.

<sup>44</sup> OIA, submission 5, p 30.

<sup>45</sup> OIA, correspondence, 23 September 2022, pp 3-4.

services such as IT, HR and finance. The uplift in the budget represents 3 percent of the department's corporate budget and is a standard accounting practice.<sup>46</sup>

### 3.2 The use of a triage system to improve timeliness

All complaints received by the OIA are initially assessed or 'triaged'. This is generally undertaken by the same 2 assessment officers (the Independent Assessor and the Deputy Independent Assessor) and sometimes an investigator. This approach is intended to ensure consistent decision making.<sup>47</sup>

During the initial assessment, a threshold test is applied to the complaint. This test asks whether a complaint raises a 'reasonable suspicion' of inappropriate conduct or misconduct. This is a self-imposed threshold and was developed largely in response to the high number of complaints received and to ensure finite resources were being used effectively.<sup>48</sup>

After initial assessment, a complaint will be dealt with in one of the following ways:

- It will be dismissed or subject to no further action (NFA) under the OIA's discretion if the complaint:
  - is not within the OIA's jurisdiction
  - does not raise a reasonable suspicion of inappropriate conduct or misconduct
  - does not contain sufficient information for a proper assessment
  - is not a justifiable use of resources to take further action
  - is not in the public interest to take further action
  - is improper, for example vexatious or frivolous.
- If the complaint raises reasonable suspicion of inappropriate conduct, the OIA will conduct a natural justice process. This involves the OIA issuing a notice under the *Local Government Act* seeking a response from the councillor who is the subject of the alleged complaint. This step must occur before a decision is made to refer the matter to the relevant council.
- If the complaint raises reasonable suspicion of misconduct, the OIA will undertake an investigation. The OIA will conduct a natural justice process before a final decision is made to refer the complaint to the Councillor Conduct Tribunal for determination.
- If the complaint raises reasonable suspicion of corrupt conduct, it is referred to the Crime and Corruption Commission. The CCC can refer matters to the OIA to investigate.

The OIA has set a target to conduct this initial assessment within 21 days of a complaint being lodged. The OIA has provided evidence that a high percentage of complaints are assessed within this timeframe.<sup>49</sup> In 2021-22, 91 per cent of complaints received were assessed within 21 days.<sup>50</sup>

---

<sup>46</sup> Queensland Government, 2022-23 Queensland State Budget – Service Delivery Statements, Department of State Development, Infrastructure, Local Government and Planning, pp 9 -10.

<sup>47</sup> Independent Assessor, public briefing transcript, Brisbane, 6 December 2021, p 19.

<sup>48</sup> OIA, submission 5, p 13.

<sup>49</sup> OIA, submission 5, p 14; Independent Assessor, public hearing transcript, Brisbane, 28 April 2022, p 14.

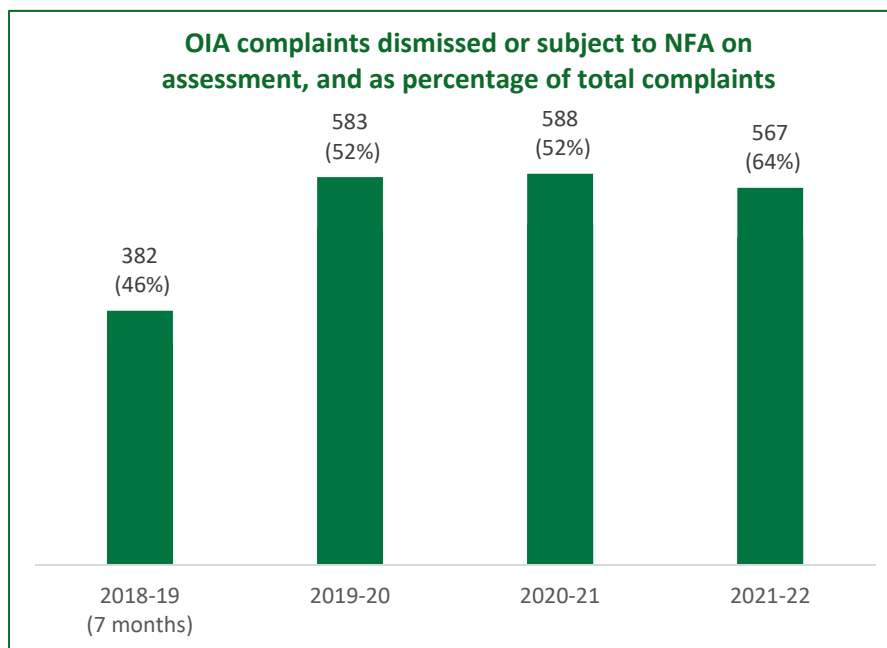
<sup>50</sup> OIA, correspondence, 14 September 2022, p 2.

The LGAQ recommended that this assessment timeframe be revised upwards to 28 days to ensure a more rigorous assessment process.<sup>51</sup>

### 3.3 Complaints dismissed or subject to no further action

The OIA's broad discretion to dismiss or take no further action on complaints provides a way to manage the number of matters that progress to a full investigation.<sup>52</sup>

Information provided by the OIA indicates that a large number of complaints (64 per cent) are dismissed on initial assessment, or subject to no further action (NFA). Information provided also indicates an upward trend in this regard.



Source: OIA, submission 5, p 14; OIA, correspondence, 14 September 2022, p 2.

Despite this, there were widespread calls from inquiry participants for the OIA to use these powers more judiciously so that trivial matters were dismissed quickly in the public interest, or that the legislation be amended to extend the opportunities for the OIA to dismiss a complaint prior to investigation.

In response, the Independent Assessor set out all stages where dismissal or NFA in the public interest might be considered in the broader assessment process:

The first stage is on assessment. For new and inexperienced councillors we have applied a three-month amnesty for low-level misconduct to allow time for learning and development.

For systemic capacity issues involving all councillors in a local government we dismiss and send them to a training intervention. None of this is in the legislation. This is what we do from a public interest perspective.

Where legislation has changed but the councillor has not had the opportunity to receive training, we dismiss as not in the public interest.

<sup>51</sup> LGAQ, submission 51, p 5.

<sup>52</sup> OIA, submission 5, pp 14-15.

Where a councillor has obtained legal advice before the conduct and followed that advice in good faith, even if we do not think that advice is right we dismiss, because clearly they have tried to do the right thing in good faith.

Where the councillor has since retired and the conduct is low-level misconduct, we dismiss in the public interest.

Where the councillor is facing more serious charges such as criminal charges, we dismiss.

Where there are failures to update registers of interest where the period of time the register was inaccurate or the interest omitted was not significant and the councillor has since updated their register, we dismiss.

Where a councillor refers themselves for a relatively minor conduct and demonstrates insight and learning, particularly if the councillor is inexperienced, we dismiss.

Where a councillor has demonstrated that they have followed in good faith guidance that the OIA previously provided, such as social media guidance or the conflict-of-interest guidance which allows them to print off a date and timestamp of when they have interrogated the conflict-of-interest app—so if they can show that the night before the council meeting they did it—we dismiss, because they have in good faith tried to comply with their obligations.

Where, having regard to other particular circumstances of the matter, there is not a public interest, we dismiss.<sup>53</sup>

The Independent Assessor contended that further dismissal was not the answer:

We are clearly dismissing a lot, because only four per cent is going to the tribunal or only four per cent is going back to local government. In my humble submission, dismissing more matters is not the answer. The answer is to either adequately resource or take a look at what is misconduct and what is the system and how it can be diverted and look at it from that perspective.<sup>54</sup>

### **3.4 Timeliness of investigations and suggested solutions**

The LGAQ submitted that the time taken to complete investigations was one of the greatest areas of concern for its members, and recommended that benchmark timeframes for investigations be applied by the OIA:

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

The Review Panel's report identified a number of strategic directives in relation to increasing natural justice and fairness for all concerned. It stated the model it was proposing (the current model) would allow for complaints to be dealt with more effectively, more efficiently, in a timelier manner and with a greater degree of fairness. The Review Panel also claimed its recommendations would lead to complaints being processed through speedier investigations. It is our contention that this has not occurred.<sup>55</sup>

Other stakeholders agreed, submitting that timeframes associated with investigations was one of the most significant concerns. For example, one Brisbane City councillor stated:

---

<sup>53</sup> Independent Assessor, public hearing transcript, Brisbane, 28 April 2022, pp 8-9.

<sup>54</sup> Independent Assessor, public hearing transcript, Brisbane, 28 April 2022, p 9.

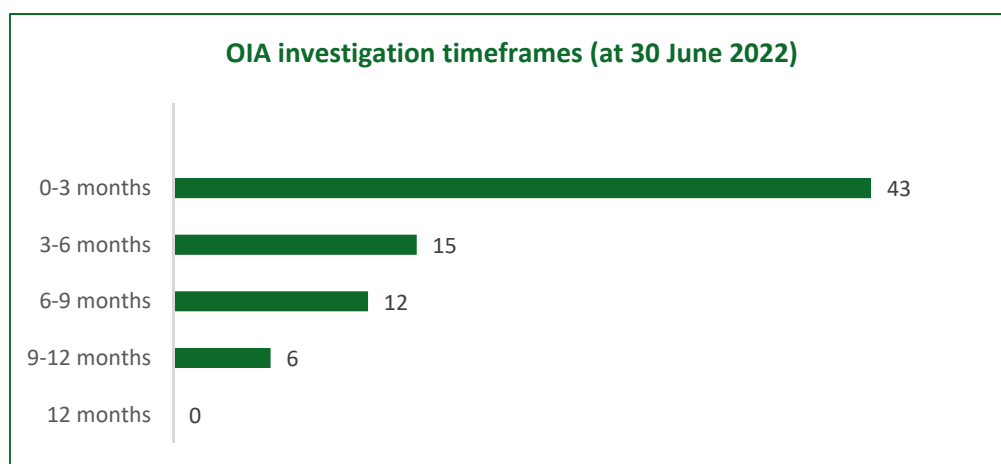
<sup>55</sup> LGAQ, submission 51, p 21.

The failure of the OIA to consider complaints in a timely way is its biggest failing and, in my view, is not consistent with the intent of the local government complaints system nor in the public interest. Currently, the uncertainty, stress and cost of the process, which can have serious reputational outcomes, hangs over Councillors heads for years. Councillors and the public need to have confidence in our democratic system and it is being undermined by a flawed process.<sup>56</sup>

Several community groups also raised timeliness as an important issue. For example, the SEQ Community Alliance and Redlands 2030 submitted:

The overall process of dealing with complaints about misconduct and inappropriate conduct is unacceptably slow, from the community's perspective. We are aware of a misconduct complaint which was lodged several months before the 2020 local government elections that still has not been resolved.<sup>57</sup>

The OIA's reported active investigation timeframes at 30 June 2022 were as follows:



Source: OIA, correspondence, 14 September 2022, p 4.

In response, some called for timeframes to be legislated, including Balonne Shire and South West Queensland Regional Organisation of Councils.<sup>58</sup>

Mackay Regional Council also suggested that a framework of timeframes be introduced and that this be based on the seriousness of the matter under consideration. Rockhampton Regional Council agreed, suggesting a staged approach would provide much needed certainty to the relevant councillor and council.<sup>59</sup>

While the majority of stakeholders called for timeframes to be condensed, some commented on timeframes afforded to those councillors who were the subject of complaints. For example, Queensland Law Society called for additional time for councillors to respond to OIA requests for information:

Our members report that upon receiving a Notice to Respond to Allegations from the OIA, they will regularly seek extensions of time of anywhere between 1 to 4 weeks (depending on the nature of the matter and the instructions received from their client). These members' applications for extensions of

<sup>56</sup> Cr Nicole Johnston, submission 42, p 1.

<sup>57</sup> Redlands2030, submission 55, p 2.

<sup>58</sup> Balonne Shire Council, submission 14, p 4; South West Queensland Regional Organisation of Councils, submission 43, p 1.

<sup>59</sup> Mackay Regional Council, submission 13, p 2; Rockhampton Regional Council, submission 32, p 4.

time are rarely agreed to in full and often, the OIA will only afford a matter of days or one week to provide responses.

In contrast, once the OIA has received a response, it can be a matter of months (8 to 10 in certain cases) for the office to provide its reply. This issue reinforces our submission about the need to ensure appropriate natural justice and procedural fairness is provided to respondents and that the OIA is undertaking its functions efficiently and effectively.<sup>60</sup>

The LGAQ also submitted that extending the OIA's benchmark for finalising its assessments by an extra 7 days, and then affording councillors at least 7 days to respond to a complaint once contacted by the OIA in writing, would assist in ensuring the OIA is able to better identify which matters should be progressed and which matters should not.<sup>61</sup>

Also on the issue of timeliness, the LGAQ called for the inclusion of an appropriate limitation period prohibiting the investigation of complaints if a prescribed period of time (e.g. three years) has elapsed between the date of the alleged conduct, and the date of the complaint.<sup>62</sup>

### 3.5 Committee comment

All inquiry participants agree that the timeliness of complaint resolution is of utmost importance and improvements, if not large-scale changes, need to be affected to ensure the system is operating as intended.

As the department noted, 'the policy intent ... is that the system moves quickly. It must be quick, and to do that you need a tiered assessment process so that it is only the top echelon that is moving forward'.<sup>63</sup>

The LGAQ commented that delays in the general investigation process are a major issue.<sup>64</sup> Timeliness is also a challenge for the CCT, where it takes 200 to 300 hours to resolve a matter (discussed in Chapter 4).<sup>65</sup> Mayor Dillon acknowledges that frustration with timeliness led him to the course of action he took with his complaint.<sup>66</sup>

The OIA reported on the significant steps that have been made in addressing timeliness. In 2021-22 91 per cent of complaints were assessed within 21 working days and 291 investigations were finalised. Furthermore, at the end of the financial year, there were only 87 active misconduct investigations, compared to 160 at the same time in the previous year. Only 4 per cent of matters are continuing on to the CCT.<sup>67</sup>

The committee acknowledges the significant caseloads of the OIA and CCT since establishment. However, the current length of time to resolve matters is not acceptable to any stakeholder and must

---

<sup>60</sup> Queensland Law Society, submission 58, p 3.

<sup>61</sup> LGAQ, submission 51, p 14.

<sup>62</sup> LGAQ, submission 51, p 6.

<sup>63</sup> B Blagoev, private briefing transcript, Brisbane, 6 December 2021, p 6.

<sup>64</sup> LGAQ, public hearing transcript, Brisbane, 22 March 2022, p 32.

<sup>65</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 7.

<sup>66</sup> Mayor Sean Dillon, public hearing transcript, Brisbane, 22 March 2022, p 21.

<sup>67</sup> OIA, correspondence, 14 September 2022, p 3; Independent Assessor, public briefing transcript, Brisbane, 28 April 2022, p 6.

be improved. We are aware of how this may call for a different approach to the allocation of resources and practices, but we are encouraged by the improvements to timeliness made during this inquiry.

We believe set timeframes should be adopted to resolve complaints in all but the most complex or serious of cases. The definition of what constitutes a complex and serious matter will need to be established and agreed upon by the department, OIA and the CCT and we suggest that the tripartite forum (discussed in Chapter 16) is the best mechanism to establish this definition and threshold. We also believe that there is merit in the adoption of a limitation period, such as that proposed by the LGAQ.

Both the OIA and CCT have made cases for more resourcing if target timeframes as set out in within this report are applied to their operations. Although we will not make a recommendation regarding additional resourcing, we acknowledge the sound arguments made by both the OIA and the CCT and encourage the department to discuss these matters with the OIA and CCT and find a workable solution.

The OIA expressed concerns relating to the temporary nature of contracts, and impact that this can have on the attraction and retention of skilled staff. We have recommended that funding be provided on a more permanent basis to support the appointment of more permanent positions, or longer-term contracts within the OIA.

We also recognise that achievement of some timeframes is reliant on co-operation from councils and councillors on conduct matters and are of the view that there needs to be a regulatory imperative to ensure local councillors co-operate and liaise within a reasonably timely manner.

#### **Recommendation 1**

That the following target timeframes be applied to the complaints framework by the Office of the Independent Assessor and the Councillor Conduct Tribunal for all but the most complex or serious of cases:

- initial assessment or 'triage' of complaint completed by Office of the Independent Assessor within 7 days of receipt
- misconduct investigations including natural justice processes completed by Office of the Independent Assessor within 60 days of initial assessment
- determination of conduct matters completed by Councillor Conduct Tribunal within 3 months of the date of referral, unless the subject councillor requests an extension under the *Local Government Act 2009*
- adoption of a statute of limitation, to be determined by the Queensland Government with advice from the tripartite forum (Recommendation 38), to accept complaints unless they involve matters to be referred to the Crime and Corruption Commission.

#### **Recommendation 2**

That the Office of the Independent Assessor publish its performance measured against the target timeframes in its annual report, and the Department of State Development, Infrastructure, Local Government and Planning publish the Councillor Conduct Tribunal's performance measured against the target timeframes in its annual report.

**Recommendation 3**

That the Queensland Government commit to allocating levels of funding provided in the 2022-23 Budget to the Office of the Independent Assessor on an ongoing basis so as to support the appointment of permanent positions and longer-term contracts for employees of the Office of the Independent Assessor.

## 4 Councillor Conduct Tribunal

The committee's focus increasingly moved to capacity issues in the Councillor Conduct Tribunal (CCT) when identifying delays and issues in the complaints system. The CCT's current resourcing and work structure is not conducive to the increased number of complaints being referred for determination, and a backlog has developed. The committee has identified several opportunities for reform.

### 4.1 Role and responsibilities

The CCT was established under the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*. It is an independent body, with a President and 12 members appointed by the Governor in Council. All positions are appointed on a sessional basis.<sup>68</sup>

The CCT's role in the councillor conduct framework is to, on the balance of probabilities, determine allegations of misconduct (and any connected inappropriate conduct) referred by the Independent Assessor.<sup>69</sup> The councillor and the Office of the Independent Assessor (OIA) are parties to these proceedings and the Independent Assessor bears the onus of proof.<sup>70</sup>

Having considered the matter before it, the CCT must decide whether or not the councillor has engaged in misconduct, and if so, what action it will take to discipline the councillor. Disciplinary actions are set out in the *Local Government Act* and are wide ranging. They include:

#### An order that the councillor:

- make a public admission that they have engaged in misconduct or inappropriate conduct
- be reprimanded for the conduct
- attend training or counselling to address the conduct, including at the councillor's expense
- pay the local government an amount of not more than 50 penalty units (or \$7,187.50)<sup>71</sup>
- reimburse the local government for all or some of the costs arising from the councillor's misconduct or inappropriate conduct (or both)
- is not to act as the deputy mayor, the chairperson of the council under the City of Brisbane Act 2010 or the chairperson of a committee of the local government for the remainder of the councillor's term
- is not to attend a number of local government meetings, up to a maximum of 3 meetings
- is removed, or must resign, from a position representing the local government, other than the office of councillor
- forfeit an allowance, benefit, payment or privilege paid or provided by the local government

---

<sup>68</sup> At September 2022, the CCT had 10 appointed members and 7 available members.

<sup>69</sup> CCT, submission 59, p 1.

<sup>70</sup> OIA, submission 5, p 13.

<sup>71</sup> Penalties and Sentences Regulation 2015. The value of one Queensland penalty unit is \$143.75 (as of 1 July 2022).

- is to forfeit, for a stated period, access to equipment or a facility provided to the councillor by the local government.

**A recommendation to the Minister responsible for local government that the councillor:**

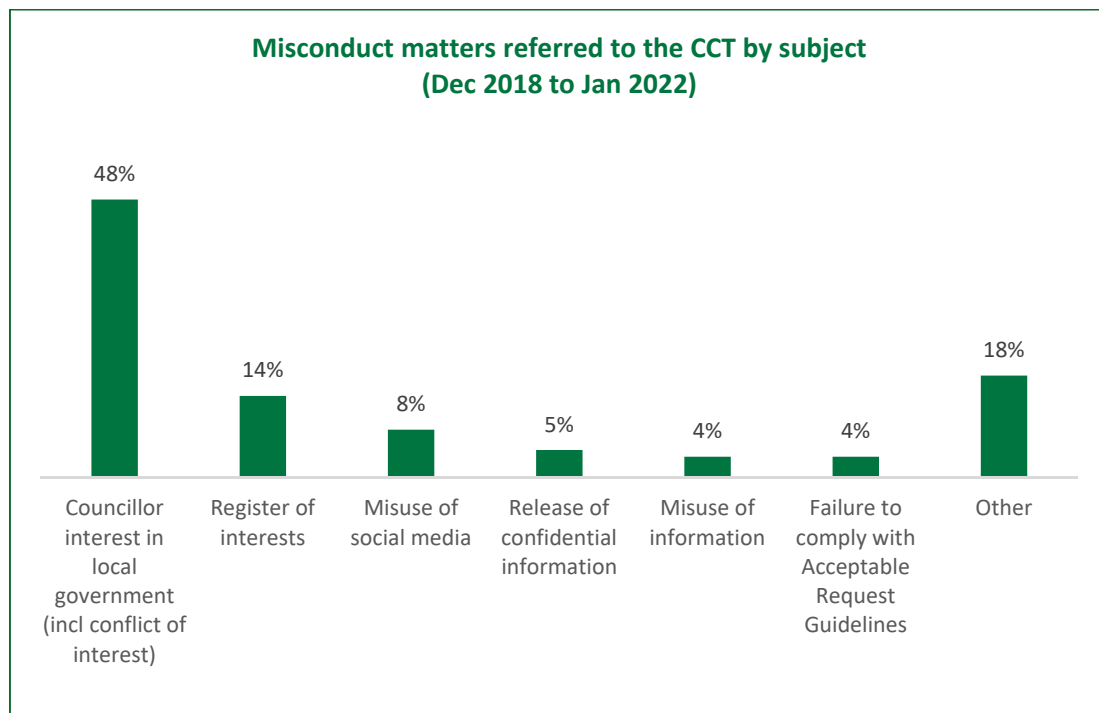
- be suspended from office for a stated period or from performing particular functions of the office
- be dismissed from office.<sup>72</sup>

The CCT also has a limited investigation and reporting function with respect to the investigation of inappropriate conduct complaints, which it undertakes at the request of certain local councils.<sup>73</sup>

## 4.2 Matters under consideration or resolved

In February 2022, the CCT indicated that it had been referred 111 matters by the OIA for determination (85 for misconduct and 26 for inappropriate conduct) since establishment. Of the 111 matters referred, a total of 67 had been finalised, 11 were in progress and 33 remained unallocated.<sup>74</sup>

The CCT's submission categorised the matters referred by the OIA, noting that nearly half related to complaints about councillors' personal interests in local government matters, including conflict of interests at council meetings.<sup>75</sup>



Source: CCT submission 59, Table B.

<sup>72</sup> *Local Government Act 2009*, s 150AR(1).

<sup>73</sup> *Local Government Act 2009*, s 150DL(1).

<sup>74</sup> CCT, submission 59, p 7.

<sup>75</sup> CCT, submission 59, p 8.

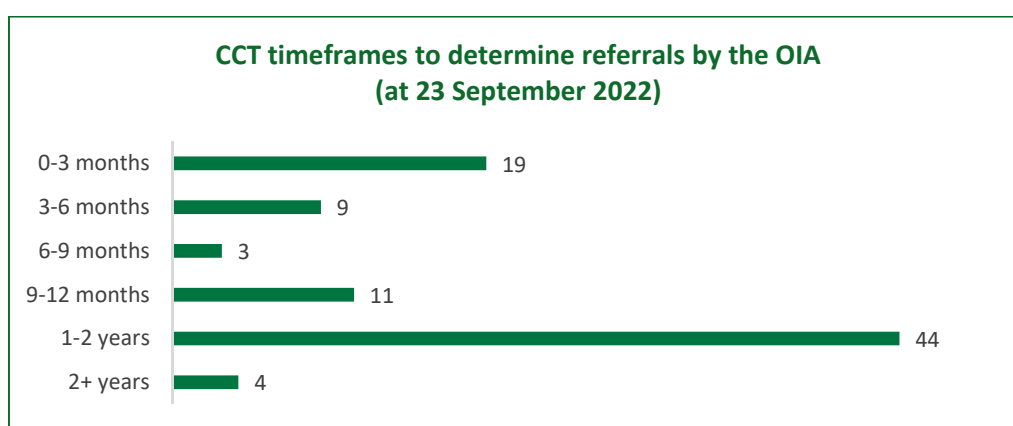
At April 2022, the OIA indicated there were 72 matters involving 33 councillors and 128 allegations before the CCT, which is approximately 4 per cent of all complaints received by the OIA.<sup>76</sup> By September 2022, this had increased to 89 matters involving 45 councillors and 137 allegations.<sup>77</sup>

A desktop review of summary decisions on the CCT website indicated that around 105 (66 per cent) of misconduct allegations were sustained, while the remaining 69 (34 per cent) were not sustained.<sup>78</sup>

The summary decisions show that orders imposed by the CCT include public admissions, financial penalties, training and counselling requirements. **Appendix D** provides further information on the outcome of CCT decisions.

### 4.3 Timeliness

Inquiry hearings clearly identified notable delays by the CCT in processing matters. In September 2022, the OIA reported the timeframe of matters before the CCT was as follows:



Source: OIA, correspondence, 23 September 2022.

In February 2022, the CCT President advised the committee of an 18-month backlog, and that it had progressed only to consider complaints referred by the OIA in June 2020:

At the moment the Tribunal is only up to matters of conduct that occurred in 2020. We have not even reached the misconduct matters of 2021 because of the backlog that the Tribunal has had. I am referring at the moment to the Act that was current in June 2020, and I think there were changes in December 2020. We have not got to any matters in relation to that Act.<sup>79</sup>

The Brisbane City Council also reflected on timeframes associated with inappropriate conduct matters referred to the CCT for investigation:

The volume and resourcing of the Tribunal will understandably impact on the timeframes taken to process complaints, however, in some circumstances, these delays have been unreasonable and may be seen to have an adverse impact on Council's ability to respond appropriately to complaints, as well as causing distress to the parties involved.

