

Office of the **Independent Assessor**

Annual Report 2020/21





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The Honourable Dr Steven Miles MP
Deputy Premier and Minister for State Development,
Infrastructure, Local Government, and Planning
1 William Street
BRISBANE QLD 4000

Dear Deputy Premier

I am pleased to submit for presentation to the Parliament, the Annual Report for 2020-21 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 2020 to 30 June 2021.

Yours sincerely



Kathleen Florian
Independent Assessor
Office of the Independent Assessor

Message from the **Independent Assessor**

I am pleased to present the 2020—21 Annual Report for the Office of the Independent Assessor (OIA).

Over the year the OIA received 1,074 complaints about the conduct of councillors across the state, which was 4 per cent higher than the number lodged in the preceding year, and the third increase over the three years since the OIA began.

This result was not unexpected as 2020—21 was the first full financial year in which all 77 Queensland councils came within the OIA's remit. However, the size of the increase indicated that complaint numbers had started to stabilise.

At the end of the 2020—21 financial year the OIA:

- had received 1,074 complaints, containing 1,164 allegations
- was assessing 89 per cent of all incoming complaints within 21 working days of lodgement
- had completed 187 misconduct investigations (over the year)¹
- had assigned 67 complaints involving 72 allegations against 31 councillors to OIA legal team for possible referral to the Councillor Conduct Tribunal (CCT)
- while 71 matters involving 105 allegations against 37 councillors were before the CCT as of 30 June 2021.

The local government sector was the main source of complaints, lodging 53 per cent. Again, this was not a surprising result as there were a high number of notifications from one council about a single issue in the second quarter.

The outcome also reflected the mandatory reporting requirements for local government officials who are obliged to advise the OIA of any suspected inappropriate conduct or misconduct, and to pass on the complaints they receive about a councillor's conduct. This is an important accountability measure to ensure that a positive reporting culture exists within councils.

Encouragingly too, an increasing number of councillors transparently acknowledged their own conduct, with 30 self-referrals received over the year, up from 11 in 2019—20 and five in 2018—19.

There were other signs of a strengthening commitment to integrity across local government. One was the significant improvement in councils' handling of inappropriate conduct complaints.

The OIA has no power to deal with these allegations and must instead refer them to the relevant council to investigate and resolve. In September 2020 we introduced initiatives to assist councils to overcome some of the challenges they were experiencing and enable them to deal with inappropriate conduct fairly and effectively. The figures detailed in chapter 3 demonstrate the positive impact of these measures and councils' efforts to strengthen standards.

A key part of the councillor complaints framework is preventing an escalation in conduct. The effective handling of lower-level issues, such as inappropriate conduct, can prevent the behaviour escalating to misconduct. Similarly dealing with misconduct can prevent an escalation to corruption or criminal matters that can cause harm to individuals and communities.

Throughout 2020—21 the OIA provided information, insights, and resources that sought to minimise recurring misconduct risks by educating councillors about their legal obligations and the standards required of community leaders. Foremost amongst them was an innovative conflict of interest 'app' developed in collaboration with the Local Government Association of Queensland (LGAQ). This online tool and other resources and activities are discussed in chapter 6.

Throughout the year, the Covid-19 pandemic continued to deliver challenges and uncertainty across Australia and around the world. Despite this, the OIA team remained dedicated to dealing with matters effectively, fairly and consistently. Their commitment was evident in the time they took everyday to talk through the concerns of both complainants and councillors. I am grateful for their hard work, drive and resilience.



Kathleen Florian
Independent Assessor

¹ One investigation involved 106 complaints about a single councillor and a single issue.

Chapter 1

About the Office of the Independent Assessor

Our vision

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

Our values



Respectful



Courageous



Connected



Transparent



Balanced

What we do

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

It investigates and prosecutes councillor misconduct and corrupt conduct when the latter is referred to it by the Crime and Corruption Commission (CCC). Inappropriate conduct matters must be referred to the relevant local government.

It contributes to the state government's objectives for building Queensland and growing our regions, by:

- timely and proficient administration of the councillor complaints framework.

Our legislation

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

On 30 March 2020, provisions in the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019* came into effect which brought BCC under the OIA's jurisdiction. As of this date the OIA's remit covered all 77 local governments in Queensland.

Queensland Human Rights Act 2019

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

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

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

Machinery of government changes

Following the state general election in October 2020, machinery of government changes came into effect on 12 November 2020. The following table outlines the OIA's reporting arrangements for the 2020–21 financial year.

