



# Office of the **Independent Assessor**

Annual Report 2018-19



**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 part of 2018–19 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 3 December 2018, when the  
Office commenced operation, to 30 June 2019.

Yours sincerely



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

## Message from the Independent Assessor

**The Office of the Independent Assessor was established to strengthen the community's trust in councillors and the local government sector.**

I am pleased to present the 2018-19 Annual Report for the Office of the Independent Assessor (OIA).

The OIA commenced operations on 3 December 2018 to effectively and efficiently manage councillor conduct complaints and to hold councillors to account for the benefit of the communities they serve and all councillors who are doing the right thing.

Based on previous complaint numbers, the OIA anticipated about 160 complaints a year but received more than 800 councillor conduct complaints in the seven months to 30 June 2019, making a total of more than 900 complaints reported in the financial year.

This high volume of complaints placed significant pressure on our resources and by the end of the financial year, delays were being experienced in completing investigations and in referring completed misconduct investigations to the Councillor Conduct Tribunal for determination. Notwithstanding this, a significant number of councillor conduct complaints have been assessed, investigated and are progressing through the Tribunal.

At the end of the financial year, the OIA:

- ▶ was assessing 80% of all incoming complaints within 21 working days
- ▶ had completed 155 misconduct investigations and was undertaking a further 152 investigations
- ▶ had 54 matters that had either been referred to the Tribunal or, had been assigned to OIA prosecutors to prepare for possible referral
- ▶ had dismissed or taken no further action on 477 complaint matters, either on assessment or after investigation.

The OIA's achievements in this area are dealt with in more detail in Chapters 3, 5 and 6 of this report.

As the Independent Assessor, I delivered presentations on the operation of the councillor complaints system to 65 councils either individually or at various Regional Organisations of

Councils gatherings. Additional support has been provided to complainants and councillors through publication of comprehensive website resources.

There were also successful collaborations with the Integrity Commissioner on conflict of interest guidelines and aids and with the Local Government Association of Queensland (LGAQ) on social media guidelines. In partnership with the Integrity Commissioner conflict of interest workshops or discussions were held with the councils who sought further assistance in this area.

In the interests of transparency and accountability, the OIA published two editions of *Insight* – a newsletter containing complaints data, trends, issues and case studies. The OIA also contributed to sector publications through the LGAQ, Local Government Managers Australia (Queensland) and the Queensland Law Society.

It has also been a priority for the OIA to build the capacity of councillors to recognise high risk areas for misconduct and to develop a shared understanding of standards and expectations that are applied across the sector consistently. This is explored further in Chapter 7.

I would like to thank the staff of the OIA for their hard work, the many hours of talking through the concerns of complainants and councillors alike, their balance and their commitment to ethical practice.

I also thank all who assisted in the establishment of the OIA in the 2018-19 financial year and I look forward to continuing our work together to further strengthen trust in local government.



**Kathleen Florian**  
**Independent Assessor**

## 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, ensuring the process remains transparent and accountable.

It investigates and prosecutes councillor misconduct; refers suspected corrupt conduct to the Crime and Corruption Commission; while inappropriate conduct matters are referred back to local governments.

The OIA proactively conducts training on the councillor complaints system and provides resources on high risk 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
- ▶ 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 Office of the Independent Assessor. The office was established to manage councillor conduct complaints for local governments across Queensland excluding the Brisbane City Council.

The Independent Assessor reports directly to the Minister for Local Government.

### Operating environment

The Office of the Independent Assessor works with its key stakeholders including community members, Queensland's 76 councils (excluding Brisbane City Council) and all councillors as well as the Minister and the Department of Local Government, Racing and Multicultural Affairs.

It also engages with the Crime and Corruption Commission, the Queensland Integrity Commissioner, Queensland State Archives, the Electoral Commission of Queensland, the Local Government Association of Queensland, the 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.