<sup>76</sup> Independent Assessor, public hearing transcript, Brisbane, 28 April 2022, p 13.

<sup>77</sup> OIA, correspondence, 14 September 2022, p 8.

<sup>78</sup> Queensland Government, Department of State Development, Infrastructure, Local Government and Planning, Decision Summaries, <https://www.statedevelopment.qld.gov.au/local-government/governance/councillor-conduct-tribunal/decision-summaries>.

<sup>79</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 3.

One example is a matter that was referred to the OIA by Council on or around 15 April 2020 as part of a bulk case handover. This matter was subsequently referred to the Tribunal on 13 July 2020, however, as of 11 November 2021 an outcome had not yet been supplied, resulting in a delay of approximately one year and four months.<sup>80</sup>

#### 4.4 Challenges around resourcing and determining matters

##### 4.4.1 Funding

Funding for the CCT is consolidated into the budget for the department. In 2020-21, the department forecast a total expenditure of \$393,673 for the CCT and associated support costs.<sup>81</sup> Costs recoverable from local councils for investigative services were forecast to be \$85,489 for that same period.<sup>82</sup> Actual fees provided to Tribunal members during the 2021-22 financial year were in the region of \$250,000.<sup>83</sup>

##### 4.4.2 Resourcing

Like the OIA, the CCT President submitted that operational and resourcing challenges were contributing to the backlog of complaints. The CCT President observed:

There exist some understandable teething issues that have arisen. These issues are to some extent to be expected with the implementation of a vastly different reporting and investigation process regarding complaints made about councillor conduct and including the prosecution of those complaints by the investigative body. The establishment of the tribunal also represented a significant change to the previous system and took over those functions, as I mentioned earlier, of the conduct review panels and many of the functions of the Local Government Remuneration and Discipline Tribunal.<sup>84</sup>

The CCT President reported several challenges for the Tribunal's resourcing model, and submitted that it had a direct impact on the CCT's capacity to perform its core functions of hearing and determining matters of misconduct.<sup>85</sup> The CCT President explained:

When we were first established on 3 December, the inaugural tribunal was a president plus six members. That is what we had as our complement in 2018. For various reasons, by August or September... six of those seven members had resigned.<sup>86</sup>

It is very difficult to do this sort of work. It involves a much greater time commitment than it ever did prior to the new system. You have really dedicated members spending a lot of their own time trying to prepare for these cases and then the drafting of the full reasons for decisions. They usually extend from 8,000 words to 16,000 words once you do the full reasons for decision. It is a complicated task. Doing that from your laptop at home without the three members getting together regularly — that is almost impossible because they generally have careers. It is very difficult to coordinate it. In terms of preparation, they do that but that is reflected in the time delays in getting matters out. There was a

---

<sup>80</sup> Brisbane City Council, submission 16, p 3.

<sup>81</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 10.

<sup>82</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 10.

<sup>83</sup> Department of State Development, Infrastructure, Local Government and Planning, *Annual Report 2021-22*, p 56.

<sup>84</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 2.

<sup>85</sup> CCT, submission 59, p 3.

<sup>86</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 2.

backlog of cases arising from those resignations in the first 12 months. There were not sufficient members to complete tasks.<sup>87</sup>

The President suggested that limited accommodation and support staff may also be contributing to a high turnover of CCT members:

The Tribunal does not have its own office or accommodation and has limited support staff. Tribunal members are expected to complete most of their work at home using a departmental laptop. That work often requires members to undertake onerous and time-consuming administrative tasks in addition to the task of resolving complaints and allegations. The lack of resources, amongst other issues, has meant the Tribunal has continued to experience a high rate of member resignations since its commencement. In addition ... the decisions of the Tribunal are subject to review—a full merits review by QCAT—which adds to the complexity and the standard of work required by Tribunal Members.<sup>88</sup>

Remuneration was also identified as an issue. Currently, members of the Tribunal are remunerated at Level 3 of the Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies. This equates to \$325 per 4-hour session for the President, and \$250 per 4-hour session for other members. This is below that awarded under the previous complaints framework.<sup>89</sup>

The broad workload associated with addressing each matter was discussed. The CCT President advised that it can take between 200 to 300 hours to hear cases and that 3 Tribunal members are typically assigned to each case:

A lot of our hearings can be on the documents, so we do not have to go to an oral hearing with witness evidence. In the simpler cases, we have three members involved. Once we get this set up into a hearing and start conducting the hearing and then drafting the full reasons for the decision, which are required by the act, the average time for that appears to be—and I have asked for a selection of cases recently to try to work this out myself—about 200 hours for that panel. That is a simple case, so that is quite a bit of work. In the more complicated cases they have gone up to maybe 300 hours.<sup>90</sup>

Asked about whether any additional support was provided to the CCT to assist in resolving matters, the CCT President confirmed:

No. I have mentioned the resourcing issues, but no. We have an administrative registrar provided by the department of local government, but we have no dedicated appointments to the Tribunal such as associates or legal research officers.<sup>91</sup>

The *Local Government Act* requires that for a hearing about the conduct of a councillor, a panel of at least 2 but not more than 3 members of the CCT be constituted. This can be reduced to one member if dealing with administrative or procedural matters.<sup>92</sup> The CCT President explained why her preference was to appoint 3 members to each panel:

As you know, the tribunal forms panels of three people. We can, in certain circumstances, form a panel of two but that is not my preference as president because if you reach a decision and the members cannot

---

<sup>87</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 3.

<sup>88</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 2.

<sup>89</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 11.

<sup>90</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 6.

<sup>91</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 12.

<sup>92</sup> *Local Government Act 2009*, s 150AM.

agree, which is not uncommon, that panel would have to be reconstituted and the whole matter reheard.<sup>93</sup>

The President of the CCT informed the committee that out of a total of 67 misconduct and inappropriate conduct matters determined to date, there were no more than 4 cases where agreement between the Tribunal Members could not be reached.<sup>94</sup>

The committee also sought to understand whether a Tribunal could be constituted with just one member, thereby freeing up other Tribunal members to determine other cases. The CCT President advised:

I had not thought of that proposal. All I can tell you is that the workload under this arrangement is extensive. There are a lot of manpower hours involved in one matter. If you had just one person writing all those decisions, they would need a lot of resources. They would need legally qualified associates to assist and they probably would not be able to get out 46 case decisions in a 24-month period, which is technically what has happened.<sup>95</sup>

The CCT President also expressed concern that councillors may not be satisfied with such an approach:

I do not know if councillors would be happy with that because it would be just the opinion then of one person. At the moment they have these checks and balances happening with the tribunal, which is what a tribunal is about, so that there is a joint decision on the way the statute is interpreted and the facts of the particular cases.<sup>96</sup>

The CCT President advised that the majority of members on the Tribunal were legally trained and qualified:

I would say that 80 per cent of the tribunal are legally trained and qualified. They are either barristers or experienced lawyers and on other tribunals. That is the problem: they have other competing work needs.

In terms of legal advice, we do seek, through the department of local government. The department of local government provides resourcing to the tribunal to an extent. We can make applications or requests to them to give us advice through Crown Law. However, that is not on a regular basis.<sup>97</sup>

#### **4.5 Queensland Civil and Administrative Tribunal**

Unlike the former complaints framework, any party to a matter has a right to request a review of a CCT decision by the Queensland Civil and Administrative Tribunal (QCAT). These are full-merits reviews where the entire matter is reconsidered. Any party may produce new evidence as part of the process.

In September 2022, the OIA confirmed that 19 matters regarding 12 councillors and involving 31 allegations were before QCAT awaiting review. No hearings had been conducted and the oldest application was over 2 years old.<sup>98</sup>

---

<sup>93</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 4.

<sup>94</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 12.

<sup>95</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 12.

<sup>96</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 12.

<sup>97</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 3.

<sup>98</sup> OIA, correspondence, 14 September 2022, p 8.

The OIA advised that there have been differing views by QCAT member on whether the OIA or the CCT should be the respondent that takes the active role in re-litigating the matter on review; however, most members have taken the view that the OIA should be that party.<sup>99</sup>

The OIA advised that the practical effect is that the OIA initially prosecutes a matter before a panel of 3 CCT members; and if a matter is reviewed, the OIA re-prosecutes the same matter before a single QCAT member.<sup>100</sup>

The OIA submitted that this review process has become a significant resource implication for the OIA and recommended that the *Local Government Act* be amended to remove the right of review from a misconduct finding and replace it with a right of appeal on a point of law.<sup>101</sup>

#### **4.6 Committee comment**

The committee is of the view that structural amendments to the CCT resourcing model are required in order for the Tribunal to operate effectively, and set a strong framework in place to support the determination of misconduct allegations in the future.

We recommend that the President of the CCT be appointed on a full-time basis to drive the Tribunal's performance and put the necessary support measures in place to ensure other Tribunal members are equipped to conduct their business efficiently. A Deputy President should also be appointed on a part-time basis to support this work.

We believe there is an opportunity for more matters to be heard by one tribunal member rather than 3, particularly in cases where a councillor admits fault. We recommend that only complex or serious misconduct cases – where significant penalties could be ordered – should be heard by a panel of 3 members. Legislative amendment will be required to enable this and the tripartite forum is best placed to determine what constitutes a complex or serious misconduct case.

We also believe that there is an over emphasis on a legal structure to resolve what are councillor behavioural issues that result in relatively minor outcomes, and consider that there is opportunity to recruit more tribunal members who do not have a 'legally qualified' background and who have local government management experience.

We understand that the CCT has access to the services of internal departmental legal practitioners and Crown Law advice, and up to now has not drawn significantly on these services. It may be the case that the department dedicate internal legal services to the CCT should the need arise.

The CCT has the power to hear misconduct matters on the papers only under the Local Government Act and we have been advised that it examines the vast majority of cases in this way. We encourage the CCT to keep doing this to promptly and efficiently process their outstanding or unresolved matters.

We also believe there is opportunity to improve communication channels and protocols between the CCT and core stakeholders including those with matters before the tribunal. We are confident that the addition of a full-time President will go some way to addressing this issue.

---

<sup>99</sup> OIA, submission 5, pp 45-46.

<sup>100</sup> OIA, submission 5, p 46.

<sup>101</sup> OIA, submission 5, p 46.

**Recommendation 4**

That the President of the Councillor Conduct Tribunal be appointed on a full-time basis to drive the performance of the tribunal and that a Deputy President be appointed on a part-time basis to support this work.

**Recommendation 5**

That remuneration for Councillor Conduct Tribunal members be increased to Level 2 of the Remuneration Procedures for Part-time Chairs and Members of Queensland Government Bodies.

**Recommendation 6**

That future recruitment for the Councillor Conduct Tribunal members also focus on candidates with high levels of experience in the local government management sector.

**Recommendation 7**

That a dedicated registry office be provided where Councillor Conduct Tribunal members can work, collaborate and conduct hearings.

**Recommendation 8**

That the *Local Government Act 2009* be amended to allow one Councillor Conduct Tribunal member to hear and determine matters such as uncontested or expedited matters, and that a panel of 3 tribunal members continue to hear and determine complex, serious or contested misconduct matters.

**Recommendation 9**

That the Councillor Conduct Tribunal resolve more matters quickly and efficiently, and on the papers, if the matters are not contested or involve an admission of fault.

## **4.7 Publication of decisions**

When the CCT makes a decision about whether a councillor has engaged in misconduct, it is required to keep a written record of the reasons for the decision, and provide a copy of the decision to the Independent Assessor, the local government, the complainant (if applicable) and the subject councillor. Only a decision summary is published on the department's website.<sup>102</sup>

Both the Independent Assessor and the LGAQ proposed legislative amendment to require publication of CCT decisions in full, submitting that it would assist councillors and other primary stakeholders to better understand the effects of the legislation.

The OIA emphasised that having visibility of CCT decisions would be an important element in building the capacity of councillors to identify and avoid misconduct risks and to achieve general deterrence:

Understanding the reasons for a Tribunal decision allows councillors to see how standards are being applied and enforced in different circumstances – and to apply this reasoning to their own circumstances.<sup>103</sup>

---

<sup>102</sup> See for example: <https://www.statedevelopment.qld.gov.au/local-government/governance/councillor-conduct-tribunal/decision-summaries>.

<sup>103</sup> OIA, submission 5, p 44.

The OIA also referred to the value of full decisions for those required to provide written submissions to support cases:

In accordance with Tribunal directions the IA and subject councillors file submissions on fact and law with the Tribunal in relation to all matters. Many matters are decided on the papers after receiving these submissions. In writing submissions, the IA often relies on reasoning of the Tribunal in previous like matters, to promote consistency in decision-making. This however places the subject councillor at a disadvantage because they have access to the summaries only which often omit material relied on by the IA. While the OIA provides a copy of any such decision relied on to the councillor, subject councillors cannot likewise proactively consider and reference previous full decisions.<sup>104</sup>

The department outlined its support for the proposal, advising that it would assist with its role to build capacity within the local government sector as issues would be clearly explained, and appropriate activities could be carried out in response.<sup>105</sup>

The CCT President did not support the proposal, advising that current practices were sufficient, and that such a requirement would add an unnecessary administrative burden:

In the Tribunal's view this [publication of a summary decision] is appropriate and consistent with the principles of transparency and accountability. The Tribunal respectfully submits that such an amendment could place additional administrative burden on Tribunal members as they may be required to ensure the full written reasons in the report and the decisions are comprehensively redacted when allegations are not sustained. There is no requirement for redaction under the current system of any reports as the release of the reports containing the decision and the reasons is limited to those persons stated above.<sup>106</sup>

The CCT also submitted that decisions and the report may also address more than one allegation and in circumstances where some but not all allegations are sustained, the councillor has a legislative protection and right to have their name withheld from publication. This includes the removal of all identifying details throughout the report.<sup>107</sup>

The CCT considered there may be more effective and efficient means of assisting councillors to understand the legislation, in particular through coordinated training, noting: 'The current website summary publication is intended to provide a simple clear analysis of the relevant legislation as it applied to the relevant facts of each matter'.<sup>108</sup>

#### **4.7.1 Committee comment**

The committee supports proposals for the publication of the full decision of the Councillor Conduct Tribunal, not only in the interest of transparency and capacity building for councillors, but also to provide additional insight into how the legislation is being interpreted and whether further adjustments to the framework are necessary.

---

<sup>104</sup> OIA, submission 5, pp 44-45.

<sup>105</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 3 February 2022.

<sup>106</sup> CCT, submission 59, p 5.

<sup>107</sup> CCT, submission 59, p 5.

<sup>108</sup> CCT, submission 59, p 5.

**Recommendation 10**

That the *Local Government Act 2009* be amended to require publication of Councillor Conduct Tribunal decisions in full, subject to appropriate redactions.

**4.8 Need for further practice directions**

The Queensland Law Society submitted that there is a need for better guidance from the CCT President with respect to certain practice and procedures:

Practice directions should continue to be developed in consultation with the OIA, CCT and relevant Council representative groups/QLS committees. We have identified a need for practice directions relating to: a. Timeframes for the filing of material; b. Timeframes for initial directions hearings; and c. Timeframes for the conduct of the hearing.<sup>109</sup>

**4.8.1 Committee comment**

The committee supports proposals for more practice directions. These should be clear and unambiguous. Directions could include those suggested by inquiry stakeholders including: timeframes for the filing of material, directions hearings, and conduct of hearings; or guidelines that provide clarity on the relative seriousness of misconduct cases, and range of appropriate penalty orders.

**Recommendation 11**

That the President of the Councillor Conduct Tribunal develop and issue practice directions, in consultation with relevant stakeholders, to initiate change in practice and promote efficiency in determining matters.

**4.7 Ability to withdraw referrals due to changes in circumstances**

The *Local Government Act* is currently silent on whether the Independent Assessor can withdraw a matter previously referred to the CCT.

In the lead-up to the 2020 local government election the Independent Assessor sought to withdraw 2 matters previously referred to the CCT. These matters involved councillors who had not nominated for the 2020 local government election and the misconduct alleged in both cases was not serious misconduct.

The CCT took the view that the Independent Assessor could not withdraw a matter once referred. To obtain clarification on this point the Independent Assessor referred the decision to the Supreme Court. The Court held that as a matter of statutory interpretation the Independent Assessor did not have the power to revoke or rescind a referral to the Tribunal once made.

The Independent Assessor submitted that ‘it is inevitable that there will, from time to time, arise a change of circumstance which impacts on the public interest in proceeding with a matter’. Examples could include a councillor being convicted of a disqualifying criminal offence, or retiring from local government.<sup>110</sup>

The OIA submitted that continuing with such matters is not the best use of the finite resources of the OIA and the Tribunal and does not contribute to building the capacity of the sector:

---

<sup>109</sup> Queensland Law Society, submission 58, p 4.

<sup>110</sup> OIA, submission 5, p 44.

If the OIA were able to withdraw Tribunal applications where there was a change of circumstance impacting on the public interest in proceeding – this would streamline current processes, improving the efficiency and cost of the councillor complaints system. The effective use of resources is vital as a high volume of councillor conduct complaints is currently causing delays in the prosecution and finalisation of matters.<sup>111</sup>

The CCT held a different view, submitting that when the issue was considered by the Supreme Court of Queensland, it was determined that the Independent Assessor was *unable* to interfere with the jurisdiction of the Tribunal. However, the Independent Assessor could make an application to the Tribunal to seek leave to withdraw the matters.

The CCT President advised that this process is consistent with the local government principles. However, she suggested that consideration of an amendment to section 150AL of the *Local Government Act*, which provides that the Tribunal *must* conduct a hearing, may be beneficial. The CCT President suggested that the Tribunal could be provided with discretion to summarily dismiss or discontinue matters in the public interest or for other exceptional circumstances.<sup>112</sup>

#### 4.7.1 Committee comment

The committee agrees that the *Local Government Act* should be amended to enable both the Independent Assessor and the Councillor Conduct Tribunal to withdraw referrals or discontinue the determination of matters in the public interest.

#### Recommendation 12

That the *Local Government Act 2009* be amended to provide that the Independent Assessor can withdraw a referral to the Councillor Conduct Tribunal, and that the Councillor Conduct Tribunal can decide to discontinue hearing a matter in the public interest.

#### 4.8 Orders relating to former councillors

The *Local Government Act* states that the councillor conduct system still applies to a former councillor where allegations involve conduct that occurred when they were a councillor.<sup>113</sup> However, the OIA submitted that an issue of enforceability of CCT orders can arise in relation to former councillors.

Under the current legislation, if the CCT makes an order against a person who is no longer a councillor (for conduct engaged in when they were a councillor) and the person disregards the orders, the OIA has no jurisdiction to take appropriate action. The OIA recommended legislative reform to address this matter.<sup>114</sup>

The LGAQ gave qualified support to the proposal, stating:

Where a former councillor is properly the subject of disciplinary proceedings (allowing for any legislative limitations on proceedings relating to former councillor conduct) and is the subject of an appropriate order in accordance with the LG Act, we support provision for requiring compliance with Councillor Conduct Tribunal orders.<sup>115</sup>

---

<sup>111</sup> OIA, submission 5, p 44.

<sup>112</sup> CCT, submission 59, p 4.

<sup>113</sup> *Local Government Act 2009*, s 150M.

<sup>114</sup> OIA, submission 5, p 46.

<sup>115</sup> LGAQ, submission 51, p 27.

## 4.9 Notice provided to parties

The *Local Government Act* requires that a copy of the application to the CCT must be given to the subject councillor. The copy must include the day, time and place of the CCT hearing and the OIA must take all reasonable steps to give the copy to the councillor at least 7 days prior to the hearing.<sup>116</sup>

The OIA submitted that at the time of making the application to the CCT, it is not aware of the details of the hearing as this is the responsibility of the CCT. The OIA submitted that this results in a duplicative process whereby the OIA provides councillors with a copy of the application at the time the application is made; the CCT issues directions following receipt of an application that state a hearing date is to be provided; and the OIA issues further correspondence with the details of the hearing, once advised by the CCT, to ensure compliance with the legislation.<sup>117</sup> The OIA recommended that the legislation be amended accordingly.

The LGAQ supported the proposal but added that it did not consider the 7 days provided by the legislation to be sufficient. The LGAQ called for the notice be provided at least 21 days, if not 28 days in advance of the hearing.<sup>118</sup>

### 4.9.1 Committee comment

The committee agrees that the proposal to amend section 150AK is appropriate as it would remove duplication and inefficiency in process.

The committee is sympathetic to calls from the LGAQ for the timeframe to be extended beyond 7 days. That said, the proposal needs to be considered within the context of efforts to improve the timely resolution of complaints.

#### Recommendation 13

That the *Local Government Act 2009* be amended to require the Councillor Conduct Tribunal to provide a subject councillor with hearing details at least 14 days in advance of the hearing.

## 4.10 The use of the Councillor Conduct Tribunal to investigate inappropriate conduct cases

The *Local Government Act* provides that the CCT can investigate matters in relation to inappropriate conduct complaints, which it undertakes at the request of certain local councils.<sup>119</sup>

### 4.10.1 Committee comment

The committee was surprised to learn that some councils, including Brisbane City Council and, to a lesser extent, the Gold Coast City Council, utilise the CCT to conduct external investigations and provide recommendations on inappropriate conduct matters for the councils, as allowed for under the *Local Government Act*. Local councils may also adopt an investigation policy which includes allowing the council to ask the President of the CCT to investigate and make recommendations regarding the allegations.<sup>120</sup> These are low level behavioural matters that result, more often than not, in an educative sanction or apology.

<sup>116</sup> *Local Government Act 2009*, s 150AK.

<sup>117</sup> OIA, submission 5, p 43.

<sup>118</sup> LGAQ, submission 51, p 10.

<sup>119</sup> *Local Government Act 2009*, s 150DL(1).

<sup>120</sup> *Local Government Act 2009*, s 150AE.

Given the workload endured by the CCT and the issues of timeliness associated with processing cases, and the availability of external investigation services to the councils, the committee believes it is more appropriate if the CCT does not undertake relatively minor councillor behaviour investigations.

**Recommendation 14**

That the *Local Government Act 2009* be amended to remove the ability for the Councillor Conduct Tribunal to provide investigation services for inappropriate conduct matters for councils.

## 5 Inappropriate conduct

Inquiry participants widely canvassed the need for improvements to the inappropriate conduct component of the councillor complaints system. It was widely agreed that all councils are not processing these complaints according to the intent of the legislation, and some stakeholders have offered solutions.

### 5.1 Defining inappropriate conduct

Inappropriate conduct is a lower level conduct issue. The *Local Government Act 2009* (*Local Government Act*) defines inappropriate conduct as conduct that:

- contravenes a behavioural standard (the Code of Conduct)
- contravenes a policy, procedure or resolution of the local government
- contravenes an order of the chairperson of a council meeting to leave and stay away
- is part of a course of conduct that leads to orders for the councillor's unsuitable meeting conduct being made 3 times in one year.<sup>121</sup>

### 5.2 How complaints are assessed

Under the *Local Government Act*, the Office of the Independent Assessor (OIA) is responsible for assessing allegations of suspected inappropriate conduct other than those arising from unsuitable meeting conduct. Unsuitable meeting conduct should be dealt with by a chairperson at a council meeting.<sup>122</sup>

The OIA does not have the power to investigate inappropriate conduct. However, to reduce the number of referrals to the local government, the OIA will undertake a preliminary assessment to ascertain whether the complaint has substance and whether or not it can actually be resolved (for example, was there a witness to the allegation).<sup>123</sup>

If the OIA suspects the alleged conduct is inappropriate conduct it will undertake a natural justice process which involves asking the councillor in question for their side of the complaint. This is achieved through issuing a section 150AA notice. This process must occur before the OIA can refer a complaint to the local government.<sup>124</sup>

Under the *Local Government Act*, the notice must set out the nature of the allegations and provide an opportunity for the councillor to respond, including providing reasons as to why the Independent Assessor should not refer the matter to the local government for consideration.<sup>125</sup>

After considering the councillor's response, the OIA will determine whether it still suspects inappropriate conduct, and if so, the complaint will be referred to the relevant council to investigate and resolve.<sup>126</sup>

---

<sup>121</sup> *Local Government Act 2009*, s 150K.

<sup>122</sup> *Local Government Act 2009*, s 150I.

<sup>123</sup> OIA, submission 5, p 15.

<sup>124</sup> OIA, submission 5, pp 15-16.

<sup>125</sup> OIA, submission 5, p 16.

<sup>126</sup> OIA, submission 5, p 16.

In 2021-22, the OIA received 347 inappropriate conduct complaints. Of these, section 150AA notices were issued on 60 complaints; and after considering these responses, 40 of these complaints were ultimately referred back to the local government to determine.<sup>127</sup>

When referring a matter to the local government, the OIA may make a recommendation as to how the matter is to be processed. This could include an acknowledgement of fault or a training response. The OIA advised that when the complaint involves a mayor or when it is made by one councillor against another, the OIA will recommend the council use external investigators.<sup>128</sup>

The issue that arises from this point is how the council responds to the referral from the OIA. It is at the discretion of the local government as to when, how, or even if they process the inappropriate conduct matter.

### **5.3 Role of the local government in inappropriate conduct matters**

Under the *Local Government Act* all local governments must adopt, by resolution, an investigation policy (policy) about how it will deal with inappropriate conduct cases referred by the OIA.

