



Office of the  
**Independent  
Assessor**

Annual Report 2019-20



**Queensland**  
Government



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The Honourable Stirling Hinchliffe MP  
Minister for Local Government, Minister for Racing  
and Minister for Multicultural Affairs  
1 William Street  
BRISBANE QLD 4000

Dear Minister Hinchliffe

I am pleased to submit for presentation to the Parliament,  
the Annual Report for 2019-20 for the Office of the  
Independent Assessor.

I certify that this Annual Report complies with the prescribed  
requirements set out in Section 150EB of the *Local Government  
Act 2009*.

This report covers the period from 1 July 2019 to 30 June 2020.

Yours sincerely



**Kathleen Florian**  
**Independent Assessor**  
Office of the Independent Assessor

## Message from the Independent Assessor

In the 2019-20 financial year the Office of the Independent Assessor (OIA) received a record number of complaints about the conduct of Queensland councillors. A total of 1030 complaints, containing 1097 allegations, were lodged, representing a 12 per cent increase in complaints on the previous 12 months.

The continued growth in complaints was likely due to the heightened focus on integrity and accountability in local government, cultural change, and increased confidence in an independent complaints process.

The complaints predominantly came from community members (43 per cent) and increasingly from local government officials and staff who lodged 42 per cent of all complaints this year, up from just 11 per cent in 2018-19.

At the end of the 2019-20 financial year the OIA:

- was assessing 75 per cent of all incoming complaints within 21 working days
- had completed 408 misconduct investigations in the financial year and was undertaking another 132 investigations.
- had assigned 50 complaints involving 87 allegations to OIA legal team for possible referral to the Councillor Conduct Tribunal (CCT)
- had referred 50 matters involving 69 allegations to the CCT.

The matters assigned to the OIA legal team and referred to the CCT included 130 complaints and related investigations about one councillor, which were referred to the CCT as one matter.

The OIA's activities and outcomes in these areas are detailed in Chapters 2, 4 and 5.

Evident in this volume of work were both signs of strengthening ethical practice and opportunities for the OIA to work with councillors and stakeholders to do and achieve more. In particular, the OIA has observed the need to bolster the effectiveness and fairness surrounding the handling of inappropriate conduct matters by Queensland councils. Initiatives may be implemented by councils themselves or it may be the case that legislative amendments are needed in the future. This is discussed in more detail in Chapter 3.

In March 2020, the OIA experienced its first quadrennial local government elections. The OIA and our fellow integrity agencies the Crime and Corruption Commission (CCC), the Electoral Commission of Queensland (ECQ) and the Queensland Integrity Commissioner (QIC) implemented

strategies to ensure that candidates and councillors were judged on their merits, and not on the politicisation or other improper use of the complaints framework. These measures, as outlined in Chapter 6, proved effective as there was no significant increase in the number of complaints lodged with the OIA during this period. When addressing a parliamentary committee, the CCC observed that the 2020 campaign period was “much cleaner” than in previous years, noting the presence of the OIA for the first time at the statewide polls.<sup>1</sup>

The local government elections also provided an opportunity for the OIA to review all matters where councillors were not returned to office to determine whether there was an ongoing public interest in progressing those matters. We also offered a short-term amnesty for incoming councillors with no previous local government experience, to assist them to build their capacity as leaders and to learn from early, lower-level mistakes. These matters are further addressed in Chapter 6.

Immediately after the elections the OIA's jurisdiction increased, firstly with the reinstatement of the Ipswich and Logan City Councils and as Brisbane City Council came under our remit, becoming the final Queensland council to do so.

Throughout the year we remained dedicated to strengthening councillors' ethical practice and their commitment to the local government principles. The OIA provided information, insights and resources that sought to educate councillors and minimise recurring misconduct risks. These activities were often executed in collaboration with key stakeholders and are discussed in Chapter 6.

The OIA also acted to improve its own operations, successfully implementing an updated case management system to align with OIA functions and responsibilities, improving workflows and reducing manual processes. The updated *Resolve* system went live in February 2020.

The skills and dedication of the OIA staff were evident throughout, as complaint by complaint and conversation by conversation, the team dealt effectively, fairly and consistently with matters. While the high volume of complaints placed pressure on our people, I am grateful for their hard work, decency and resilience, as well as the time they took every day to listen to the concerns of complainants and councillors alike.



**Kathleen Florian**  
Independent Assessor

<sup>1</sup> CCC Chairperson Alan MacSporran QC before the Parliamentary Crime and Corruption Committee public meeting 19 June 2020.

## Chapter 1

# About the Office of the Independent Assessor

## Our vision

To strengthen the community's trust in councillors and the local government sector.

