



31 March 2021: Edition 9

## From the Independent Assessor Kathleen Florian



Recently some councils have raised concerns with me that conduct complaints are being weaponised by councillors' opponents to cause them harm and place them under political pressure.

Regrettably, this can happen in the competitive and sometimes contentious world of politics. It is not unique to Queensland and it is not unique to local government.

So how does the OIA deal with this situation?

Firstly, we assess complaints strictly on their merits. Following assessment, 1331 of the 2713 complaints received by the OIA since December 2018 have not been dealt with further.

That doesn't mean they were all improper – most are dismissed because the allegations don't raise a reasonable suspicion of inappropriate conduct or misconduct by a councillor as prescribed by the legislation. They may also be dismissed if further dealing with the complaint is an unjustifiable use of resources in all of the circumstances.

In such cases the subject councillor is not identified in the Councillor Conduct Register, where complaint outcomes are recorded.

However, if a complaint raises a reasonable suspicion of inappropriate conduct or misconduct, or further enquiries are necessary to determine this, then the OIA will undertake a misconduct investigation or refer suspected inappropriate conduct to the relevant local government to investigate (the OIA does not have the power to investigate inappropriate conduct).

Since its inception the OIA has referred 101 matters to local government and commenced 805 misconduct investigations<sup>[1]</sup>. In this edition of Insight, we step you through OIA investigations [below](#).

If, at the end of an investigation, there is no reasonable satisfaction that the councillor has engaged in misconduct, then the matter will not be dealt with further. This is still an important outcome, as the outcome advice will authoritatively address each allegation with reasons. Again, the subject councillor will not be identified in the Councillor Conduct Register.

If, however after a natural justice process there is a reasonable satisfaction that misconduct has occurred the matter will be referred to the Councillor Conduct Tribunal (CCT).

Of the 2713 complaints received by the OIA, 167 complaints<sup>[2]</sup> have been referred to the CCT or are currently undergoing a natural justice process prior to a possible referral. The 167 complaints relate to 68 councillors and 230 separate allegations.

The numbers speak to the robust process which is in place to identify and deal with legitimate matters.

The OIA also monitors all complaints and if a pattern emerges of allegations lacking in substance then we commence our process for managing potentially vexatious complainant behaviours.

Councillors sometimes suggest to me that all complaints from political opponents or detractors should be dismissed as vexatious. I do not agree. Opponents sometimes rightly identify misconduct and, as explained, if a complaint is substantive it will be dealt with.

It must be remembered, however, that misconduct is not criminal conduct and the councillor complaints system is protective rather than punitive in nature. It aims to help councillors to learn from their mistakes and build their capacity as elected leaders for the benefit of their communities and local government.

The system is also about maintaining confidence in local government in Queensland, given its unique and critical role in high-value, high-volume and high-frequency decision making for your areas.

Dealing with misconduct matters as they arise helps to prevent an escalation in conduct to more serious misconduct or corrupt conduct and prevents longer term systemic or cultural issues.

Importantly, councillors who find themselves becoming the focus of political detractors or opponents are not powerless. You have power over your own conduct. Do your best to stay focused and not be drawn into distractions created by others.

Over the next couple of months, I will be visiting some councils who are currently impacted by these issues to discuss councillor experiences and to workshop the issues of greatest concern.

As always, I welcome your feedback.

**Kathleen Florian**

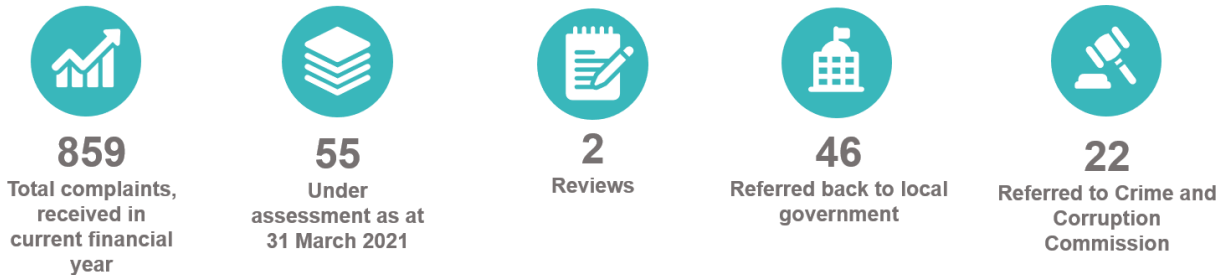
Contact: [independentassessor@oia.qld.gov.au](mailto:independentassessor@oia.qld.gov.au)

