

Office of the **Independent Assessor**

Annual Report 2023-24

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The Honourable Meaghan Scanlon MP
Minister for Housing, Local Government
and Planning and Minister for Public Works
1 William Street
BRISBANE QLD 4000

Dear Minister Scanlon

I am pleased to submit for presentation to the Parliament, the
Annual Report for 2023-24 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 2023 to 30 June 2024.

Yours sincerely



Bronwyn Blagoev
Independent Assessor
Office of the Independent Assessor

Message from the Independent Assessor

I am pleased to present the 2023-2024 Annual Report for the Office of the Independent Assessor (OIA).

This year has been defined by the passage of the Local Government (Councillor Conduct) and Other Legislation Amendment Act 2023 (Amendment Act) which contained key legislative reforms resulting from the inquiry into the Independent Assessor and councillor conduct complaints system by the then State Development and Regional Industries Committee. These reforms are designed to make the councillor complaints framework more effective and more efficient. In particular, the reforms call for a renewed focus on more serious misconduct matters and consideration of how the operations of the Independent Assessor can better support councillor capacity building.

There are a range of new provisions providing the Independent Assessor with an enhanced ability to deal with councillor conduct complaints more efficiently and proportionately.

The amendments include the removal of former councillors from the disciplinary framework, removal of historic complaints that are not corrupt conduct and for less serious conduct, and provide a process for the Assessor to recommend measures such as training to avoid unnecessary public expense.

These reforms have already seen significant improvements to the councillor conduct framework, with the number of matters awaiting determination by the Councillor Conduct Tribunal (CCT) reducing from 66 on 1 July 2023 to six by 30 June 2024.

The Office of the Independent Assessor (OIA) is committed to playing its part in ensuring matters are dealt with expeditiously at all points within the councillor complaints framework. As at 30 June 2024:

- ▶ 98 percent of complaints were assessed and an outcome communicated within 21 working days
- ▶ OIA investigation timeframes averaged 3.33 months
- ▶ the natural justice process averaged 4.88 months.

In 2024-25, the OIA is committed to assessing complaints within seven working days and investigating simple complaints within 60 working days. It is anticipated that more complex complaints proceeding through a natural justice process to the CCT will naturally take longer.

This financial year the OIA received less complaints than the 2022-23 financial year. This is a positive sign that will continue to be monitored over the coming years by the OIA. There is an overwhelming desire by both the OIA and, more broadly, across the local government sector to see a reduction in the number of councillor complaints and an increase in councillors' understanding of their roles and responsibilities.

During this year the OIA has been collaborating with key stakeholders and visiting councils, giving us the opportunity to talk with councils about the approach we are taking in assessing and managing complaints in a way that reflects the key legislative changes passed in 2023. Importantly, we have also been conveying the OIA's focus, that being to support councillors to better understand their legislative responsibilities and to direct the resources of the OIA on instances of serious misconduct.

This year, no matters were referred to the CCT and two percent of matters were referred to local governments to deal with as a conduct breach. The remaining complaints play an important role in allowing us to support others, such as the Local Government Association of Queensland (LGAQ) and the Department of Housing, Local Government, Planning and Public Works (DHLGPPW), to support councillors with targeted capacity building. It is imperative that we all work collaboratively.

Fourteen percent of all complaints made this year were made by councillors themselves. The OIA is pleased to see a real focus by key stakeholders on issues relevant to collaboration, teamwork and resilience for the new local government term. These efforts by stakeholders such as the LGAQ and DHLGPPW show a commitment to driving down these types of complaints and encouraging councils to focus, collectively, on strategic issues of community importance. The OIA will be actively monitoring trends relevant to these types of complaints over the coming term.

I wish to acknowledge the important work that the DHLGPPW, the LGAQ and the Local Government Managers Australia Queensland (LGMA) do in building the capacity of councillors and council employees. The OIA is committed to working with each of these important bodies to build the capacity of Queensland's local government sector. I wish to acknowledge each of their efforts in working collaboratively with the OIA, particularly to build awareness of the role of the OIA and how we undertake that role.

Finally, I wish to acknowledge the staff of the OIA who have worked tirelessly to ensure that the policy contained within the Amendment Act was implemented swiftly. Their professionalism has already greatly contributed to reducing the backlog of matters before the CCT and in cementing the educative approach of the OIA.

I am proud to have been announced as Independent Assessor this financial year and wish to recognise Ms Kathleen Florian, Queensland's inaugural Independent Assessor who stepped down as Independent Assessor in October 2023. Ms Florian led the establishment of the OIA during its first five years, an incredibly busy and challenging period.

Bronwyn Blagoev
Independent Assessor

01 About us

OUR VISION

Trust in the integrity of councillors.

OUR VALUES



CUSTOMERS FIRST



IDEAS INTO ACTION



UNLEASH POTENTIAL



EMPOWER PEOPLE



BE COURAGEOUS

WHAT WE DO

The Office of the Independent Assessor (OIA) undertakes the initial assessment of all complaints about councillor conduct in Queensland, ensuring the process remains transparent and accountable.

Complaints assessed as a suspected conduct breach may be referred to the relevant local government for resolution. Complaints assessed as alleged misconduct may be investigated by the OIA and may, following a natural justice process, be referred to the independent Councillor Conduct Tribunal (CCT) to decide. Complaints assessed as corrupt conduct are referred to the Crime and Corruption Commission (CCC).

The OIA contributes to the state government's objectives of 'Building Queensland' and 'Growing our regions' by:

- ▶ delivering an efficient and trusted councillor complaints framework that is balanced, timely, efficient and consistent
- ▶ strategically enhancing councillor integrity by collaborating with key stakeholders to support them to build capacity and foster a culture of accountability and ethical practice in local government.

01 About us

Oversight

The Housing, Big Build and Manufacturing Committee is responsible for monitoring and reviewing the performance of the Independent Assessor (IA).

Legislation

The *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* established the OIA to manage councillor conduct complaints and set out the legislative framework for the councillor conduct complaints system.

On 30 March 2020, provisions in the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019* added the Brisbane City Council (BCC) into the OIA’s jurisdiction.

On 22 November 2023, provisions in the *Local Government (Councillor Conduct) and Other Legislation Amendment Act* (the Amendment Act) made several amendments to the councillor conduct complaints system to enhance its efficiency and effectiveness. These included:

- ▶ introducing a preliminary assessment process so insubstantial conduct matters are ‘closed out’ as early as possible
- ▶ establishing statutory limitation periods for when complaints, notices or referrals must be made to the IA
- ▶ replacing the term ‘inappropriate conduct’ with ‘conduct breach’
- ▶ limiting the application of the complaints system to councillors’ conduct in their official capacity, and to sitting councillors (except where their conduct is suspected corrupt conduct).

The OIA’s remit covers all councillors from Queensland’s 77 local governments.

Human Rights Act 2019

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

protects and promotes human rights in its decision-making and actions.

To further the objectives of the HR Act and to ensure the OIA’s policies, procedures and practices are compatible, the OIA:

- ▶ acts and makes decisions in a way which is compatible with human rights
- ▶ considers and refers to the HR Act at key decision points
- ▶ raises awareness of the HR Act among OIA staff
- ▶ promotes compliance with the HR Act by OIA staff.

Machinery-of-government changes

Machinery-of-government changes came into effect on 18 December 2023. The following timeline outlines the OIA’s reporting arrangements for the 2023-24 financial year.