## Our values

RESPECTFUL

COURAGEOUS

CONNECTED

TRANSPARENT

BALANCED

## What we do

The Office of the Independent Assessor (OIA) assesses, investigates and prosecutes complaints about councillor conduct and works with councillors to strengthen compliance with the integrity framework.

It investigates and prosecutes councillor misconduct and corrupt conduct when the latter is referred to it by the Crime and Corruption Commission (CCC), while inappropriate conduct matters are referred to the relevant local government.

The OIA proactively conducts training on the councillor complaints framework and provides resources to councillors to help them to avoid recurring misconduct risks.

It contributes to the Queensland Government's objectives for the community, being a responsive government and keeping communities safe, by:

- timely engagement with the public and councillors to ensure that councillor conduct complaints are managed in an effective and transparent manner
- ensuring local government decision-making is undertaken in the public interest
- contributing to the security of the community by detecting and dealing with councillor misconduct
- by engaging in targeted prevention strategies progressed in collaboration with stakeholders.

## Our legislation

The *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* established the OIA to manage councillor conduct complaints for local governments across Queensland, excluding Brisbane City Council (BCC) at that time.

On 30 March 2020, provisions in the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other*

*Legislation Amendment Bill 2019* came into effect which brought BCC under the OIA's jurisdiction. As of this date the OIA's remit covered all 77 local governments in Queensland.

The Independent Assessor (IA) reports directly to the Minister for Local Government, Racing and Multicultural Affairs.

## Oversight

On 21 May 2020, the Economics and Governance Committee of the Queensland Parliament became responsible for monitoring and reviewing the performance of the Independent Assessor.

## Operating environment

The OIA works with its key stakeholders including community members, Queensland's 77 local governments and 578 councillors, as well as the Minister and the Department of Local Government, Racing and Multicultural Affairs (DLGRMA).

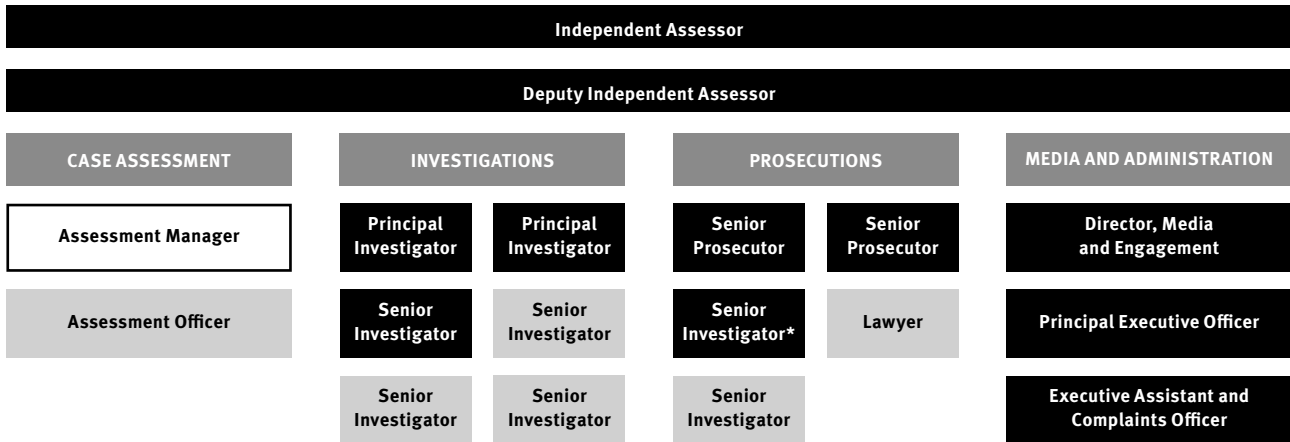
It also engages with the CCC, the Queensland Integrity Commissioner (QIC), Queensland State Archives, the Electoral Commission of Queensland, the Local Government Association of Queensland (LGAQ), Local Government Managers Australia (Queensland) and the Queensland Law Society. The OIA is part of the Local Government Liaison Group and the Queensland Integrity Agencies Committee.

The OIA contributed to law reform through a submission and evidence to the Parliamentary Economics and Governance Committee considering the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019*.

## Organisation structure

In 2019-20 the OIA conducted its business with 11 full-time equivalent (FTE) staff. To manage workloads and pressure points, one investigator with legal qualifications was moved to the legal team and six temporary staff members augmented

**OFFICE OF THE INDEPENDENT ASSESSOR – 11 FTE**



**Legend**

■ Permanent FTE    ■ Temporary FTE    □ Temporary from DLGRMA redeployment list

\*with legal qualifications

the assessment, investigation and legal teams. One officer was provided free of charge by the DLGRMA.