Minster	Timeline
Minister of Local Government, Racing and Multicultural Affairs	1 July 2020 – 11 November 2020
Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning	12 November 2020 – 30 June 2021

Oversight

Prior to the 2020 state general election, the Economics and Governance Committee of the Queensland Parliament was responsible for monitoring and reviewing the performance of the Independent Assessor (IA).

That oversight function was transferred to the State Development and Regional Industries Committee (SDRIC) following the election, as part of machinery of government changes.

The IA attended a SDCRIC public hearing on 22 March 2021.

Operating environment

The OIA works with its key stakeholders including community members, Queensland’s 77 local governments and 578 councillors, as well as the Deputy Premier and Minister of State Development, Infrastructure, Local Government and Planning, and the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP).

It also engages with other stakeholders including the Crime and Corruption Commission (CCC), the Queensland Integrity Commissioner (QIC), Queensland Audit Office (QAO), The Queensland Ombudsman, the Local Government Association of Queensland (LGAQ) and Local Government Managers Australia (Qld) (LGMA).

The OIA is part of the Local Government Liaison Group and the Queensland Integrity Agencies Committee.

Organisational structure

In 2020–21 the OIA conducted its business with 11 full-time equivalent (FTE) staff. To manage workloads and pressure points, two investigators were moved to the legal team and six temporary staff members augmented the assessment, investigation and legal teams. One

officer was provided free of charge by the DSDILGP. In December 2020, the OIA received an additional \$250,000 in funding to support two additional temporary staff and the continuation of a third temporary employee.

The OIA received support from the DSDILGP for human resources, finance, information technology (IT), procurement and communication.

OIA financial and non-financial performance information

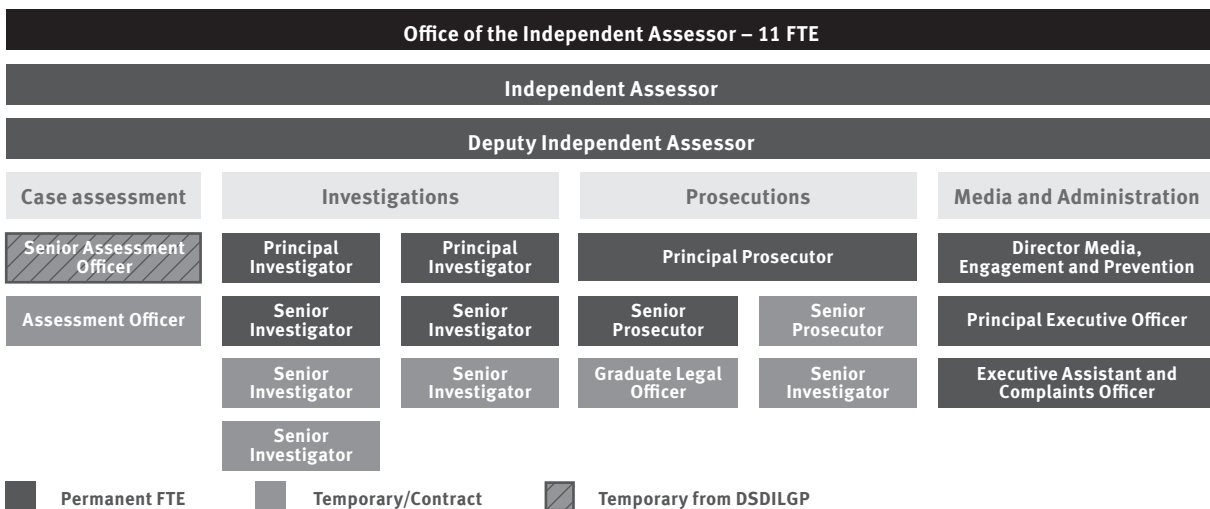
OIA Financial information for 2020–21 is located in the DSDILGP annual report 2020–21

OIA non- financial performance information based on the 2020–21 Service Delivery Statement is located in the DSDILGP annual report 2020–21

Impact of COVID-19

The OIA continued to deal with the challenges presented by the COVID-19 pandemic. In particular, investigations were conducted from the OIA office rather than in the field to limit travel. This impacted on investigation timeframes as working on location can deliver efficiencies by enabling investigators to speak to multiple witnesses in a compressed period of time.

Staff worked from home during lockdowns and a work-from-home roster was introduced to facilitate social-distancing requirements at other times by reducing the number of staff in the office each day. This meant all-staff meetings were held online.



(Organisational structure as at 30 June 2021)

Chapter 2

Intake and assessment

Intake

The Office of the Independent Assessor (OIA) receives complaints about councillor conduct.

Councillor conduct may involve inappropriate conduct or misconduct. Complaints that raise a reasonable suspicion of corrupt conduct must be referred to the Crime and Corruption Commission (CCC).