Phone: 1300 620 722

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1. 130 complaints about a former Noosa councillor were dealt with as one investigation, and 106 complaints about a councillor from the Torres and Western Cape region were also handled as one investigation as all complaints in each case related to one issue.
  2. This included the 130 complaints about the former Noosa councillor which was referred to the CCT and dealt with as one matter.

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## OIA complaint management at a glance



\*Figures are recorded from 1 July 2020 to 31 March 2021.

## Engaging with property developers

Property developers and others who submit their views on development matters (submitters) often seek access to councillors to discuss potential or existing projects, issues which can attract strong community interest and polarise opinions.

When, how, and even if, a councillor engages with developers and submitters can raise both misconduct and corruption risks, some of which were explored in the Crime and Corruption Commission's Belcarra report. The risks are naturally higher when a councillor has a conflict of interest in a matter that is before council or if a development application (DA) is likely to be made in the future.

However, there are also benefits to engagement with these stakeholders as it can provide opportunities to attract improved infrastructure, amenities, and services in an area, while boosting the local economy. It may also allow councillors to communicate community priorities and any feedback about a proposal.

To assist councillors to engage confidently and lawfully with developers and submitters the OIA has developed an example policy and accompanying guidance, which guides their interactions through the various stages of a DA process.

It explains if, and when, meetings are allowed, and what they might look like, including recommendations to have a third-party present during some interactions.

To round out this advice, the OIA has also developed some frequently asked questions (FAQ) which look at some specific issues such as engaging with developers who have multiple applications (at different stages) before council and dealing with developers who hold other roles in the community.

The [policy](#), [guidance](#), and [FAQs](#) are available on the [OIA website](#) and might also prove useful to other community members, including developers, to understand councillors' legal requirements.

I understand these documents will be highlighted by the Urban Development Institute of Australia and the Property Council Australia to their Queensland members to facilitate appropriate engagement.

The example policy is completely optional, and it may not be necessary for those councils that deal with limited development matters, and the Brisbane City Council where DAs are predominantly decided by council officers.

The OIA thanks Moreton Bay Regional Council for its assistance in developing the policy and to those stakeholders who provided valuable feedback and contributions during consultation, particularly the Local Government Association of Queensland (LGAQ) and contributing councils.

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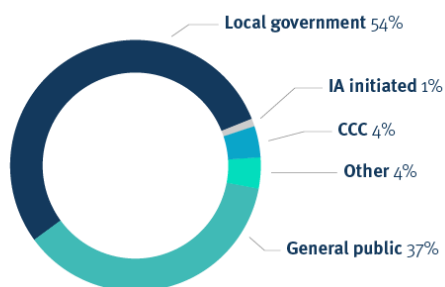
## Complaints: data & trends

Local government has been the main source of complaints in the 2020-21 financial year to date.

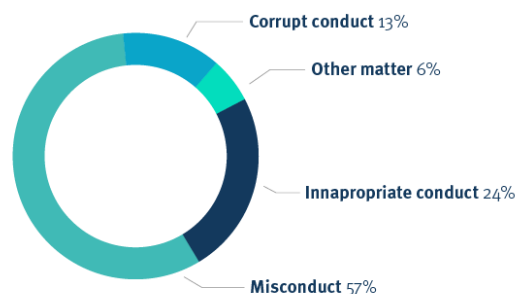
From 1 July 2020 - 31 March 2021, the sector lodged 54 per cent of complaints, including 22 self-referrals by councillors. The public made 37 per cent of complaints to the OIA.