The OIA received support from DLGRMA and the Department of State Development, Tourism and Innovation (DSDTI) for human resources, finance, information technology (IT), procurement and communication.

**Financial performance**

The financial performance of the OIA is consolidated within the audited Financial Statements of the Annual Report 2019-20 of the DLGRMA.

**Impact of COVID-19**

This year the OIA was required to deal with the challenges presented by the COVID-19 pandemic. Staff were equipped to work from home and our operations moved online from March 2020. As at 30 June 2020, the pandemic’s greatest impact was to delay investigations into councillors in remote and First Nations communities as a result of the OIA’s inability to travel to those areas and/or to gather relevant evidence electronically.

While several other processes took longer than usual, the OIA continued to interact with stakeholders via online platforms, which allowed us to take part in meetings, presentations and events in the face of restrictions on travel and gatherings. These events were particularly important as newly-elected councils took office following the 2020 local government elections. The OIA conducted training for individual councils

and collaborated on group inductions with stakeholders including DLGRMA, LGAQ, CCC, and QIC.

The OIA remained accessible to complainants who were encouraged to lodge complaints via the OIA website, and councils were given some concessions to help them deal with the impact of COVID-19. For example, the OIA allowed longer response times when requesting information and issuing notices as part of complaint assessments, investigations and natural justice processes. Importantly, first-time councillors were given a three-month amnesty which is discussed in Chapter 6.

**Introduction of the *Queensland Human Rights Act 2019***

The OIA understands and complies with the requirements of *The Human Rights Act 2019* (HR Act).

To further the objects of the HR Act and to ensure our policies, procedures and practices are compatible with the HR Act, the OIA:

- acts and makes decisions in a way which is compatible with human rights
- considers and refers to the HR Act when assessing councillor conduct, undertaking investigations and conducting legal processes
- raises awareness of the HR Act among OIA staff
- promotes compliance with the HR Act by OIA staff.

## Chapter 2

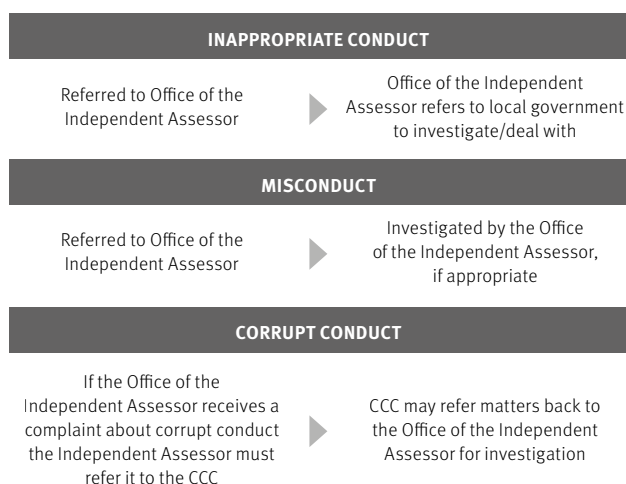
# Intake and assessment

### Intake

The Office of the Independent Assessor (OIA) receives complaints about councillor conduct. Councillor conduct may involve inappropriate conduct or misconduct. Complaints received by the OIA that raise a reasonable suspicion of corrupt conduct must be referred to the Crime and Corruption Commission (CCC).

Importantly, the OIA does not have jurisdiction to review or investigate council decisions.

### The complaints management scheme



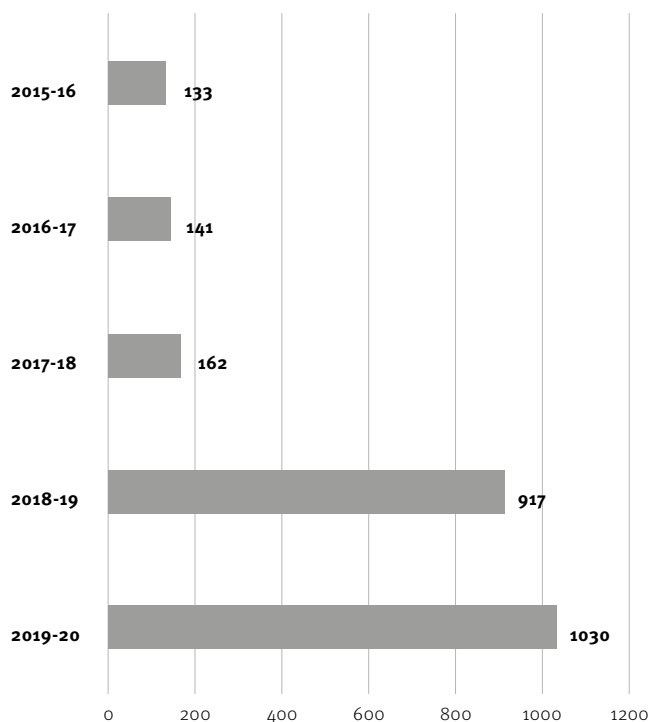
From its inception on 3 December 2018 through to 30 June 2020, the OIA received 1854 complaints, involving 64 of the 77 local governments in Queensland.