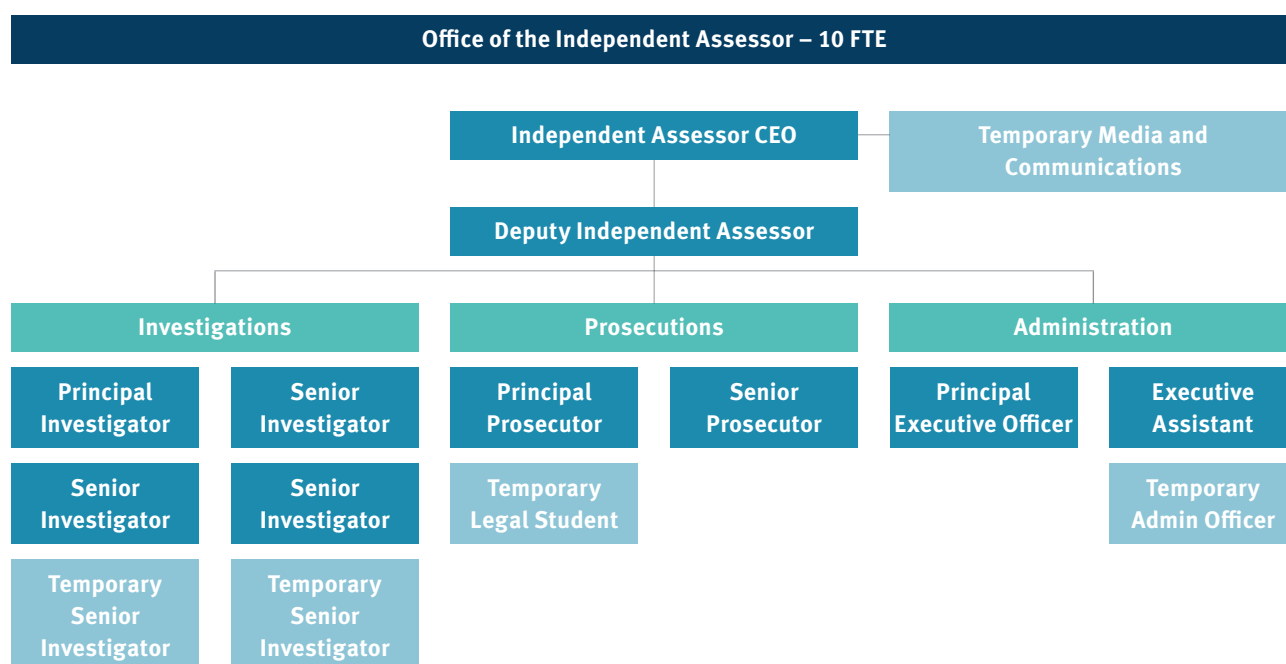
The OIA contributed to law reform through a submission and evidence to the Parliamentary Economics and Governance Committee considering the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019*.

Our work identified the top three misconduct risks that led to investigations in 2018-19 were:

- ▶ failing to disclose or properly deal with conflicts of interest
- ▶ breaches of the trust placed in a councillor
- ▶ failing to disclose a material personal interest in a matter before council.

## Organisation structure

The Office of the Independent Assessor was established with 10 full time equivalent (FTE) positions to manage an anticipated 160 complaints a year. In its first seven months of operation, the OIA received 824 complaints. The OIA structure of four investigators and two lawyers has been supplemented by temporary resources to manage this workload.



Additionally, the OIA receives support from the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) and the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) for human resources, finance, IT, procurement and communications.

## Chapter 2

### 2018-19 at a glance



**917**

Total complaints, 2018-19  
financial year



**824**

Total complaints to OIA



**477**

Dismissed/NFA



**152**

Active investigations



**79**

Investigations parked or on hold



**74**

Referred to CCC



**20**

Referred back to council



**16**

Pending Assessment at 30 June 2019



**155**

Investigations completed



**35**

With legal team pending possible  
referral to CCT



**10**

Before Councillor Conduct Tribunal



**13**

CCT Decisions



## Chapter 3

# 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. Importantly, the OIA does not have jurisdiction to review or investigate **council decisions**. Before the establishment of the OIA, the Department of Local Government, Racing and Multicultural Affairs received and managed complaints about misconduct and local governments themselves managed complaints of inappropriate conduct.