This result was affected by a high number of complaints from one local government in the Torres and Western Cape region during the second quarter.

**Source of complaints 2020-21**

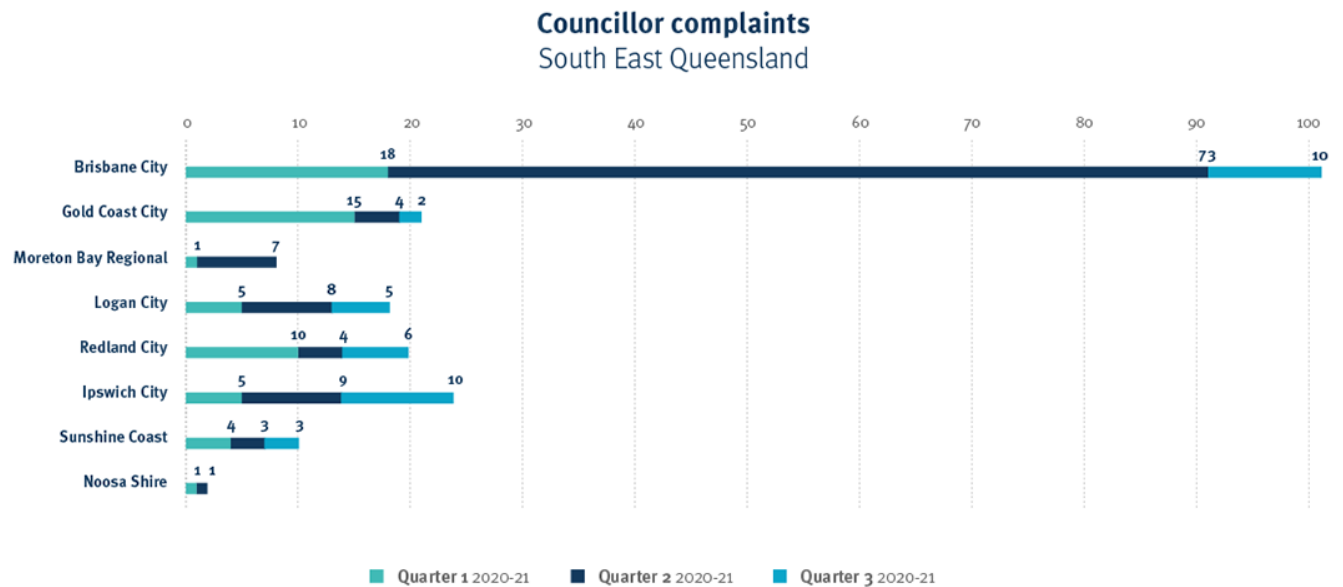


**Issues 2020-21**



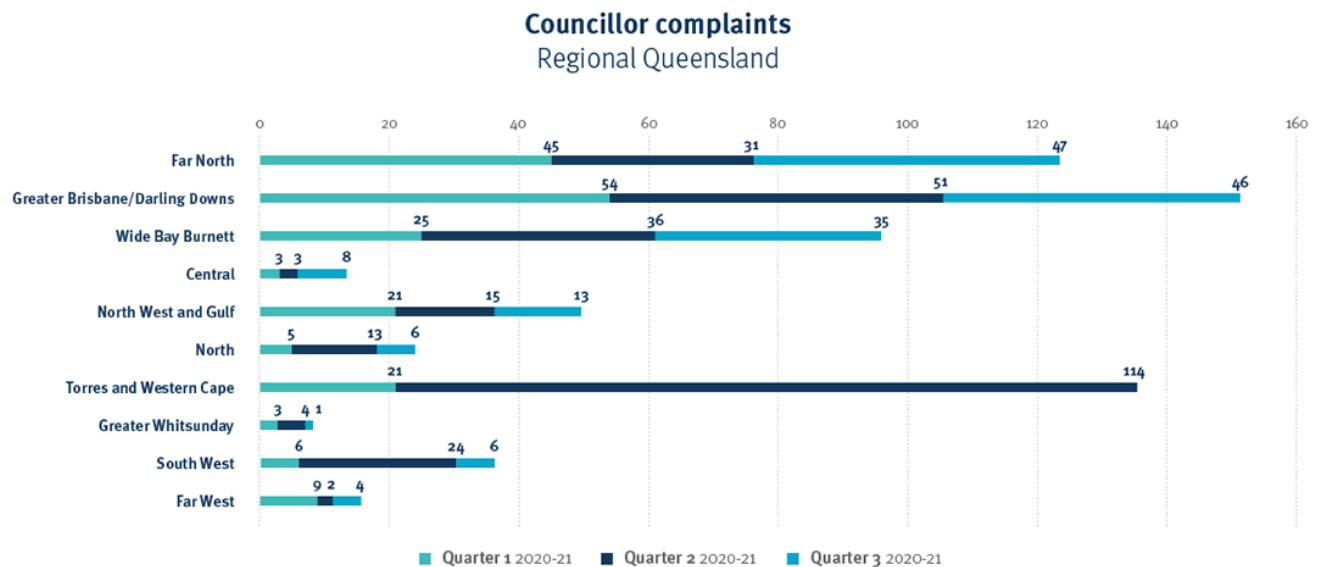
## Complaints: South East Queensland 2020-21