**In the 2019-20 financial year, 1030 complaints containing 1097 allegations were lodged in relation to 55 local governments. This represented a 12 per cent increase on the complaints received in the preceding year.**

Legislative changes incorporating Brisbane City Council into the OIA's jurisdiction took effect on 30 March 2020, two days after the quadrennial local government elections. Fifteen per cent of all complaints received since the statewide polls related to Brisbane City Councillors.

The following graph depicts the number of complaints lodged with the OIA and the Department of Local Government Racing and Multicultural Affairs (DLGRMA), which received conduct complaints prior to the OIA's inception in December 2018.

### Historical complaints as at 30 June 2020



Analysis of the source of complaints received by the OIA in 2019-20 showed:

- 43 per cent were lodged by members of the public (down from 62 per cent in 2018-19)
- 42 per cent were referred by local government, including self-referrals by councillors (up from 11 per cent in 2018-19)
- 7 per cent were referred by the CCC (down from 23 per cent in 2018-19)
- 8 per cent came from other sources, including anonymous complaints and complaints initiated by the OIA.

Many complaints involved multiple allegations, with 42.5 per cent of allegations relating to misconduct, 26 per cent relating to inappropriate conduct and 20 per cent involving corrupt conduct. Other matters accounted for 11.5 per cent of allegations.

The most common categories of complaints were breaches of trust [breach of local government principle] (25 per cent), conflicts of interest (18 per cent) and breaches of the Councillor Code of Conduct (15 per cent).



## Assessment

**The OIA assesses complaints to determine whether they raise a reasonable suspicion of inappropriate conduct, misconduct or corrupt conduct. Any complaints that do not relate to councillor conduct are dismissed and the complainant is notified.**

If the complaint contains insufficient information for proper assessment the Independent Assessor (IA) may request further details. If the complainant does not comply with this request or provides additional information which is still found to be insufficient, the IA may decide not to investigate the complaint.

### Possible assessment outcomes

The OIA assesses complaints twice a week and an assessment may result in one of the following outcomes:

#### Assessed by OIA once sufficient information received

- Referred to CCC
- OIA to investigate
- Referred to local government
- Complaint dismissed
- No further action taken

In 2019-20, the OIA assessed 75 per cent of complaints received within 21 working days. This is five per cent lower than in the previous year due to a number of factors including:

- the expansion of the OIA’s jurisdiction to include Brisbane City Council and the return of Ipswich and Logan City Councils
- a review of matters involving councillors who did not return to office after the 2020 local government elections and the finalisation of 57 matters as an outcome of that review (this generated more than 150 pieces of additional correspondence which required the assistance of the OIA assessment team)
- the OIA’s short-term amnesty for first-time councillors which required detailed correspondence to be provided to those councillors to build capacity.

The amnesty is detailed in Chapter 6 and the post-election review is discussed below under the section *Dismissal or no further action*.

The following table shows the outcomes of OIA assessments as at 30 June 2020.

Outcome of assessments: 2019-20	
Dismissed or no further action	51%
OIA investigation	37%
Referred to other agencies	6%
Enquiry only	5%
Pending assessment	1%

### Corrupt conduct

The IA must notify the CCC if a complaint or information involves, or may involve, corrupt conduct. In 2019-20, 40 matters involving suspected corrupt conduct were referred to the CCC.

The OIA also maintained an arrangement with the CCC which was established in January 2019, pursuant to section 40 of the *Crime and Corruption Act 2001* (CC Act). The arrangement improves complaint-handling efficiencies for both agencies by allowing the OIA to immediately commence investigating agreed categories of corrupt conduct, without first referring the matter to the CCC. Instead, the OIA provides a monthly schedule of matters to the CCC and the CCC can resume responsibility for a case at its discretion.

During 2019-20, the OIA reported 35 suspected corrupt conduct complaint files to the CCC under the section 40 (CC Act) schedule. This was in addition to the 40 referrals mentioned above.

### Misconduct – OIA to investigate

Complaints that raise a reasonable suspicion of misconduct at the time of assessment are investigated by the OIA. As at 30 June 2020, 37 per cent of all complaints assessed in 2019-20 became an OIA misconduct investigation. Misconduct investigations are explored in Chapter 4.