#### Complaints management scheme that commenced on 3 December 2018

#### Inappropriate Conduct

Referred to Office of the Independent Assessor

Office of the Independent Assessor refer to Local Government to investigate/deal with, if appropriate

#### Misconduct

Referred to Office of the Independent Assessor

Investigated by the Office of the Independent Assessor, if appropriate

#### Corrupt Conduct

If the Office of the Independent Assessor receives a complaint about corrupt conduct the Independent Assessor must refer to the CCC

CCC may refer matters back to the Office of the Independent Assessor for investigation

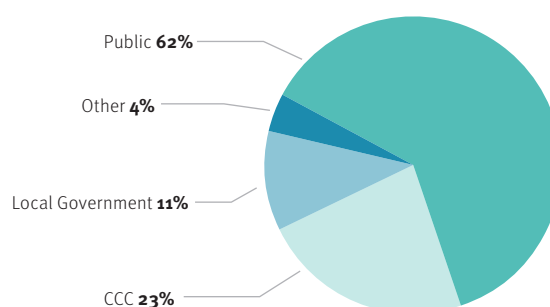
Since its inception on 3 December 2018, the OIA has received 824 complaints, covering 51 of the 76 councils within the OIA's jurisdiction. This represented a 466% increase in the number of complaints received by the Department of Local Government, Racing and Multicultural Affairs for the 2017-18 financial year.

#### Historical complaints as at 30 June 2019



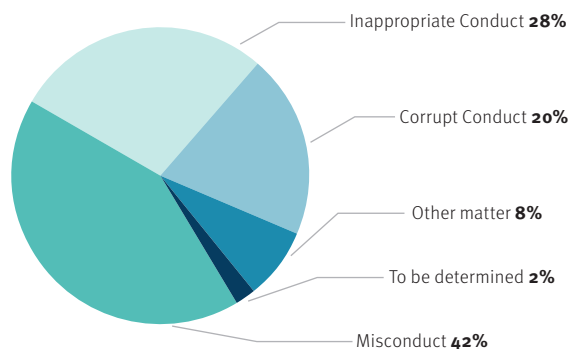
Analysis of the source of the complaints received by the OIA indicated that 62% were received direct from members of the public, 23% were matters referred by the Crime and Corruption Commission, 11% were referred by local government, including self-reporting by councillors and mayors with the remaining 4% from other sources, including anonymous complaints.

#### Source of complaints as at 30 June 2019



Many complaints received involved multiple allegations with 42% of these relating to misconduct, 28% to inappropriate conduct and 20% to corrupt conduct.

## Issues



The most common categories of complaints received were conflicts of interest 26%, breaches of trust 14% and breaches of the code of conduct 18%.

Complaints to the OIA that involve suspected conflicts of interest are discussed in more detail in Chapter 5.

Breaches of trust involve conduct by a councillor that is contrary to the legislated Local Government Principles and/or Responsibilities of Councillors.

On 3 December 2018, a prescribed Code of Conduct for Councillors in Queensland was mandated by legislation. Breaches of the Code of Conduct amount to inappropriate conduct. Inappropriate conduct is discussed further in Chapter 4.

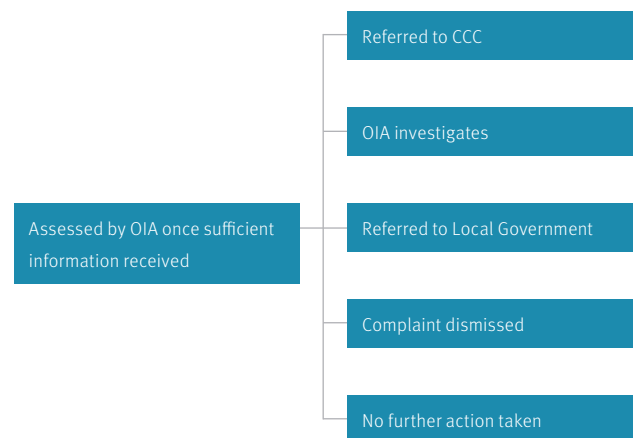
## Assessment

In circumstances where a complaint is made, that, in the opinion of the Independent Assessor does not include sufficient information to properly investigate the conduct, the assessor may request further information from the complainant. If the information provided is still insufficient to conduct an investigation, or the complainant does not comply with the notice, the Independent Assessor may decide not to investigate the complaint.