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

From its establishment on 3 December 2018 through to 30 June 2021, the OIA received 2,928 complaints, involving 71 of the 77 local governments in Queensland.

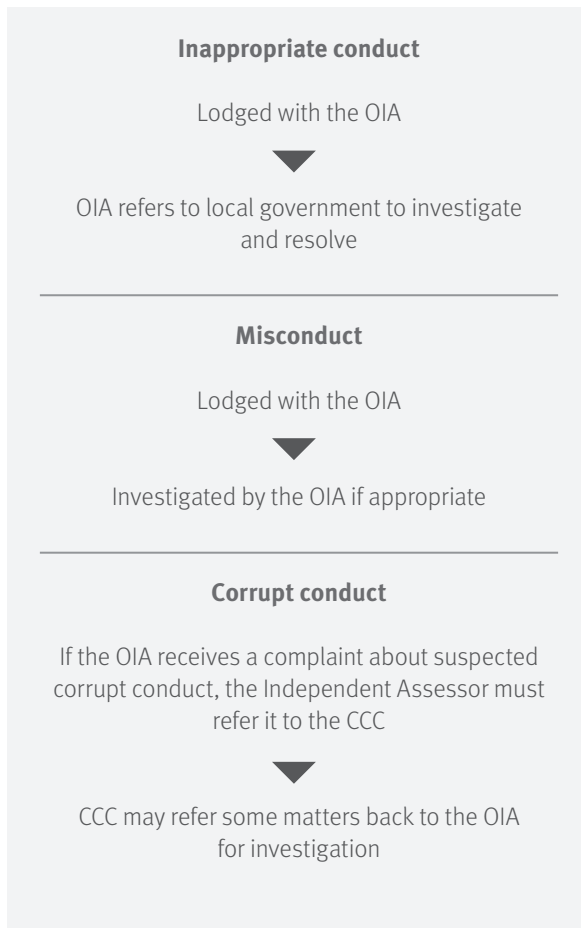
In the 2020–21 financial year, 1,074 complaints containing 1,164 allegations were lodged in relation to 62 local governments.

This represented a 4 per cent increase on the number of complaints received in the preceding year. This increase was not unexpected as 2020–21 was first full financial year in which all 77 Queensland councils came within the councillor conduct framework.

Many complaints involved multiple allegations, with 54 per cent of allegations relating to misconduct, 27 per cent relating to inappropriate conduct and 12 per cent involving suspected corrupt conduct. Other matters accounted for 7 per cent of allegations.

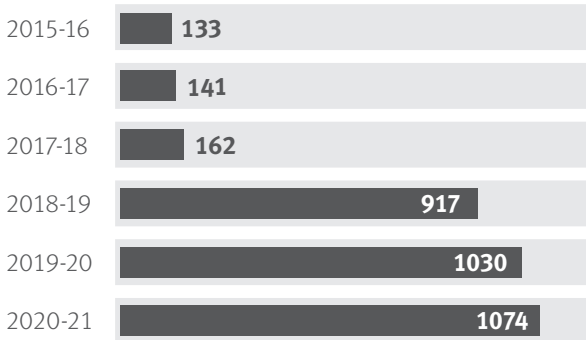
When the OIA receives multiple complaints about a single councillor in relation to a single issue (or closely related issues), the complaints are dealt with as one investigation. Such matters are also referred to the CCT as one referral, when required.

The most common categories of complaints were:



Historical complaints as at 30 June 2021

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



Analysis of the source of complaints received by the OIA in 2020—21 showed:

- 53 per cent were lodged by local government, including self-referrals by councillors
- 37 per cent were lodged by members of the public
- 4 per cent were referred by the CCC
- 6 per cent came from other sources, including complaints referred from government departments and anonymous complaints.

As mentioned in the foreword, a high number of complaints from one council in relation to a single issue impacted the above results.

The results also reflected the mandatory reporting obligations for local government officials under sections 150P and 150R of the *Local Government Act 2009* (LG Act). As such officials must notify the OIA should they become aware of information indicating a councillor may have engaged in inappropriate conduct or misconduct. They are also required to refer to the OIA any complaints received about a councillor's conduct.

The reporting from the local government sector included an increased number of self-referrals with 30 councillors reporting themselves to the OIA, up from 11 in 2019-20, and five in 2018-19.