The policy must address factors such as how the complaint will be investigated and when an external investigator will be appointed. The policy must be consistent with the principles of natural justice and require councillors and persons who make complaints to be given notice about the outcome of the investigations.<sup>129</sup>

A local government must investigate the councillor's conduct in a way that is consistent with any recommendation of the Independent Assessor and the local government's investigation policy.

Under the *Local Government Act*, the investigation policy may allow the local government to ask the president of the Councillor Conduct Tribunal (CCT) to investigate a matter and make recommendations to the local government about dealing with that matter. Where this occurs, the local government must pay back costs incurred by the CCT.<sup>130</sup>

After conducting an investigation the local government must decide whether or not the councillor has engaged in inappropriate conduct, and if so, the appropriate disciplinary action.

Possible disciplinary measures that the council may take are set out in the *Local Government Act* and include:

- An order that no action be taken against the councillor
- An order that the councillor do one or more of the following:
  - make a public admission that they have engaged in inappropriate conduct
  - be reprimanded for the conduct
  - attend training or counselling, including at the councillor's expense
  - be excluded from a stated local government meeting

---

<sup>127</sup> OIA, correspondence, 23 September 2022, p 10.

<sup>128</sup> OIA, submission 5, p 16.

<sup>129</sup> *Local Government Act 2009*, s 150AE.

<sup>130</sup> Department of State Development, Infrastructure, Local Government and Planning, *Analysis of the implementation of the Councillor Conduct Complaints Framework*, March 2021, p 10.

- be removed, or must resign, from a position representing the local government, other than the office of councillor
- that if the councillor engages in the same type of conduct again, it will be treated as misconduct
- reimburse the local government for all or some of the costs arising from the councillor's inappropriate conduct.<sup>131</sup>

#### **5.4 Support measures in place for local governments**

There are several measures in place to support local governments undertake their responsibilities in determining inappropriate conduct matters. The Department for State Development, Infrastructure, Local Government and Planning (the department) has prepared an example 'Investigation Policy' which includes processes for councils to manage, process, resolve and report inappropriate conduct complaints.<sup>132</sup>

The department has also developed Model Meeting Procedures (procedures) for councils which include a process for dealing with inappropriate conduct complaints at council meetings. The procedures require that complaints be dealt with in a transparent and accountable way, that any conflicts of interests be managed appropriately, and that the process be consistent with natural justice principles.<sup>133</sup>

The OIA also submitted that it had undertaken several activities to support the sector including the identification of a panel of possible external investigators, and conducting workshops with panel members so as to facilitate a universal approach to investigations.<sup>134</sup>

#### **5.5 Issues in finalising inappropriate conduct complaints**

Evidence to the inquiry clearly indicated that some local councils are struggling to finalise referrals from the OIA.

The OIA advised in December 2021, only 53 per cent of matters referred to the local councils by the OIA had been resolved. This was a notable improvement from 2019-20, during which only 15 per cent of referrals were reported as being finalised.<sup>135</sup>

The OIA advised that it was aware of at least one council that had taken no action in response to inappropriate conduct matters referred back to it.<sup>136</sup>

Inquiry participants made several observations as to why this might be the case. The OIA submitted that while some councils have 'dealt with inappropriate conduct openly, objectively and fairly,' many

---

<sup>131</sup> *Local Government Act 2009*, s 150AH.

<sup>132</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 3 February 2022, p 2. The investigation policy is available on the department's website.

<sup>133</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 3 February 2022, p 2.

<sup>134</sup> OIA, submission 5, p 16.

<sup>135</sup> OIA, submission 5, p 16.

<sup>136</sup> OIA, submission 5, p 37.

councils have expressed ‘concerns about councillors sitting in judgment of their peers and their reluctance to substantiate a conduct allegation against another councillor’.<sup>137</sup>

Challenges associated with accessing relevant information were also identified:

There are some instances where complaints are submitted to the OIA for alleged inappropriate conduct that occurred over 18 months ago. In many of these circumstances it is difficult to gather the relevant information or locate the appropriate people involved in the matter. It should be noted that this continuity of information is more challenging in regional or remote local governments that experience high staff turnover meaning that in many cases the corporate memory can be weak.<sup>138</sup>

Furthermore, issues relating to council alliances were identified as councillors who belong to a voting block appear less likely to be found to have engaged in inappropriate conduct than someone who is on the political outer.<sup>139</sup>

Councillors from Brisbane City Council also reflected on the process where inappropriate conduct matters are routinely referred to the CCT for investigation in an effort to promote bipartisan decision making:

Regrettably, the politicisation of this process, as foreseen, has come to pass. In cases of alleged inappropriate conduct, the CCT is now only providing a recommendation of guilt/innocence. The decision as to what appropriate punishment should be made is being left to the Ethics Committee councillors.<sup>140</sup>

The difficulty the Ethics Committee members now find themselves is the perception that they are ‘judge, jury and executioner’ in the final stage of the process. In a party-political Council, the majority party is always open to claims of partisan decision making, regardless of the party membership of the Councillor facing the allegation.<sup>141</sup>

The OIA submitted that concerns about the process had also been expressed by members of the community, noting that it was not unusual for complaints to be withdrawn if they are referred back to local government to deal with.<sup>142</sup>

The LGAQ submitted that its preferred position was for inappropriate conduct complaints not to be referred to the council, as this was a significant departure from the previous regime which required the mayor (not the council) to deal with such allegations.<sup>143</sup>

## 5.6 Investigation costs

Several local governments expressed concerns around the costs of investigating inappropriate conduct complaints.

One example was provided by the Mayor of the City of Gold Coast who advised that since the new arrangements were introduced, only 9 of the 167 complaints against Gold Coast Councillors had been

---

<sup>137</sup> OIA, submission 5, p 36.

<sup>138</sup> David Keenan, submission 25, p 4.

<sup>139</sup> OIA, submission 5, p 36.

<sup>140</sup> Cr Adam Allan, submission 29, p 1.

<sup>141</sup> Cr Adam Allan, submission 29, p 2.

<sup>142</sup> OIA, submission 5, p 37.

<sup>143</sup> LGAQ, submission 51, p 10.

upheld following referral to Council for a final decision. This had come at an estimated cost of \$200,000 to the OIA and the council.<sup>144</sup> The Mayor submitted:

Ultimately none of the complaints were upheld and when you look at the nature of the complaints you can only conclude that they have been an appalling waste of time and money given that the complaints were about, inter alia: A Councillor using the word "frivolous" in the incorrect context during a media conference; Facebook blocking; Incorrect moderation of a Councillor's Facebook page; and The Mayor saying "I don't know what they're smoking" in relation to a cohort of complainants during a media conference.<sup>145</sup>

... the \$200,000 spent investigating and determining the complaints have provided absolutely no return for the Gold Coast or Queensland. I look at this as approximately ten extra shade sails that I could have installed in parks across the City to protect and enhance the amenity of Gold Coast families and in that context, I resent the waste of money.<sup>146</sup>

However, the OIA has pointed out that 12 inappropriate conduct matters have been referred back to the Gold Coast City Council since 3 December 2018, not 167, and 10 of those matters were dismissed by the council.<sup>147</sup>

Similarly, the CEO of Mount Isa City Council advised that some \$200,000 has been spent on complaints matters, including investigators, lawyers, reviewers, and staff time.<sup>148</sup> The CEO explained the costs further:

External investigators and lawyers on legal advice, going through making sure we respond to the reports that have been put in by not just the OIA but other agencies as well such as the CCC.<sup>149</sup>

Similar concerns were raised by other councils which reported investigation costs into the tens of thousands of dollars.<sup>150</sup>

The OIA advised that best indications suggested that external investigations were costing councils between \$600 and \$9,000 per matter.<sup>151</sup>

To address this, some inquiry participants suggested that the Independent Assessor be provided with more discretion to take no further action in certain inappropriate circumstances, to ensure that local governments do not become 'bogged down' with investigations about minor matters.

It was also suggested that in certain cases, a simple letter could be sent to the councillor advising that the OIA has received a complaint but will not expend resources on the matter because the initial assessment is that it is minor in nature. This would bring the matter to the councillor's attention and save significant resources.<sup>152</sup>

---

<sup>144</sup> City of Gold Coast, submission 28, p 2.

<sup>145</sup> City of Gold Coast, submission 28, p 3.

<sup>146</sup> City of Gold Coast, submission 28, p 5.

<sup>147</sup> OIA, correspondence, 23 September 2022.

<sup>148</sup> D Keenan, public hearing transcript, Mount Isa, 2 March 2022, p 14.

<sup>149</sup> D Keenan, public hearing transcript, Mount Isa, 2 March 2022, p 14.

<sup>150</sup> Cr David Clifton, public hearing transcript, Cairns, 1 March 2022, p 20; Mayor Greg Christensen, public hearing transcript, Southport, 21 March 2022, p 13.

<sup>151</sup> OIA, submission 5, p 38.

<sup>152</sup> City of Gold Coast, submission 28, p 5.

Another suggestion included increasing the threshold of inappropriate behaviour through definition or creating a more prescriptive Code of Conduct. It was also suggested that current requirements around the mandatory referral of complaints to the assessor be relaxed for inappropriate conduct matters, potentially allowing a level of assessment by the CEO or delegate, noting that the complainant still has the option for a direct referral should they be dissatisfied with a non-referral assessment decision.<sup>153</sup>

## 5.7 Committee comment

It is important to remember that inappropriate conduct matters are lower level conduct matters, and not complaints about corrupt or criminal conduct. The committee believes the framework for the inappropriate conduct system is sound, but that it is not used well by the local government sector and councils are displaying many different approaches to dealing with inappropriate conduct matters.

The legislation creates a clear process that keeps all parties informed of the progress of an inappropriate conduct complaint. For example, the OIA is required to notify the councillor when a matter has been referred.<sup>154</sup>

The OIA has noted that the system is not working as intended as councillors will not sit in judgment of their peers. The OIA and others have suggested that inappropriate conduct matters should remain with the OIA to investigate and decide. However, the committee is of the opinion, along with the department, that such complaints should remain with councils to resolve.

We believe councils can deal with inappropriate conduct matters, and it needs to be emphasised that it is a council's legislative responsibility to resolve such matters.<sup>155</sup> Nevertheless, the committee believes the OIA can further assist councils to fulfil this responsibility by actively issuing recommendations on how individual matters can be progressed by the council when the matter is referred back to them.

Councils have the authority to outsource the investigation of an inappropriate conduct matter in accordance with their investigation policy, should it be required.<sup>156</sup> The department has also issued a template policy for the investigation of inappropriate conduct matters.

We believe there is opportunity to reduce duplication in process. Currently, in practice, the OIA will complete a natural justice process prior to referring a matter to the local government for consideration. The local council will then conduct another natural justice process as part of, or following, an investigation into the matter. The committee strongly supports natural justice processes occurring as part of the inappropriate conduct process but feel it is unnecessary to conduct this process twice for what is essentially a lower level conduct matter.

We have therefore recommended that the requirement for the OIA to undertake a natural justice process prior to referring a matter back to council be removed. In doing this we offer strong guidance to local councils to undertake a natural justice process as a first step, in considering inappropriate conduct matters.

---

<sup>153</sup> City of Gold Coast, submission 28, pp 2-3.

<sup>154</sup> *Local Government Act 2009*, s 150AD.

<sup>155</sup> *Local Government Act 2009*, ss 150AF and 150AG.

<sup>156</sup> *Local Government Act 2009*, s 150AE.

We have also recommended that the department provide targeted training to councils that are labouring to meet their councillor conduct obligations. If a council does not accept the need for professional development, or co-operate in delivering this training, this should be reflected in the department's annual report.

The committee understands how important reputation is for a local councillor. Nevertheless, local governments are claiming they spend thousands of dollars to investigate lower-level conduct complaints where the disciplinary action is no more than an admission of fault and a public apology. This is clearly not the intent, or a requirement of the system.

The committee recommends that the department review its model inappropriate conduct investigations policy to ensure alignment with the recommendations accepted in this report. We also recommend that all local governments review their inappropriate conduct investigations policy and processes to ensure that matters are resolved expeditiously.

The committee is also of the view that steps should be taken to increase the transparency of the inappropriate conduct process. This includes publishing reports of external investigators (as appropriate) and ensuring that local communities are aware of how their councils are processing inappropriate conduct matters. It may be the case that the *Local Government Act* needs to be amended to enable the OIA to 'follow up' any unresolved inappropriate conduct issues with councils.

In short, the capacity of councils to deal with inappropriate conduct needs to be developed.

**Recommendation 15**

That the *Local Government Act 2009* be amended to require local governments to publish in their annual reports the number of inappropriate conduct matters referred by the Office of the Independent Assessor, the number of referrals that have been addressed and the average time taken to resolve the matter.

**Recommendation 16**

That the Independent Assessor publish information on the number of matters referred to local government for resolution, the number reported back to the Independent Assessor by the local government as being resolved by local governments, and the number of matters that are currently unresolved or not reported.

**Recommendation 17**

That the *Local Government Act 2009* be amended to remove the requirement for the Office of the Independent Assessor to conduct the section 150AA natural justice deliberation for inappropriate conduct matters as this process is duplicated by the local government on referral.

**Recommendation 18**

That the Department of State Development, Infrastructure, Local Government and Planning review its model inappropriate conduct investigations policy to ensure alignment with the recommendations accepted in this report, and that all local governments review their inappropriate conduct investigations policy and processes to ensure matters are resolved expeditiously.

**Recommendation 19**

That reports of external investigators appointed by local governments to consider substantiated inappropriate conduct matters be published by the local government with appropriate redactions.

### **Recommendation 20**

That the Department of State Development, Infrastructure, Local Government and Planning identify councils that are struggling to meet their obligations in relation to inappropriate conduct complaints, and provide targeted training.

## **5.8 Should a central body determine inappropriate conduct matters?**

Several inquiry participants suggested that allegations of inappropriate conduct be determined by a central entity.

The OIA suggested that a central body could assess and investigate inappropriate conduct matters, thereby removing duplication, improving consistency in approach and ensuring that the complaint is handled in a proportionate manner.<sup>157</sup>

The OIA submitted that such a scheme could ultimately reduce investigation costs, which could then be recovered from the local government. The OIA also suggested that disciplinary orders could be modified to include measures such as formal mentoring which could have a significant positive impact in building capacity across the sector.<sup>158</sup>

There was some support among inquiry participants for a centralised approach.<sup>159</sup> However, some stakeholders, including the LGAQ, did not consider the OIA as a viable candidate for this central authority due to resourcing constraints.<sup>160</sup>

Towards the end of the inquiry, the committee received a recommendation from Mount Isa City Council of a peer-to-peer based Councillor Conduct Review Panel. It is understood that the proposal will be brought to the 2022 LGAQ annual conference. Advocates suggested that the Queensland Government consider establishing a central pool of mayors and deputy mayors from which a panel of members (possibly neighbouring councillors) could be selected to consider inappropriate conduct complaints.<sup>161</sup>

Several potential benefits were identified including reduced timeframes for complaint resolution and reduced costs to councils, as well as opportunity to develop the skills of mayors and deputy mayors which could be taken back to their respective councils.<sup>162</sup>

It was suggested that members of the panel could conduct interviews with the subject councillor, other individuals where necessary, and obtain information from the council's CEO. The panel would provide its recommendations to the OIA, and the local government in a report within 30 days. It would then be a matter for the council to accept, or not, any recommendations made by the panel. It was proposed that panel members would not receive any remuneration for this work and that any legal advice would be paid for by the local authority.<sup>163</sup>

---

<sup>157</sup> OIA, submission 5, p 37.

<sup>158</sup> OIA, submission 5, p 37.

<sup>159</sup> SEQ Community Alliance, submission 40, p 2; Brisbane Residents United, submission 41, p 4.

<sup>160</sup> LGAQ, submission 51, p 25.

<sup>161</sup> Ordinary Council Meeting Agenda, Mount Isa City Council, 20 July 2022.

<sup>162</sup> Ordinary Council Meeting Agenda, Mount Isa City Council, 20 July 2022.

<sup>163</sup> Ordinary Council Meeting Agenda, Mount Isa City Council, 20 July 2022.

The committee did not receive any evidence that there would be a barrier that would limit an individual council in implementing such a proposal.

#### **5.8.1 Committee comment**

The committee's view is that a model with a central inappropriate conduct scheme authority should not be applied across the local government sector. It is important that councils develop maturity in decision-making that enables them to address inappropriate conduct complaints as part of its everyday business.

In regard to the proposal from Mount Isa City Council, the committee believes there is nothing preventing councils adapting this as part of their inappropriate conduct investigations policy. Indeed, implementing this proposal would build the capacity of local councils when processing inappropriate conduct matters and would be cost effective.

## 6 Misconduct

The misconduct component in the councillor complaint system has been the source of some trepidation among stakeholders and has driven fear in engaging with the system.

### 6.1 What is misconduct

Misconduct is defined in the *Local Government Act 2009* (*Local Government Act*) as:

- conduct that adversely affects the honest and impartial performance of functions and powers
- a breach of trust placed in a councillor through:
  - misuse of information or material acquired in, or in connection with, the performance of the councillor's functions
  - a breach of the acceptable request guidelines of the local government
- failure to notify the OIA about the conduct of another councillor
- failing to declare a prescribed conflict of interest
- influencing a decision-maker when a councillor has a prescribed or declarable conflict of interest
- a councillor giving directions to local government staff
- a councillor releasing information that is confidential to the local government
- a failure by a councillor to update or correct their register of interests.<sup>164</sup>

### 6.2 Assessing and investigating complaints of misconduct

The OIA will investigate complaints of alleged misconduct where preliminary inquiries indicate that there is a reasonable suspicion of misconduct or where further enquiries are required to determine this. Investigations may also be undertaken to examine some of the complex factual and legal issues that can arise in such complaints.<sup>165</sup>

The OIA advised that investigations vary from relatively simple matters that can be finalised quickly to those that are factually and legally complex, requiring substantial time and resources.<sup>166</sup> Investigations are prioritised on the seriousness of the allegation, the potential impact of the conduct, evidence preservation and whether it was referred by the Crime and Corruption Commission. Otherwise, investigations are undertaken in date order.<sup>167</sup>

The OIA may recommend training, rather than disciplinary action, when systemic issues are identified. Investigations are then parked until the councillors complete the relevant training and the matters are then dismissed or subject to no further action.<sup>168</sup>

The *Local Government Act* provides that if the OIA is reasonably satisfied the councillor's conduct is 'misconduct', it will make an application to the CCT.

---

<sup>164</sup> *Local Government Act 2009*, s 150L.

<sup>165</sup> OIA, submission 5, p 17.

<sup>166</sup> OIA, submission 5, p 17.

<sup>167</sup> OIA, submission 5, p 18.

<sup>168</sup> OIA, submission 5, p 18.

### 6.3 Natural justice

The OIA legal team will undertake a natural justice process as required by the *Local Government Act* to ensure a fair process.

A notice under section 150AA of the *Local Government Act* provides the councillor who is the subject of a complaint with a statement of facts that sets out the allegation or allegations and the facts that have been gathered as part of the investigation. The statement of facts also clearly sets out how the alleged conduct may constitute misconduct.<sup>169</sup>

The councillor is invited to make a submission stating their position in response to the notice, and it must be considered by the OIA. Following this consideration, a decision may be made to refer the matter or matters to the CCT, or make amendments, such as removing one or more allegations for which a reasonable satisfaction of misconduct no longer exists.

Alternatively, the OIA may decide to dismiss the entire matter or take no further action at that time. Since the OIA was established, this has occurred on approximately 50 occasions after the councillor has provided a response to the allegations raised in the natural justice process.<sup>170</sup>

If a matter is referred to the CCT, the natural justice process can assist to narrow the issues that may be in dispute. For example, a councillor may accept the facts but dispute that they amount to misconduct. The threshold for referral is a reasonable satisfaction that a councillor has engaged in misconduct. Some of the factors considered include whether it is in the public interest to refer the matter to the CCT and whether there are reasonable prospects of the allegation or allegations being sustained.<sup>171</sup>

### 6.4 Outcomes and costs of misconduct investigations

The OIA reported that since establishment to 30 June 2022, a total of 1,020 misconduct investigations had commenced, of which 940 had been finalised.<sup>172</sup>

**OIA Misconduct Investigations (at 30 June 2022)**

	2018-19 (7 months)	2019-20	2020-21	2021-22	Establishment to 30 June 2022
<b>Complaints received</b>	824	1030	1075	881	<b>3,810</b>
<b>Total no. of misconduct investigations commenced</b>	311	240	314	155	<b>1,020</b>
<b>Total no. of investigations finalised</b>	168	284	198	290	<b>940</b>

Note: Increased number of investigations in 2020-21 due to Brisbane City Council being added to OIA jurisdiction.

<sup>169</sup> OIA, submission 5, p 19.

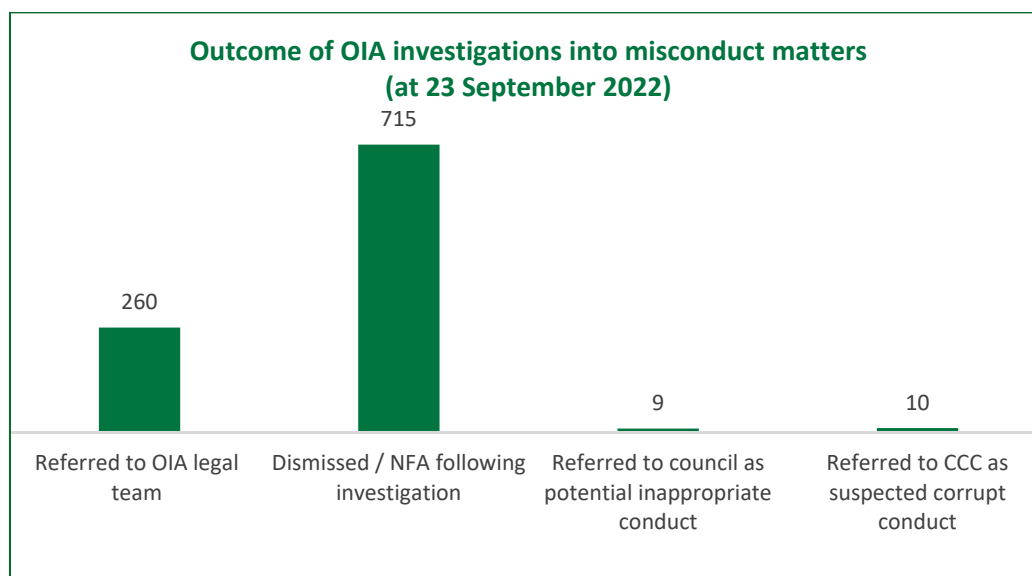
<sup>170</sup> OIA, submission 5, p 19.

<sup>171</sup> OIA, submission 5, p 19.

<sup>172</sup> OIA, correspondence, 14 September 2022.

Over 715 of these investigations resulted in the complaint being dismissed or having no further action taken by the OIA. If a decision is taken to dismiss or take no further action on a matter after investigation, the complainant and councillor are provided detailed reasons for this decision.<sup>173</sup> The OIA's discretion to dismiss or take no further action on a matter provides a mechanism to manage the number of matters that progress to the OIA legal team.<sup>174</sup>

The outcome of these investigations, including decisions to dismiss or take no further action, is set out in the graph below.<sup>175</sup>



Source: OIA, correspondence, 23 September 2022, p 21.

The OIA reported the average cost of a misconduct investigation was \$2,704. This is significantly lower than figures in the Solomon Review, which found a council could incur costs of around \$30,000-\$50,000 for a misconduct investigation if it was outsourced to an external investigator.<sup>176</sup>

#### 6.4.1 Committee comment

The committee believes councillors are struggling with the issue or definition of misconduct. Characterisation of misconduct by stakeholders impacts on their perception of the fairness or effectiveness of the councillor complaints system. Specifically, councillors feel it is a term akin to corruption, with one councillor saying 'the perception of misconduct is that something really bad has transpired – you are actually taking brown paper bags of money'.<sup>177</sup>

This characterisation of misconduct affects the timely resolution of issues, as councillors will want to argue the matter because of how they and others perceive misconduct. An aspect driving the fear of misconduct action in the councillor complaint system is that one of the consequences of a misconduct finding is removal of a councillor.

<sup>173</sup> OIA, submission 5, p 19.

<sup>174</sup> OIA, submission 5, p 19.

<sup>175</sup> OIA, submission 5, p 18.

<sup>176</sup> OIA, submission 5, p 18.

<sup>177</sup> Mayor Greg Campbell, public hearing transcript, Mount Isa, 2 March 2022, p 10.

The committee believes it is important that the OIA communicate as early as possible to the councillor as to what actions or penalties they may face for inappropriate conduct or misconduct findings in the councillor conduct complaint system.

Even the language surrounding misconduct heightens the fear and apprehension of misconduct in the councillor complaint system. Under the legislation, the OIA must *investigate* councillor complaints, it may initiate an *investigation* and has *investigative powers*. Councillors hear that their complaint has been referred to *OIA Legal* – an internal team within the organisation.<sup>178</sup> However, equal emphasis needs to be placed on the less intimidating process of assessment.

#### **Recommendation 21**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make it clear that dismissal of councillors for misconduct should and will only be considered in the most serious of circumstances or repeated breaches of expected standards of behaviour.

#### **Recommendation 22**

That the Office of the Independent Assessor, Councillor Conduct Tribunal and other parties inform relevant councillors of the potential penalties of a finding of misconduct as early as possible in the process.