Minister Timeline

○ 1 July 2023 – 17 December 2023

Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning

○ 18 December 2023 – 30 June 2024

Minister for Housing, Local Government and Planning and Minister for Public Works

Operating environment

The OIA works with its key stakeholders including members of the community, councillors and staff from Queensland’s 77 local governments, officers from the DHLGPPW, and peak bodies including the LGAQ and LGMA.

The OIA also engages with the CCC, Queensland Civil and Administrative Tribunal (QCAT), Queensland Integrity Commissioner, Queensland Audit Office, Queensland Electoral Commissioner and Queensland Ombudsman.

OIA financial and non-financial performance information

OIA financial information is located in the 2023-24 DHLGPPW Annual Report.

OIA non-financial performance information based on the Service Delivery Statement is also in the 2023-24 DHLGPPW Annual Report.

Organisational structure

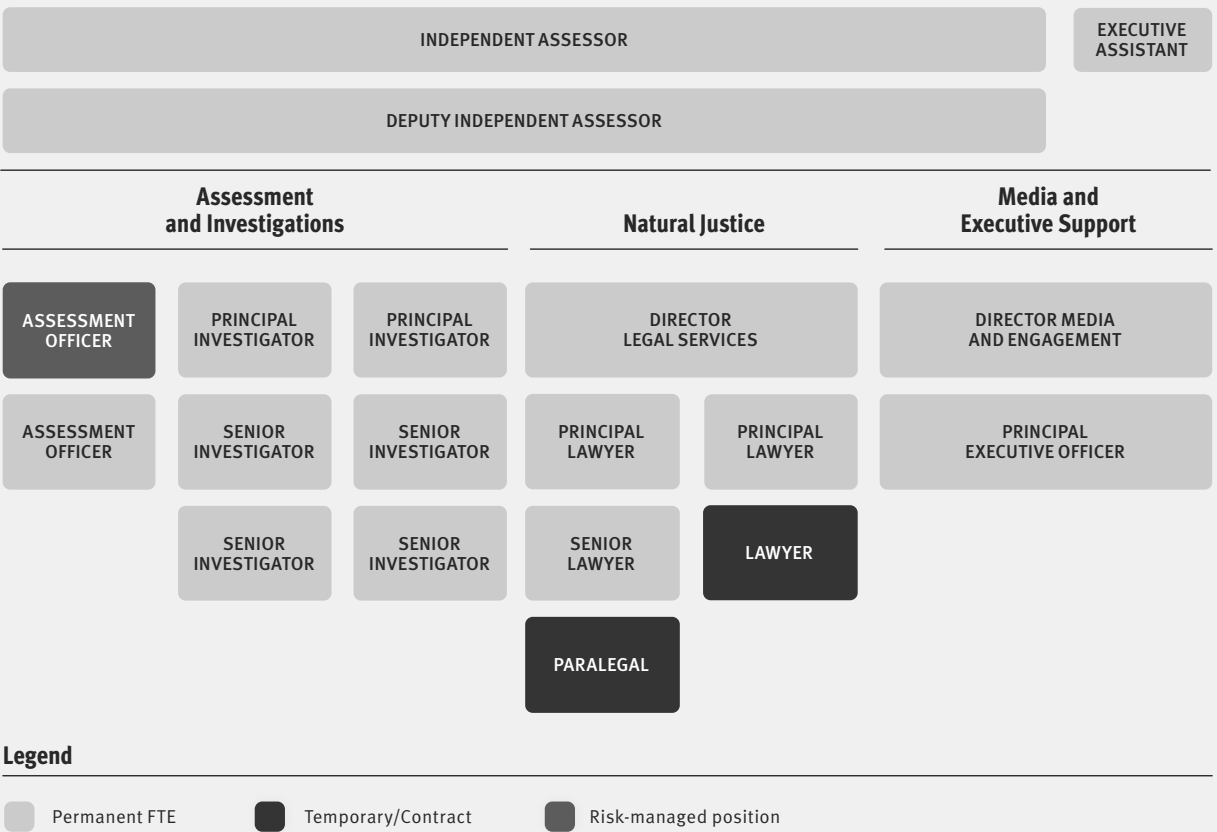
The OIA is funded for 19 permanent full-time equivalent (FTE) positions. This includes eight former temporary positions that were transferred to

permanent FTE as part of the 2023-24 State Budget (one of the recommendations in Report No.28 of the 57th Parliament – Inquiry into the Independent Assessor and councillor conduct complaints system tabled in October 2022).

The OIA receives support from DHLGPPW for human resources, finance, communications, information technology and procurement.

On 1 November 2023 Bronwyn Blagoev commenced as Acting IA, following the stepping down of Ms Kathleen Florian, Queensland’s inaugural IA.

ORGANISATIONAL CHART



02 Introduction of the *Local Government (Councillor Conduct) and Other Legislation Amendment Act 2023*

Preliminary assessment process

The Amendment Act introduces a formal assessment process for the OIA. The Amendment Act provides that the preliminary assessment provisions apply to a complaint about the conduct of a councillor made or referred to the IA under chapter 5A, part 3, division 2 (Complaints about councillor conduct), a notice about the conduct of a councillor given to the IA under chapter 5A, part 3, division 3 (Local government duties to notify assessor about particular councillor conduct), and information about the conduct of a councillor given to the IA under section 150AF(3).

The Amendment Act requires the IA to make a preliminary assessment of all complaints, notices and information about councillor conduct. *The Local Government Act 2009* (LG Act) now very clearly specifies the factors which must be considered by the IA in deciding whether to dismiss a complaint or take no further action. For example, the LG Act now clearly provides the IA with a power to take no further action where it would not be in the public interest or would be an unjustifiable use of resources. These powers are critical in ensuring that the resources of the OIA are targeted towards more serious complaints.

The LG Act is also clear that the IA may dismiss a complaint or decide to take no further action if the IA is satisfied that the conduct has already been, is being, or may be dealt with by another entity. In instances where a complaint is being addressed by another agency such as the CCC or the Queensland

Police Service, it is appropriate that the OIA will not take any further action.

Importantly, the LG Act now permits the IA to take 'alternative action' to address a councillor's conduct, for example, a recommendation to the councillor to attend specific training. This provides the OIA with greater flexibility to resolve complaints in a way that builds capacity, rather than focuses on a prosecution before the CCT.

In 2023-24 the OIA referred 3 councils and 24 councillors for training, guidance or intervention:

- ▶ 11 recommendations for training by either DHLGPPW or the council
- ▶ 13 recommendations for other action such as reviewing council policies and/or an apology.

In many instances this approach ensures that councillors receive bespoke training on a particular area in a short period of time, building capacity quickly.

Statutory limitation periods

A complaint, notice or information about the conduct of a councillor must now be made or given to the IA:

- ▶ within one year after the conduct occurred; or
- ▶ within six months after the conduct comes to the knowledge of the person who made the complaint or gave the information or notice, but within two years after the conduct occurred.

Where a complaint is assessed as a conduct breach, the IA may dismiss the complaint or take no further action if at least six months have elapsed since the conduct the subject of the complaint occurred and it would not be in the public interest to take action.

Application of the complaints system

The Amendment Act made key changes to the jurisdiction of the OIA. The OIA must now dismiss complaints or take no further action where the conduct relates solely to behaviour engaged in by the councillor in a personal capacity (unless the conduct is suspected corrupt conduct) or where the councillor's office becomes vacant (unless the conduct is suspected corrupt conduct).

Prior to the Amendment Act, the LG Act enabled a complaint about the conduct of a former councillor to be investigated and dealt with under the councillor conduct complaints system. However, because the person was no longer in office, the penalties that could be imposed were limited. The change implemented by the Amendment Act will enable OIA resources to be better targeted.