The following graph shows the number of complaints received about the conduct of councillors in South East Queensland from 1 July 2020 – 31 March 2021.



## Complaints: Regional Queensland 2020-21

The graph below shows the complaints received about the conduct of councillors in regional Queensland from 1 July 2020 – 31 March 2021. See the councils in each area on the next page.



#### Greater Brisbane / Downs regions

- Goondiwindi Regional
- Toowoomba Regional
- Western Downs Regional
- Southern Downs Regional
- Lockyer Valley Regional
- Somerset Regional
- Scenic Rim Regional

#### Wide Bay Burnett

- Bundaberg Regional
- Fraser Coast Regional
- Gympie Regional
- North Burnett Regional
- Cherbourg Aboriginal Shire
- South Burnett Regional

#### Central Queensland

- Rockhampton Regional
- Livingstone Shire
- Gladstone Regional
- Banana Shire
- Central Highlands Regional
- Woorabinda Aboriginal Shire

#### Far North Queensland

- Cairns Regional
- Cassowary Coast Regional
- Cook Shire
- Douglas Shire
- Mareeba Shire
- Hope Vale Aboriginal Shire
- Lockhart River Aboriginal Shire Council
- Tablelands Regional
- Yarrabah Aboriginal Shire
- Wujal Wujal Aboriginal Shire

#### North Queensland

- Burdekin Shire
- Charters Towers Regional
- Hinchinbrook Shire
- Palm Island Aboriginal Shire
- Townsville City

#### Greater Whitsunday

- Isaac Regional
- Mackay Regional
- Whitsunday Regional

#### Far West

- Barcaldine Regional
- Barcoo Shire
- Blackall-Tambo Regional
- Boulia Shire
- Diamantina Shire
- Longreach Regional
- Winton Shire

#### South West

- Balonne Shire Council
- Maranoa Regional Council
- Murweh Shire Council
- Paroo Shire Council
- Bulloo Shire Council
- Quilpie Shire Council

#### North West and Gulf

- Burke Shire
- Carpentaria Shire
- Cloncurry Shire
- Croydon Shire
- Doomadgee Aboriginal Shire
- Etheridge Shire
- Flinders Shire
- McKinlay Shire
- Mornington Shire
- Mount Isa City
- Richmond Shire

#### Torres and Western Cape

- Aurukun Shire Council
- Kowanyama Aboriginal Shire Council
- Mapoon Aboriginal Shire Council
- Northern Peninsula Area Regional Council
- Napranum Aboriginal Shire Council
- Pormpuraaw Aboriginal Shire Council
- Torres Shire Council
- Torres Strait Island Regional Council