### **6.5 Acceptable request guidelines**

Acceptable request guidelines provide instructions for councillors who ask local government employees for assistance or for information to help the councillor carry out his or her responsibilities under the *Local Government Act*. It also places reasonable limits on requests by councillors.<sup>179</sup>

Under the *Local Government Act*, councils are required to adopt, by resolution, acceptable request guidelines. There is no template or model for acceptable requests guideline produced by the department, so there is no consistency on these guidelines between councils. Breaches of a council's acceptable requests guidelines were added to the definition of misconduct in 2018.<sup>180</sup>

The OIA submitted that a breach of the acceptable request guidelines should not be a category of misconduct, but rather potential inappropriate conduct. The OIA recommended legislative amendment to allow greater flexibility for these matters to be dealt with as inappropriate conduct.<sup>181</sup>

#### **6.5.1 Committee comment**

Acceptable request guidelines are an internal mechanism by councils that govern the allocation of council resources to support councillors in their work. The committee agrees with the recommendation by the OIA that breaches of acceptable request guidelines be a category of inappropriate conduct, except in serious circumstances.

The OIA should have the discretion to refer matters involving breaches of acceptable request guidelines to local councils for resolution if it sees fit. We believe that the tripartite forum is best placed to develop a shared and agreed definition of what constitutes a serious circumstance.

<sup>178</sup> *Local Government Act 2009*, ss 150T, 150U and 150V.

<sup>179</sup> OIA, submission 5, p 38.

<sup>180</sup> *Local Government Act 2009*, s 150L(1)(c)(ii); OIA, submission 5, p 38.

<sup>181</sup> OIA, submission 5, p 38.

However, it is envisaged that examples of serious breaches of acceptable request guidelines could include requests regarding the assessment or approval of development applications, or the awarding or management of council contract arrangements.

#### **Recommendation 23**

That the *Local Government Act 2009* be amended so that a breach of a council's acceptable request guidelines is not a category of misconduct except in serious circumstances.

### **6.6 Discretion to refer and redirect lower-level misconduct matter elsewhere**

The OIA proposed that the *Local Government Act* be amended to grant the Independent Assessor the statutory discretion to refer allegations of lower-level misconduct to be dealt with as inappropriate conduct, in appropriate circumstances.<sup>182</sup>

Possible circumstances in which discretion could be applied include:

- the nature and seriousness of the allegation of misconduct
- the councillor's experience
- the councillor's previous disciplinary history, if applicable
- if the matter may be more effectively dealt with as inappropriate conduct having regard to all of the circumstances of the matter.<sup>183</sup>

The OIA submitted that the proposed amendments would reduce the number of matters which are required to be investigated by the OIA as potential misconduct, allowing the OIA to focus its investigative resources on more serious conduct matters. The proposal would also reduce the workload of the OIA's legal resources as it would reduce the number of matters referred to the legal team, and could ultimately reduce the pressure on CCT resources.<sup>184</sup>

Several inquiry participants, including Rockhampton Regional Council outlined support for more non-serious matters referred to the local council for resolution.<sup>185</sup>

The department did not support this proposal. The department advised that whilst it appreciates the intent of the amendment, that is to free up the system for consideration of more serious matters, it was the department's preference that the OIA use existing powers to dismiss complaints for public interest reasons. The department was also of the view that the *Local Government Act* clearly defines what constitutes inappropriate conduct and misconduct, and that giving discretion to a person or entity reduces legislative certainty.<sup>186</sup>

#### **6.6.1 Committee comment**

The committee is of the view there is merit to the OIA's recommendation that some forms of potential misconduct, besides breaching acceptable request guidelines, can be easily diverted into

---

<sup>182</sup> OIA, submission 5, p 39.

<sup>183</sup> OIA, submission 5, p 39.

<sup>184</sup> OIA, submission 5, p 39.

<sup>185</sup> Rockhampton Regional Council, submission 32, p 4.

<sup>186</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 3 February 2022, Attachment 2, p 7.

‘inappropriate conduct’.<sup>187</sup> However, the committee feels that this would involve another major change to the councillor complaint system, with new definitions, threshold tests, penalties and administrative practices imposed upon the sector.

The committee has decided not to support the OIA’s recommendation on this issue at this stage.

---

<sup>187</sup> OIA, submission 5, p 6.

## 7 Code of Conduct for Councillors in Queensland

The Code of Conduct for Councillors in Queensland (Code of Conduct) component of the councillor conduct and behaviour system was also the focus of concern and confusion amongst submitters to the inquiry. Once again, solutions suggested included better training and some regulatory adjustments.

### 7.1 Requirements

The Code of Conduct sets out the principles and standards of behaviour expected of mayors and councillors when carrying out their roles and responsibilities as elected representatives. Inappropriate conduct includes conduct that contravenes a behavioural standard within the Code of Conduct.

The Code of Conduct describes the conduct councillors should demonstrate to ensure their compliance with the local government principles (see Chapter 2). It also provides a set of standards of behaviour (set out below) aimed at helping councillors understand how the principles are put into practice while performing their duties.

<b>Code of Conduct - Standards of behaviour</b>	
<b>1.</b>	<b>Carry out RESPONSIBILITIES conscientiously and in the best interests of the Council and the community</b>
1.1	Attend and participate meaningfully in all Council meetings, committee meetings, informal meetings, briefings, relevant workshops and training opportunities to assist them in fulfilling their roles other than in exceptional circumstances and/or where prior leave is given
1.2	Respect and comply with all policies, procedures and resolutions of Council
1.3	Use only official Council electronic communication accounts (e.g. email accounts) when conducting Council business
1.4	Report any suspected wrongdoing to the appropriate entity in a timely manner
1.5	Ensure that their behaviour or capacity to perform their responsibilities as a Councillor is not impaired by the use of substances that may put them or others at risk while performing their duties (for example, alcohol, illegal drugs or prescribed/nonprescribed and/or restricted substances)
1.6	Cooperate with any investigation being undertaken by the local government or other entity
1.7	Ensure that the Councillor's Advisor is aware of their obligations to comply with the standards of behaviour in the Code of Conduct for Councillor Advisors in Queensland.
<b>2.</b>	<b>Treat people in a reasonable, just, RESPECTFUL and non-discriminatory way</b>
2.1	Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness
2.2	Not use abusive, obscene or threatening language (either oral or written) or behaviour towards other Councillors, Council employees or members of the public
2.3	Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.
<b>3.</b>	<b>Ensure conduct does not reflect adversely on the REPUTATION of Council</b>
3.1	When expressing an opinion dissenting with the majority decision of Council, respect the democratic process by acknowledging that the Council decision represents the majority view of the Council
3.2	When making public comment, clearly state whether they are speaking on behalf of Council or expressing their personal views
3.3	At all times strive to maintain and strengthen the public's trust and confidence in the integrity of Council and avoid any action which may diminish its standing, authority or dignity

The Code of Conduct was developed by the Local Government Liaison Group, which was established as a recommendation of the Review Panel. The committee understands that its membership included the LGAQ, the CCC, the Queensland Ombudsman and the Local Government Managers Association.<sup>188</sup>

## **7.2 Understanding what is required**

Several inquiry participants expressed frustration in understanding exactly what was required by the Code of Conduct. For example, the City of Gold Coast submitted that the subjective behavioural standards included in the Code have significantly contributed to the unnecessary work burden on the local government.

Others suggested that certain standards such as ‘the highest ethical standards’ were impossible to achieve and difficult to interpret. Another example was provided by Cr Nicole Johnson who noted that standard 3.3 was unachievable in the context of a politically charged environment.<sup>189</sup>

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

The LGAQ submitted that future work on the Code of Conduct could benefit from practical experience gained from the sector. Such experience could be achieved through expansion of the membership of the group tasked with looking at the Code to include a former council CEO and a former councillor or mayor as ‘their added perspective could provide an additional level of understanding of the challenges faced by elected representatives and senior officers at a council level’.<sup>190</sup>

## **7.3 Committee comment**

Some councillors have reported struggles in utilising and interpreting the Code of Conduct, and that the Code opens councillors up to complaints on a wide range of subjects.

The OIA has stated that the councillor responsibilities and the local government principles are broad and can be interpreted or utilised in a variety of ways not originally intended. The committee considers, for example, complaints regarding ‘breach of trust’ can potentially cover any action by a councillor. This broadness of interpretation could equally be applied to the other behavioural standards under the Code of Conduct.<sup>191</sup>

However, the committee believes the Code of Conduct does not need to be expanded, or more details added, to cover all possible eventualities. This would only create more legislative or regulatory change to be absorbed by the sector. The Code, as drawn broadly and without a range of proscriptive measures, would better serve the sector that faces a very wide range of circumstances that cannot be anticipated.

Having said that, the practical application of the principles and standards in the Code of Conduct is causing angst for the sector. In particular, local government principles 3 and 5 (set out in Chapter 2), and standard of behaviour 3.3 (set out in the table on the previous page) have attracted significant attention from submitters to the inquiry.

---

<sup>188</sup> LGAQ, submission 51, p 22.

<sup>189</sup> Cr Nicole Johnston, public hearing transcript, Brisbane, 22 March 2022, pp 11-12.

<sup>190</sup> LGAQ, submission 51, p 23.

<sup>191</sup> Independent Assessor, public briefing transcript, Brisbane, 28 April 2022, p 10.

These are open to broad interpretation and there is a high level of personal judgement by councillors or constituents as to whether a councillor is adhering to these principles and standards in specific incidents. The breadth of interpretations mean a breadth of complaints can be justified, some of which are not envisaged to be captured by the intention of the scheme. The committee believes work should continue on review and reform of the Code of Conduct to allow for the improved, effective and practical application of the Code.

It is our view that material and communications, which give guidance on how the Code of Conduct works and what it does, should be developed to sit alongside the Code and the principles. The OIA nominated guidance documents by the Local Government Association of England as an example of documents that could sit alongside the Code.<sup>192</sup>

To help with a clear and unambiguous interpretation of the Code of Conduct, the committee recommends the department include examples of how the standards of behaviour have previously been interpreted and enacted within the councillor conduct system.

**Recommendation 24**

That the Department of State Development, Infrastructure, Local Government and Planning deliver extended training and a range of educative materials on the interpretation and use of the Code of Conduct for Councillors in Queensland as part of its training program.

**Recommendation 25**

That the Department of State Development, Infrastructure, Local Government and Planning review the working of the standards of behaviour set out within the Code of Conduct to create a clearer and unambiguous interpretation for all stakeholders.

---

<sup>192</sup> Independent Assessor, public briefing transcript, Brisbane, 28 April 2022, p 10.

## 8 Local government monitors

Several inquiry participants suggested the use of ‘municipal monitors’ such as those in place in Victoria, to support councils undertake their responsibilities.

### 8.1 Use of municipal monitors in Victoria

In Victoria, municipal monitors can be appointed to councils that have experienced governance issues by the Minister for Local Government. The role of the monitor is to observe governance processes, provide advice to the councils experiencing issues, and make recommendations to the Minister for further action. At the end of their appointment, monitors provide a final report to the Minister on a council’s progress and further recommendations if required.<sup>193</sup>

The Chief Executive Officer (CEO), Mount Isa City Council suggested that the Victorian model be considered in Queensland. The CEO advised that the experience had been ‘invaluable’ for a number of Victorian Councils, however acknowledged that some disadvantages could also apply:

I would like the committee to consider the use of municipal monitors. ... Again, where there is the potential for a council to be veering off where they are meant to be, there is a history of appointing municipal monitors who go into a council and sit in council meetings. They see how the interaction is, see how the health of the chamber is and they report back on that to the minister. They do that for a period of time, both in the informal briefings and the workshops as well, to try and understand what is working and what is not working.<sup>194</sup>

For a number of councils that has proved invaluable. For some councils it has led to further investigations being undertaken by IBAC [Independent Broad-based Anti-corruption Commission]. There have been some dis-benefits one could argue in that argument, as well. It may be that monitors could be a good idea.<sup>195</sup>

The Independent Assessor supported the concept, noting the disproportionate number of complaints coming from a small number of councils:

I think it is an excellent idea because we have done some research into how that operates in Victoria. When you consider that it is a small number of councils where we are getting a disproportionate amount of work, if you could have an effective intervention in there through someone like a municipal monitor, I recommend that.<sup>196</sup>

Recent research conducted by PwC found that the appointment of monitors can support good governance, however cautioned that monitors tend only to be appointed once an issue has already escalated, and that a balance needs to be achieved between the autonomy of councils (empowering them to resolve issues and disputes in the first instance) and the role of the Minister.<sup>197</sup> The stigma associated with the appointment of a municipal monitor in that it could be viewed as a ‘failure’ of the council, also needed to be considered.<sup>198</sup>

<sup>193</sup> PwC, *Local Government Culture Project Insights Report*, May 2022, p 35.

<sup>194</sup> D Keenan, public hearing transcript, Mount Isa, 2 March 2022, p 14.

<sup>195</sup> D Keenan, public hearing transcript, Mount Isa, 2 March 2022, p 15.

<sup>196</sup> Independent Assessor, public briefing transcript, Brisbane, 28 April 2022, p 8.

<sup>197</sup> PwC, *Local Government Culture Project Insights Report*, May 2022, p 35.

<sup>198</sup> PwC, *Local Government Culture Project Insights Report*, May 2022, p 35.

## **8.2 Committee comment**

The suggested use of municipal monitors goes beyond the effectiveness of the councillor complaints system. Nevertheless, the committee believes there is merit in further exploring the use of local government monitors in Queensland to encourage positive practices where there are relational issues within the council, or capacity building interventions are failing and leading to poor outcomes.

### **Recommendation 26**

That the Department of State Development, Infrastructure, Local Government and Planning investigate the merits or otherwise of the use of local government monitors for capacity building purposes and to proactively encourage positive practices in councils.

## 9 Conflict of interest provisions

Out of all the issues covered in this inquiry, most local government members have struggled with conflict of interest provisions in the councillor conduct system. To ensure transparency, accountability and integrity as a councillor, conflicts of interest between the public interest, a councillor's interest, and the interests of related persons must be managed. Yet many stakeholders do not know how to define it, and there are different interpretations on what actions to take in council meetings when potential conflicts are declared.


### 9.1 Definition of conflict of interest

The best summary or definition of what is a 'conflict of interest' comes from the Department of State Development, Infrastructure, Local Government and Planning (the department). The department's Managing Conflicts of Interest: Quick Reference Guide sets out the following information.

#### How to identify and manage a conflict of interest

##### Step 1

Ordinary business	Do not need to manage
<p>You do not need to manage a COI if it includes:</p> <ul style="list-style-type: none"> <li>Your interest is no greater than a significant proportion of other community members (e.g. all people in a suburb, all people in a small town, all business owners, all dog owners)</li> <li>Councillor remuneration, expenses, superannuation or insurance</li> <li>Adoption of budget, rates and charges and cost-recovery fees</li> <li>Planning scheme or amendments for the whole council area</li> <li>Your appointment as mayor, deputy mayor, councillor, committee member, or council representative of a board or association, or as a candidate for mayor or councillor.</li> </ul>	<p>You do not need to manage a COI if it includes:</p> <ul style="list-style-type: none"> <li>Gifts + loans + sponsored travel or accommodation totalling less than \$500 (unless perception of bias could exist for another reason such as membership of club)</li> <li>Religious beliefs</li> <li>Membership of political party</li> <li>Non-executive member of non-profit organisation or club</li> <li>A student, former student, or parent or grandparent of a student of a school</li> </ul>




If you have more of an interest than other people, you may wish to voluntarily manage as a declarable interest.

##### Step 2

Prescribed COIs		
A prescribed COI is a specific, clear list of situations where legislation states that you must not participate in decisions.		
If you or a close associate	Have a prescribed COI	Manage this by:
<p><b>Close associates include:</b></p> <ul style="list-style-type: none"> <li>Spouse, parent, child or sibling (see FAQs)</li> <li>Partner in business partnership Employer (non-government)</li> <li>Organisation of which you are an executive officer or board member</li> <li>Any company or entity that you or your close associates own or part-own or have an interest in (except public shares where you own less than 5%)</li> </ul>	<p><b>Prescribed COIs include:</b></p> <ul style="list-style-type: none"> <li>Donations (gifts) + loans + sponsored travel or accommodation totalling \$2000 or more in relevant term</li> <li>Matter relates to a contract with council (incl. panels, sponsorships, unsuccessful tenders)</li> <li>Matter relates to an application or submission to council (e.g. DA or grant application)</li> <li>Appointment/employment matters of CEO if close associate</li> </ul>	<ol style="list-style-type: none"> <li>Notifying CEO if outside a meeting, then notifying the meeting: <ul style="list-style-type: none"> <li>Date/value of gift</li> <li>Other interest details</li> <li>Name/relationship of related party</li> <li>Can pass on any factual information to the CEO</li> </ul> </li> <li>Taking no part in: <ul style="list-style-type: none"> <li>Decisions</li> <li>Meetings</li> <li>Workshops</li> <li>Briefings</li> <li>Influencing others</li> </ul> </li> </ol>

### Step 3

Declarable COIs		
<b>A declarable COI is a situation where you might have a conflict of interest, and you must declare the interest, and then either you choose to leave the meeting yourself or other councillors vote to decide whether you can participate in a decision.</b>		
If you or related parties	Have a declarable COI	Manage this by:
<b>Related parties include:</b> <ul style="list-style-type: none"> <li>Close associates <b>Plus</b></li> <li>In-laws (your spouse's parent, child or sibling)</li> <li>Any other person you have a close personal relationship with (see FAQs on page 2)</li> <li>Any company or entity that you or another related party own, part-own or have an interest in</li> </ul>	<b>Declarable COIs include:</b> <ul style="list-style-type: none"> <li>Donations (gifts) + loans + sponsored travel or accommodation totalling \$500-\$2000 in relevant term</li> <li>Interests where a reasonable person might think you could be biased</li> </ul> <div style="text-align: center;">  <p>Unsure? This usually means you should declare the interest.</p> </div>	<ol style="list-style-type: none"> <li>Notifying CEO if outside a meeting, then notifying the meeting <ul style="list-style-type: none"> <li>Date/value of gift</li> <li>Other interest details</li> <li>Name/relationship of related party</li> <li>Can pass on any factual information to CEO</li> </ul> </li> <li>Deciding if your participation is in the public interest Don't take part in decisions <b>or</b> Councillors decide by passing resolution first before getting involved</li> </ol>

Source: Department of State Development, Infrastructure, Local Government and Planning, Managing Conflicts of Interest: Quick Reference Guide, last updated 5 September 2022, p 1.

Ms Blagoev from the department explained the background to the conflict of interest arrangements further:

The department has, through to 2020, put through those most recent amendments which were designed to simplify the system. The way they were designed to do that was to create what is called declarable conflicts of interest. That means, essentially, 'If you tick any of these boxes you have a declarable conflict of interest and you leave the room.' My opinion is that is quite simple.

The more difficult box is, 'Okay, I am not ticking any of these boxes, but I still might have a conflict of interest because I know such-and-such and their housing matter is coming before the council,' for example. They are arguably prescribed conflicts of interest. They have always been around. They were around pre Belcarra; they were around pre the 2020 amendments. They have always been there. It is just the spotlight has not been on them.<sup>199</sup>

We would really like to see councillors being in a position where this just becomes business as usual for them or, as I say to them, 'If you're not sure about something, be organised and get advice early before a matter comes to a council meeting.'<sup>200</sup>

Ms Blagoev explained that the department is ready and able to take calls, and provide written guidance to councillors on such matters, although this is not legal advice:

I personally take calls from councillors. What we do not do is provide legal advice to councillors. I certainly can provide some written guidance to a councillor. We will talk to councillors over the phone and suggest, 'Maybe go this way and think about doing this.' Yes, every council knows who their regional adviser is and those contact details. If the regional adviser cannot assist with something, they will come through to the Brisbane office and our governance team will assist.

<sup>199</sup> B Blagoev, public hearing transcript, 9 February 2022, Brisbane, pp 39-40.

<sup>200</sup> B Blagoev, public hearing transcript, 9 February 2022, Brisbane, p 40.

We will give advice on a particular situation, but it is not legal advice and it is not advice that is, I guess, a legal defence, and that is really important for councillors to understand.<sup>201</sup>

Ms Blagoev advised the committee of the policy when it comes to the management of conflicts of interest. The department wants to see conflicts of interest declared and managed appropriately, but does not want to see every interest declared, emphasising that the *Local Government Act* only requires declaration of a 'prescribed or declarable conflict of interest'.<sup>202</sup> Furthermore, under the *Local Government Act*, typically a councillor does not need to declare a conflict of interest where:

[T]he councillor stands to gain a benefit or suffer a loss in relation to a matter that is no greater than the benefit or loss that a significant proportion of persons in the local government area stand to gain or lose.<sup>203</sup>

## 9.2 Challenges

### 9.2.1 Sector is struggling with conflict of interest provisions

The department identified in a comprehensive manner the struggles by councillors to navigate the conflict of interest provisions:

The whole sector is struggling with conflicts of interest. I would essentially say for a whole term the department's focus on training has been conflicts of interest. When you go out to councillors, all they want to talk about is conflicts of interest. The department has actually invested considerable resources and considerable staff members in talking to councils and training councillors around conflicts of interest. What we probably determined is: that extra spotlight, where everyone has been talking about conflicts of interest, probably shows how much councillors have always struggled with the concept of conflicts of interest, but until you shine a spotlight on it you do not realise they have been struggling that much.<sup>204</sup>

### 9.2.2 Inconsistent interpretation by stakeholders

The struggle has not been aided by some inconsistencies in interpretation, with evidence that the department and the OIA have had different viewpoints on how to implement conflict of interest provisions:

As a department we will always look at what the legislation says. When a councillor is seeking advice, I will always get out the act and talk about what the section requires you to do. I am aware through our general consultation with the Office of the Independent Assessor that they will apply a benchmark which is best practice. They have openly said that.

The department's focus is always: what does the *Local Government Act* require you to do? When we train, we train on the basis: what does the *Local Government Act* say? That is the simplest way to train councillors. We appreciate there may be different instances or different best practice guidance that entities, be it the OIA, the CCC or the Ombudsman, would like councillors to follow, but our answer is always the same: what does the act say?<sup>205</sup>

There is also evidence of confusion and different interpretations within councils. Peter Krebs, Manager of Legal Services from the Torres Strait Island Regional Council, stated:

---

<sup>201</sup> B Blagoev, public briefing transcript, 6 December 2022, Brisbane, p 7.

<sup>202</sup> B Blagoev, private briefing transcript, 6 December 2021, Brisbane, p 1, 3.

<sup>203</sup> B Blagoev, correspondence, 10 October 2022, p 1.

<sup>204</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 40.

<sup>205</sup> B Blagoev, private briefing transcript, Brisbane, 6 December 2021, p 1.

As we say to councillors, it is always better to declare everything... We always make sure it is declared, it is minuted, and whether it is a declarable or prescribed conflict.... It can be quite tricky at times. Our advice is on how they feel. If they feel it is a close enough relationship that it could impair their decisions or they are unable to bring an impartial mind to making a decision, they should hand it over.<sup>206</sup>

Concerns around the inconsistent interpretation of conflict of interest provisions and the provision of inconsistent advice were also raised by some councils. Southern Downs Regional Council submitted:

... If experts in the area of Conflicts of Interest can have such widely divergent views, it is completely inappropriate that elected members and council staff be expected to get the interpretation right every time or endure the wrath of the legislation.<sup>207</sup>

### 9.2.3 Definitions within the provisions

Some inquiry participants outlined confusion over how to apply certain definitions within the conflict of interest provisions. Specifically, there is confusion over sections 150EG and EH which pose a question to a councillor as to whether they stand to gain a benefit or suffer a loss in relation to the matter that is no greater than the benefit or loss that a significant proportion of persons in the local government area would stand to gain or lose. King & Company explained:

Given the broad nature of the terms used in this provision and lack of clarity with regards to what constitutes “a significant proportion”, there has been much confusion, uncertainty and inconsistency of application of this provision amongst councillors, local government, the legal profession and the OIA.<sup>208</sup>

King & Company also submitted that this provision is particularly relevant to smaller regional communities where it is very common for councillors who are an owner of a local business, and are heavily involved in the community for many years:

For many small regional councils, it is a common problem for many, if not most, councillors to have a conflict of interest in relation to a matter the subject of a council decision. This limits the ability and efficiency of the elected representatives to vote on key matters relevant to the community and can cause much uncertainty and instability in such councils.<sup>209</sup>

King & Company also submitted that ‘In some cases, a councillor is not genuinely aware that he or she has a conflict of interest in a matter’.<sup>210</sup>

### 9.2.4 Cost of advice

The Southern Downs Regional Council submitted that the cost of legal advice incurred by the council in relation to conflicts of interest matters was disproportionate to the importance of the matters under consideration:

The amount of money spent by SDRC on legal advice in relation to conflicts of interest is completely disproportionate to importance of the matters under consideration. The legislation needs to be “black and white” and not try to capture every conceivable potential conflict of interest.

---

<sup>206</sup> P Krebs, public hearing transcript, Cairns, 1 March 2022, pp 7-8.

<sup>207</sup> Southern Downs Regional Council, submission 26, p 2.

<sup>208</sup> King & Company, submission 49, p 14.

<sup>209</sup> King & Company, submission 49, p 14.

<sup>210</sup> King & Company, submission 49, p 14.