### Inappropriate conduct – refer to local government

The OIA does not have the power to investigate suspected inappropriate conduct by councillors unless it is closely tied to alleged misconduct. Instead, these complaints are referred to the relevant local government for investigation. In 2019-20, 27 such complaints were referred to local governments. Inappropriate conduct matters are discussed further in Chapter 3.

### Dismissal or no further action

In 2019-20 the OIA dismissed or took no further action on 626 complaints, some of which were received during the preceding financial year. Complaints may be dismissed during the assessment phase or after an investigation.

Reasons for dismissal or no further action include:

- the complaint did not raise a reasonable suspicion of inappropriate conduct or misconduct
- the complaint contained insufficient detail, or was lacking in substance
- the complaint was being dealt with by another agency
- the complaint was vexatious or improper
- further action was not a justifiable use of resources or in the public interest.

Sixty-one per cent of complaints were dismissed or subject to no further action, up from 52 per cent in 2018-19. This increase was a likely result of a one-off review of matters involving councillors who did not return to office after 2020 local government elections as detailed below.

### Post-election review

After the March 2020 elections, the OIA identified 85 matters involving councillors who did not return to office. These matters were reviewed against set criteria to assess whether pursuing them remained in the public interest.

The criteria took into account the seriousness of the complaint, the strength of the evidence, the types of sanctions likely to be imposed if a misconduct allegation was sustained, the former councillor's disciplinary history and whether the councillor was the subject of any other outstanding matters already before the Councillor Conduct Tribunal (CCT) or the courts. The OIA also considered the general principle of deterrence and whether a complaint centred on an issue that would benefit from a CCT determination. CCT decisions can provide clarification and/or guidance to sitting councillors about their legal obligations and the standards required of them.

As a result of the review, 57 of the 85 matters were either dismissed or subject to no further action, while it was determined that a strong public interest remained in progressing 28 matters.

### Vexatious or improper complaints

While the OIA has a responsibility to enforce the legislative standards for councillor conduct, it must also address unacceptable complainant conduct. The OIA uses a three-step escalation process to deal with complaints that appear to

be frivolous, vexatious or otherwise improper. The OIA may move directly to step three in cases where the complainant behaviour is very serious.

- **Step one:** The dismissal of a complaint which may be improper. The OIA provides a warning that any further complaint may be dismissed as vexatious or improper.
- **Step two:** The complainant makes a further complaint that is assessed as improper. The complaint is dismissed and the complainant receives a written warning that any further such complaint may result in the OIA commencing an investigation under the *Local Government Act 2009* (Sections 150AU and 150AV) to determine whether the complainant has committed a criminal offence.
- **Step three:** The OIA may investigate/prosecute the complainant, who faces fines of more than \$11,000 if convicted.

Based on this process, the OIA will be able to demonstrate a course of conduct on the part of the improper or vexatious complainant, notwithstanding warnings provided.

To date, the escalation process has proved effective in managing vexatious and improper complainant conduct.

Prior to 30 October 2019 it was not an offence for local government officials, councillors and council chief executive officers to make vexatious or improper complaints. However, the assent of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* made it possible to also prosecute local government officials in such circumstances.

### Review of decisions

A request for an internal review of a decision to dismiss a complaint or take no further action can be made within two months of the case being closed, consistent with best practice complaints management. Internal reviews are carried out by the IA.

In 2019-20, 20 requests for review were received and 17 reviews were completed. In 88 per cent of cases the original decision was upheld, and in two matters the decision to dismiss or take no further action was overturned and the IA raised a fresh complaint based on the complainants providing further information as part of the review process.

## Chapter 3

# Inappropriate conduct – referral to local government

### **Inappropriate conduct occurs when a councillor breaches the Councillor Code of Conduct or a local government policy, procedure or resolution.**

The Office of the Independent Assessor (OIA) does not have the power to investigate inappropriate conduct unless it is tied to alleged misconduct. Instead, suspected inappropriate conduct is referred to the relevant local government to investigate under the terms of its investigation policy.

Before making these referrals the OIA must issue a notice to the subject councillor and provide the councillor with an opportunity to respond to the allegation/s. After that process, if the Independent Assessor (IA) still suspects inappropriate conduct, the complaint is referred to the relevant local government to investigate and deal with.

The IA may make a recommendation to the local government on how the investigation is to be undertaken. For example, the IA routinely recommends that councils refer matters to the Councillor Conduct Tribunal (CCT) to investigate when allegations of inappropriate conduct are made against a mayor.

Inappropriate conduct accounted for 26 per cent of all complaints received by the OIA during 2019-20.

#### **Outcome of referrals**

Throughout the year, 27 suspected inappropriate conduct matters, involving 14 separate councils were referred for investigation. Almost half of these complaints were made by members of the public while the balance was referred to the OIA by councillors, council chief executive officers (CEO) and local government employees.