Vexatious complainants

The OIA has a responsibility to deal with councillor conduct complaints, which can sometimes include improper or vexatious complaints.

To ensure that councillors are provided due process and to uphold the efficacy of the councillor conduct framework, it is necessary for the IA to be provided adequate means by which to manage improper complaint behaviour.

To achieve this, the IA has two processes available under the LG Act to deal with vexatious complaints:

- ▶ commence a statutory prosecution under sections 150AV or 150R(3); and/or
- ▶ undertake a statutory process to make a 'vexatious complainant' declaration under section 150AWA.

The OIA is conscious of its important role in providing protections for councillors from vexatious complaints and actively considers whether a complaint or complainant is vexatious upon assessment of each complaint.

The OIA is yet to declare a complainant as vexatious under new section 150AWA of the LG Act. For a declaration to be made under section 150AWA of the LG Act, the IA must be satisfied that the person has repeatedly made complaints and at least three of the complaints made by the person have been dismissed as frivolous or vexatious or have been made other than in good faith. Whilst no declaration has yet been made under section 150AWA of the LG Act, individual complaints have been dismissed by the IA as vexatious and may form part of a section 150AWA declaration in due course.

During 2023-24, the IA did commence one prosecution under section 150AV of the LG Act. This decision was made against a background of what the IA believed were a large number of vexatious complaints having been made over an extended period of time. The IA later chose to discontinue the prosecution and, following assent of the Amendment Act, will now be actively seeking to make declarations under section 150AWA of the LG Act, in an attempt to protect councillors from vexatious complaints.

Mandatory reporting

Reporting by both councils and the OIA is important to support the transparency of the councillor conduct complaints system. The Amendment Act imposes additional reporting requirements on both councils and the OIA. For example, a council must report on the total number of suspected conduct breaches referred to it by the IA and the respective outcomes.

03 Complaints and notifications

2023-24
COMPLAINT
SNAPSHOT

RECEIVED

878

ALLEGATIONS

955

SINCE ESTABLISHMENT

5,585

51%

from the public

41%

from local
government sector

67%

decrease in councillor
self-referrals

17%

anonymous complaints

The OIA has received 5,585 complaints about councillor conduct since it was established on 3 December 2018 to 30 June 2024.

In 2023-24, the OIA received 878 complaints or notifications containing 955 separate allegations. This represents a two per cent decrease in the number of complaints or notifications received in 2022-23. Since establishment, the OIA has consistently received on average 950 complaints or notifications a year.

Complaints and notifications may allege that a councillor has engaged in inappropriate conduct/conduct breach, misconduct or corrupt conduct.

Under the OIA's broad discretion, complaints or notifications are dismissed on assessment as subject to no further action if they:

- ▶ are out of jurisdiction
- ▶ not inappropriate conduct/conduct breach or misconduct
- ▶ contain insufficient information for a proper assessment
- ▶ are not a justifiable use of resources
- ▶ are not in the public interest
- ▶ are improper, that is, vexatious or frivolous.

In addition, the passage of the Amendment Act on 22 November 2023, introduced amendments that allowed for complaints about former councillors and historic

complaints that are not corrupt conduct to also be dismissed on assessment. The amendments also provide a process for the IA to recommend measures such as training to avoid unnecessary public expense.

Complaints or notifications assessed as possible misconduct may be investigated by the OIA and may, following a natural justice process, be referred to the CCT to decide.

Under the legislation, complaints assessed as inappropriate conduct/conduct breach may be referred back to local government for investigation and decision. Those assessed as corrupt conduct are referred to the CCC.

Complaint volumes

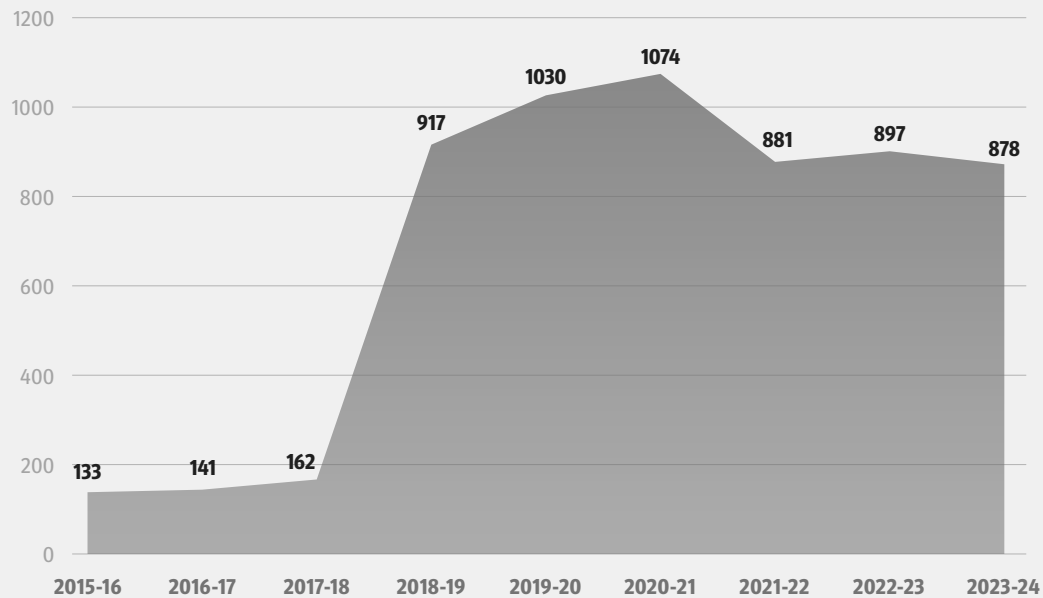
The previous councillor conduct model placed council Chief Executive Officers (CEOs) in the difficult position of receiving and assessing complaints against their employers. With the establishment of the OIA, that responsibility shifted from CEOs to the OIA.

The surge in complaints since the establishment of the OIA is likely because of the introduction of mandatory reporting for CEOs and councillors in 2018, previous under-reporting of complaints, and increased confidence in a complaints process that is independent of councils.

03 Complaints and notifications

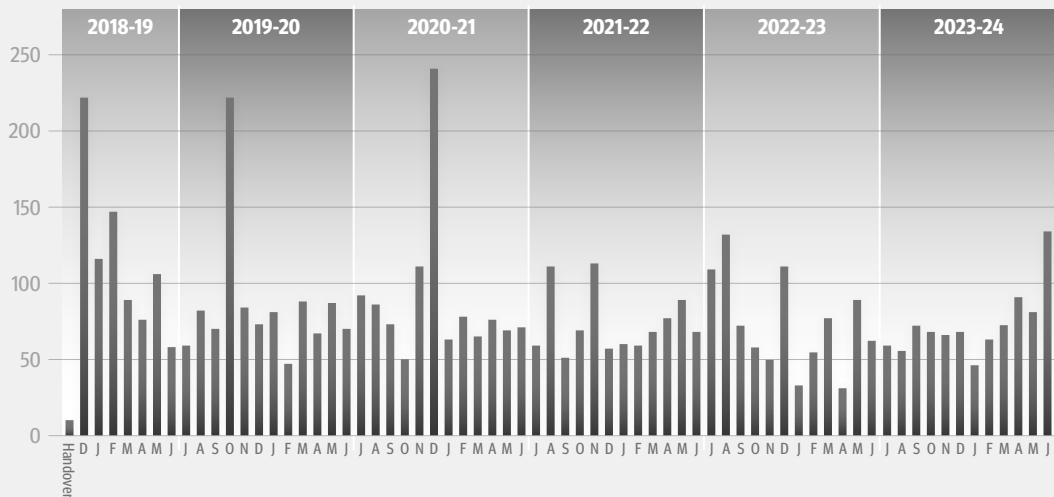
This graph depicts the number of complaints lodged with the OIA since it was established on 3 December 2018 and the volume of complaints prior to that with the department responsible for local government.