The scrutiny and legislative oversight on local government is more onerous than on any other level of government and is disproportionate to the perceived problem trying to be solved.<sup>211</sup>

New provisions requiring other councillors to notify if another councillor has a potential conflict has caused angst in enacting the provisions for some councils. Southern Downs Regional Council submitted:

Should the responsibility for deciding if a councillor has a conflict of interest rest with the councillor and not the balance of unconflicted councillors as the penalty for failing to declare ultimately rests with the potentially conflicted councillor were the matter to be referred to the OIA with an unfavourable finding being made?<sup>212</sup>

### 9.2.5 Confusion as to how to enact the provisions

Anxiety and confusion over how to enact the provisions has led to what some stakeholders see as overly cautious practices by some councils. The Property Council of Australia submitted that there is a risk averse approach from councillors who instead opt to remove themselves from any matter where there may be a risk of a perceived conflict of interest or misconduct – even if this is to the detriment of the communities which they represent.<sup>213</sup>

### 9.2.6 Recent reforms

The pace and scale of change in introducing conflict of interest provisions has left councils under prepared to implement this behavioural reform. In December 2018, conflict of interest matters became specific offences under the *Local Government Act*. The changes were introduced by way of the Local Government Electoral (Implementing State 1 of Belcarra) and Other Legislation Bill which sought to strengthen requirements for how a councillor must deal with a real or perceived conflict of interest or material personal interest to:

- require that after a councillor has informed a meeting of the councillor's conflict of interest in a matter other than an ordinary business matter, other councillors must vote at the meeting to decide whether the councillor has a real or perceived conflict of interest and whether the councillor must leave the place at which the meeting is being held or may stay and participate in the meeting
- prescribe additional information to be provided by a councillor when informing a meeting of a real or perceived conflict of interest or a material personal interest in a matter other than an ordinary business matter
- require any councillor at a meeting who believes or suspects on reasonable grounds that another councillor at the meeting has a real or perceived conflict of interest or a material personal interest in a matter other than an ordinary business matter to inform the person who is presiding at the meeting of the councillor's belief of suspicion
- strengthen penalties for councillors who fail to comply with their obligations
- provide that it is an offence for a councillor who has a material personal interest or a real or perceived conflict of interest in a matter other than an ordinary business matter to influence or attempt to

---

<sup>211</sup> Southern Downs Regional Council, submission 26, p 2.

<sup>212</sup> Southern Downs Regional Council, submission 26, p 2.

<sup>213</sup> Property Council of Australia, submission 27, p 2.

influence any vote by another co councillor or any decision by a council employee or contractor in relation to the matter.<sup>214</sup>

Further changes were also introduced by regulation in October 2020, with the commencement of the Local Government Legislation (Integrity) Amendment Regulation 2020.

This regulation dealt with several areas relating to conflicts of interest including requirements for the organisation and conduct of meetings of a local government and its committees, and setting new and amended requirements for the management of registers of interest.<sup>215</sup> It also approved the new Code of Conduct for Councillors to reflect the new process in the *Integrity Act 2009* for managing councillors' conflict of interest.<sup>216</sup>

Balonne Shire Council explored this regulatory change:

There have been significant changes to the LG Act and LG Regs with rolling reforms over the past three years. ... Training was provided as changes were introduced however created more confusion and uncertainty and questions left unresolved.<sup>217</sup>

The committee sought to understand why councillors are finding implementation of the provisions challenging.

From the department's point of view, councils are at different levels when it comes to decision making about these types of matters. Some are willing and open to working through issues while others appear not to want to address conflict of interest matters when raised. In any case, the department outlined its position that it wants councils to 'give it a go', with the aim of building capacity and declaration to become 'normal' part of conducting council business.<sup>218</sup>

Another reason, according to Councillor Conduct Tribunal, is that:

... prior to 2018 ... conflicts of interest were not really being investigated. They were not really on the radar of councillors. It is just a community change in values in relation to ethics and integrity. Now the Act specifies it and it is very clear in the Act.<sup>219</sup>

Some inquiry participants have identified a reason for the institutional angst is the lack of substantial and substantive training delivered by government agencies and other stakeholders on this matter.

Some considered that 'training on this issue has been piecemeal, haphazard or irregular'. The Mayor of Townsville City Council identified that she needed to make conflict of interest training compulsory for all:

Occasionally I have made certain training compulsory for councillors, particularly around issues such as changes to local government legislation and requirements under the act, to ensure everyone is made aware. For example, the state government changed the act around conflicts of interest. It is probably

---

<sup>214</sup> Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018, explanatory notes, pp 4-5.

<sup>215</sup> Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018, explanatory notes, p 4.

<sup>216</sup> Local Government Legislation (Integrity) Amendment Regulation 2020, explanatory notes, p 2.

<sup>217</sup> Balonne Shire Council, submission 14, p 3.

<sup>218</sup> B Blagoev, private briefing transcript, Brisbane, 6 December 2021, p 5.

<sup>219</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 3.

clearer now than what it was previously. Obviously, all councillors have been trained in this important area.<sup>220</sup>

Whether through improved training or systemic improvements, the department succinctly identified the ideal position for the sector:

The Department would really like to see councillors being in a position where this just becomes business as usual for them or, as I say to them, 'If you're not sure about something, be organised and get advice early before a matter comes to a council meeting.'<sup>221</sup>

### 9.3 Committee comment

The committee strongly believes it is important for Queensland local governments to understand and master the requirements of conflict of interest provisions. Conflict of interest matters are serious issues that can undermine confidence in a local government. The issue will not disappear and councillors must take some responsibility in mastering the requirements and how best to manage them.

As part of the system to build public confidence in decision making in councils, it is important that the department keep taking steps to improve the capacity of councillors to deal with conflict of interest matters.

Evidence to the inquiry clearly demonstrates that councillors are struggling to identify what constitutes a conflict of interest. Some councillors appear to over-analyse the interest, some are overly cautious, and some participate in council business when they clearly have a prescribed conflict.

The committee makes 2 points after considering the evidence.

Firstly, training on this issue has been haphazard, irregular or not given appropriate importance.

Secondly, differing interpretations amongst government agencies have heightened anxiety and confusion.

We are of the view that an enhanced training regime in conflict of interest provisions, amongst other elements of the councillor conduct disciplinary system is vitally important. We also believe the department needs to further its work in training and building capacity in the sector to help councillors in these matters.

The committee does not want to recommend changes that reduce obligation of councillors or undermine the requirements to master the provisions, but we feel there are communications and regulatory changes that can be made to ease the discomfort of councillors and encourage them to actively comprehend the provisions.

This includes:

- an amendment to make clear the preparation for a council budget is included in 'ordinary business exemption'
- provide a regulation making power to enable certain decisions about policies or procedures required by the legislation (for example, annual operational plan and investigation policy) to be prescribed as part of the ordinary business exemption

---

<sup>220</sup> Mayor Jenny Hill, public hearing transcript, Townsville, 28 February 2022, pp 2-3.

<sup>221</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 40.

- a targeted amendment to ensure that travel or accommodation benefits provided by the LGAQ for the LGAQ policy executive is not a conflict of interest
- an amendment to provide clarity that a person or entity is only a related party of the councillor in relation to a matter if the councillor knows, or out reasonably to know, about the person's involvement in the matter
- legislative notes to be inserted into provisions to provide further clarity about the duty of a councillor to report another councillor's conflict of interest and the obligation of a councillor if their conflict of interest is reported by another council
- an amendment to provide that donations made to a non-profit, charitable or relegation organisation involving no personal financial gain or loss to a councillor or their close associate are not a conflict of interest.

The committee welcomes advice that work is ongoing between the department and stakeholders and supports the further consideration of the issues identified above.

We are also of the view that conflict of interest provisions training be made compulsory such as the approach adopted by Townsville City Council.

**Recommendation 27**

That the Department of State Development, Infrastructure, Local Government and Planning make training and professional development on the councillor conduct system, including conflicts of interest, compulsory for all local government councillors, mayors and senior council managers.

## 10 Frivolous and vexatious complaints

Councillors are specifically concerned with the presence of what is labelled as vexatious and frivolous complaints within the councillor complaint system.

### 10.1 Definitions and processes for frivolous or vexatious complaints

The definition of frivolous and vexatious was defined by officials from the Department of State Development, Infrastructure, Local Government and Planning (department) as follows:

The legislation itself does not define those matters, in which case we would use a plain English definition of them. To be very blunt, a vexatious complaint is usually a complaint made for an improper purpose. A frivolous complaint is made without adequate basis.<sup>222</sup>

The Office of the Independent Assessor (OIA) has processes for unacceptable complainant conduct – that is, complaints about councillors that are vexatious, frivolous or improper. Currently, the OIA uses a three-step escalation process to deal with improper complainant behaviour:<sup>223</sup>

#### OIA Improper Complainant Behaviour Escalation Process

Step	OIA Process
1	The first unacceptable complaint is dismissed and the complainant is given a vexatious warning
2	The second unacceptable complaint is dismissed as vexatious and an offence warning is provided
3	The third unacceptable complaint is dismissed as vexatious and the OIA may commence an investigation into the complainant

The OIA advised that 34 complainants advanced to the second step in 2020-21. Two complainants advanced to step 3, and there were 3 investigations into vexatious complainants. At the time of writing, no person had been charged but 2 investigations were ongoing.<sup>224</sup>

The OIA advised that this process demonstrates conduct by the complainant that, following warnings, can be taken as a vexatious charge to the Magistrates Court. If proved in the Magistrates Court, a fine of up to 85 penalty units (\$12,218.75) may be imposed.<sup>225</sup> This is an increase from up to 10 penalty units under the previous system.

It is also an offence for a person to make or ask someone else to make a vexatious, mischievous, reckless or malicious complaint. The penalty is the same as if that person had made the complaint themselves.<sup>226</sup>

<sup>222</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 42.

<sup>223</sup> OIA, submission 5, p 31.

<sup>224</sup> OIA, submission 5, p 31.

<sup>225</sup> Penalties and Sentences Regulation 2015. The value of one Queensland penalty unit is \$143.75 (as of 1 July 2022).

<sup>226</sup> *Local Government Act 2009*, s 150AV(1)(b).

Testimony from Cr Rob Pyne illustrates the current system for dealing with possible vexatious and frivolous complaints, explaining what happens when a complaint is lodged or a section 150AA letter is received:

Since I have been in council this time under this system, in the last couple of years, I have not been afraid to engage in robust debate on social media so I have attracted a number of complaints...

It [s 150AA letter] is very brief: 'We have received a complaint about you. The complaint was along the lines of sharing comments on social media. We found the complaint not to be of substance.' That is the four or five letters I have got in the last couple of years.<sup>227</sup>

## 10.2 Calls for tougher action on vexatious or frivolous complaints

The assessment of vexatious, frivolous and improper complaints was raised by several inquiry stakeholders.

Several councillors referred to what they perceived as the 'politicisation' of the assessment process. For example:

... the Office of the IA has been hijacked by political opponents of sitting councillors. Basically, every complaint that I see going through is a complaint against a sitting councillor and it is politically driven and it is vexatious. It is not in any way, shape or form about the conduct or the activity of a councillor, but really about trying to put some public humiliation on that councillor, stain their reputation and thus defeat their support within the community. That is the whole objective. It is a political strategy.<sup>228</sup>

King & Company submitted a similar position:

We are aware of a large number of councillors who have been the subject of repeated complaints and who strongly suspect have been made not in good faith and for an improper purpose, such as a personal vendetta, or for personal and political gain. These councillors have expressed their extreme frustration and dismay at being the constant subject of such complaints, which has caused them to:

- Spend an overwhelming amount of time and resources participating in the process and defending the allegations in circumstances where they have similar overwhelming competing duties to perform as a councillor, a citizen, and for many, a business owner.
- Suffer much stress and distress causing great personal detriment. The stress and distress has extended to their families.<sup>229</sup>

The Mayor of Townsville City Council agreed, suggesting that the *Local Government Act* be amended to provide further guidance to the OIA in deeming a person a vexatious complainant. The Mayor also suggested that the maximum penalty was an insufficient deterrent. Explaining further:

A very small number of loud and determined voices work in an insidious manner to besmirch the name of all the local government representatives with whom they have different beliefs or values. These people utilise every avenue possible, whether through anonymous blogs, through proxy campaigns or through institutional methods like the OIA, to discredit good people. It serves to discourage many good people from putting their hand up to contest or recontest local government elections.

Under our current system, there is little to no resource for elected members as very few of the people who should be deemed as vexatious complainants actually are. I would suggest the insertion of a

---

<sup>227</sup> Cr Rob Pyne, public hearing transcript, Cairns, 1 March 2022, p 1.

<sup>228</sup> Deputy Mayor Phil Barwick, public hearing transcript, Mount Isa, 2 March 2022, p 3.

<sup>229</sup> King & Company, submission 49, p 9.

definition in schedule 4 of the act to define the words ‘vexatious’ or ‘vexatiously’ as being repetitive, malicious or otherwise not in good faith. I would even suggest that the legislated threshold be set to determine the number of complaints that are being dismissed before there are investigations of a single complainant. Any person who breaks that threshold automatically should be declared a vexatious complainant.<sup>230</sup>

Southern Downs Regional Council echoed this view:

There have been many complaints lodged against SDRC elected members with the vast majority not upheld. It would appear to Council that the OIA does not take a sufficiently strong position on repeat complainants or vexatious complainants. Frivolous or vexatious complainants need to be taken out of the system as soon as possible and not wait until there is an overly abundant amount of suspicion or evidence. The submitter of vexatious complaints should also be held to account in some way.<sup>231</sup>

The LGAQ called for a more thorough decision matrix when assessing whether a complaint is frivolous or vexatious and undertake a stronger action to deter such complainants:

It should not be lost on the Committee that throughout the three years of its existence, the OIA has never successfully prosecuted anyone for making frivolous or other improper complaints, under sections 150AU and 150AV of the LG Act. The LGAQ is not advocating for a heavy-handed approach, but it is clear the current system is far too lenient.<sup>232</sup>

In a response that enlightens this matter, the OIA specified that one of the law reforms that was introduced in 2018 is that councillors now have a mandatory obligation to report conduct which may indicate inappropriate conduct or misconduct.

It is also an offence for a councillor to make a vexatious complaint, but this is harder to address as councillors have a statutory responsibility to report conduct which they think may indicate inappropriate conduct or misconduct. The OIA confirmed that it had issued a number of councillors with warnings about vexatious complaints, including in the lead-up to elections.<sup>233</sup>

### 10.3 Anonymous complaints

The new councillor complaint framework does not make reference to anonymous complaints, nor does it prohibit the making of anonymous complaints. The Independent Assessor advised that about 10 per cent of complaints are submitted anonymously, adding that there was a tendency for these to be received from First Nations council areas, likely a product of people making complaints in very small communities.<sup>234</sup>

Some inquiry participants suggested that the ability for individuals to make anonymous complaints encouraged vexatious complainants, and called for automatic rejection.

The LGAQ advised that delegates attending a recent LGAQ Annual Conference endorsed a resolution that the OIA not deal with or respond to anonymous complaints or compel local government authorities to deal with or respond to anonymous complaints.

---

<sup>230</sup> Mayor Jenny Hill, public hearing transcript, Townsville, 28 February 2022, p 2.

<sup>231</sup> Southern Downs Regional Council, submission 26, p 2.

<sup>232</sup> LGAQ, submission 51, p 16.

<sup>233</sup> Independent Assessor, public briefing transcript, Brisbane, 7 December 2021, p 14.

<sup>234</sup> Independent Assessor, public hearing transcript, Brisbane, 9 February 2022, p 26.

The LGAQ submitted that in supporting the resolution, delegates argued there were many avenues through which a person could lodge a complaint with the appropriate whistle-blower protections, and these should be utilised, rather than accepting and processing anonymous complaints. Removing the requirement to investigate complaints made anonymously would serve to reduce the number of frivolous complaints, as well as those complaints lodged merely to cause mischief and angst.<sup>235</sup>

The LGAQ submitted that the issue is primarily one of natural justice: no one should be subject to an anonymous complaint.<sup>236</sup> The LGAQ's position was supported by several individual councillors and councils. Mayor Jack Dempsey of Bundaberg Regional Council submitted:

It's too easy for people to anonymously make trivial, mischievous and vexatious complaints. Making a complaint should require a person to disclose their identity, with the option to not have this revealed, and strict penalties imposed if this is breached so the complainant has confidence in the integrity of the system. The OIA has a heavy workload and it will assist with processing other complaints in a timely manner if anonymous ones are declined. I believe allowing anonymity for complaints also allows a potential vexatious complainant to use others to make similar or the same complaint effectively circumventing the '3 strikes' policy'.<sup>237</sup>

However, support for such an approach was not unanimous. For example, Cr Andrew Gale, Southern Downs Regional Council told the committee:

I would like to make a statement in relation to anonymous complaints. I support them. I know that is in conflict with the LGAQ submission, which I have read. ....I value whistle-blowers and I value their right to anonymity. I have very much been a student of Fitzgerald. That is when I started in the police force. Most of the things said about that I find pertinent. Anonymous complaints are often hard to substantiate. That is a fact. Plenty of bad conduct or corruption has been uncovered by anonymous tips in the first place.<sup>238</sup>

Some suggested that a fee of \$200 be applied to each complaint, as a means to reduce anonymous complaints. Peter Krebs, Manager of Legal Services from the Torres Strait Island Regional Council reflected on impact that this could have on the Torres Strait community:

Most of our people are on social welfare, so \$200 would be a significant portion of the household budget for our residents. It would be a significant imposition on them to do that. ... [I]t would act as an absolute deterrent for them to do it.<sup>239</sup>

The department did not support the LGAQ's proposal to reject anonymous complaints for fear of excluding genuine and important details. This approach aligns with the way the Crime and Corruption Commission deals with anonymous complaints under the *Crime and Corruption Act 2001*.<sup>240</sup>

The OIA observed:

There will be a small percentage of anonymous complaints made by people, particularly council employees or other councillors, who are rightfully concerned about reprisal. It is appropriate in any complaints system that you create pathways for people who have legitimate complaints to be able to

---

<sup>235</sup> LGAQ, submission 51, p 15.

<sup>236</sup> LGAQ, submission 51, p 15.

<sup>237</sup> Mayor Jack Dempsey, submission 33, p 4.

<sup>238</sup> Cr Andrew Gale, public hearing transcript, Toowoomba, 18 March 2022, p 10.

<sup>239</sup> P Krebs, public hearing transcript, Cairns, 1 March 2022, p 9.

<sup>240</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 3 February 2022, Attachment 1 – Department Response to key submission issues, p 1.

make those in a way that allows investigations to occur—and potentially outcomes to occur—whilst preserving the anonymity of vulnerable persons in that process.<sup>241</sup>

#### 10.4 Increasing the visibility of vexatious complaints

Several inquiry participants called for more visibility in terms of how many complaints were being dismissed on grounds of being vexatious.

The LGAQ recommended the OIA include in its annual report the number of complaints that are dismissed each year because they are frivolous, vexatious, mischievous in their intent, not in the public interest, or would be an unjustifiable use of resources, to increase confidence in the assessment process.<sup>242</sup>

Creevey Russell Lawyers agreed, submitting that:

Although the OIA publishes statistics on the number of complaints dismissed, the information published by the OIA gives the public no clear visibility into the number of complaints that are dismissed under section 150X(b) of the Act as frivolous, vexatious or not in good faith – let alone in relation to the number or outcome of any investigations into the offence under section 150AV.<sup>243</sup>

#### 10.5 Calls to extend provisions to include vexatious complainants

There were several calls, including from the LGAQ, for arrangements to be strengthened through the inclusion of an offence for vexatious *complainants*. Currently, the *Local Government Act* deals only with vexatious *complaints*.

The LGAQ advised that such an approach was recommended by the Independent Councillor Complaints Review Panel in 2017. Specifically the panel recommended that:

- ... the Act be amended to include a section making it an offence for a person to:
  - (a) make repeated complaints about a councillor – (i) vexatiously, or (ii) not in good faith, or (iii) primarily for a mischievous purpose, or (iv) recklessly or maliciously; or
  - (b) counsel or procure another person to make a complaint about a councillor as mentioned in point (a).<sup>244</sup>

The Queensland Government response supported the recommendation in principle and stated:

The government **supports in principle** strengthening the processes and penalties for dealing with frivolous or vexatious complaints. The government supports the introduction of an offence for a person making a frivolous or vexatious complaint without a reasonable excuse, whether the complaint is repeated or not.<sup>245</sup>

---

<sup>241</sup> Independent Assessor, public hearing transcript, 28 April 2022, p 14.

<sup>242</sup> LGAQ, submission 51, p 5.

<sup>243</sup> Creevey Russell Lawyers, submission 47, p 2.

<sup>244</sup> Independent Councillor Complaints Review Panel, *Councillor Complaints Review: A fair, effective and efficient framework*, January 2017, p 84.

<sup>245</sup> Queensland Government response to the report by the Independent Councillor Complaints Review Panel, July 2017, p 2.

## 10.6 Committee comment

The committee acknowledges that frivolous and improper complaints have the potential to inflict reputational damage on a councillor. We understand that councillors are especially concerned with a complaint system that is not rejecting what they categorise as vexatious or frivolous complaints.

Testimony to the inquiry repeatedly revealed there is a specific concern about the councillor complaint system being a vessel for complaints that are solely *politically* motivated.

The most summative comment came from Deputy Mayor Phil Barwick of Mount Isa City Council who said '[b]asically, every complaint that I see going through is a complaint against a sitting councillor and it is politically driven and it is vexatious.... It is a political strategy'.<sup>246</sup>

The committee is encouraged that many complaints – some 64 per cent – are being dismissed at the point of assessment.<sup>247</sup> This will include what councillors see as vexatious or frivolous complaints.

However, it must be noted that many complaints that are 'unwelcome' are also being characterised as vexatious or frivolous, and all stakeholders need to be aware of just what constitutes a vexatious or frivolous complaint. The department points out a complaint is vexatious if it is made for an improper purpose, and frivolous if it is made without adequate basis.<sup>248</sup> Furthermore, the impetus created by changes in recent years to report possible misconduct has seemingly generated a raised perception of the complaints system being used for a vexatious or political purpose.

We find that in the main, the OIA are doing an effective job in dealing with what are categorised as vexatious and frivolous complaints. The OIA has stressed that they are very conscious of the political dimensions of a complaint, and only assess the substance of the matter.

The committee makes 3 points on this issue.

First, there is a process to deal with improper, vexatious or frivolous complaints. The OIA needs to communicate with stakeholders how it is processing such complaints and action being taken against vexatious complainants. The OIA is encouraged to continue action against such complaints so as to generate more confidence in the complaints system.

Secondly, the problem of the councillor complaint system being used for political purposes cannot be fixed by altering the councillor complaint system. It can only be fixed by addressing the political matter or conflict at the source of the matter.

In terms of vexatious or frivolous complaints by opponents, Cr Rob Pyne made the comment that the complaints system 'is going to be gamed by people's political opponents ... I do not know how to do anything about that'.<sup>249</sup>

This view is repeated in this telling exchange during hearings:

Mr Hart: Does that lead you to believe that the OIA has been used as a political weapon?

Ms Hill: What does not get used as a political weapon?<sup>250</sup>

---

<sup>246</sup> Deputy Mayor Phil Barwick, public hearing transcript, Mount Isa, 2 March 2022, p 3.

<sup>247</sup> Independent Assessor, public hearing transcript, Brisbane, 9 February 2022, p 16.

<sup>248</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 42.

<sup>249</sup> Cr Rob Pyne, public hearing transcript, Cairns, 1 March 2022, p 1.

<sup>250</sup> Mayor Jenny Hill, public hearing transcript, Townsville, 28 February 2022, p 5.

The committee is aware that many complaints are coming from within councils, and they all must be assessed. The OIA points out it cannot dismiss a complaint from a councillor, council employee or council CEO in the public interest under section 150Y of the *Local Government Act*. If they dismiss those, it must be as an unjustifiable use of public resources.<sup>251</sup>

We are also acutely aware of the impact on sitting councillors of the use of the complaints system for political purposes, as can be seen in the testimony of Mount Isa City Council members recounted above.

The committee believes that the use of the councillor complaint system for improper purposes – that is, complaints that are vexatious, frivolous or for politically motivated purposes – can most effectively be minimised or reduced through training or better capacity building within the sector, which is discussed below. The committee is satisfied that the process in regards to the acceptance of anonymous complaints is also appropriate.

However, in our third point, the committee believes there may be merit in implementing recommendation 4.6 of the 2017 Independent Councillor Complaints Review Panel report that recommended creating an offence for a person who makes repeated vexatious complaints.

**Recommendation 28**

That all stakeholders involved in the councillor conduct process use a consistent definition of vexatious and frivolous complaints and complainants, and the Office of the Independent Assessor continue to report annually on actions taken on these complainants.

**Recommendation 29**

That the Queensland Government consider adopting Recommendation 4.6 in the 2017 Independent Councillor Complaints Review Panel report regarding repeatedly vexatious complainants.

---

<sup>251</sup> Independent Assessor, public hearing transcript, Brisbane, 9 February 2022, p 21.

## 11 Councillor Conduct Registers

Currently under the *Local Government Act 2009 (Local Government Act)*, all councils are required to record details of decisions to dismiss or take no further action on a councillor conduct complaint in the council's councillor conduct registers. This must include the date of decision and date the complaint was made, a summary of the complaint and a summary of the decision and the reasons for the decision.

Where matters are dismissed or subject to no further action, a councillor is not identified unless they consent to being identified.

Councils rely on correspondence that the Office of the Independent Assessor (OIA) sends to the council chief executive officers (CEOs) when updating the councillor conduct register. To support a consistent and accurate approach across councils, and to ensure that matters are de-identified as much as possible, the OIA provides CEOs with recommended entries. However, it is up to each council whether they use this recommended entry.<sup>252</sup>

The OIA suggested that removing the requirement to list dismissed or subject to no further action matters would create significant efficiencies for both the OIA and local councils and that transparency could be maintained through the annual report process:

While sustained councillor conduct matters should be transparently recorded in councillor conduct registers the OIA is of the view that matters that are dismissed or the subject of no further action should not be publicly recorded. It is noted that total numbers of matters that are dismissed or subject to no further action are reported in the OIA's annual report. Removing this requirement would create significant efficiencies for both the OIA and councils.<sup>253</sup>

The Independent Assessor explained further:

Our observation has been that those registers are followed closely, including sometimes by the media, and that, based on the limited information that is in the register, things can be extrapolated, sometimes not factually. In my view it can be a bit mischievous in that regard. Whilst I accept fully the advantages of including that on the register, I think on balance our view is that it should not be on the register, noting that the OIA does report and is required to report in its annual report on the number of matters dismissed or the subject of no further action overall.<sup>254</sup>

The Local Government Association of Queensland (LGAQ) supported the suggestion stating:

The LGAQ understands the need to ensure a public register of complaints upheld by the OIA, however, the publishing of complaints dismissed by the Independent Assessor is an onerous and unnecessary step. The LGAQ notes the OIA is of the same view ... recommending s150DX, 150DY and 150DZ of the LG Act be amended to remove the requirement for matters that have been dismissed, or are the subject of no further action by the OIA, to be published in the councillor conduct register.<sup>255</sup>

---

<sup>252</sup> OIA, submission 5, p 40.