## Investigations 1 July 2020 – 31 March 2021



**235\***

New investigations  
commenced



**142**

Investigations  
finalised



**207**

Active  
investigations as at  
31 March 2021

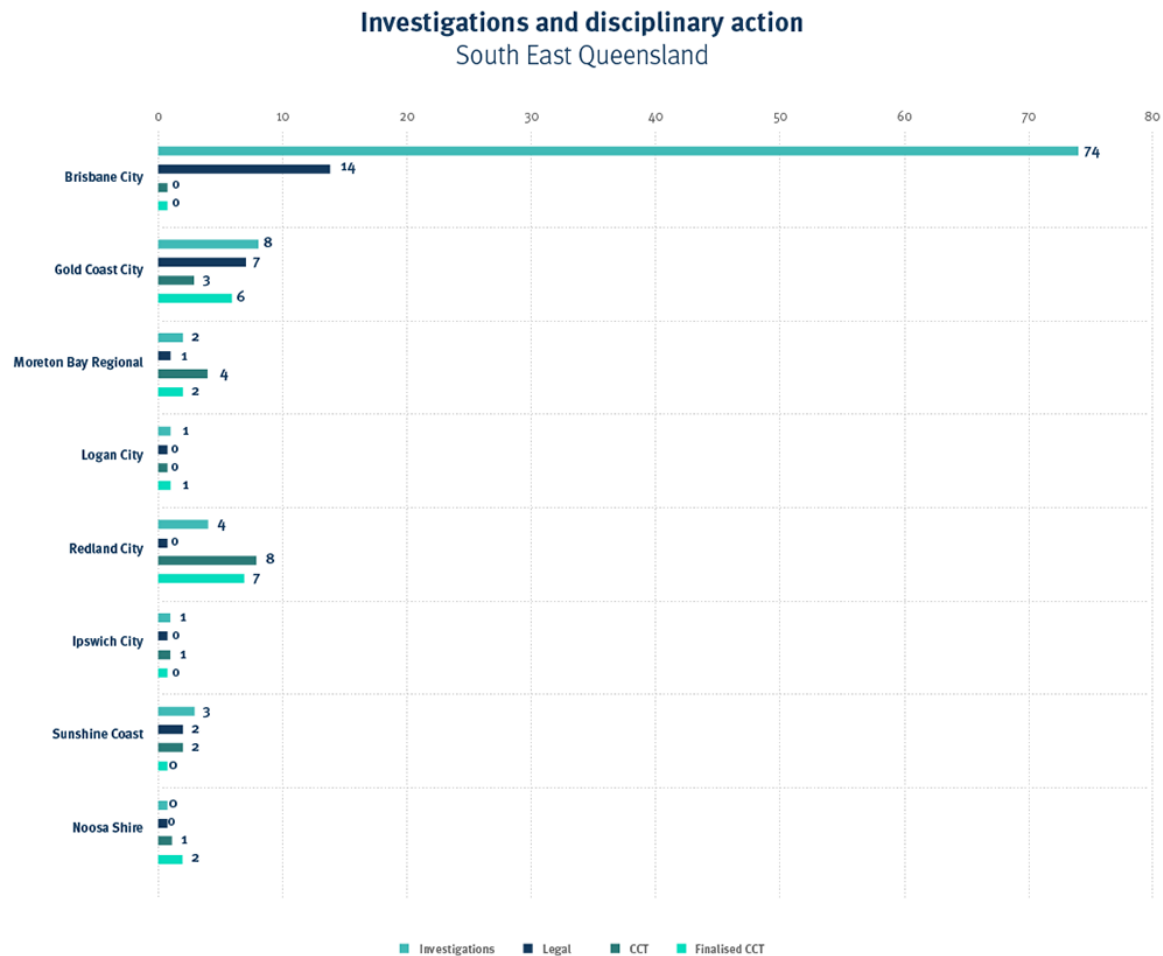
\*One investigation involves 106 complaints about a single issue.

\*\*Some of the finalised and active investigations commenced in the 2019-2020 financial year.