Figure 1:
Complaint volumes



The next graph indicates complaints received each month since the establishment of the OIA. The increase in complaints shown in the graph reflect the establishment of the OIA in December 2018, 130 complaints against one councillor in 2019-20, 109 complaints against one councillor in 2020-21 and 101 complaints against councillors in one council in 2023-24.

Figure 2:
Complaints received each month since OIA establishment



Source of complaints

The source of complaints to the OIA in 2023-24 were:

- ▶ 51% from members of the public
- ▶ 41% from the local government sector including CEOs, councillors, councillor self-referrals and council staff
- ▶ 3% referred by the CCC
- ▶ 5% from other sources.

Councillors referring their own conduct again decreased significantly with only six self-referrals in 2023-24. This is down 67 per cent from 18 self-referrals in 2022-23 and 32 referrals in 2021-22. The OIA will continue to monitor this downward trend.

In comparison, complaints or notifications from one councillor about the conduct of another councillor accounted for 14 per cent of all complaints or notifications received, down from 22 per cent in 2022-23. This is an encouraging trend and one which will be closely monitored moving forward because, historically, these complaints were generally associated with personal disputes between councillors rather than substantive conduct issues.

This data reflects mandatory reporting obligations for local government officials under sections 150P and 150R of the LG Act.

The OIA received no complaints against councillors from:

- ▶ 20 councils in 2023-24
- ▶ 2 councils since the establishment of the OIA (5.5 years).

Complaint allegations

In 2023-24:

- ▶ 55% of allegations related to alleged misconduct, up from 49%
- ▶ 38% related to alleged inappropriate conduct/conduct breach, down from 41%
- ▶ 3% related to suspected corrupt conduct
- ▶ 4% were other matters, down from 7%.

Anonymous complaints

In 2023-24, the OIA received 150 anonymous complaints which accounted for 17 per cent of all complaints received. While this is 20 more

anonymous complaints than received in 2022-23, generally, the rate of anonymous complaints has remained consistent for the past four financial years.

The outcomes of anonymous complaints in 2023-24 include:

- ▶ 111 dismissed or NFA on assessment (74%)
- ▶ 19 investigated (13%)
- ▶ 15 referred to the CCC
- ▶ 2 referred to councils as potential inappropriate conduct/conduct breach
- ▶ 2 progressed to natural justice
- ▶ 5 dealt with as enquiries only.

Of the 19 anonymous complaints that were investigated, 13 were dismissed at the end of the investigation and one remained under investigation as of 30 June 2024. Two complaints progressed to OIA legal for a natural justice process.

Many anonymous complaints concerned First Nations councils, where, in small communities, there may be an increased fear of reprisal or conflict. In 2023-24, the overall anonymous complaints rate relating to First Nations councils was 44 per cent compared to 11 per cent for other councils. The rate of anonymous complaints in First Nations councils jumped significantly from 2022-23 where the rate was 16 per cent.

Independent Assessor initiated complaints

Under the LG Act, the IA may initiate investigations. The IA commenced one own-motion complaint in 2023-24. This is a decrease from 12 own-motion complaints in 2022-23 and eight own motion complaints in 2021-22. This reduced rate of own-motion complaints is likely due to the increased focus on targeting OIA resources on more serious misconduct matters and the inevitable impact of the Amendment Act from 22 November 2023.

Impact on corruption complaints

In 2023-24 the OIA referred 34 complaints (four per cent of all complaints for the year) to the CCC.

In 2023-24, the CCC received 396 complaints related to the local government sector, which was a 59.7 per cent increase on the previous year. The complaints contained 877 allegations, a 60 per cent increase from 2022-23.

04 Assessment

2023-24
ASSESSMENT
SNAPSHOT

98% **76%** **16%**

assessed and
communicated in
21 working days

dismissed or NFA
on assessment

full misconduct
investigation

2% **4%** **24**

referred to local
government as potential
inappropriate conduct/
conduct breach

referred to the CCC

training and
capacity building
recommendations made

26

dismissed as vexatious or
lacking in substance (3%)

How complaints are assessed

The Amendment Act included a range of new provisions providing the IA with an enhanced ability to deal with councillor conduct complaints more efficiently and proportionately. The amendments allow the IA to focus resources toward progressing more serious conduct.

Now, the IA must dismiss or take no further action for complaints that fall within the following categories:

- ▶ dealing with the complaint would not be in the public interest
- ▶ the complaint was made outside the statutory timeframes
- ▶ the alleged conduct was engaged in compliance with a guideline made by the department's chief executive
- ▶ the alleged conduct occurred solely in a personal capacity, unless suspected corrupt conduct
- ▶ the conduct is clearly not misconduct or a conduct breach
- ▶ the office of the councillor is vacated, unless suspected corrupt conduct
- ▶ the complainant is subject to a vexatious complaint declaration and the complaint is not permitted under a condition of the declaration.

The IA may dismiss or take no further action for complaints that fall into the following categories:

- ▶ the conduct has been, is being, or may be dealt with by another entity
- ▶ the complaint is vexatious, frivolous, not made in good faith or lacks substance or credibility
- ▶ dealing with the complaint would be an unjustifiable use of resources
- ▶ for alleged conduct breaches, greater than six months has expired since the conduct occurred
- ▶ there is insufficient information to properly assess the alleged conduct.

If none of the above considerations apply, the IA must decide:

- ▶ if a conduct breach is reasonably suspected, to refer the conduct to the local government to deal with;

- ▶ to investigate the conduct of the councillor; or
- ▶ not to deal with the complaint and make any recommendation the IA considers appropriate including, for example, that the councillor attend training, counselling or mediation.

It is important that the IA takes a holistic approach to assessing complaints. Section 150SD of the LG Act also provides that the IA may have regard to any reason for, or factors relevant to, the conduct. For example, whether or not any training related to the conduct has been undertaken by the councillor or the Aboriginal traditions or Island customs of the councillor.

Whether there is a public interest in a matter proceeding is considered at all stages of the process regardless of whether the complaint or notification has come from a member of the public or a local government official.

In 2023-24, 76 per cent of all complaints and notifications were dismissed or subject to no further action on assessment. This is a higher percentage compared to 2022-23 (65 per cent) and reflects the renewed focus on assessing complaints in a way which embraces an educative focus and also directs the resources of the OIA to more serious misconduct complaints.

When the OIA assesses a complaint or notification, it also considers whether:

- ▶ it raises either potential conduct breach, misconduct or corrupt conduct
- ▶ it should be dismissed or the subject of no further action for reasons outlined in section 150X or 150Y of the LG Act
- ▶ an allegation of conduct breach should be referred back to a local government
- ▶ it should be investigated as potential misconduct
- ▶ it must be referred to the CCC as it raises a reasonable suspicion of corrupt conduct on the part of a councillor
- ▶ a human right or rights are raised
- ▶ whether the complaint or notification was made by a public interest discloser and steps are required under the *Public Interest Disclosure Act 2010* and the OIA's public interest disclosure policy¹.

¹ OIA public interest disclosure policy is available at www.oia.qld.gov.au.