As at 30 June 2019, 3% of all matters received were categorised as enquiries and outside the OIA's jurisdiction. These complainants were redirected to the appropriate agency.

Despite the challenges associated with the high volume of complaints, the OIA received and assessed 80% of all complaints within 21 working days.

Assessment of councillor complaints are undertaken twice weekly and may result in one of the following possible outcomes:



## Referral to the CCC

If the Independent Assessor reasonably suspects a complaint or information involves, or may involve, corrupt conduct the Independent Assessor must notify the Crime and Corruption Commission (CCC). In the first seven months of operation, 74 matters involving suspected corrupt conduct were referred to the CCC. Of those 85% were returned to the OIA for investigation, subject to CCC oversight. The majority of these matters related to conflicts of interest.

## Office of the Independent Assessor to investigate – misconduct

Matters that are assessed as misconduct and raise a reasonable suspicion of misconduct at the time of assessment are investigated by the OIA. As at 30 June 2019, 38% of all complaints received became an OIA misconduct investigation. These matters are explored in more detail in Chapter 5.

### Refer to Local Government

Matters that are assessed as inappropriate conduct are considered for referral back to local government for investigation. As at 30 June 2019, 20 complaints had been referred back to local government for investigation. These matters are reported on in Chapter 4.

### Dismissal or no further action

The OIA dismissed or took no further action on 477 complaints, which represented 46% of all incoming complaints.

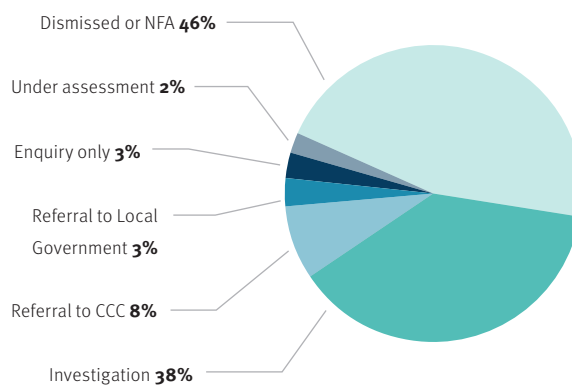
- ▶ In 58% of cases, the conduct complained of did not raise a reasonable suspicion of inappropriate conduct or misconduct as defined by the Act
- ▶ 23% of complaints were not pursued either because they represented an unjustifiable use of the OIA's resources or because it was not in the public interest to further investigate the matter
- ▶ 11% of complaints were already being dealt with by another entity, such as the Crime and Corruption Commission
- ▶ 2% of complaints were dismissed on the basis that they were frivolous or vexatious
- ▶ 1% of complaints were dismissed on the basis that they were lacking in substance or because the complainant failed to provide additional information requested by the OIA to support the complaint.

Warning letters were issued to complainants who made complaints assessed as vexatious or not made in good faith advising them that if they made a further complaint assessed as vexatious or not in good faith then they may commit an offence under the Local Government Act 2009 (Sections 150AU and 150AV). As at 30 June 2019, these warnings had deterred complainants from repeat complaints that were vexatious in nature.

A request for an internal review of a decision to dismiss or take no further action can be made within two months of the

case being closed, consistent with best practice complaints management. The internal review is carried out by the Independent Assessor. As at 30 June 2019, 71 requests for review had been received and 63 reviews completed. In 94% of cases the original decision was upheld. In two matters the decision to dismiss or take no further action was overturned and the matters sent for investigation.