Of the 27 matters which were referred to local government, two were sustained, two were not sustained, 13 were ongoing as at 30 June 2020, and the OIA was yet to be advised of an outcome in relation to 10 matters. While the OIA cannot review how local governments deal with inappropriate conduct matters, it monitors and reports on the handling of these matters and these figures raised concerns.

The OIA observed that while some councils dealt with inappropriate conduct openly, objectively and fairly, others expressed concerns about councillors sitting in judgment of their peers and their reluctance to substantiate a conduct allegation.

Alliances were also problematic as it appeared that councillors who belonged to a team or voting block were less likely to be found to have engaged in inappropriate conduct than a councillor on the political outer.

Additional issues were noted surrounding compliance with the council's investigation policy, including the natural justice provision.

#### **Strengthening standards**

It is believed that legislative amendments may be required to ensure consistent standards are transparently applied across local government when dealing with inappropriate conduct.

The IA spoke of her concerns about inappropriate conduct matters at a Local Government Association of Queensland Civic Leaders Summit for mayors, deputy mayors and council chief executive officers (CEO). The IA asked councils to consider these issues and to resolve to deal with these matters fairly, objectively and consistently.

To assist councils to achieve this standard, the OIA commenced a process to identify a panel of external investigators who could quickly and independently investigate such matters according to agreed and consistent standards, if engaged by the local government.

Stakeholder consultation and the process of identifying external investigators were ongoing as at 30 June 2020. The OIA believes that proactively addressing the issues surrounding inappropriate conduct is another way in which councils can demonstrate to their communities their commitment to strengthened integrity standards.

## Chapter 4

# Misconduct – Office of the Independent Assessor investigations

### Thirty-seven per cent of all complaints received in 2019-20 became misconduct investigations.

Misconduct is more serious conduct than inappropriate conduct, and includes:

- breaches of the trust placed in a councillor as an elected official
- misuse of information or material acquired in or in connection with the performance of the councillor's function for the benefit or detriment of the councillor or another person
- giving directions to local government employees
- releasing information confidential to council
- failing to report suspected conflicts of interest of other councillors
- failing to comply with an order of the council or the Councillor Conduct Tribunal (CCT)
- failing to comply with acceptable request guidelines of the council
- failing to comply with a council policy about the reimbursement of expenses
- being disciplined for inappropriate conduct three times in one year.

The Office of the Independent Assessor (OIA) can also deal with certain statutory offences as misconduct under the *Local Government Act 2009* (LG Act) including:

- failure to properly declare or manage a conflict of interest or a material personal interest in a council meeting
- failure to record particulars of an interest in a register of interests
- taking retaliatory action against another councillor or reprisal action against another councillor or council employee
- offences in relation to the use or misuse of council information
- influencing or attempting to influence a council decision-maker where a councillor has a conflict of interest or a material personal interest.

#### OIA investigations

Throughout 2019-20, 381 complaints relating to 284 different allegations were subject to investigation by the OIA. Of these complaints, 130 related to the same or similar conduct by one

councillor. The investigations involved 38 of the state's 77 councils and the top six categories of alleged misconduct were:

- failing to declare a conflict of interest (93)
- breaching the trust place in a councillor [breach of local government principles] (55)
- release of information confidential to council (25)
- directing council staff (24)
- dishonest and or impartial performance of a councillor's functions (20)
- failing to disclose a material personal interest (16).

In order to address the large number of complaints requiring investigation, within resource capacity, a formal case prioritisation model was used.

An investigation is classified as finalised once the matter is referred to the OIA legal team, dismissed or subject to no further action. In 2019-20, 132 matters were subject to no further action following investigations.

The table below shows the timeframes for investigations finalised in 2019-20.

Investigations completed in less than 3 months	38%
Investigations completed between 3 and 6 months	24%
Investigations completed between 6 and 9 months	22.5%
Investigations completed between 9 and 12 months	8%
Investigations completed in more than 12 months	7.5%

#### Notices issued

In 2019-20, the OIA exercised powers under Section 150CH of the LG Act on 160 occasions. This power allows investigators to request Information that is reasonably necessary to investigate a councillor's conduct.

Under Section 150CJ of the LG Act, nine notices were issued requiring attendance of a person at an interview with investigators.

In addition to notices requiring a person to attend a place and answer questions or to provide information, the Independent Assessor (IA) may issue a notice under Section 150CK of the LG Act stating that the person's attendance or information provided is confidential, as is the notice itself. During the 2019-20 financial year, 20 such notices were issued.