04 Assessment

CONDUCT EXAMPLES

Conduct breach

Conduct that breaches a behavioural standard or a policy, procedure or resolution of the local government.

EXAMPLE

Breach of a council's media policy or disrespectful behaviour towards another councillor or member of the public.

Misconduct

Conduct that breaches the misconduct provisions in the LG Act (section 150L of the LG Act).

EXAMPLE

Failing to declare a conflicts of interest or influencing council decision makers when a councillor is conflicted.

Corrupt conduct

Conduct that may be a criminal offence or disciplinary matters which may result in termination as a councillor.

EXAMPLE

Fraud and theft, misuse of council information for a benefit, secret commissions, abuse of office.

Complaints dealt with as enquiry only

Complaints assessed as being out of the OIA's jurisdiction are recorded as an enquiry. It is the OIA's usual practice to communicate with a complainant to explain the circumstances and, where possible, refer them to the correct agency. The complaint is then recorded as an enquiry only. This occurred for three per cent of complaints assessed in 2023-24.

Dismissed or no further action

In 2023-24 a total of 635 complaints, or 76 per cent of all complaints assessed, were dismissed or marked no further action (NFA) on assessment.

This is a significant increase from 2022-23 (65 per cent) and reflects the substantial reforms to the assessment of complaints which came into effect on 22 November 2023.

The ability to dismiss complaints as not a justifiable use of resources or not in the public interest provides a means to manage investigation work volumes and ensure that the OIA's finite resources are focused on those investigations and disciplinary matters where there is a public interest in advancing.

The OIA has consistently dismissed complaints as not in the public interest under section 150X or, not a justifiable use of resources under section 150Y, in the following circumstances:

- ▶ for new inexperienced councillors, a three-month amnesty for low-level misconduct has been provided to allow time for councillors to be trained in their new roles
- ▶ where legislation has changed but the councillor has not had the opportunity to receive training
- ▶ where the councillor has obtained legal advice before the conduct and followed that advice in good faith and produces a copy of that advice
- ▶ where a councillor was seriously unwell at the time of the conduct or has since become seriously unwell
- ▶ where the councillor is facing more serious issues such as criminal charges
- ▶ failures to update registers of interests where the period of time the register was inaccurate was limited and the interest omitted was not significant and the councillor has since updated the register
- ▶ where a councillor self-refers for relatively minor conduct and demonstrates insight, particularly if the councillor is inexperienced.

Post-election review

Prior to the March 2024 elections, the OIA collaborated with the Electoral Commission of Queensland and the CCC on a 'Campaign with Integrity' email to all candidates. The email, sent on 14 February 2024, outlined the roles of each agency in supporting the election and provided helpful tips to help candidates navigate the election period.

The OIA received 69 election-related complaints from the start of caretaker on 29 January 2024 to election day on 16 March 2024.

The Amendment Act introduced amendments that allowed for complaints about former councillors that are not corrupt conduct to be dismissed on assessment. After the elections, the OIA identified 35 matters involving councillors who did not return to office and which were not suspected corrupt conduct.

Following the elections, the OIA met with a number of councils to better understand the challenges and opportunities facing the many new councillors and CEOs as they started a new term and to increase awareness of the role, function and performance of the OIA. These face-to-face meetings were well received and played an important role in helping to build councillor capacity.

Recognising that many elected representatives were new councillors with little government experience, the OIA provided detailed feedback to first-time councillors who were the subject of complaints instead of taking investigative or other action, except where the matter was serious. Feedback focused on the councillor's alleged actions, their legal obligations and the standards required of elected representatives.

Intervention and alternative action

The Amendment Act provides the OIA with greater flexibility to resolve complaints in a way that builds capacity, rather than focuses on a prosecution before the CCT.

The OIA has referred three councils and 24 councillors for training, guidance or intervention. Of those recommendations, 11 were for training by either the department or the council and 13 recommendations were made for other actions such as reviewing council policies and/or an apology.

In many instances this approach ensures that councillors receive bespoke training on a particular area in a short period of time, building capacity quickly.

Examples of the types of recommendations made include:

- ▶ councillor refamiliarises themselves with the code of conduct or a council policy
- ▶ councillor attends conflict of interest training delivered by the department
- ▶ training from council CEO on councillor expenses and facilities policy
- ▶ councillor corrects their register of interests.

Of the 24 councillors referred for alternative action:

- ▶ 10 recommendations did not require a response to the OIA (usually the recommendation is that the councillor refamiliarise themselves with a council policy or the code of conduct)
- ▶ 9 councillors did not provide confirmation of implementation of the recommendation to the OIA (three councillors were not re-elected)
- ▶ 5 councillors confirmed that they had implemented the recommendation.

The OIA will continue to monitor compliance with these recommendations, noting they are not mandatory recommendations. In addition, the OIA will monitor whether these are serving as a capacity building tool for councillors by monitoring any reoccurrence of similar conduct by councillors who were the subject of a recommendation.

04 Assessment

Vexatious or improper complaints

The OIA has a responsibility to address unacceptable complaint conduct.

To ensure that councillors are provided due process and to uphold the efficacy of the councillor conduct framework, it is necessary for the IA to be provided adequate means by which to manage improper complaint behaviour.

To achieve this, the IA has two processes available under the LG Act to deal with vexatious complaints:

- ▶ commence a statutory prosecution under section 150AV or 150R(3) of the LG Act; and/or
- ▶ undertake a statutory process to make a ‘vexatious complainant’ declaration under section 150AWA of the LG Act.

In 2023-24 the OIA did not declare any complainants as vexatious under new section 150AWA of the LG Act. In 2023-24 there were 26 complaints which were dismissed as vexatious, lacking in substance and/or not in good faith and two complaints where a warning was issued.

It is important to note that the OIA will not consider a complaint to be vexatious if it raises a reasonable suspicion of councillor conduct. The OIA also notes that councillors and CEOs have mandatory statutory obligations to report complaints or information ‘indicating a councillor may have engaged in conduct that would be inappropriate conduct or misconduct’ (sections 150P and 150R). As such, it is important that councillors and CEOs feel comfortable and safe to comply with this mandatory requirement, a consequence being that it can be difficult to declare such complaints as vexatious.

Conduct breach

Under the legislation the OIA does not have the power to investigate suspected conduct breaches by councillors. These complaints or notifications may be referred to the relevant local government for investigation and for councillors to decide. Only if the complaint is tied to alleged misconduct can the OIA investigate.

Where a complaint is assessed as a potential conduct breach, the OIA may decide not to refer the matter to the local government and to take no further action under section 150SD of the LG Act. In many instances these matters are very minor in nature and would present an unjustifiable use of resources for local governments to investigate. The OIA is conscious of the cost for local governments in having these matters investigated and will typically only refer more serious instances of a conduct breach to a local government.

In 2023-2024, 18 matters or two per cent of all complaints assessed were referred to local governments to deal with. This is a small percentage of all complaints assessed and reflects the intention of the OIA to only refer more serious conduct breach matters to local government, reflecting the significant resource impact this can have on a local government.

Conduct breach matters are discussed further in [Chapter 5](#).

Misconduct

Complaints or notifications that raise a reasonable suspicion of misconduct at the time of assessment may be investigated by the OIA. Before a matter is investigated, the OIA must be satisfied that it is in the public interest to proceed.

In 2023-24, 134 complaints or notifications (16 per cent of all matters assessed including matters from previous years) became OIA misconduct investigations. This is down from 20 per cent in 2022-23 and reflects the OIA applying a higher threshold in determining whether to investigate a matter, notably as a result of the Amendment Act.