## Investigations & disciplinary matters: South East Queensland

The following graph shows by council, as at 31 March 2021:

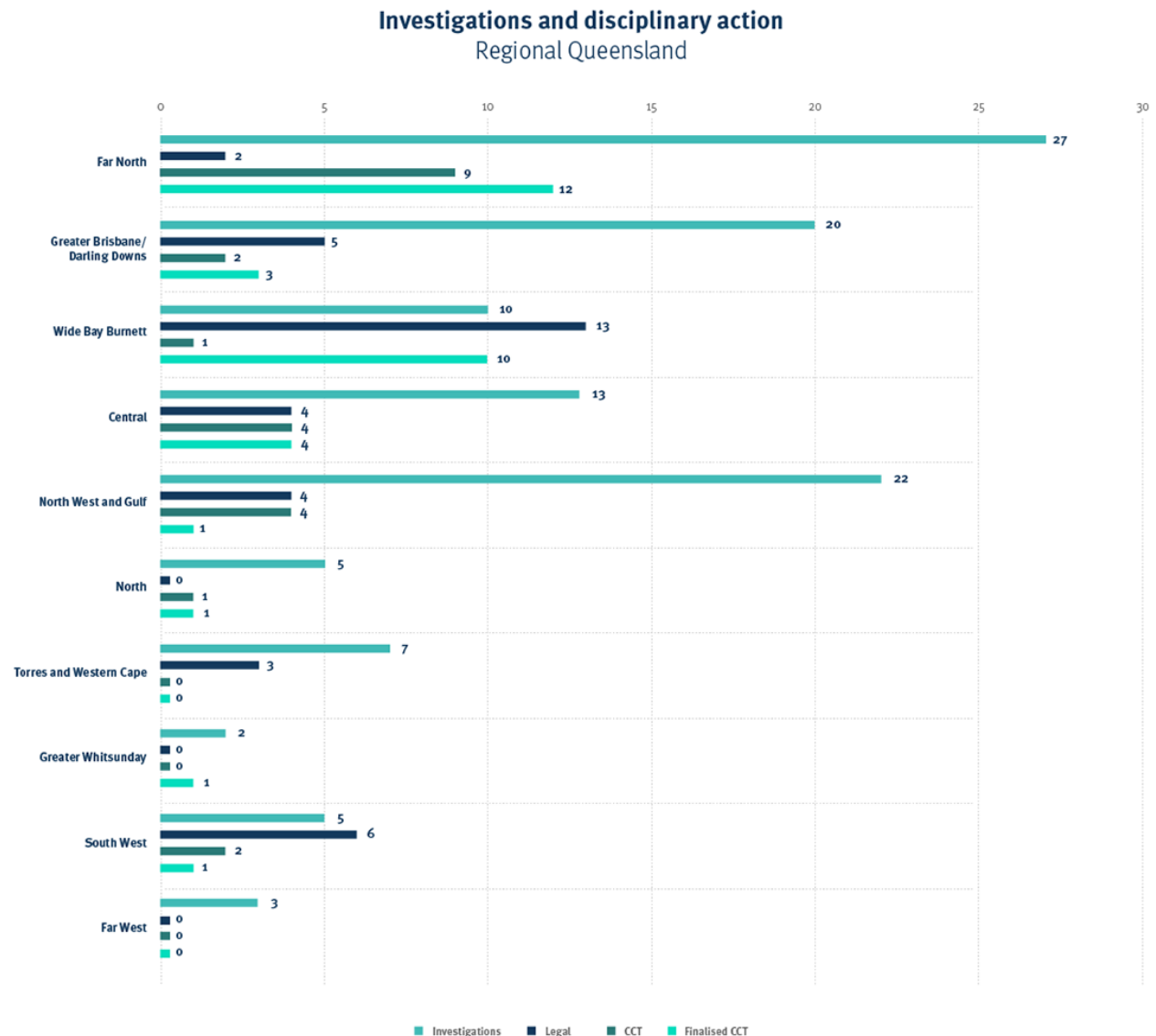
- the number of investigations into the conduct of councillors
- the number of matters with the OIA legal team undergoing a natural justice process
- matters before the Councillor Conduct Tribunal (CCT)
- matters already decided by the CCT



\*Brisbane City Council came under the OIA's jurisdiction on 30 March 2020. All other Queensland councils came within the OIA's remit as of 3 December 2018.