<sup>253</sup> OIA, submission 5, p 40.

<sup>254</sup> Independent Assessor, public hearing transcript, Brisbane, 9 February 2022, p 18.

<sup>255</sup> LGAQ, submission 51, p 24.

Several councillors supported the proposal, noting that it served no public benefit to provide detail of complaints that are dismissed, and that it was difficult to achieve anonymity in most local communities.<sup>256</sup>

However, support was not unanimous. Several community groups including the Queensland Local Government Reform Association, OSCAR and Brisbane Residents United supported continuation of the existing arrangements:

We strongly support the continued listing of dismissed or unsubstantiated complaints on the councillor conduct register that councils are required to maintain (s150DX). Keep in mind, in these situations, the name of the Councillor against whom the complaint was made remains confidential as it should. These registers serve as a useful guide to the community in general, and potential complainants, about the nature of complaints that are dismissed. Provided councils provide sufficient detail about the nature of each complaint, this serves as a very useful resource for the community and over time will potentially reduce the number of complaints made by members of the public.<sup>257</sup>

These groups also called for further supports to develop the capacity of the public to better understand the councillor complaints framework:

We believe the best way to improve the handling of councillor conduct complaints, and therefore reduce the costs to the OIA and councils, is through better education of councillors and the public. Much is made about “capacity building” within councils but it is equally important that members of the public have as much guidance as possible when contemplating lodging a complaint about councillor conduct.<sup>258</sup>

### 11.1 Committee comment

The committee is supportive of calls to amend the *Local Government Act* at sections 150DX, 150DY and 150DZ to remove the recording of matters that have been dismissed or deemed to require no further action by the Independent Assessor from a council’s councillor conduct register. We believe the requirements place an administrative burden on the OIA and local councils that is not commensurate with the benefits.

We acknowledge the views that the information can be of importance to members of the public. However, believe that similar information can be more efficiently published centrally and on an annual basis by the OIA in its annual report.

#### Recommendation 30

That the *Local Government Act 2009* be amended to remove the requirement to record in councillor conduct registers matters that have been dismissed or deemed to require no further action by the Office of the Independent Assessor or Councillor Conduct Tribunal.

#### Recommendation 31

That the Office of the Independent Assessor continue to publish the number of complaints dismissed or deemed to require no further action in its annual report.

<sup>256</sup> Mayor Jack Dempsey, submission 33, p 4; Deputy Mayor Phil Barwick, public hearing transcript, Mount Isa, 2 March 2022, p 5.

<sup>257</sup> QLGRA/OSCAR, submission 53, p 4.

<sup>258</sup> QLGRA/OSCAR, submission 53, p 4.

## 12 A legal system, or a councillor conduct system?

The councillor complaints system is operating in a way that is more legalistic and complex than intended. This is having several detrimental impacts. Steps need to be taken by all stakeholders to return the councillor conduct system to its original and intended purpose.

### 12.1 Is the system in legal overdrive?

Evidence submitted to the inquiry indicates that the framework is operating in a way that is overly legalistic and therefore becoming more complex than is needed to achieve its intended purpose.

The Department of State Development, Infrastructure, Local Government and Planning (department) identified the issue of ‘legal overdrive’ in 2021, noting that the legalistic, complex and adversarial practices were not anticipated or intended by government. Ms Blagoev stated that the department supports an approach from the Office of the Independent Assessor (OIA) where only serious matters are brought to the Councillor Conduct Tribunal (CCT), and a robust *assessment* of which complaints should be prosecuted:

The department also acknowledges the minor nature of many of the complaints received and the importance of ensuring the resources of the Office of the Independent Assessor are used in a manner that targets systemic or more serious misconduct. To that end, the department would support an approach from the Office of the Independent Assessor where only these more serious matters are prosecuted through to the tribunal. A robust assessment of which complaints should be prosecuted is required to ensure the system operates effectively.<sup>259</sup>

The increasingly common appearance of experienced legal representation within the system is being noted and rationalised by various stakeholders as a factor in the legal overdrive within the system.

It is entirely to be expected that councillors believing that a misconduct matter may lead to their dismissal will want experienced legal representatives (this is discussed further in Chapter 14).

Inquiry hearings also explored the role of the LGAQ insurance scheme in encouraging councillors to utilise legal advice and representation as their first step. Councillors are entitled under professional indemnity insurance arrangements to retain one of a group of approved lawyers, to represent them on disciplinary investigations and proceedings, at no cost to the councillor. The scheme was established by the Local Government Association of Queensland (LGAQ) which is a trustee of Local Government Mutual Services (LGMS). JLT Public Sector is the LGM Liability insurance scheme manager.<sup>260</sup>

The members of the LGMS insurance scheme are councils who pay an annual premium for the scheme which covers a large range of liability exposures for councils, councillors and council officers including coverage for councillors responding to disciplinary investigations or proceedings. In addition to insurance premiums it is understood that councils also pay an excess fee per claim.<sup>261</sup>

Furthermore, the presence of legally qualified OIA personnel as a party at hearings further prompts legal representation by other parties. The President of the CCT provided some context to this issue and spoke of challenges arising as a result of introducing legal representation to all hearings:

---

<sup>259</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 31.

<sup>260</sup> OIA, correspondence, 2 February 2022, p 10.

<sup>261</sup> OIA, correspondence, 2 February 2022, p 10.

In the former system you will be aware that councillors did not have any ability or an automatic right to have legal representation. In the majority of those hearings from my experience, as I was on those panels, it was probably less than 10 per cent—where they would have attended hearings. In addition, there was no prosecutor, so there was no legally qualified prosecutor present in those hearings. Now we have everything. We have the legally qualified prosecutor and we have the councillor’s legal representatives. That is all understandable and all in support of the principles of natural justice, but the complexity of the tribunal work is vast as a consequence of that.<sup>262</sup>

Tribunals are generally set up to be more informal and faster than a court system. The CCT President advised that the procedures under the *Local Government Act 2009* (*Local Government Act*) are court-like procedures, despite clear intentions that the system is designed to be more informal:

Although the provisions are there and clearly the intention of everyone was that it be informal—and we still have the old procedures of section 213 where you can deny legal representation—it is not fair to the councillor to deny legal representation when we have the prosecutor who is legally qualified and appearing. They have a right. It is natural justice that they have that, so there are a few inconsistencies in terms of the tribunal operations. So we are not technically an informal tribunal; we are a court-like tribunal and a disciplinary tribunal. I can understand the formality because it is damaging the reputation of councillors if they end up with a misconduct finding, so a lot of effort and time goes into making sure we have that right—that interpretation in the legislation.<sup>263</sup>

Appeals to the Queensland Civil and Administrative Tribunal (QCAT) after a decision is handed down by the CCT can require a high level of resourcing for the OIA and CCT. This could be heightened by a second hearing process where QCAT can conduct a full merits review of a decision.

## 12.2 Committee comment

The committee can understand impressions that there is an overemphasis on investigation and prosecution on the part of the OIA that has led to some stakeholders accusing them of ‘overreach’.

The committee understands why the OIA needs investigative powers. The OIA outlines there were no investigative powers in the previous system and a low level of prosecutions due to insufficient evidence. In fact, the skills and experience of OIA staff in the field of investigation is a source of strength for the agency.<sup>264</sup>

However, the committee believes some decisions of, and language used by, the OIA tend to emphasise investigation and prosecution more so than the conduct management aspect of the councillor complaint system.

The committee believes an example is the issue of the Fassifern Guardian journalist requested to provide their notes during one investigation.<sup>265</sup> Another example is the use of the threshold of ‘reasonable suspicion’ to decide whether to proceed in a matter – a legalistic practice used by OIA in triage process.<sup>266</sup> While undoubtedly a useful tool for triaging complaints and required as outlined in the legislation, it could be argued that its use helps prompt legal overdrive.

Another example of strong emphasis on legal investigation is the effect of the terms ‘reasonably suspects’ or ‘reasonable satisfaction’. The use of what has been called the reasonable suspicion

---

<sup>262</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 2.

<sup>263</sup> CCT President, public hearing transcript, Brisbane, 9 February 2022, p 7.

<sup>264</sup> Independent Assessor, private briefing transcript, Brisbane, 11 October 2021, pp 1-2.

<sup>265</sup> Independent Assessor, private briefing transcript, Brisbane, 11 October 2021, p 2.

<sup>266</sup> OIA, submission 5, pp 14, 19.

threshold has heightened fear and unease among councillors. Furthermore, when councillors hear that their complaint has been referred to 'OIA Legal' they are prompted to perhaps respond with their own legal team.

However, the OIA will stress they are required by section 150AC(2) of the *Local Government Act* to state on the referral notice whether they 'reasonably suspect' the councillor has engaged in misconduct when they refer the matter to the CCT. Whether the Act requires it or not, the effect is the same: councillors and mayors feel they are embroiled in an overtly legal process.

It appears that stakeholders' perception of a legalistic or investigative overdrive was compounded by a statement from the Independent Assessor at the LGAQ conference at Mackay. The statement was regarding the need to establish precedent. Some councils feel that the OIA's actions are motivated by this need for precedent, with this statement at Mackay specifically referenced in public hearings with councillors.<sup>267</sup>

The committee also notes that the OIA appear to have distanced themselves from the need to establish precedence. The committee agrees that the legal emphasis of seeking to establish precedent is harmful to the building of confidence in the system.

Still, the committee also sees that legal overdrive is also heightened by continual professional access to legal personnel through the LGAQ.

There are two final points from the committee. Firstly, on the matter of legal overdrive. Section 150CY of the *Local Government Act* makes the OIA the prosecutor when presenting cases to CCT. The committee accepts this is currently a legislated requirement, but a different emphasis would be that the OIA needs to be a party to a CCT case, not the prosecutor.

Secondly, a prosecutorial outlook within the OIA is reflected in their structure. The OIA says they have two permanent solicitors and two graduate lawyers.<sup>268</sup> They routinely refer matters to what they describe as their OIA Legal team. We believe there should be more people with direct local government management experience as part of their team and as various stakeholders point out, former CEOs of councils would be a useful addition.

We understand why the OIA has taken a robust approach to investigation. After all, this is a requirement of the *Local Government Act*, which states in section 150T that the OIA must investigate all complaints, and states in section 150W(1) that a decision to dismiss a matter can only be made after an investigation has been undertaken. However, to build a greater confidence in the local government complaint system, all parties need to 'de-escalate' legal overdrive or an overly legalistic approach.

#### **Recommendation 32**

That the Office of the Independent Assessor consider recruitment of experienced former local government managers to provide a broader range of skills and outlook in the councillor complaint assessment process.

---

<sup>267</sup> Mayor Gregory Campbell, public hearing transcript, Mount Isa, 2 March 2022, p 9; Cr Andrew Gale, public hearing transcript, Toowoomba, 18 March 2022, p 10.

<sup>268</sup> Independent Assessor, public hearing transcript, Brisbane, 9 February 2022, p 16.

## 13 Social media and freedom of political expression

Social media and freedom of political expression was an issue of much commentary by inquiry stakeholders in relation to the councillor complaint system. Social media provides significant opportunities for councillors to communicate with their constituents. However, it can also be a challenging environment for councillors to navigate.

When the Office of the Independent Assessor (OIA) was established, a number of complaints were made about councillor conduct on social media, particularly around blocking members of the public from participating on a councillor's official social media page. The OIA responded with notices to the councillors in question, setting out allegations, and seeking their position on the matters. This has prompted frustrations in the sector that the OIA is dealing unnecessarily with such complaints.

Related to this matter about freedom of expression is the issue involving Sean Dillon, Mayor of Barcaldine. This issue helped prompt the inquiry and potentially raised some fundamental political expression issues within the local government sector.

If confidence in the councillor complaint system and the OIA is to be maintained and strengthened, the issues of social media and the implied freedom of political expression need to be clarified.

### 13.1 What are councillors required to do on social media?

The Department of State Development, Infrastructure, Local Government and Planning (department) confirmed that when councillors interact on social media they must always comply with the local government principles, as set out in section 4 of the *Local Government Act 2009* (*Local Government Act*) and the councillor Code of Conduct:

Councillors are certainly free in social media to interact, as we all do as private citizens. They do have to keep in mind public record obligations when they do that. I would say to councillors that they must always comply with the code of conduct, local government principles and then any particular policy their council has around social media.<sup>269</sup>

These standards require councillors to among other things, treat people in a reasonable, just, respectful and non-discriminatory way. For example:

3. In representing and meaningfully engaging with the community, Councillors will:

- show respect to all persons
- clearly and accurately explain Council's decisions
- accept and value differences of opinion.<sup>270</sup>

...

Councillors will, at a minimum, act in the following ways:

- 2.1 Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness
- 2.2 Not use abusive, obscene or threatening language (either oral or written) or behaviour towards other Councillors, Council employees or members of the public

---

<sup>269</sup> B Blagoev, public briefing transcript, Brisbane, 6 December 2021, p 6.

<sup>270</sup> Code of Conduct for Councillors in Queensland, p 5.

- 2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.<sup>271</sup>

The committee heard that to assist councillors manage their social media accounts, the OIA and Local Government Association of Queensland (LGAQ) produced a guideline which clarified how the Code of Conduct may apply to councillors on social media. These guidelines sought to achieve a balance between ensuring councillors use of social media was appropriate and open to positive, negative or neutral electorate feedback, while supporting a councillor to protect themselves against unacceptable online behaviour.<sup>272</sup>

The guidelines included a model impressum (a statement of ownership and content) which is set out below, which councillors were encouraged to post on their social media account. This would make clear that breaching the page rules may result in being blocked from the page or having comments deleted.<sup>273</sup>

*This page is moderated in a way which recognises that everyone has a right to comment and engage with the content, in a way which may be positive, neutral or negative.*

*However, comments or posts which do the following will be removed and repeated contravention of these rules, will result in the person being blocked from the page:*

- *Posts that harass, abuse or threaten a councillor, council staff or a member of the public*
- *Posts that attack someone based on their age, gender, impairment, political beliefs, race, religion or sexuality*
- *Posts that contain obscene or offensive language*
- *Posts that constitute spam or solicit business*

*Comments that negatively impact the experience of other community members on this page may also be removed and those posting such comments will receive a warning. If members of the public continue to post such comments after receiving two warnings, they may be blocked from the page.*

The LGAQ and the OIA encouraged councillors to take screenshots of posts that breach the guidelines before a person is blocked from a site so that should a complaint arise, this could be dealt with quickly. The OIA submitted that the OIA-LGAQ's Queensland Councillor Social Media Community Guideline received ministerial support in a media release in April 2019.<sup>274</sup>

### **13.2 How does the Office of the Independent Assessor assess complaints about councillors on social media?**

The OIA advised that when it receives a complaint that alleges the councillor has 'blocked' an individual inappropriately, it will assess whether the blocking has breached the relevant Code and

---

<sup>271</sup> Code of Conduct for Councillors in Queensland, p 6.

<sup>272</sup> OIA, submission 5, p 50.

<sup>273</sup> Independent Assessor, public briefing transcript, Brisbane, 7 December 2021, p 22.

<sup>274</sup> OIA, submission 5, p 50; Hon Stirling Hinchliffe, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, 'New social media guide sets out "do's and don'ts" for local councillors', media release, 14 April 2019.

Principles. The OIA may issue a notice (under section 150AA) requesting that the councillor provide screen shots or other information about why the member of the public has been blocked.<sup>275</sup>

After receiving this information, the matter will either be dismissed or referred to local government to determine whether the councillor has engaged in inappropriate conduct.<sup>276</sup>

The LGAQ called for complaints involving blocking to be dismissed immediately:

... we are aware of numerous examples where the OIA has initiated action against elected members for blocking trolls on their Facebook pages. The OIA refers to the code of conduct and states the action of blocking a troll is a breach of the code's obligation to treat fellow councillors, council employees and members of the public with courtesy, honesty and fairness. The OIA also states that such action should be considered a breach of the Human Rights Act—presumably section 21, which is the right to freedom of expression.

However, we submit to this inquiry that the OIA is failing to acknowledge section 25 of that same act, which provides every person with the right not to have their correspondence interfere with—in this case, such as the councillor's own Facebook post—and not to have their reputation unlawfully attacked. Blocking trolls is something every ordinary citizen not only has the right to do but also is encouraged to do. The act of blocking a troll is not restricting any right of freedom of expression as the person blocked can always express their views on their own social media or indeed other places.<sup>277</sup>

The LGAQ's position was echoed by several individual councillors, including the Mayor of Bundaberg Regional Council, who submitted:

In my view, the OIA has exceeded its authority in seeking to micro-manage councillors' social media accounts. It's unilaterally imposing rules which don't apply to State or Federal Members of Parliament and the broader community, and which wasn't intended by the legislation. I'm aware that a number of State Members have deleted comments from their Facebook pages which aren't defamatory. This is normal practice in social media management. The OIA should only be interested in what councillors say on their social media accounts, not how they manage them.<sup>278</sup>

Responding to this issue, the OIA advised:

The Human Rights Act provides that people have a right of freedom of expression and to express opinions without interference. The Human Rights Act requires all public officials in Queensland to have regard to the Human Rights Act when making decisions about all matters. The view is that members of the public should be able to engage with councillors on social media to express views in relation to local government matters but not in a manner which is offensive, inappropriate or unacceptable. We back councillors 100 per cent in circumstances where they are victimised on social media. We merely ask them for the information and the screenshots that demonstrate that that is the case. When we receive a complaint, we do not necessarily have an idea of that context. Until we get that response from the councillor, we cannot act on it.<sup>279</sup>

The LGAQ reported that a section 150AA notice was also issued in response to a councillor for which appropriate conduct was alleged because a troll's abusive post *was not* removed.

---

<sup>275</sup> OIA, submission 5, p 50.

<sup>276</sup> OIA, submission 5, p 50.

<sup>277</sup> LGAQ, public hearing transcript, Brisbane, 6 December 2021, p 2.

<sup>278</sup> Mayor Jack Dempsey, submission 33, p 6.

<sup>279</sup> Independent Assessor, public briefing transcript, Brisbane, 7 December 2021, p 24.

### 13.3 Committee comment

In considering the issue of social media a clear distinction needs to be made between what could be defined as robust political expression – *positive, neutral or negative* – and what is deemed to be abusive, obscene and offensive commentary.

As elected representatives, spirited criticism on a range of public policy matters is to be expected. However, reflections unconnected to the issue at hand, or that reflect on circumstances of birth, appearance, general intelligence, or similar should not be considered expressing a political opinion, and it is entirely appropriate that councillors moderate their social media accounts in these circumstances.

The committee acknowledges the OIA view ‘that a councillor “could” breach the Code of Conduct if they block members of the public if [the public] are trying to constructively engage’ and are obeying the rules set out at the top of the page.<sup>280</sup> The committee also acknowledges that in issuing a section 150AA notice, the OIA is seeking to provide the councillor with an opportunity to put forward their side of the story.

However, we also agree with the views of Mr Tim Fynes-Clinton and others that it should not be a breach of the Code of Conduct to *moderate* your own social media in terms of removing or hiding offensive comments. We also agree with the LGAQ that blocking or moderating social media accounts should not enliven freedom of expression principles. Social media users can post the same comments on other social media pages. They can even take a screen shot of the councillor’s post, then post that screenshot elsewhere and make whatever comments they desire.

The committee recommends that the Minister and the department make a clear direction that moderating a social media account, including the blocking of individuals, does not constitute a breach of the Code of Conduct and should not constitute an infringement of any principles or rights of freedom of expression. However, councillors must be aware that making defamatory or offensive comments could run the risk of a breach of conduct and statutory offence.

#### **Recommendation 33**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make clear that moderating a social media account, including blocking certain individuals, is not a breach of the Code of Conduct. However, engaging in defamatory or offensive comments could breach the Code of Conduct and have wider ramifications.

### 13.3 Implied right to freedom of political expression

The right to freedom of political expression was also raised in various submissions in response to the circumstances surrounding a complaint made by a Hospital and Health Service against the Mayor of Barcaldine, in the context of the rollout of the region’s COVID-19 vaccination program.

The issue has now been dismissed, but its implications have longevity. The committee does not intend to re-examine the issue other than to set out the respective positions of the Mayor and OIA.

It was the Mayor’s view that the OIA’s actions did not align with the intent of the local government complaints system or the public interest:

---

<sup>280</sup> Independent Assessor, public hearing transcript, Brisbane, 11 October 2021, p 9.

[T]he performance of the functions of the OIA with respect to the allegations it has continued to pursue against me, including at the time of writing, do not accord with the intent of the local government complaints system. Nor does the pursuit of those allegations accord with the public interest. Rather, the decision of the OIA to serve me with a section 150AA Notice of Assessment for alleged inappropriate conduct for raising concerns about the local COVID-19 vaccine rollout in my community during discussion in an open council meeting — and then to escalate this matter to a misconduct investigation after I responded to their notice with my defence — has caused serious and significant concern to not only myself and my family but to my fellow Barcaldine Regional Councillors and senior staff.<sup>281</sup>

To allege that commenting in a negative way regarding the current or future activities of a State department (or agency) in relation to my local community, in a fully open and transparent council meeting, breaches the Code of Conduct for Councillors in Queensland and is an exemplar of “Failing to show the high standards of leadership” is incongruous with the role elected representatives play in championing their community. It is in direct conflict with the implied right to freedom of political expression.<sup>282</sup>

Further, to pursue this allegation for more than eight months, while providing no clarity either way as to its veracity via finding or referral to the Councillor Conduct Tribunal, has effectively served to mute the council. My fellow councillors and I have been hesitant to comment on important advocacy issues involving other levels of government during subsequent council meeting discussions for fear we will be subject to further potential sanction. This is because if this allegation is determined by the OIA or CCT to be misconduct, any subsequent conversations or statements of a similar nature would then automatically require referral (including self-referral) to ensure council is upholding of the Code of Conduct.<sup>283</sup>

The constant confusion and uncertainty caused by the lack of timely decision making by the OIA regarding this matter only serves to undermine public trust and confidence in the local government sector, as our constituents look to us to speak up and represent them on issues of critical importance including but not limited to health and the COVID-19 vaccine rollout, which has been a community safety issue of utmost importance throughout this pandemic.<sup>284</sup>

The OIA set out the following position in a media release:

The Office of the Independent Assessor has dismissed a complaint against Barcaldine Mayor Sean Dillon regarding public comments he made about the council ‘not accepting any responsibility whatsoever’ for the COVID vaccine rollout in Barcaldine and having no confidence in a Hospital and Health Service.

The facts revealed the Mayor’s comments in a live streamed council meeting were in reaction to incorrect information provided by a council officer about the proposed vaccine rollout.

The incorrect information was that the HHS was proposing to vaccinate whole towns in one day. There was also a miscommunication within council about the priority vaccination of the elderly.

The Mayor’s comments were further published on a local news site, which also raised the conduct of the Mayor in making the statements.

In deciding to dismiss the complaint, the Independent Assessor took into account that the Mayor’s statements were made in response to incorrect information and the council subsequently worked effectively with the HHS in delivering the vaccine rollout.

---

<sup>281</sup> Mayor Sean Dillon, submission 21, p 1.

<sup>282</sup> Mayor Sean Dillon, submission 21, p 2.

<sup>283</sup> Mayor Sean Dillon, submission 21, p 2.

<sup>284</sup> Mayor Sean Dillon, submission 21, p 2.

An investigation into the complaint was underway when it appeared in the media on 20 October 2021 with comments made by Mayor Dillon, his legal team and the Local Government Association of Queensland, the week before the LGAQ State Conference.

The OIA requests councillors and complainants keep matters confidential and to respect the process for resolving complaints.

The OIA does not usually issue media statements on dismissed matters. However the OIA may release information, particularly when matters are put into the public arena by others.

The OIA requests councillors and complainants keep matters confidential and to respect the process for resolving complaints.

The Mayor's legal representatives raised the issue of a councillor's implied right to freedom of political expression in an early response to this complaint.

This issue was not raised by the OIA.<sup>285</sup>

The Independent Assessor stated:

I want to make it very clear that I am not reducing anyone's ability to speak. It is critical to the role of councillors that they represent their communities and can do so by critically making points. Councillors do that across Queensland all the time. Although we have had complaints about such matters, no matters of that nature have ever been referred to the tribunal.<sup>286</sup>

#### 13.4 Committee comment

The Dillon matter should have been a minor matter processed in a more timely, cost-effective and less adversarial manner, but it was escalated by all stakeholders involved.

The committee understands that as a complaint coming from either a local government or state government body, there is a requirement for it to be investigated under the *Local Government Act*.

The committee notes that it was assessed as *perhaps* being inappropriate conduct by OIA, 'the lowest level of councillor conduct that we deal with as a breach of the code of conduct'.<sup>287</sup> This section 150AA notice was answered with an eleven page opinion by King & Company stating it was a matter of implied right to freedom of expression.