Misconduct investigations are explored in [Chapter 6](#).

Corrupt conduct

The IA must notify the CCC if a complaint or information involves, or may involve, suspected corrupt conduct.

In 2023-24, 34 matters or four per cent of all complaints involved suspected corrupt conduct by a councillor and were referred to the CCC. This is higher than in 2022-23 where 24 matters or three per cent of all complaints involved suspected corrupt conduct.

Under section 40 of the *Crime and Corruption Act 2001* (CC Act), the OIA has a complaint-handling agreement that allows the OIA to immediately commence investigating agreed categories of corrupt conduct without first referring the matter to the CCC. The OIA then provides a monthly schedule to the CCC and it can take responsibility for a case at its discretion.

During 2023-24 the OIA reported no suspected corrupt conduct complaint files to the CCC under section 40 schedule of the CC Act. In 2022-23 the OIA referred two suspected corrupt conduct complaint files to the CCC.

Review of assessment decisions

Consistent with best practice complaint management² the OIA offers an internal review of an assessment decision to dismiss or take no further action on a complaint. Requests for review must be made within 30 calendar days from the date of the outcome advice.

In 2023-24 there were 17 requests for an internal review of an assessment decision. All reviews were completed. In 16 matters the original assessment was upheld. In one matter, a decision was made to reassess the matter and refer it as a suspected conduct breach to the relevant local government.

Internal reviews are carried out by the IA.

Under the *Public Sector Act 2022*, the OIA is required to publish details of customer complaints. This includes complaints about decisions made which may include requests for an internal review of an assessment decision. In 2023-24, the OIA had no customer service complaints.

² AS/NZS 10002:2014 Australian/New Zealand Standard Guidelines for complaint management in organisations.

05 Conduct Breach

2023-24
COMPLAINT
SNAPSHOT

358

complaints alleging inappropriate
conduct/conduct breach
(41% of all complaints received)

18

complaints referred back
to 13 councils to deal with
(2% of all complaints)

10

of these complaints were
dealt with by councils in
the financial year

321

of inappropriate conduct/
conduct breach matters
were dismissed or NFA

A conduct breach occurs when a councillor breaches a behavioural standard or a local government policy, procedure or resolution.

On 22 November 2023, the Amendment Act changed the legislated term ‘inappropriate conduct’ to ‘conduct breach’.

In 2023-24, the OIA received 358 complaints or notifications alleging inappropriate conduct/conduct breach by councillors, which accounted for 41 per cent of all complaints lodged in that year.

The OIA does not have the power to investigate a conduct breach unless it is closely tied to alleged misconduct. However, the OIA does assess complaints of a conduct breach and has the ability under section 150SD of the LG Act to dismiss the complaint or take no further action with respect to the complaint, in the same way as it can do so for complaints assessed as misconduct.

Where the OIA believes there are public interest grounds for taking further action with respect to a complaint assessed as a conduct breach, it will refer the complaint to the relevant local government to deal with. Each local government must adopt an investigation policy about how it will deal with such referrals.

Referrals to local governments

In 2023-24 the OIA referred 18 complaints to 13 councils to deal with (two per cent). This is a reduction compared to 2022-23 where 57 complaints were referred back to 27 councils to deal with (six per cent of all complaints). The OIA understands that the cost to local governments in investigating these matters is high, relative to the minor nature of conduct breaches.

In determining whether to refer a matter to a local government to deal with or take no further action, the OIA will consider the overall public interest. The following factors are considered by the OIA in determining the public interest (non-exhaustive list):

- ▶ the severity of the conduct
- ▶ the cost to the local government in investigating the complaint
- ▶ the likely availability of evidence
- ▶ the cultural impact on the local government in councillors determining whether their fellow councillors engaged in a conduct breach
- ▶ the health and wellbeing of witnesses and councillors
- ▶ the penalties available to the local government
- ▶ whether there is an alternative available to address the conduct, such as mediation or training.

From the 18 complaints referred to local governments:

- ▶ 8 (44%) of these complaints were not dealt with or reported to the OIA as at 30 June 2024
- ▶ 10 (56%) of these complaints were dealt with by councils in the financial year
- ▶ 3 complaints were sustained and 1 was not sustained
- ▶ 5 were resolved by alternative dispute resolution
- ▶ 1 complaint was withdrawn.

The OIA notes the above statistics may have been impacted by the local government election held in March 2024 with local governments, on occasion, unable to finalise matters prior to an election. One impact of the election being the subject councillor not being re-elected.

Local governments are required under section 150AHA of the LG Act to provide the OIA with notice if they decide not to start or continue with an investigation about a conduct breach. Notice must also be given when a decision has been made about whether a councillor has engaged in a conduct breach (and any applicable penalty imposed).

Given the smaller number of conduct breach matters referred to local governments, the OIA would like to see these matters dealt with quickly. The OIA will continue to monitor how local governments handle these complaints and identify any capability building issues for further consideration or action.

06 Investigations

2023-24
INVESTIGATION
SNAPSHOT

147

misconduct investigations
completed,
205 in the previous year

134

matters became a full
misconduct investigation

21

active investigations
as of 30 June 2024

The OIA undertakes an investigation when a complaint or notification raises a reasonable suspicion of misconduct or further inquiries are necessary to determine this.

Where there are public interest reasons for doing so and neither section 150SD(2) or 150SD(3) of the LG Act apply, the IA may decide to investigate a complaint. This occurs where the IA has chosen not to deal with a complaint in another way, for example by recommending a councillor attend training or mediation.

Investigation timeframes

Since establishment, 1334 complaints, or 24 per cent of all complaints or notifications, have been investigated.

In 2023-24, 134 complaints or notifications, or 16 per cent of all matters assessed including matters from previous years, became an OIA misconduct investigation.

During 2023-24, the OIA completed 147 misconduct investigations. This is less than in previous years (205 in 2022-23 and 290 in 2021-22). At 30 June 2024, there were 21 active investigations remaining, down from 34 in 2022-23 and 84 in 2021-22.

As at 30 June 2024, the average time taken to undertake an investigation into a complaint was 3.33 months (up from 2.71 months as at 30 June 2023). With an emphasis on investigating more serious complaints, it is inevitable that each of those investigations will take slightly longer than a simpler complaint.

The table over page depicts the age of all investigations over the past three years

Timeframe	2021-22	2022-23	2023-24
0 - 3 months	43	25	16
3 - 6 months	12	2	5
6 - 9 months	12	0	0
9 - 12 months	6	0	0
12+ months	0	0	0
On hold investigations	11	7	0
Total	84	34	21

Table 1: Reducing timeframes for complaints under investigation as at 30 June of each financial year

Types of investigations

The top five categories of alleged misconduct investigated by the OIA in 2023-24 were:

- ▶ release of confidential information (15%)
- ▶ conduct that is not honest or impartial (14%)
- ▶ breach of the trust placed in a councillor (11%)
- ▶ failure to declare a conflict of interest (11%)
- ▶ conduct which influences a decision-maker, where the councillor has a conflict of interest themselves (8%)

Notices issued

The LG Act under Chapter 5A, Part 4 provides investigation and enforcement powers to the OIA. The following powers were exercised in 2023-24:

- ▶ Section 150CH allows investigators to request information that is reasonably necessary to investigate a councillor's conduct: 62 notices issued (down from 107 in 2022-23)
- ▶ Section 150CJ notices require the attendance of a person at an interview with investigators: 15 notices issued (down from 29 in 2022-23)
- ▶ Section 150CK states that the person's attendance at an interview or the information provided is confidential, as is the notice itself. This is issued when it is reasonably believed to be necessary to ensure the investigation is carried out confidentially or to prevent the commission of an offence: seven notices issued (down from 17 in 2022-23).