## Investigations & disciplinary matters: Regional Queensland

The following graph provides the same data as above in relation to regional Queensland councils. See the list of councils in each region [here](#) (PDF, 150KB).



\*106 complaints received in relation to one issue at a council in the Torres and Western Cape region are being treated as one investigation



## Investigating complaints

In Insight [Edition 8](#), we started to examine the difference between assessments and investigations – two distinct processes involving complaints lodged with the OIA.

To recap... an assessment is the first step taken to determine whether the complaint indicates a councillor may have engaged in inappropriate conduct, misconduct, or corrupt conduct. Every complaint is assessed.

An investigation is the next step taken for those complaints that are assessed as raising a reasonable suspicion a councillor has engaged in misconduct, or if further inquiries are required to determine this.

In this edition, we take a closer look at investigations.

### *OIA to investigate*

Once it is determined that a matter requires investigation the subject councillor and the complainant usually receive letters advising them of such. In some cases, however notification to a subject councillor may be withheld if there are operational reasons to do so, for example where it is appropriate to firstly secure, prove, or disprove, the existence of relevant evidence.

When the OIA provides notification of an investigation, a subject councillor is generally given two options:

- The councillor can acknowledge their mistake and opt to fast-track the matter to the Councillor Conduct Tribunal for a determination.
- OR
- The councillor can dispute the allegation/s, in which case a full investigation will be undertaken.

Should a councillor wish to proactively make a submission on a matter at this early stage, they are welcome to do so. In many cases this can help to expedite or focus an investigation by giving the investigator an early understanding of what a councillor accepts is correct or what is disputed and why<sup>[\[1\]](#)</sup>.

Once the investigator has gathered and evaluated the available evidence, the matter is reviewed by a multi-disciplinary panel which includes the Independent Assessor and/or the Deputy Assessor, the OIA investigator and lawyers. If the panel is not reasonably satisfied the subject councillor has engaged in misconduct, based on the available evidence, the matter will be dismissed or subject to no further action.

OIA investigators have a range of powers – they can require a person to attend a place and answer questions, request information necessary to investigate a councillor's conduct and execute search warrants.

If the panel has a reasonable suspicion of misconduct, the matter is referred to the OIA legal team to undertake a natural justice process. This process allows the councillor to respond to the allegation/s, detailed particulars and evidence gathered, based on a draft statement of facts prepared by the OIA lawyers.

Any submission made in response by the councillor is considered by the Independent Assessor before a decision is made on whether to refer the matter to the CCT for a determination on whether misconduct is made out.

A complaint can still be dismissed at this stage or made subject to no further action, or in matters involving multiple allegations the Independent Assessor may accept that some of the allegations no longer raise a reasonable satisfaction the councillor has engaged in misconduct.

While the OIA makes every effort to finalise an investigation as soon as possible, the timeframe depends on a number of factors including the complexity of the matter, the availability of witnesses and evidence, and the time taken by councils and councillors to respond to requests for information.

The volume of investigations undertaken by the OIA is also a factor. After a complaint is assessed, the subsequent investigation may be placed on hold until an investigator is available to examine the allegation/s in detail. Matters may be prioritised due to the seriousness of the allegations or their impact on the function of the council.

1. If the OIA ultimately decides to refer the matter to the Councillor Conduct Tribunal (CCT), any submission provided at this time will be included in the materials that are supplied to the CCT.

## Toolkit

Download a printable Insight 9 [here](#) (PDF, XXXXXKB).

Check the OIA website for helpful resources including:

- The OIA-LGAQ [Conflict of Interest App](#). An online tool that helps councillors to determine whether they have a prescribed or declarable conflict of interest. The LGAQ is working to make the app easier to navigate and the updated version is coming soon.

The DSDILGP website has useful tools too, including:

- [Quick reference guide: Managing conflicts of interest](#)