Mayor Dillon acknowledged that frustration with timeliness from the OIA led him to take this defence for his complaint.<sup>288</sup> Mayor Dillon also clarifies he chose to use a freedom of political expression defence as he felt that 'if we could only speak in positive terms about the decision of a government agency, we would not be displaying the high standards of leadership required of us under the code of conduct'.<sup>289</sup>

The LGAQ confirmed this line of thinking when pressed about blocking people on social media being a restriction on their political expression, saying that it was a matter for the Code of Conduct.<sup>290</sup> If that

---

<sup>285</sup> Office of the Independent Assessor, correspondence, 15 February 2022, p 2.

<sup>286</sup> Independent Assessor, public briefing transcript, Brisbane, 7 December 2021, p 9.

<sup>287</sup> Independent Assessor, private briefing transcript, Brisbane, 7 December 2021, pp 1-2.

<sup>288</sup> Mayor Sean Dillon, public hearing transcript, Brisbane, 22 March 2022, p 20.

<sup>289</sup> Mayor Sean Dillon, public hearing transcript, Brisbane, 22 March 2022, p 17.

<sup>290</sup> Mr Tim Fynes-Clinton, public hearing transcript, Brisbane, 22 March 2022, p 33.

is the case, the Dillon matter becomes a matter of Code and Principles, not freedom of political expression and could have been processed promptly.

The OIA stated in February 2022 that a matter being *under investigation* is not evidence of wrongdoing.<sup>291</sup> However, the issue of the length of the assessment by the OIA played a large role in the escalation of the issue.

The committee also notes that it is clearly acknowledged and understood by the Independent Assessor that it is not appropriate for the OIA to assess matters of public or political debate.

The committee is of the view that the Code of Conduct and the local government principles do not operate in conflict with the implied right to freedom of political communication. However, the committee recommends that for the avoidance of any doubt, the Minister and department make clear, through the appropriate mechanism, that the Code of Conduct does not impinge on implied freedom of political expression. However, that it is possible that some statements made by councillors that are plainly offensive or ill-considered could enliven Code of Conduct considerations.

It is clear to the committee that all stakeholders believe that conduct measures restricting the possible exercise of freedom of political speech go well beyond the intent of the scheme.

**Recommendation 34**

That the Minister and the Department of State Development, Infrastructure, Local Government and Planning make clear that the Code of Conduct does not usually impinge on implied freedom of political expression. However, it is possible that some statements made by councillors could enliven Code of Conduct complaints and considerations.

---

<sup>291</sup> Independent Assessor, public hearing transcript, Brisbane, 9 February 2022, p 29.

## 14 Apprehension and fear

Apprehension and fear is determining how councillors and mayors interact with the councillor complaint system, as well as their impressions of the overall system. This is leading to overly legalistic responses.

### 14.1 Councillor views

Fear appears to be a key driver for many complaints about the councillor complaint system and dissatisfaction with how it operates. This fear tends to be greater for councillors who do not have extensive experience in local government.

Such fear and apprehension is heightened if councillors believe they are being accused of a crime, if a complaint about them is being assessed by the OIA or a section 150AA notice is received.

Mayor Michael Kerr talked about the fear he experienced when interacting with the councillor complaint system, stating 'I am feeling a lot more disconnected from my community because of the fear factor'. He further described his reaction after receiving a letter from the OIA:

The letter as I said, because it is formally written and a legal matter and it makes – from a councillor's perspective inappropriate conduct or misconduct is no different to corruption on our level. That is how it is felt. It is not just a case that you are done something wrong and it could be a mistake. This is a nasty thing. It is going to be listed on the website. I go into adrenaline shock whenever I see the mail coming in with 'OIA Confidential'.<sup>292</sup>

Cr Kim Coughlan of Mount Isa City Council relayed a similar reaction:

It was late and I was going through my emails. There was a big 'Attention: Confidential' written in red, which was very official looking. I opened it and started to read.... My mouth and my tongue went dry and got light-headed. The email was listing all these charges against me. I got upset ... I had no sleep that night.... I had to get legal advice. I have had to engage lawyers because I did not know what to do.<sup>293</sup>

Mayor Jenny Hill recounted the same experience amongst Townsville councillors:

[E]very time you get one of these complaints it preys on the mind of the councillor. I have had to counsel a couple of my councillors. I have had some in tears in my office.... You just have to sit them down and calm them down, especially the first-term councillors. ... In this process you sometimes feel that you are guilty and that you need to prove your innocence. That, to me, is the biggest issue of all.<sup>294</sup>

It is fear of reputational damage and specifically fear of dismissal that are at the core of anxiety over interaction with the councillor complaint system. Cr Fran Mann from Mackay thought her complaint may even lead to her dismissal:

When I was first referred, I tried to work out based on what the complaint was what the penalty might be and no-one could assist me with that. All of this time, the thought hanging over my head is maybe it will be a warning, maybe it will be a fine or maybe it will be dismissal. That is the range. When you refer to the relevant section of the act, that is the range of penalties so it gives me no comfort whatsoever that

---

<sup>292</sup> Mayor Michael Kerr, public hearing transcript, Cairns, 1 March 2022, pp 17-18.

<sup>293</sup> Cr Kim Coughlan, public hearing transcript, Mount Isa, 2 March 2022, p 19.

<sup>294</sup> Mayor Jenny Hill, public hearing transcript, Townsville, 28 February 2022, p 4.

they are still only dealing with things from 2020. Potentially, it might be another 12 months before I get any resolution.<sup>295</sup>

The same fear was articulated by Cr Donna Gates from Gold Coast City Council who said ‘there are cases where a simple administrative error could result in dismissal’.<sup>296</sup> Cr Tully, Mount Isa City Council stated:

It does not bother me. It does bother some people. Personally, they are the people that I am concerned about. They cannot do their job when their thoughts are on something else. It is human nature. When you are thinking about something that is hanging over your head, you are not prepared to stand up and talk, make good decisions and put thoughts forward in fear that you are going to get a complaint against you.<sup>297</sup>

## **14.2 Steps taken by the Office of the Independent Assessor**

During the course of the inquiry, the OIA showed they recognise the fear factor and are working to lessen it. The Independent Assessor said on 28 April 2022 that they are redrafting letters sent to councillors to ‘reduce that sense of apprehension’.<sup>298</sup>

The OIA also advised that it has updated its website to include step-by-step processes, communication and timeline estimates, and has consistently communicated that the councillor conduct scheme is a disciplinary scheme for dealing with individual misconduct:

The OIA has consistently communicated that the councillor conduct scheme is a disciplinary scheme for dealing with individual misconduct. It is not about corruption or serious systematic issues. In the vast majority of cases it is about the opportunity to learn and move on.<sup>299</sup>

## **14.3 Committee comment**

The committee makes three points about fear and apprehension felt by councillors regarding the complaint system.

Firstly, the OIA’s requesting of information to assess a complaint does not mean the councillor has been accused of a crime, is presumed guilty of an offence or is undergoing a ‘trial’. If a complaint has been made, especially from another councillor or local government source, it must be assessed.

Secondly, fear or apprehension by a councillor is a key contributor to the ‘legal overdrive’ in the system. As seen in the evidence in this section, the first reaction of a complaint who is notified of a complaint against them is to seek legal advice. As the QLS representative stated, ‘in our experience, legal advice and representation helps to give some certainty and give some advice to people who otherwise might not know their rights’.<sup>300</sup>

Thirdly, the committee feels that a new emphasis on training, professional development and learning is key to addressing anxiety and a range of other issues canvassed in this report. We are of the opinion that all stakeholders need to reduce the fear and increase the familiarity of interaction with councillor

---

<sup>295</sup> Cr Fran Mann, public hearing transcript, Brisbane, 7 March 2002, p 9.

<sup>296</sup> Cr Donna Gates, public hearing transcript, Southport, 21 March 2022, p 2.

<sup>297</sup> Cr Mick Tulley, public hearing transcript, Mount Isa, 2 March 2022, p 6.

<sup>298</sup> Independent Assessor, public hearing transcript, Brisbane, 28 April 2022, p 4.

<sup>299</sup> OIA, correspondence, 24 March 2022, p 2.

<sup>300</sup> Queensland Law Society, public hearing transcript, Brisbane, 22 March 2022, p 28.

complaint system. We reiterate our comment that we believe this will reduce over-legalisation of the system, aid in the more timely resolution of issues, and lessen associated costs for everyone.

## 15 Training and advice

The committee is aware of a lack of familiarity or lack of knowledge about the councillor complaints system and conduct standards amongst councillors. Each section canvassed so far in this report reveals there is a need for further training and professional development to navigate the system, as well as a need for clear guidance on where to access appropriate advice from a variety of stakeholders.

Councillors expressed frustrations around inconsistent advice and differing interpretations of the requirements and intent of local government legislation and policy.

### 15.1 Consistency in training and advice to councillors

Councillors can seek training and advice from several sources. This includes the Department of State Development, Infrastructure, Local Government and Planning (department), council chief executive officers (CEOs) and other council officers, the Local Government Association of Queensland (LGAQ), private legal firms and the Queensland Integrity Commissioner (Integrity Commissioner).

The departmental review found that in some cases, the Office of the Independent Assessor (OIA) and Councillor Conduct Tribunal (CCT) are in some aspects interpreting and applying the legislation differently from the government's intent, leading to misalignment of intent and outcomes. This appears to be the case in respect of conflict of interest provisions, which are being interpreted in a more risk averse way than the department would normally apply.

Southern Downs Regional Council stated:

SDRC has on numerous occasions received conflicting advice from our legal advisors, the Department of State Development, Infrastructure, Local Government and Planning (the department), the Integrity Commissioner and the Office of the Independent Assessor on various issues. In several instances the advice has been diametrically different to the extent that it indicates the legislation is fundamentally flawed. If experts in the area of Conflicts of Interest can have such widely divergent views, it is completely inappropriate that elected members and council staff be expected to get the interpretation right every time or endure the wrath of the legislation.<sup>301</sup>

The department acknowledged that consistency in training was important:

We are certainly aware of where training has been inconsistent. We are receiving feedback from the sector to say it wants more consistent training. There is also a lot of crossover and duplication in training. I am aware of an instance where we went out to train on topic X and then the next day the LGAQ was out there to do the same training. We are aware of duplication. What we like to see is that councils take up all offers for training. We definitely see some councils that do not. Yes, consistency in training is very important.<sup>302</sup>

### 15.2 Removing duplication in training and advice

Under the *Local Government Act 2009* (*Local Government Act*), the OIA has a legislated function to provide advice and training about dealing with alleged or suspected conduct breaches.<sup>303</sup>

In November 2018, the then Minister for Local Government, in response to a request from the Independent Assessor, provided a direction allowing the OIA to:

---

<sup>301</sup> Southern Downs Regional Council, submission 26, p 2.

<sup>302</sup> B Blagoev, public briefing transcript, Brisbane, 6 December 2022, p 13.

<sup>303</sup> *Local Government Act 2009*, s 150CU(b).

...provide advice, training and information to councillors, local government employees, local governments and other persons about alleged suspected inappropriate conduct, misconduct and corrupt conduct.<sup>304</sup>

This had the effect of allowing the OIA to provide training on conduct matters generally, rather than limited to how to deal with allegations of conduct breaches. The Minister requested that the OIA work closely with the department in delivering training and capability activities to ensure a coordinated approach.<sup>305</sup>

The 2021 departmental review found that in delivering training and capacity building to councillors the OIA is duplicating the functions of other entities, noting that its core role is not training. A lack of coordination with the department on the delivery of these activities was also identified and that this:

- shifts the policy intent of the framework of separating out the training and capability functions from the complaints management functions, which led to the creation of the OIA and CCT
- leads to an inefficient use of resources, and
- creates mixed messaging and confusion in the local government sector.<sup>306</sup>

In addition, the OIA partnering with LGAQ on capacity building projects could have been seen to compromise the OIA's role as an independent investigative body.<sup>307</sup>

In October 2021, the Ministerial direction was revoked, thereby removing the OIA's mandate to deliver a broader training function.

### 15.3 Should training be mandated

Questions were asked during hearings around whether training on the councillor conduct regime and complaints system should in fact be mandated. Discussing this issue, the department advised they:

[H]ad a [Local Government Managers Association] CEO forum last week and we actually posed to the CEOs if they thought there should be any mandatory training. It was mixed. I think there is a variety of factors that need to be considered. What are we making mandatory? Is it the Finance 101 training? Is it governance training? Is it a mixture? Are we making sure that we have training that really suits all of our councillors? The difference between the Brisbane City Council and some of our Indigenous councils is enormous and that is the challenge.<sup>308</sup>

Some submitters even suggested a formal, comprehensive program akin to an Institute of Public Directors course. The CEO of Mount Isa City Council suggested:

[N]ot everyone is a good trainer and not everyone is a good participant in training. My recommendation—is that in Victoria there is a quasi or full Institute of Company Directors course that is done by all elected officials. Yes, it is an expensive course. ...it now sits around the \$9,000 to \$10,000 mark. That investment at the beginning of a four-year term where you cover conflict of interest, ethical decision-making,

---

<sup>304</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 8.

<sup>305</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 8.

<sup>306</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 14.

<sup>307</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 14.

<sup>308</sup> B Blagoev, public briefing transcript, Brisbane, 6 December 2021, p 12.

financial management skills, how to set strategy and how to operate as a board or a council, would be of far more benefit than infrequently saying, 'Things are a bit rotten, can you go and do something on conflict of interest' or, 'Hold on, they are getting more complaints, can you address that'.

It is important to remember that the councillors here run an operating budget of \$90 million. They have a capital works budget of \$42 million. They need training that equates to the magnitude of the job that they are doing—that is not going to be through an infrequent visit from the department.<sup>309</sup>

The LGAQ advised that it did not support mandatory training as the local government sector faces the challenge of having new representatives elected every four years. The LGAQ submitted that all councillors must deal with ongoing requirements of understanding changes to legislation, and there have been some significant changes in recent years:

This environment would make mandatory training difficult, onerous and impractical. It would, however, be beneficial for the training to be provided in a more coordinated way than is currently the case, and then individual councils could opt-in to what they felt was necessary for them. That is something that could potentially be coordinated by the Department.<sup>310</sup>

The committee was also told of various approaches adopted by individual councils. The Mayor of Townsville indicated that training under her leadership was not mandatory, but it was virtually compulsory:

Firstly, we use the LGAQ as an independent source of training. We run training updates for elected members. We have staff who travel around the state to provide training to the councillors. Occasionally I have made certain training compulsory for councillors, particularly around issues such as changes to local government legislation and requirements under the act, to ensure everyone is made aware. For example, the state government changed the act around conflicts of interest. It is probably clearer now than what it was previously. Obviously, all councillors have been trained in this important area.<sup>311</sup>

By way of comparison, the Mayor of Burdekin said she did not do a program of training outside what the CEO provides because it 'would be prohibitive'.<sup>312</sup> Cr Mather from Livingstone Shire Council, a councillor since 1988 said 'I cannot recall having training that showed us the path ... There has been no training'.<sup>313</sup> The CEO of Carpentaria Council stated:

... forgetting to declare your interest on something that was in council for three minutes has caused us a \$3,900 bill. We recovered \$250. There is training, yes. Is there enough training? Probably not. Actually give us some detailed examples of what ticks the box in relation to getting out of the room.<sup>314</sup>

The Queensland Law Society also outlined their support for more resources for councillors:

It is the case, with all due respect to local councillors, that sometimes they are not highly educated and they are not receiving any training. They put their hand up to take up a position and they win that through the public vote without any training or support. Further, when they do win their election, they do not have a lot of resources and support around them when they are operating. ... I agree 100 per cent that

---

<sup>309</sup> D Keenan, public hearing transcript, Mount Isa, 2 March 2022, p 14.

<sup>310</sup> LGAQ, submission 51, p 27.

<sup>311</sup> Mayor Jenny Hill, public hearing transcript, Townsville, 28 February 2022, pp 2-3.

<sup>312</sup> Mayor Lyn McLaughlin, public hearing transcript, Townsville, 28 February 2022, p 14.

<sup>313</sup> Cr Glenda Mather, public hearing transcript, Brisbane, 7 March 2022, p 2.

<sup>314</sup> M Crawley, public hearing transcript, Karumba, 2 March 2022, p 3.

the more support and resources that can be added should reduce not the complaints but the need for those complaints to be investigated thoroughly.<sup>315</sup>

#### 15.4 Is the training achieving the desired outcomes?

Several inquiry participants reflected on the outcomes of the various training initiatives.

The Mayor of Scenic Rim Regional Council stated that after an extensive training program, the behaviour does not change:

At the commencement of this term, learning from the changes that happened through 2016 to 2020, we put together a program, even though COVID smashed us a bit, that actually went through every aspect of being a councillor. That was over a four-month period or thereabouts. It included intimate sessions with legal advisers working through the wording of the legislation and how that converted. We then had follow-up sessions with LGAQ. In the context of trying to get clarity of thinking and process for councillors around the CEO decision, we have had a long session again about a whole heap of these requirements and the legislative requirements about conflicts of interest, behaviour and process with senior departmental officers and lawyers in the room at once. When that door closes and we move into the public arena, the behaviour does not change.<sup>316</sup>

A councillor from Mount Isa City Council advised the committee that the CEO and staff ‘have gone overboard’ with training and ‘some of it is good, some if it is boring and not worth it’:

... it does not matter how much training I get. The CEO and the staff have gone overboard with our training. Some of it is good, some of it is boring and not worth it. I know we have to do it, but it does not matter how much training I do, if someone wants to get me, because of how the system is, they are going to be able to get me.<sup>317</sup>

#### 15.5 The department as the trainer

Under the *Local Government Act*, the department is responsible for the provision of training to the sector.

The committee received evidence that the department develops and delivers capability building resources and training to support councillors to meet their legislative responsibilities. The department’s *Strategic Plan 2020-24* includes strategies and performance indicators specifically targeted at developing and implementing knowledge and capacity building programs to support and build local government integrity and sustainability. The department’s website offers resources and information packs on the Code of Conduct, councillor complaints framework, managing conflicts of interest, good decision making and running effective meetings.<sup>318</sup>

The department informed the committee of the development of a Knowledge Centre, a one-stop shop for resources for councillors and council staff:

The thinking behind that is that it not only includes departmental resources; we would ideally like to see councils helping each other as well. For example, if one council has done something really good, then that goes on the knowledge centre and other councils will be able to see that as well. We also are aware that the LGMA [Local Government Managers Association] has a governance forum, so governance

---

<sup>315</sup> C Gneck, public hearing transcript, Brisbane, 22 March 2022, pp 27-28.

<sup>316</sup> Mayor Greg Christensen, public hearing transcript, Southport, 21 March 2022, p 14.

<sup>317</sup> Cr Kim Coghlan, public hearing transcript, Mount Isa, 2 March 2022, p 19.

<sup>318</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 8.

officers from across councils can get together and talk about governance matters such as conflicts of interest and how we are handling inappropriate conduct matters. There are a range of resources there. In my experience, our Indigenous councils do rely heavily on the face-to-face training.<sup>319</sup>

The department has a regional office network staffed to directly interact with councils across the state and, as requested by councils, is able to provide timely and efficient advice on *Local Government Act* matters.<sup>320</sup>

The department advised the committee that building capacity within the sector was its key role:

... the department really sees that its key role is to build capacity of our councils. We have a whole regional network of staff who are out there every week providing training. They do training not around just the stock standard 'so you want to be a councillor' or induction training; we actually do bespoke training for councils. It is not death by PowerPoint. We routinely go out to councils. We sit down with them and say, 'Right, let's talk about conflicts of interest.' I have certainly done sessions before where you are going through councillors' registers of interest and you are talking about scenarios. That has been most handy. Our role really is training.<sup>321</sup>

## 15.6 Committee comment

The committee firmly believes that training is needed to build the capacity of councillors in several areas, particularly conflict of interest issues and conduct matters. We believe training in these areas will not only increase the ability of councils to deal with matters as they arise before they escalate, it will also be important for enhancing consistency within the sector.

The department is best placed to assume a central role in the provision of training to the sector. Advice from the tripartite forum (discussed in the following chapter) will be fundamental in this regard.

It is clear to us that while various training initiatives are conducted, in certain cases they are leading to limited learning outcomes. This is demonstrated by the testimony of several elected officials most aptly surmised by the Mayor of Scenic Rim Regional Council who stated 'behaviour will not change'.

We believe training should be part of an ongoing professional development requirement and that this should be coordinated and delivered by the department.

Training mechanisms should consist of more than a passive approach and involve more targeted, active approaches such as face-to-face and scenario-based courses. The provision of information sheets, an app and on-line courses should complement this approach, and we encourage further development of the department's portal and Knowledge Centre.

We believe that an annual four-hour workshop as provided by the LGAQ, or in-house training provided by the CEO or the local government's internal legal team, may not be sufficient.

In essence, the committee desires the training function to be assumed by the department and to limit the OIA's training function for councillors to that set out in 150CU(b) of the *Local Government Act* – that is, to provide advice, training and information to councillors, local government employees and other persons about dealing with alleged or suspected inappropriate conduct, misconduct, or corrupt

---

<sup>319</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 38.

<sup>320</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 8.

<sup>321</sup> B Blagoev, public hearing transcript, Brisbane, 6 December 2021, p 5.

conduct. This will enable the OIA to continue to concentrate on its core functions of assessment, investigation and prosecution of councillor conduct complaints.

That said, we also believe that the OIA and the LGAQ has an integral role in the training and professional development of the local government sector by providing advice to other stakeholders designing and delivering the training.

**Recommendation 35**

That the Department of State Development, Infrastructure, Local Government and Planning reaffirm and strengthen its lead role in training and capability building activities to build local government integrity and deliver these activities in conjunction with stakeholders such as the Local Government Association of Queensland.

**Recommendation 36**

That responsibility for the delivery of training to councillors be removed from the Office of the Independent Assessor to enable the re-allocation of resources to core activities.

## 16 Role of the department

One of the reasons that Queensland has such a strong and vibrant local government sector is the leadership provided not only by individuals, but by agencies and organisations. The Office of the Independent Assessor (OIA) has provided another point of leadership, yet that has posed some issues of clarity in leadership and policy interpretation within the sector.

Any assessment of the effectiveness of local government systems within Queensland needs to acknowledge the place of the Department of State Development, Infrastructure, Local Government and Planning (department) at the administrative centre of that system, as required by the *Local Government Act 2009* (*Local Government Act*).

### 16.1 Reaffirming the role of the department as policy lead

A departmental review of the councillor conduct scheme in 2021 identified several issues relating to a lack of clarity and understanding of the respective roles and responsibilities, particularly the department's role as the policy lead. The review recommended that the department re-establish itself as the 'point of truth' for advice on how the legislation operates, through shared information on its website, social media or other relevant communication mechanisms.<sup>322</sup>

The findings reflect concerns around the receipt of inconsistent advice and differing interpretation of requirements set out in the *Local Government Act* by councils and councillors. Southern Downs Regional Council submitted:

SDRC has on numerous occasions received conflicting advice from our legal advisors, the Department of State Development, Infrastructure, Local Government & Planning (The Department), the Integrity Commissioner and the Office of the Independent Assessor on various issues.<sup>323</sup>

The department explained further:

There are actually a lot of players out there giving advice. ... Councils can certainly procure their own legal advice, and we strongly encourage them to do that. As you would have seen in the report, it was at one point the role of the Office of the Independent Assessor to provide training to councils around conflict-of-interest provisions. We then had the department, and we have the LGAQ. There are a lot of players there; you are right in saying that. It is interpretation. Interpretation of the provisions will differ based on whom you speak to on any given day.<sup>324</sup>

The review stated that revised memorandums of understanding should also be developed, to make clear any revised roles and responsibilities, and how the entities will interact.<sup>325</sup>

### 16.2 Tripartite forum

The departmental review also recommended the establishment of a tripartite forum to provide an opportunity to discuss and clarify issues with roles, responsibilities, and operational arrangements

---

<sup>322</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 19.

<sup>323</sup> Southern Downs Regional Council, submission 26, p 2.

<sup>324</sup> B Blagoev, public briefing transcript, Brisbane, 6 December 2021, p 5.

<sup>325</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 4.

relating to the councillor complaints system and provide coordinated action on local governance and advice to the Deputy Premier as required.<sup>326</sup>

The establishment of a tripartite forum also helps place a 'point of truth' within the sector. At the end of the 2021 review, a tripartite forum was established that is chaired by a senior officer of the department, with membership comprising the department, OIA and Councillor Conduct Tribunal (CCT).

The department advised:

The purpose of the tripartite meetings is an opportunity really for the three parties to come together to discuss things like key themes and consistency of messaging. We certainly heard feedback from stakeholders about the importance of ensuring that everyone has a consistent way of looking at things.

The tripartite meeting is intended to deal with some of those bigger ticket items where there is not consistency between the parties.<sup>327</sup>

The department advised that meetings have occurred between the department and the OIA for quite a long period. The department added that officers in the OIA had been very proactive in providing the department with early advice on a training matter and that communication had been excellent.<sup>328</sup>

### 16.3 Committee comment

The committee believes that the departmental review of the councillor conduct system in 2021 struck the right tone in calling for the department to be placed at the centre as the 'point of truth' within the system and the sector. We consider this to be fundamental in moving the complaints framework forward, identifying issues early and reducing confusion within the sector.

We agree that there is value in the establishment of a regular, formal meeting of a tripartite body of representatives from the department, OIA and the CCT. There is an opportunity for the CCT to have a more formal relationship in this regard. We believe this will be particularly helpful in identifying training needs, areas for policy review and areas where there are differences of interpretation.

#### **Recommendation 37**

That the Department of State Development, Infrastructure, Local Government and Planning be reaffirmed as the local government policy lead, steward of the councillor conduct framework, and 'point of truth' on how the legislation should operate, and that a memorandum of understanding between the department, the Office of the Independent Assessor and the Councillor Conduct Tribunal be created to clearly define roles and responsibilities and how the entities will interact.