Search warrants

An OIA investigator is able to apply for a search warrant under section 150BN where there are reasonable grounds for suspecting that there is evidence of a conduct offence at a place.

No search warrants were issued in 2023-24.

Review of completed misconduct investigations

At the conclusion of a misconduct investigation all matters are reviewed by an OIA multi-disciplinary group which includes the IA and the Deputy IA. Matters that do not reach the threshold of a reasonable satisfaction of misconduct at the conclusion of an investigation are dismissed or there is no further action taken at this point.

Where there is a reasonable satisfaction of misconduct at this point, the matter may be referred to a natural justice phase where it is further considered by the OIA's internal lawyers. This step in the complaints management process is further detailed in [Chapter 7](#).

07 Natural Justice

2023-24
NATURAL
JUSTICE
SNAPSHOT

32

misconduct complaints or notifications referred for natural justice process

0

misconduct applications referred to the CCT

The OIA conducts a statutory natural justice process following a misconduct investigation.

At the end of an OIA investigation, if there is a reasonable satisfaction of misconduct and a public interest, the matter will progress to a natural justice process.

In 2023-24, 32 misconduct complaints or notifications concerning 19 councillors and 44 allegations were referred to OIA legal to undertake this process. This represents 34 per cent of all completed investigations.

The natural justice process involves the OIA preparing a statement of facts which sets out the allegation, the particulars and supporting facts, and explains what category of misconduct is alleged. This statement is shared with the councillor and/or their legal representative who may provide a further response. This is a statutory natural justice

process that is required under section 150AA of the LG Act.

A councillor's response must be considered by the IA in deciding if the matter proceeds to the CCT and matters can be dismissed at this point. The natural justice process also allows parties to narrow the issues in dispute if a matter is subsequently referred to the CCT.

As at 30 June 2024, 22 complaints were undergoing the natural justice process, up from nine in the previous year. This represents the prioritisation that has been given this year to finalising matters before the CCT before finalising newer matters undergoing the natural justice phase.

Natural justice timeframes

As at 30 June 2024, the average time for the natural justice process to be undertaken and an outcome communicated was 4.88 months (up from 4.37 months in 2022-23). The key drivers for delays include the prioritisation of existing matters

before the CCT and delays in waiting for responses from other parties such as legal representatives, witnesses, councillors and complainants. The introduction of an 'other party pause' calculation into OIA timeframes for 2024-25 will allow for a better indication of how long it takes the OIA to perform its functions.

Timeframe	2021-22	2022-23	2023-24
0 – 3 months	15	8	5
3 – 6 months	2	0	5
6 – 9 months	1	1	9
9 – 12 months	1	0	0
12+ months	0	0	0
Matters on hold	3	3	0
Total	22	12	19

Table 2: Timeframes for complaints undergoing natural justice process

*Does not include three matters on hold pending a related determination by the CCT

Public Interest

Any decision by the IA to make an application to the CCT considers what is the public interest in referring a matter to be determined.

The IA has regard to the following public interest considerations:

- ▶ the seriousness of the alleged misconduct
- ▶ whether there are reasonable prospects of a finding of misconduct
- ▶ the experience of the councillor
- ▶ are there any mitigating or aggravating circumstances
- ▶ the availability and effectiveness of any alternatives to making an application to the CCT
- ▶ whether the subject councillor has previous disciplinary history, including for like matters
- ▶ is the alleged breach a continuing or subsequent breach
- ▶ how often misconduct of this kind occurs and whether there is a need for deterrence

- ▶ the length of time since the alleged misconduct occurred
- ▶ the physical or mental health of the subject councillor
- ▶ the length and expense of any misconduct hearing
- ▶ if the alleged misconduct is sustained, what are the possible sanctions available
- ▶ the need to maintain public confidence in the councillor conduct framework.

Matters referred to the CCT

In 2023-24 the IA did not refer any matters to the CCT. As at 22 November 2023 there were 56 applications awaiting consideration by the CCT. As at 30 June 2024, that number had dropped to six. The resources of the OIA have been focused on reducing the backlog of existing matters before the CCT. It is expected that further referrals to the CCT will be made in 2024-25.

08 Tribunal hearings and reviews

2023-24
CCT SNAPSHOT

6

misconduct applications
(12 allegations) waiting
for a CCT decision

18

applications decided
by the CCT

8

full-merit reviews
waiting before QCAT

A referral to the CCT is a disciplinary process, not a criminal one. The purpose of a disciplinary process is to ensure compliance with the standards of conduct set out in the LG Act, to promote future compliance and to uphold confidence in the integrity of councillors.

CCT applications

The CCT receives councillor misconduct applications referred to it by the IA. The IA is the applicant in all matters and bears the onus of proof.

After conducting a hearing in relation to an application, the CCT must decide whether or not the councillor has engaged

in misconduct and, if so, decide what disciplinary order is appropriate.

Under the LG Act, the President of the CCT provides practice directions to assist parties in the hearings. The CCT is required to act as quickly and informally as is consistent with a fair and proper consideration of the issues and natural justice. Each application is dealt with on a case-by-case basis.

At the end of the 2022-23 financial year there were 66 applications with the CCT awaiting a decision. Thirty-two of those matters had been awaiting a decision for more than a year and seven had been waiting a decision for more than two years. Feedback from the local government sector, quite rightly, raised concerns with the efficiency of the councillor complaints framework.

This number had reduced to 56 applications by 22 November 2023. Following amendments to the LG Act which took effect on 22 November 2023, the IA withdrew 43 matters from the CCT. From those, 22 were withdrawn on mandatory grounds under

section 150AKA(2) or section 350(2) of the LG Act on the basis that the subject councillor’s office had been vacated. Section 350 of the LG Act, which took effect on 22 November 2023, required the IA to withdraw matters from the CCT where a number of circumstances applied, including where the subject councillor’s office had been vacated or where the conduct related solely to behaviour engaged in by the councillor in a personal capacity, unless the conduct is suspected corrupt conduct.

Eleven matters were further withdrawn from the CCT under section 350 of the LG Act following the local government elections held on 16 March 2024.

Timeframe	Applications with CCT	Number of complaints reflected in application	Number of allegations
0 - 3 months	0	0	0
3 - 6 months	0	0	0
6 - 9 months	0	0	0
9 months – 1 year	3	3	7
12 - 15 months	0	0	0
15 - 18 months	1	2	2
18 - 21 months	0	0	0
21 months - 2 years	0	0	0
2 years or more	2	15	3
Total – 30 June 2024	6	20	12

Table 3: Timeframes for matters before CCT as of 30 June 2024

In 2023-24 the IA referred no new applications to the CCT. This is a direct result of the OIA prioritising finalising existing CCT matters, noting the age of many of those matters and the public interest in having them finalised.

Since establishment, the OIA has referred a total of 137 misconduct applications to the CCT.

CCT decisions

In 2023-24 the CCT decided a total of 18 applications, the same as in each of 2021-22 and 2022-23. These 18 applications represented 41 complaints, 15 councillors and 59 allegations. Of those applications, the CCT sustained 12 applications either in whole or in part.

08 Tribunal hearings and reviews

The CCT publishes a written summary of its decisions on the website of the department responsible for local government, recording findings and reasons. The following findings and orders reinforce the need for councillors to remain vigilant in identifying and managing their interests and to learn from CCT decisions.