The following chart depicts the outcomes of OIA assessments as at 30 June 2019.



## Chapter 4

# Inappropriate conduct – referral to Local Government

Inappropriate conduct is councillor conduct that amounts to a breach of the Councillor Code of Conduct, a local government policy, procedure or resolution. The Office of the Independent Assessor (OIA) does not investigate inappropriate conduct.

Suspected inappropriate conduct is referred back to the local government to investigate under the terms of its investigation policy. Before referring suspected inappropriate conduct to a local government, the OIA must issue the subject councillor a notice and provide the councillor with an opportunity to respond. After that process, if the Independent Assessor still suspects inappropriate conduct, the matter is referred to the local government to investigate and to deal with the matter.

The Independent Assessor may make a recommendation to the local government on how the investigation is to be undertaken. For example, the Independent Assessor routinely recommends that the matter is referred to the Councillor Conduct Tribunal to investigate when it is alleged that a mayor has engaged in inappropriate conduct.

Inappropriate conduct accounted for 28% of all complaints received by the OIA. In the seven months of its operation, the OIA referred 20 suspected inappropriate conduct matters, involving 12 separate councils back to local government for investigation. Almost half of these complaints were made by members of the public while the balance had been referred to the OIA by the CEO or other councillors.

Of the 20 matters referred back to council, one was sustained, seven were not sustained, four were withdrawn by the complainant after referral and eight remained unresolved as at 30 June 2019.

While the OIA cannot review how local government deals with inappropriate conduct matters, it is monitoring and reporting on how inappropriate conduct is being dealt with by local governments.



## Chapter 5

# Misconduct – Office of the Independent Assessor investigations

Analysis over the first seven months shows that 38% of all complaints received became misconduct investigations. Misconduct is more serious conduct than inappropriate conduct. Conduct categorised as misconduct 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
- ▶ 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 including:

- ▶ failure to properly declare or manage conflict of interest or a material personal interest in a council meeting.
- ▶ failure to record particulars of an interest in the councillor's 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.

As at 30 June 2019, 315 complaints relating to 407 different allegations had been subject to investigation by the OIA. These investigations involved 39 of the 76 councils.

These investigations included 135 allegations of conflict of interest; 99 allegations of breach of trust; 39 allegations involving material personal interest and a further 33 allegations of councillors failing to update their register of interests.

## Case study

### Conflicts of interest – understanding misconduct risks

A conflict of interest occurs when a councillor's personal interest conflicts with the public interest creating a risk that a councillor may make, or be perceived to make, a decision that is not in the public interest. There is nothing inherently wrong with having a conflict of interest. It only becomes wrong if it is not fully disclosed or managed.

Office of the Independent Assessor (OIA) complaint and investigations data identifies conflict of interest as the most significant misconduct risk for Queensland councillors.



**217**

Conflict of interest complaints or **26%** of all 2018-19 complaints



**144**

Conflict of interest investigations or **71%** of all 2018-19 investigations

The OIA recognises that councillors are directly engaged in high volume and high value decision making about their own communities. Many councillors have lived, and have been leaders, in their communities over many years and have close family, personal, business, sporting, financial and other connections.

They may also have developed expertise in industries, businesses or other pursuits that intersect with local government. Councillors are also very visible in their communities and are often the decision-makers on matters that most closely affect the interests of ratepayers.

In these circumstances, the existence of conflicts of interest are inevitable. This underlines the importance of full disclosure and management of conflict of interest matters.

An analysis of conflict of interest matters investigated by the OIA has identified the following recurring themes:

**Voting on a matter related to an electoral donor who provided funds/gifts/benefits to the councillor (38)**

**Voting on a matter related to legal proceedings to which the councillor is a party (30)**

**Failing to report another councillor's conflict of interest (28)**

**Voting on a matter related to a friend/relative or associate of a councillor (15)**

**Councillor ownership of property/business impacted by a decision of council (12)**

**Voting to approve grants or development approvals for business entity owned/directed by the councillor (10)**

**Councillor office bearer or associated with a community group or organisation subject to council decision (7)**

**Voting on a matter related to the employment/termination of a CEO where councillor has conflict of interest/potential bias (4)**



As at 30 June 2019, the OIA had completed 160 investigations, with 101 matters resulting in dismissal or a decision to take no further action. The OIA prosecutors were assigned 55 investigations to initiate a natural justice process pending possible referral to the Tribunal.