## Chapter 5

# Disciplinary or prosecution matters

### Misconduct (disciplinary matters)

Given the Office of the Independent Assessor's (OIA) investigation workload and the goal of timely resolutions, councillors are given the opportunity to fast track matters where allegations are agreed. When councillors acknowledge misconduct, their cooperation is taken into account by the Councillor Conduct Tribunal (CCT) when determining an appropriate sanction.

Matters that are not fast tracked are fully investigated. If the investigation does not support the allegation the matter will be dismissed or subject to no further action. However should an investigation gather evidence which supports the allegation, the matter is referred to the OIA legal team.

The Independent Assessor (IA) may elect to deal with councillor conduct as misconduct or as a criminal offence in the case of certain statutory offences under the *Local Government Act 2009* (LG Act) or the *City of Brisbane Act 2010* (CoBA).

When the matter is dealt with as misconduct, and on a disciplinary basis the OIA legal team undertakes a natural justice process which provides a councillor with the opportunity to respond in detail to the allegation/s and the evidence gathered.

In 2019-20, 50 complaints involving 87 allegations were assigned to the OIA legal team for possible referral to the CCT.

As at 30 June 2020, 26 matters involving 12 councillors or former councillors and 53 separate allegations were being prepared for or undergoing a natural justice process.

Any submission provided by the councillor as part of this natural justice process is considered by the IA in determining whether there is a reasonable satisfaction that misconduct has occurred. If the IA is so satisfied the matter is referred to the CCT for a determination.

**During 2019-20 the IA referred 50 matters involving 37 councillors or former councillors and 69 allegations to the CCT. This included 130 separate complaints about the same or similar conduct by one councillor which were referred to the CCT as one matter.**

When the CCT is ready to proceed with a matter, it is listed for a directions hearing where consideration is given to matters such as applications for legal representation or a contested hearing where witnesses may be cross examined. Where possible, the CCT proceeds on the papers by receiving the

evidence of the parties in affidavit form, narrowing the scope of issues in contest and receiving written submissions from both parties on the particular facts or law.

In 2019-20, the OIA reviewed one administrative decision of the CCT made during the course of a directions hearing. This review was due to be heard by the Supreme Court of Queensland in August 2020 and will provide clarity about whether the IA has power to revoke or rescind a referral to the CCT in circumstances where public interest considerations in pursuing a matter have changed. Relevant provisions of the LG Act are silent on this point.

### Councillor Conduct Tribunal outcomes

**In 2019-20 the CCT decided 23 matters involving 13 councillors, including nine matters that had been referred in 2018-19. The CCT sustained 19 allegations against 10 councillors while nine allegations against six councillors were not sustained.**

The CCT publishes a written summary of each decision on the Department of Local Government Racing and Multicultural Affairs (DLGRMA) website, recording its findings and reasons.

Whether misconduct is substantiated or not, the OIA circulates de-identified notes on CCT decisions to provide information on how the legislation was applied and the standards expected of councillors. These notes provide important clarity for councillors, the OIA, lawyers who practice in this area and other stakeholders.

The circumstances in which misconduct findings were made during this period included:

- Five councillors who had not updated their register of interests as required by the LG Act. These decisions provided important clarification regarding items 12 and 17 of the prescribed register of interests form.
- Four councillors who either released information which was confidential to local government or misused information that became known to them in the performance of their duties.
- One councillor who threatened another councillor, intimidated an OIA complainant who was a member of the public, and published material on Facebook which was threatening, false or misleading.
- One councillor who failed to disclose a conflict of interest in a matter.

Delays were experienced in progressing matters through the OIA legal team and the CCT. From the OIA's perspective these delays were due to limited legal resources.

Under Chapter 5A of the LG Act which CoBA adopts, CCT decisions can now be reviewed by either the subject councillor or the IA to the Queensland Civil and Administrative Tribunal (QCAT). During the 2019-20, one councillor reviewed a CCT decision and this matter was at an early stage as at 30 June 2020. The IA did not review any matters.

### **Criminal matters**

The OIA may elect to prosecute statutory offences created by the LG Act and CoBA in the Magistrates Court.

The OIA has a prosecution policy on its website which sets out when the IA will deal with a matter as misconduct or as a statutory offence. Generally, the IA will deal with a matter as misconduct unless it is particularly serious and is not being dealt with by the CCC.

The IA may choose to prosecute as a statutory offence when the subject councillor has a disciplinary history for like matters, and the disciplinary process has not been effective in modifying the councillor's behaviour to date. The OIA will also escalate any allegations of reprisal against councillors or council staff. In 2019-20 the CCC determined it would deal with two such matters flowing from complaints made to the OIA.

As at 30 June 2020, the OIA had not commenced a criminal prosecution.