The circumstances in which misconduct findings were made in 2023-24 included:

- ▶ A councillor who released confidential information from an internal council briefing note on their Twitter page which was further disclosed by a journalist as part of a news report.
- ▶ A councillor who made offensive remarks in an email sent to an advisory group of council, consisting of council officers and external community members.
- ▶ A councillor who made a series of Facebook comments that failed to provide high quality leadership, were disrespectful towards Aboriginal and/or Torres Strait Islander peoples, and disrespectful towards transgender people.
- ▶ A councillor who misused information acquired as a councillor by emailing her daughter, who worked for a recruitment company, the contact details of two council officers and advising that council was considering utilising labour hire.
- ▶ A councillor who failed to declare a conflict of interest on four occasions when council was considering matters where an entity/person connected to the councillor was involved.
- ▶ A councillor who failed to include required details on their register of interests on seven occasions.
- ▶ A councillor who failed to declare a conflict of interest on two occasions when council was considering matters that might impact a business owned by the councillor.
- ▶ A councillor who obtained reimbursement from council on 8 occasions in breach of councillor’s reimbursement policy.

The significant reduction in applications before the CCT during 2023-24 will assist in ensuring that applications dealt with by the CCT in future years will be done in an efficient manner. The OIA acknowledges the impact that a protracted matter can have on the wellbeing of a councillor and is committed to doing its part to ensure matters are dealt with quickly.

QCAT review of CCT decisions

A CCT misconduct decision may be subject to a full-merits review by QCAT.

Any party to the matter may apply to QCAT for a review of the decision.

As at 30 June 2024, there were eight applications awaiting a decision from QCAT. These reviews represent six councillors, 24 complaints and 46 allegations. Three were initiated this financial year.

In 2023-24, four QCAT decisions were handed down and 3 matters were withdrawn by the subject councillor. Of the four decisions handed down by QCAT, three overturned the prior CCT decision.

Timeframe	Number of reviews to QCAT	Number of complaints reflected in a review	Number of allegations
0 - 3 months	2	17	6
3 - 6 months	0	0	0
6 - 9 months	1	1	11
9 months - 1 year	0	0	0
12 - 15 months	1	1	23
15 - 18 months	0	0	0
18 - 21 months	0	0	0
21 months - 2 years	1	2	2
2 years or more	3	3	4
Total	8	24	46

Table 4:
Timeframes for applications before QCAT for review as of 30 June 2024

Judicial Reviews

The OIA was a party to one judicial review proceeding determined during 2023-24, and further, was a party to one appeal of a judicial review decision also determined during 2023-24.

The first matter related to an application made in June 2023 by a councillor to the Supreme Court of Queensland on the basis that the IA’s decision to refer the alleged misconduct to the CCT was unlawful. The Supreme Court dismissed the councillor’s application and awarded costs to the OIA. Following this, the councillor was not re-elected in the March 2024 local government elections. Due to key legislation changes commencing 22 November 2023, any former councillor applications in the CCT that are not decided at the point the councillor vacates their office, the CCT application made by the OIA must be withdrawn. As such the CCT matter involving this councillor was withdrawn on 5 April 2024.

Another judicial review proceeding that was determined by the Supreme Court of Queensland in OIA’s favour in October 2022, resulted in an appeal by the councillor to the Queensland Court of Appeal. This appeal was determined on 17 November 2023 and found in favour of the councillor. The Court of Appeal found that, while the IA was entitled to be reasonably satisfied that the councillor had engaged in misconduct, it was an abuse of process to refer the matter to the CCT as it would require the re-litigation of an issue that had already been finally determined. The application to the CCT was permanently stayed.

09 Breach of conduct provisions

The IA may prosecute offences against ‘conduct provisions’ before the Magistrates Court as set out in section 150AY of the LG Act.

While the councillor conduct matters referred to in earlier chapters are potential disciplinary matters, a breach of a conduct provision is a potential criminal matter.

Examples of conduct provisions include dishonest conduct of a councillor, use of council information for a benefit or detriment, prohibited conduct of a councillor in possession of inside information, making a complaint vexatiously or not in good faith, and failing to leave a meeting after declaring a prescribed conflict of interest.

Vexatious complaints

In 2023-24, the OIA dismissed 26 complaints as vexatious, lacking substance or not in good faith.

In addition, two vexatious warnings were issued to members of the public.

During 2023-24, the IA did commence one prosecution under section 150AV of the LG Act. This section states that a person must not either make a complaint about the conduct of a councillor vexatiously or other than in good faith or counsel/procure

another person to do so. This decision was made against a background of what the IA believed were a large number of vexatious complaints having been made over an extended period of time. The IA later chose to discontinue the prosecution and, following assent of the Amendment Act, will now be actively seeking to make declarations under section 150AWA of the LG Act, in an attempt to protect councillors from vexatious complaints.

Vexatious complaint issues

Members of the public who make a complaint frivolously or improperly may be prosecuted under sections 150AV and 150AU of the LG Act.

Similarly, under section 150R(3), it is a potential breach of a conduct provision where a local government official may be prosecuted for making a complaint vexatiously or not in good faith. A local government official for the purposes of section 150R is a CEO of the local government or a councillor.

Breach of conduct provisions by a councillor

In some circumstances, the IA may deal with a breach of the conduct provision by a councillor as misconduct. Generally, matters will be dealt with as misconduct unless it is serious, involves repeat conduct and/or dishonesty, and is not being dealt with by the CCC.

Where investigating or prosecuting a conduct provision is possible, the following public interest considerations are taken into account:

- ▶ the seriousness of the alleged offending
- ▶ if there are any mitigating or aggravating circumstances
- ▶ the availability and effectiveness of any alternatives to dealing with the matter as a breach of a conduct provision (that is, dealing with it as misconduct)
- ▶ the councillor’s previous disciplinary history or compliance with disciplinary orders
- ▶ is the alleged breach a continuing or subsequent offence
- ▶ how often offences of this kind occur and whether there is a need for deterrence
- ▶ statutory time limits on bringing a prosecution
- ▶ the age and physical or mental health of the councillor
- ▶ the length and expense of any court hearing
- ▶ if the councillor is convicted, what are the possible penalties available
- ▶ whether charging a councillor may result in their immediate suspension, whether this is proportionate given the prospects of success upon prosecution, and the likelihood of a conviction being recorded
- ▶ whether charging a councillor may result in their immediate suspension, whether this is proportionate given the impact on constituents, and proximity to a local government election
- ▶ the need to maintain public confidence in local government.

Glossary

Application	One legal file referred to the CCT for one councillor. It may contain multiple complaints and multiple allegations about the same or closely connected issues.
Matter	The OIA determines its statistics in line with the number of complaints received or assessed. A ‘matter’ represents one complaint. It may contain multiple allegations.
NFA	No further action
On the papers	A CCT hearing conducted only through written submissions and a review of the application.
On hold	In previous performance years, investigations were placed ‘on hold’ pending the availability of an investigator
Parked	An investigation is ‘parked’ while awaiting other decisions before the courts, the CCT or other agency action or advice.
BCC	Brisbane City Council
CCC	Crime and Corruption Commission
CCT	Councillor Conduct Tribunal
DHLGPPW	Department of Housing, Local Government, Planning and Public Works
FTE	Full-time equivalent
HR Act	<i>Human Rights Act 2019</i>
IA	Independent Assessor
LG Act	<i>Local Government Act 2009</i>
NFA	No further action
OIA	Office of the Independent Assessor
QCAT	Queensland Civil and Administrative Tribunal

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