#### **Recommendation 38**

That the recently established tripartite forum, chaired by the Department of State Development, Infrastructure, Local Government and Planning and with representation from the Office of the Independent Assessor and the Councillor Conduct Tribunal, continue to meet on a regular basis and develop a formalised terms of reference and publish directions as appropriate.

---

<sup>326</sup> Department of State Development, Infrastructure, Local Government and Planning, *Local Government Integrity Project*, p 19.

<sup>327</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 42.

<sup>328</sup> B Blagoev, public hearing transcript, Brisbane, 9 February 2022, p 43.

## 17 The provision of authoritative legal advice

The advice provided by the Queensland Integrity Commissioner on integrity and ethical issues was greatly appreciated by all stakeholders in the councillor complaint system. There is opportunity and demand for such a service to be reinstated.

### 17.1 Role of the Queensland Integrity Commissioner

In response to the Belcarra Report, all Queensland mayors and councillors were nominated as ‘designated persons’ under the *Integrity Act 2009* (*Integrity Act*) in February 2018. As a result, the Queensland Integrity Commissioner (the Integrity Commissioner) became the primary ethics advisor to local governments.

This remained the case until amendments to the conflict of interest provisions in the *Local Government Act 2009* (*Local Government Act*) and *City of Brisbane Act 2010* (*City of Brisbane Act*) occurred in October 2020.

Under the *Integrity Act*, a designated person can ask the Integrity Commissioner for advice on an integrity or ethics issue, and the Integrity Commissioner must provide written advice, unless certain reasons prescribed in the legislation exist.<sup>329</sup> The Integrity Commissioner is unable to delegate this advice function under the *Integrity Act*.<sup>330</sup>

On introduction of the new complaints system the Integrity Commissioner experienced extremely high levels of demand for advice, likely due to the ‘heightened public scrutiny’ and extent of reforms.<sup>331</sup> Between February 2018 and October 2020, Queensland mayors and councillors sought advice on 395 occasions. By contrast, the Integrity Commissioner received an average of 60 requests per year between 2003 and 2017.<sup>332</sup>

The former Integrity Commissioner submitted that ‘overwhelmingly, oral and written communication from mayors and councillors indicated a strong desire for clarity and certainty around the standards expected of them, particularly in light of the consequences of committing an offence’.<sup>333</sup>

Mayors and councillors indicated that they were seeking guidance and resources that were as practical as possible, given the variety of backgrounds, skills and knowledge of councillors. They also frequently expressed the view that they were committed to ensuring public confidence in the local government sector was not further diminished. However, it was difficult to navigate the complex and changing local government landscape.<sup>334</sup>

There are a number of distinct benefits to the advice provided by the Integrity Commissioner. Section 40 of the *Integrity Act* provides limited protection for designated persons acting on conflict of interest advice provided by the Integrity Commissioner, provided the person has disclosed all information relating to the potential conflict when seeking the advice. The *Integrity Act* provides that a designated

---

<sup>329</sup> *Integrity Act 2009*, s 21.

<sup>330</sup> Queensland Integrity Commissioner, public hearing transcript, Brisbane, 9 February 2022, p 46.

<sup>331</sup> Queensland Integrity Commissioner, submission 39, p 5.

<sup>332</sup> Queensland Integrity Commissioner, submission 39, p 6.

<sup>333</sup> Queensland Integrity Commissioner, submission 39, p 6.

<sup>334</sup> Queensland Integrity Commissioner, submission 39, p 6.

person is not liable in a civil proceeding or under an administrative process when acting in accordance with the Integrity Commissioner's advice.<sup>335</sup>

Furthermore, the Integrity Commissioner has the unique benefit of being able to consider 'other ethical standards the Integrity Commissioner considers appropriate', and is not reliant on decisions of Queensland courts or tribunals for guidance on untested matters.<sup>336</sup>

Notwithstanding the nomination of mayors and councillors as designated persons, which still stands, the role of the Integrity Commissioner in the local government sector was reduced when the *Local Government Act* and *City of Brisbane Act* were amended in October 2020, with a new scheme for identifying, assessing, and managing, interest issues. In this regard, the Integrity Commissioner raised concerns about the effectiveness and complexity of the new scheme.<sup>337</sup>

## 17.2 Committee comment

It is clear to the committee that the role of the Integrity Commissioner, and advice provided, was greatly appreciated by all stakeholders in the councillor complaint system. We and all stakeholders understand the resourcing impacts entailed by the addition of an integrity service for local government within the Office of the Integrity Commissioner, but feel it was a highly valued service and remains an option worth investigating.

We also believe that an enhanced training regime for councillors, as detailed in the chapter above, will lessen the need for rapid and specialised advice from an integrity advisory service.

### Recommendation 39

That the Department for State Development, Infrastructure, Local Government and Planning investigate the appointment of an independent local government integrity and conduct advisory service that can issue authoritative advice under the *Integrity Act 2009* to a councillor on integrity and conduct matters.

---

<sup>335</sup> *Integrity Act 2009*, s 40.

<sup>336</sup> Queensland Integrity Commissioner, submission 39, p 7.

<sup>337</sup> Queensland Integrity Commissioner, submission 39, p 7.

## 18 Enhancing oversight of the complaints process

Confidence of stakeholders in the councillor complaint system and the role of the Office of the Independent Assessor (OIA) within that system would be enhanced by a more formal oversight arrangement for the agency.

### 18.1 Existing arrangements

Parliamentary oversight of the Independent Assessor is currently provided by the State Development and Regional Industries Committee (committee). This responsibility is established by Schedule 6 of the Standing Rules and Orders of the Queensland Legislative Assembly (Standing Orders).

The nature of the committee's oversight is set out in Standing Order 194A. It provides that if a portfolio committee has oversight responsibility, and no statutory provisions exist to set out the nature of those responsibilities, the committee will have the following functions:

- monitor and review the performance by the entity of the entity's functions
- report to the Legislative Assembly on any matter concerning the entity, the entity's functions or the performance of the entity's functions that the committee considers should be drawn to the Legislative Assembly's attention
- examine the annual report of the entity tabled in the Legislative Assembly and, if appropriate, to comment on any aspect of the report
- report to the Legislative Assembly any changes to the functions, structures and procedures of the entity that the committee considers desirable for the more effective operation of the entity or the Act which establishes the entity.<sup>338</sup>

It is a matter for each portfolio committee to choose how to discharge these responsibilities.

The above oversight arrangements for the Independent Assessor commenced in 2020 and originated in response to a direct request from the Independent Assessor. At that time, the Independent Assessor considered an oversight mechanism was necessary as:

... an appropriate check and balance on an office undertaking an integrity function [particularly in an environment where questions should be able to be asked of the Independent Assessor and the Independent Assessor should have the opportunity to address them in the public interest].<sup>339</sup>

In response to this request, the Legislative Assembly moved to include oversight of the Independent Assessor in Schedule 6 of Standing Orders.<sup>340</sup>

On commencing its oversight responsibilities at the start of the 57th Parliament, the committee sought to better understand the origins of the arrangements in place. The committee sought advice from the Department of State Development, Infrastructure, Local Government and Planning (department) as to why statutory arrangements, such as those in place for independent office holders including the

---

<sup>338</sup> Legislative Assembly of Queensland, Standing Rules and Orders of the Legislative Assembly, standing order 194A.

<sup>339</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 21 May 2021, p 1.

<sup>340</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 21 May 2021, p 1.

Integrity Commissioner, Health Ombudsman and Information Commissioner, were not in place for the Independent Assessor.

The then Director-General advised:

... [T]he IA [Independent Assessor] investigates and deals with misconduct and connected inappropriate conduct or corrupt conduct of councillors. In order to safeguard the independence of the investigative function, it was decided that the LGA [*Local Government Act*] would stipulate that the IA is not subject to outside direction by another person about the way they exercise their powers in relation to investigations or the priority given to investigations.

... in contrast to [other Independent Office Holders] the IA has no final or disciplinary decision-making powers in relation to the determination of misconduct or connected inappropriate conduct. That power rests instead with the Councillor Conduct Tribunal (CCT), also established under the LGA. Consistent with other bodies exercising disciplinary functions, decisions of the CCT in relation to misconduct are appealable to the Queensland Civil and Administrative Tribunal. Given this limitation on the powers of the IA, it was not considered necessary at the time that the legislative framework include an oversight function.<sup>341</sup>

## 18.2 Strengthening oversight

Several inquiry participants called for stronger oversight arrangements for the OIA.

The OIA recommended that provisions be inserted into the *Local Government Act 2009* (*Local Government Act*) for a regular strategic review of the Independent Assessor's functions. The OIA submitted that this would provide 'a regular, transparent review of the role and functions' and 'a regular opportunity to revisit whether the councillor conduct system is achieving its policy intent and to consider law reform proposals that may address issues identified'.<sup>342</sup>

Such an approach is comparable to strategic review arrangements in place for the Integrity Commissioner as set out in the *Integrity Act 2009* (*Integrity Act*) which requires a regular strategic review of the Integrity Commissioner's functions at least every 5 years. That review must be conducted by an appropriate person appointed by the Governor in Council, in consultation with the relevant parliamentary committee. Under the *Integrity Act*, the reviewer has powers similar to the Queensland Audit Office.<sup>343</sup>

The Local Government Association of Queensland (LGAQ) also called for the relevant portfolio committee to be provided with stronger oversight powers, similar to those in place for the Parliamentary Crime and Corruption Committee (PCCC).<sup>344</sup>

The PCCC is established under the *Crime and Corruption Act 2001* and its principal functions include:

- monitoring and reviewing the performance of the functions of the Crime and Corruption Commission (the Commission) and the structure of the Commission
- reporting to Parliament matters relevant to the Commission

---

<sup>341</sup> Department of State Development, Infrastructure, Local Government and Planning, correspondence, 21 May 2021, p 1.

<sup>342</sup> OIA, submission 5, p 47.

<sup>343</sup> *Integrity Act 2009*, ss 86-88.

<sup>344</sup> LGAQ, submission 51, p 7.

- participating in the appointment of Commissioners and the Chief Executive Officer of the Commission.

The PCCC has a continual role in monitoring and reviewing the Commission and also conducts specific inquiries in respect of matters pertaining to the Commission.<sup>345</sup>

Several community groups offered a different view. These groups welcomed the transparency provided by parliamentary committee processes (such as public hearings), however suggested that parliamentary oversight could intrude on the overall independence of the OIA:

The conduct of parliamentary committees, via public hearings/briefings, the opportunity for submissions from stakeholders, and the availability of transcripts of hearings, all contribute to community confidence in the integrity and transparency of statutory bodies like the OIA. We need to note, however, that there is a view amongst some of our members that parliamentary oversight might hinder the independence of the OIA, particularly where complaints are made on a partisan basis.<sup>346</sup>

### 18.3 Committee comment

A primary function of portfolio committees is to support the Legislative Assembly in its scrutiny of government, including services provided by independent statutory bodies such as the OIA. It is through this oversight that Parliament holds independent bodies to account on behalf of the people of Queensland.

We have considered calls for strengthened oversight arrangements and are of the view that current arrangements are sufficient and commensurate with the responsibilities of the OIA. Central to this view is the fact that the OIA does not have final decision-making powers on determining and disciplining inappropriate conduct and misconduct matters.

We do however consider there to be merit in ongoing and regular strategic review, particularly in the coming years as the complaints framework matures and adjusts to any changes arising from this inquiry.

We therefore recommend that the relevant portfolio committee exercise its responsibilities under the Standing Orders and provide an *annual report* to the Legislative Assembly in accordance with Standing Order 194A. We also recommend that the performance of the Councillor Conduct Tribunal be considered at this time.

#### **Recommendation 40**

That the relevant portfolio committee provide an annual report to the Legislative Assembly on the performance of the functions of the Independent Assessor and the Councillor Conduct Tribunal.

---

<sup>345</sup> Queensland Parliament, Parliamentary Crime and Corruption Committee, *Functions of The Committee*, [www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=171](http://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=171).

<sup>346</sup> Queensland Local Government Reform Alliance, Organisation Sunshine Coast Association of Residents, submission 53, p 9.

## Appendix A – Submitters to the inquiry

Sub #	Submitter
001	Nigel Waistell
002	Mount Isa City Council
003	Confidential
004	Cr Adelia Berridge
005	Office of the Independent Assessor
006	Cr Paul Golle
007	Janette Christie
008	Jeana Scott
009	Confidential
010	Confidential
011	Lynette McLaughlin, Mayor, Burdekin Shire Council
012	Confidential
013	Michael Thomson, CEO, Mackay Regional Council
014	Balonne Shire Council
015	Margaret Strelow
016	Brisbane City Council
017	Council of the City of the Gold Coast
018	Steve Johnston, CEO, Bundaberg Regional Council
019	Wendy Boglary
020	Tamborine Mountain Progress Association Inc
021	Confidential
022	Confidential
023	Confidential
024	Cr Glenda Mather
025	David Keenan, CEO, Mount Isa City Council
026	Dave Burges, CEO, Southern Downs Regional Council
027	Property Council of Australia
028	Tom Tate, Mayor, Council of the City of the Gold Coast
029	Cr Adam Allan

030	Confidential
031	Confidential
032	Rockhampton Regional Council
033	Jack Dempsey, Mayor, Bundaberg Regional Council
034	Confidential
035	Julie Wilkinson
036	Confidential
037	Confidential
038	Torres Strait Regional Council
039	Queensland Integrity Commissioner
040	SEQ Community Alliance
041	Brisbane Residents United
042	Cr Nicole Johnston
043	South West Queensland Regional Organisation of Councils
044	Redland City Council
045	Cr Jared Cassidy
046	Confidential
047	Creevey Russell Lawyers
048	Confidential
049	Tim Fynes-Clinton, Executive Partner, King & Company Solicitors
050	Confidential
051	Local Government Association of Queensland
052	Fassifern Guardian
053	Queensland Local Government Reform Alliance and Organisation Sunshine Coast Association of Residents
054	Confidential
055	Redlands2030 Inc
056	Cr Derek Swanborough
057	Cr Paul Bishop
058	Queensland Law Society
059	Councillor Conduct Tribunal

## **Appendix B – Officials at public briefings**

### **6 December 2021**

#### **Department of State Development, Infrastructure, Local Government and Planning**

- Ms Bronwyn Blagoev, Executive Director, Local Government Division
- Dr Caroline Smith, Executive Director, Economic and Policy Futures

### **7 December 2021**

#### **Office of the Independent Assessor**

- Ms Kathleen Florian, Independent Assessor
- Mr Charlie Kohn, Deputy Independent Assessor
- Ms Jane Hodgkinson, Director, Media and Engagement

### **9 February 2022**

#### **Office of the Independent Assessor**

- Ms Kathleen Florian, Independent Assessor
- Mr Charlie Kohn, Deputy Independent Assessor
- Ms Jane Hodgkinson, Director, Media and Engagement

#### **Department of State Development, Infrastructure, Local Government and Planning**

- Ms Bronwyn Blagoev, Executive Director, Local Government Division
- Dr Caroline Smith, Executive Director, Economic and Policy Futures

#### **Queensland Integrity Commissioner**

- Dr Nikola Stepanov, Queensland Integrity Commissioner

### **28 April 2022**

#### **Office of the Independent Assessor**

- Ms Kathleen Florian, Independent Assessor
- Mr Charlie Kohn, Deputy Independent Assessor
- Ms Jane Hodgkinson, Director, Media and Engagement

## **Appendix C – Witnesses at public hearings**

### **6 December 2021 – Brisbane**

#### **Local Government Association of Queensland**

- Ms Alison Smith, Chief Executive Officer

#### **King & Company Solicitors**

- Mr Tim Fynes-Clinton, Executive Partner

### **9 February 2022 - Brisbane**

#### **Councillor Conduct Tribunal**

- Ms June Anstee, President
- Mr Troy Newman, Member

### **28 February 2022 - Townsville**

#### **Townsville City Council**

- Ms Jenny Hill, Mayor
- Mr Jonte Verwey, Councillor

#### **Burdekin Shire Council**

- Ms Lynette McLaughlin, Mayor

### **1 March 2022 - Cairns**

#### **Cairns Regional Council**

- Mr Rob Pyne, Councillor

#### **Torres Strait Island Regional Council**

- Mr Peter Krebs, Manager, Legal Services

#### **Douglas Shire Council**

- Mr Michael Kerr, Mayor

#### **Tablelands Regional Council**

- Mr David Clifton, Councillor

### **2 March 2022 - Karumba**

#### **Carpentaria Shire Council**

- Mr Jack Bawden, Mayor
- Mr Mark Crawley, Chief Executive Officer
- Mr Andrew Murphy, Councillor
- Mr Craig Young, Councillor

#### **Burke Shire Council**

- Mr Ernie Camp, Mayor

## **2 March 2022 – Mount Isa**

### **Mount Isa City Council**

- Mr Phil Barwick, Deputy Mayor
- Mr Mick Tulley, Councillor
- Ms Kim Coghlan, Councillor
- Mr David Keenan, Chief Executive Officer

### **Cloncurry Regional Council**

- Mr Gregory Campbell, Mayor

## **7 March 2022 – Brisbane**

### **Livingstone Shire Council**

- Ms Glenda Mather, Councillor

### **Mackay Regional Council**

- Mr Greg Williamson, Mayor
- Ms Fran Mann, Councillor

## **8 March 2022 - Bundaberg**

### **Bundaberg Regional Council**

- Mr Jack Dempsey, Mayor
- Mr Michael Gorey, Chief of Staff

## **18 March 2022 - Toowoomba**

### **Southern Downs Regional Council**

- Mr Vic Pennisi, Mayor
- Mr Andrew Gale, Councillor

### **Balonne Shire Council**

- Ms Samantha O'Toole, Mayor

## **21 March 2022 - Southport**

### **Gold Coast City Council**

- Ms Donna Gates, Deputy Mayor
- Mr Luke Wallace, Chief of Staff

### **Scenic Rim Regional Council**

- Mr Greg Christensen, Mayor

## **22 March 2022 - Brisbane**

### **Mount Isa City Council**

- Ms Danielle Slade, Mayor

**Brisbane City Council**

- Mr Jared Cassidy, Councillor
- Mr Steve Griffiths, Councillor
- Ms Nicole Johnston, Councillor

**Barcaldine Regional Council**

- Mr Sean Dillon, Mayor

**Queensland Law Society**

- Ms Kate Brodnik, Senior Policy Solicitor
- Mr Calvin Gnech, Chair, Occupational Discipline Law Committee

**Local Government Association of Queensland**

- Ms Alison Smith, Chief Executive Officer

**King & Company Solicitors**

- Mr Tim Fynes-Clinton, Executive Partner

**Brisbane Residents United**

- Ms Elizabeth Handley

**SEQ Community Alliance**

- Mr Chris Walker, President

## Appendix D – Councillor Conduct Tribunal Decisions

Summary of Councillor Conduct Tribunal (CCT) Decisions			
No.	Decision Date	Misconduct allegations sustained / not sustained	Summary of CCT Order
1	25/05/2022	Sustained x 2	Make public Facebook admissions (x2) of misconduct Pay to the local government \$3,446.25
2	17/05/2022	Sustained x 3 Not sustained x 2	Reprimanded x 3 Pay to the local government \$5,514.00 Note, had the councillor still been serving on council, the Tribunal would have considered whether it would be appropriate to recommend to the Minister that the councillor be suspended for a period.
3	16/05/2022	Not sustained	N/A
4	12/05/2022	Sustained x 4	Make public admission at general council meeting that is open to the public (x 2) Make admission at general council meeting that is open to the public, making specific reference to being elected as Deputy Mayor at the time (x2) Attend training/counselling at own expense (x2) with specific reference to requirements for Register of Interests
5	6/05/2022	Not sustained	N/A
6	25/03/2022	Sustained	No further action be taken.
7	23/03/2022	Not sustained	N/A
8	8/03/2022	Sustained	Reprimanded Pay to local council \$500
9	4/02/2022	Sustained	Attend training at own expense to address Councillor Code of Conduct and Dealing with Council Records appropriately Pay to the local government \$300
10	3/12/2021	Sustained	Make public admission at general council meeting that is open to the public Attend training at own expense on appropriate management and disclosure of conflicts of interest. Tribunal recommends training be facilitated by the Department. Pay to the local government \$250

Summary of Councillor Conduct Tribunal (CCT) Decisions			
No.	Decision Date	Misconduct allegations sustained / not sustained	Summary of CCT Order
11	10/11/2021	Sustained x 2	Attend training at own expense to address specific conduct as per allegations. Tribunal recommends training be facilitated by the Department.
12	28/10/2021	Sustained	Make public admission at general council meeting that is open to the public Attend training (not at own expense) on proper application of the local government principles
13	21/10/2021	Not sustained	N/A
14	21/10/2021	Sustained	Make admission at council meeting Attend training at own expense on proper assessment and determination of conflicts of interest. Pay \$500
15	8/10/2021	Sustained	Make public admission at general council meeting that is open to the public Attend counselling with CEO of Council and include proper application of the policy to meetings with applicants for development applications
16	5/10/2021	Sustained	Reprimanded Attend training at own expense on how to deal with applicants and development applications and include the proper process for seeking further information and applying local government principles to interactions and decision making Pay to the local government \$1,000
17	24/09/2021	Sustained	Reprimanded Attend training to address conduct. Tribunal recommends training be facilitated by the Department
18	30/08/2021	Sustained x 2	Make public admission at general council meeting that is open to the public Reprimanded Pay to the local government \$2,000
19	13/07/2021	Sustained	Make public admission at general council meeting that is open to the public Pay to the local government \$250
20	30/06/2021	Not sustained	N/A

Summary of Councillor Conduct Tribunal (CCT) Decisions			
No.	Decision Date	Misconduct allegations sustained / not sustained	Summary of CCT Order
21	30/06/2021	Sustained	Attend training to address conduct. Tribunal recommends training be facilitated by the Department
22	26/05/2021	Sustained	Reprimanded
23	13/04/2021	Not sustained x 10	N/A
24	24/03/2021	Sustained	Make public admission of misconduct
25	1/03/2021	Sustained x 2	Reprimanded
26	23/02/2021	Not sustained x 6	N/A
27	23/02/2021	Sustained x 8	Make public admission at council meeting Pay \$4,665 Reprimanded x 9
28	22/02/2021	Sustained x 2	Reprimanded x 2 Pay \$5,003.50
29	15/02/2021	Not sustained	N/A
30	26/11/2020	Sustained	No penalty
31	26/11/2020	Sustained	Make public admission at council meeting Attend relevant training, at own expense, to address the conduct
32	1/12/2020	Sustained	Make public admission of misconduct Attend relevant training, at own expense, to address the conduct and include appropriate use of Facebook and handling confidential information as Councillor Pay \$700
33	28/10/2020	Sustained	Make public admission of misconduct
34	24/09/2020	Sustained	Make public admission of misconduct Pay \$250
35	2/07/2020	Sustained	Make apology at council meeting Update register of interests Attend training on types of interests and completion of register of interests Training at own expense and Independent Assessor to be notified once training completed

Summary of Councillor Conduct Tribunal (CCT) Decisions			
No.	Decision Date	Misconduct allegations sustained / not sustained	Summary of CCT Order
36	19/02/2020	Sustained	Make public admission of misconduct Attend training/counselling to address conduct at own expense. CEO to report to Independent Assessor once training undertaken
37	19/02/2020	Not sustained x 2	N/A
38	6/02/2020	Sustained	Make public admission at council meeting
39	15/12/2019	Sustained	Reprimanded Make public admission of misconduct Pay \$700
40	14/12/2019	Sustained	Councillor to be counselled by the CEO about misconduct and CEO to report to Independent Assessor once counselling undertaken
41	14/12/2019	Sustained	Councillor to be counselled by the CEO about misconduct and CEO to report to Independent Assessor once counselling undertaken
42	29/11/2019	Sustained x 1 Not sustained x 1	Make public admission at council meeting Attend training/counselling to address conduct at own expense. CEO to report to Independent Assessor once training undertaken Pay \$300
43	29/11/2019	Not sustained	N/A
44	26/11/2019	Sustained x 2	Make public admission of misconduct
45	25/10/2019	Sustained x 2	Councillor to be counselled by the CEO about misconduct and CEO to report to Independent Assessor once counselling undertaken x 2
46	6/09/2019	Sustained	Make public admission at council meeting Councillor to be counselled by the CEO about misconduct and CEO to report to Independent Assessor once counselling undertaken Pay \$250
47	16/08/2019	Not sustained x 2	N/A
48	16/08/2019	Sustained x 4	Reprimanded x 4 Pay \$2,100

Summary of Councillor Conduct Tribunal (CCT) Decisions			
No.	Decision Date	Misconduct allegations sustained / not sustained	Summary of CCT Order
49	14/08/2019	Not sustained	N/A
50	14/08/2019	Not sustained	N/A
51	5/08/2019	Sustained x 2	Pay \$250
52	5/08/2019	Sustained x 2	Make public admission of misconduct x 2 Pay \$200
53	27/06/2019	Not sustained x 2	N/A
54	17/05/2019	Not sustained	Tribunal made recommendation that decision be provided to CCC to consider what action can be taken to prevent complainants publishing complaints before properly investigated and dealt with
55	26/04/2019	Not sustained	N/A
56	23/04/2019	Sustained	Make public admission at council meeting Pay \$100
57	17/04/2019	Sustained	Make public admission at council meeting. Tribunal noted apology on 20 November 2018 meets compliance for order
58	3/04/2019	Sustained x 2	Make public admission at council meeting x 2 Pay to local government \$100
59	3/04/2019	Sustained	Make public admission at council meeting Pay to local government \$100
60	12/02/2019	Sustained	Make public admission at council meeting