## Chapter 6

# Prevention activities

### Focus on prevention

**Preventing misconduct and inappropriate conduct is a priority for the Office of the Independent Assessor (OIA). We identify and respond to emerging and ongoing issues in individual councils and across the sector by providing information and insights, targeted training and resources.**

The focus areas include:

- how the councillor conduct framework operates
- recurring or high-risk areas of councillor conduct
- strategies to manage complex conduct issues
- clarification on how the OIA assesses or deals with certain matters.

A key plank in the OIA's prevention activities is building councillor capacity to abide by their legal obligations as defined in the *Local Government Act 2009* (LG Act) and the *City of Brisbane Act 2010* (CoBA). This involves the delivery of ongoing educative activities including presentations and training sessions which can be tailored to individual councils.

In the 2019-20 year the Independent Assessor (IA) conducted 21 such sessions. Many of these were delivered in person but moved to online platforms in the final quarter due to the introduction of travel restrictions and social distancing requirements as a result of the COVID-19 pandemic.

The OIA raised awareness about misconduct risks and highlighted areas of concern through its timely publications, which were emailed directly to subscribers, councillors and council chief executive officers (CEO). The quarterly *Insight* report transparently detailed complaint volumes, investigations and disciplinary matters, trends and issues while providing broader guidance on prevention priorities and opportunities. The IA also provided a synopsis of decisions made by the Councillor Conduct Tribunal (CCT) in relation to misconduct allegations.

To maximise the reach and effectiveness of prevention activities, the OIA collaborated on initiatives with key stakeholders. In recognition of the challenges posed by ever-changing technologies, a councillor's guide to messaging applications was produced in partnership with Queensland State Archives (QSA). This helpful resource succinctly outlines the rules and risks when using the popular apps to discuss

council business. It remains available on the OIA website after being published in May 2020.

The OIA contributed to industry publications by the Local Government Association of Queensland (LGAQ) and Local Government Managers Australia, and participated in events conducted by the LGAQ throughout the year including its annual conference and a Civic Leaders Summit, an event which is described as an introduction to local government in Queensland for mayors, deputy mayors and council chief executive officers.

### 2020 quadrennial local government elections

Both before and after the quadrennial local government elections in March 2020, the OIA collaborated with fellow integrity agencies on a range of preventative initiatives. In the lead-up to the statewide polls, the OIA worked with the Crime and Corruption Commission (CCC), the Electoral Commission of Queensland (ECQ) and the Queensland Integrity Commissioner (QIC) on a project that sought to ensure the elections were conducted honestly, fairly and transparently.

This involved a joint media event which was supplemented by an email to sitting councillors and as many candidates as possible, outlining some key legal obligations and encouraging compliance with all relevant legislation. The agencies also sought to deter the misuse of complaints bodies for political purposes by highlighting the penalties for vexatious or other improper allegations.

Throughout the election period the OIA urged all parties to maintain confidentiality regarding unresolved issues. A letter was sent to every current complainant in an ongoing OIA investigation or disciplinary matter urging them to keep matters confidential until due process had been followed. The IA also publicly condemned the release of information about ongoing matters.

The OIA received 100 complaints from the date the notices of elections were published on 22 February through to election day on 28 March. This was an average number for a five-week period and was an indicator that efforts to deter improper complaints were successful.

Of the complaints received, 61 came from members of the public, 28 of which were made by candidates or their spouses while 10 were anonymous. The OIA received just four councillor-on-councillor complaints, one matter was self-referred by a councillor and the balance came from other departments and agencies, including the CCC. No complaints

were dealt with as vexatious although one warning was issued during the election period. The OIA also issued a number of warnings about potentially vexatious matters earlier in February when a pattern of irregular complaint activity was identified.

### **Post-election activities**

The OIA embarked on a range of post-election activities to help educate newly-formed councils about their legal obligations and the standards required of councillors. The IA conducted training and information sessions for individual councils and also participated in educative events with key stakeholders, including a joint webinar with the CCC and QIC. This statewide event highlighted key misconduct and corruption risks to provide both information and a timely deterrent at the outset of the current council term.

To specifically build the capacity of first-time councillors with no local government experience, the OIA announced a three-month amnesty in relation to complaints about alleged misconduct or inappropriate conduct, except where the matter was serious.

Instead of taking investigative or other action, the OIA provided detailed feedback to brand-new councillors who were the subject of complaints. This feedback focused on the councillor's alleged actions, their legal obligations and the standards required of elected representatives.

The amnesty was introduced in recognition of the steep learning curve in local government and the challenges posed by COVID-19 for newly-elected councils. It commenced on 5 May 2020 and will conclude on 5 August 2020. The amnesty was applied in 18 cases involving 18 councillors as of 30 June 2020.



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