As at 30 June 2019, the OIA was actively investigating 73 matters, with a further 79 either parked pending outcomes in other jurisdictions (for example, involving former councillors who are also the subject of criminal charges) or on hold pending allocation of available investigative resources.

In order to address the large number of complaints requiring investigation by the OIA within resource capacity, a formalised case prioritisation model has been adopted.

Investigations are prioritised as being high, medium or low based on a number of relevant factors including: potential continuing impact of the conduct, age of the matter, evidence preservation, public interest, seriousness, Crime and Corruption Commission oversight and whether the conduct may be systemic. This is a dynamic process and matters may be quickly raised or lowered in priority as information is considered. As a general policy, the OIA aims to finalise investigations within six months of commencement of investigation.

In the first seven months of operation, the OIA has exercised powers under Section 150CH of the Local Government Act 2009 on 126 occasions. This power allows investigators to request Information that is reasonably believed to provide information in regard to the commission of an offence against the conduct provisions of the Act, or information reasonably necessary for the investigation of councillor conduct.

In addition, nine notices have been issued under Section 150CJ of the Act requiring attendance of a person at an interview with investigators.



## Chapter 6

# Disciplinary or prosecution outcomes

### Misconduct

The Independent Assessor may elect to deal with councillor conduct as misconduct or, in the case of certain statutory offences under the Local Government Act 2009, as a criminal offence. In the seven months since the commencement of the Office of the Independent Assessor (OIA), the Independent Assessor has referred 20 matters to the Councillor Conduct Tribunal. Of these, 13 matters have been determined, with allegations in 10 matters sustained, two not sustained and one withdrawn.

#### Tribunal outcomes for misconduct matters

Category	Number of matters	Outcome
Breach of Trust	4	sustained
Breach of Trust / Conflict of Interest	3	sustained
Breach of Trust / Failure to update register of interest	1	sustained
Conflict of Interest	3	1 sustained; 2 not sustained
Failure to update register of interest	1	sustained
Failure to comply with order of the previous Tribunal	1	withdrawn

The circumstances of these decisions included:

- ▶ A councillor made social media comments with racial overtones when referring to a state Member of Parliament
- ▶ Three councillors from the one council were fined for failing to declare a conflict of interest while voting to award a council contract to an election donor. Two of these also failed to update their register of interests
- ▶ A councillor who was a part-owner of two properties in a city Central Business District (CBD), was found to have engaged in misconduct by failing to declare a conflict of interest while voting on amendments to the CBD development incentive policy.

As at 30 June 2019, a further 32 matters were with the prosecution team undergoing a natural justice process to determine whether they should be referred to the Tribunal.

Given OIA investigation workloads and the need to complete investigations in a timely manner, councillors are offered the opportunity to fast track matters where the allegation, or the facts underpinning the allegation, are agreed. These cases are now moving into the Councillor Conduct Tribunal with the aim of quick resolution.

Matters not fast tracked in this way are fully and thoroughly investigated.

The Independent Assessor has also prioritised the referral to the Tribunal of a number of more borderline conflict of interest matters in order to provide councillors with guidance on how the Tribunal is applying the legislation and consistently setting standards.

Subject councillors may choose to be legally represented and a summary of the CCT's decisions are published on the Department of Local Government, Racing and Multicultural Affairs website.

The OIA has developed resources for its website to assist councillors and their legal representatives to understand the Tribunal process. The OIA has also contributed material to the Queensland Law Society's publication, *Proctor*, to assist legal representatives who are engaged by councillors.

### Statutory offences

The OIA may elect to prosecute statutory offences created by the Local Government Act 2009 in the Magistrates Court as set out in Chapter 5.

The OIA has a prosecution policy on its website which sets out when the Independent Assessor will deal with a matter as misconduct or a statutory offence. Generally, the Independent Assessor will deal with the matters as misconduct unless the matter is particularly serious, or the councillor has a disciplinary history for like matters; and the disciplinary process has not been effective in modifying the councillor's behavior.

As at 30 June 2019, the OIA had not commenced a criminal prosecution.



## Chapter 7

### Prevention activities

The Office of the Independent Assessor (OIA) provides training and information to councillors, councils, council employees and others on the councillor conduct complaint systems and provides broader guidance and resources on;

- ▶ recurring or high risk areas of councillor conduct
- ▶ strategies to manage more complex conduct issues, and
- ▶ guiding principles on the circumstances where the OIA will prosecute categories of councillor misconduct.

The OIA response includes:

- ▶ comprehensive website information providing guidance to prospective complainants
- ▶ presentations to representatives of 65 councils, either through Regional Organisations of Councils or individually, and
- ▶ contributions to stakeholder publications such as the LGAQ, LGMA and the Queensland Law Society.

*Insight* is the OIA's quarterly publication which reports complaint volumes, trend analysis, emerging issues and themes, prevention advice and informs broader prevention priorities and opportunities.

The website resources include a synopsis of decisions of the Councillor Conduct Tribunal which are also sent to all Queensland councillors; providing timely information about how the Tribunal is applying standards so that councillors can, in turn, apply these standards to their own circumstances.

The OIA has also worked with the Office of the Queensland Integrity Commissioner to develop a suite of conflict of interest guides to assist councillors make decisions in the best interests of their communities; and conducted conflict of interest workshops at a number of councils.

Comprehensive social media guidelines were released in partnership with the LGAQ and are available for councillors to help manage their online presence. These guides have been accessed on the OIA website on more than 800 occasions.



## Chapter 8

### Looking ahead

- ▶ Looking ahead, it is expected that councillor complaint numbers may increase again in the lead up to the March 2020 local government elections and as Brisbane City councillors come under the Office of the Independent Assessor's (OIA) jurisdiction.
- ▶ The OIA will proactively implement strategies to minimise the politicisation of councillor complaints in the lead up to the March 2020 elections. Frivolous or vexatious complaints or those that result in no further action will be identified and dealt with expeditiously.
- ▶ The OIA anticipates it will assess most complaints within 21 working days, but it is likely - subject to any changes in resourcing - that ongoing delays will be experienced in completing investigations and referring matters to the Councillor Conduct Tribunal. There is also likely to be increased pressure on the Tribunal to progress matters through the hearing and decision process.
- ▶ The Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 will significantly change how conflicts of interest are dealt with by councillors. The OIA will monitor the impact of this Bill and work with stakeholders to develop new resources for councillors to mitigate high risk misconduct matters. New collaborations will focus on innovative prevention strategies.
- ▶ The OIA will continue to monitor emerging trends and high risk areas of misconduct while maintaining a close watching brief on how inappropriate conduct matters are being dealt with by local governments.
- ▶ Internally, an upgrade of the OIA case management system is expected to deliver efficiencies in how we receive and capture complaints, produce correspondence and briefs of evidence and in how we track and report on our work.
- ▶ We will also be exploring opportunities for our cohesive and high performing team to further develop and to innovate.



## Chapter 9

# Financial performance

The financial performance of the Office of the Independent Assessor (OIA) is consolidated within the audited Financial Statements of the Annual Report 2018-19 of the Department of Local Government, Racing and Multicultural Affairs.

Next year, in addition to the financial information, the OIA Service Delivery Statement performance will also appear in the DLGRMA Annual Report as the department Service Delivery Statement incorporates the OIA service performance information in the 2019-20 State Budget.

## Contacts

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### **Email complaints**

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[www.oia.qld.gov.au](http://www.oia.qld.gov.au)