Assessment

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

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

Possible assessment outcomes

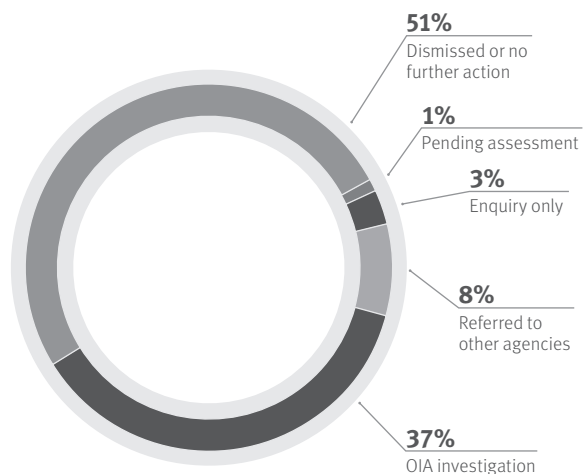
The OIA assesses complaints twice a week and an assessment may result in one of the following outcomes:

Assessed by OIA once sufficient information received

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

In 2020—21, the OIA assessed 89 per cent of complaints within 21 working days of lodgement.

The following graph shows the outcomes of OIA assessments as at 30 June 2021.



Corrupt conduct

The IA must notify the CCC if a complaint or information involves, or may involve, corrupt conduct. In 2020—21, 34 matters involving suspected corrupt conduct were referred to the CCC. Twelve of the 34 matters were received by the OIA in the preceding year.

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

During 2020—21, the OIA reported 29 suspected corrupt conduct complaint files to the CCC under the section 40 schedule (CC Act). This was in addition to the 34 referrals mentioned above.

As a result of amendments to the *Local Government Act 2009* which commenced on 12 October 2020, the number of matters that reach the threshold of corrupt conduct has reduced.

Inappropriate conduct – refer to local government

The OIA does not have the power to investigate suspected inappropriate conduct by councillors unless it is tied to alleged misconduct. Instead, these complaints must be referred to the relevant local government for investigation. In 2020—21, 54 such complaints were referred to 26 local governments. Inappropriate conduct matters are discussed further in chapter 3.

Misconduct – OIA to investigate

Complaints that raise a reasonable suspicion of misconduct at the time of assessment

are investigated by the OIA. In some more complex matters further investigation may be required to determine whether this threshold is met. As at 30 June 2021, 37 per cent of all complaints assessed in 2020—21 became an OIA misconduct investigation. Misconduct investigations are explored in chapter 4.

Dismissal or no further action

A decision to dismiss a complaint or take no further action in relation to a matter can be made during the assessment phase or after an investigation.

In 2020—21, 395 complaints were dismissed on assessment while 177 were subject to no further action at this stage. These figures included some complaints that were lodged in the preceding year.

Altogether the OIA dismissed or took no further action (NFA) on 572 complaints which represented 51 per cent of all matters assessed in 2020—21, down from 61 per cent in the preceding year. The higher dismissal/NFA rate in 2019-20 was due to a one-off review of matters involving councillors who did not return to office after the quadrennial local government elections in March 2020.

Reasons for dismissal or no further action may include:

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

Vexatious or improper complaints

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

This process enables the OIA to demonstrate a course of conduct on the part of the complainant, notwithstanding warnings provided.

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

During 2020—21, 34 complainants received a warning after matters were escalated to step two. Two complainants were escalated to step three and investigations were commenced.

Review of decisions

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

In 2020—21, 11 requests for review were received and 10 reviews were completed. In all cases the original decisions were upheld.

Three-step escalation process

Step one

The OIA provides a warning that any further complaint may be dismissed as vexatious or improper.



Step two

The complaint is dismissed as vexatious/improper, and an offence warning is issued.



Step Three

The OIA commences an investigation ahead of a possible prosecution. (A fine of more than \$11,000 may apply.)

The OIA may move directly to step three in cases where the complainant behaviour is very serious.

Chapter 3

Inappropriate conduct – referral to local government

A key plank in the councillor complaints system is effectively dealing with lower-level issues, such as inappropriate conduct, to prevent an escalation to more serious levels of conduct.

Inappropriate conduct occurs when a councillor breaches the Code of Conduct for Councillors in Queensland, a local government policy, procedure, or resolution.

In 2020–21, the OIA received 290 inappropriate conduct complaints, which accounted for 27 per cent of all complaints lodged in the year.

Of the 54 matters, 18 were sustained, six were not sustained, five were resolved by alternate dispute resolution, 25 were ongoing as at 30 June 2021 or the OIA was yet to be advised of an outcome.

Initiatives to strengthen standards

While the OIA cannot review how local governments deal with inappropriate conduct complaints, it monitors and reports on the handling of these matters.

In 2019–20, the OIA raised concerns that while some councils were dealing with inappropriate conduct fairly and objectively, others were experiencing challenges. These included a reluctance amongst councillors to sit in judgment of their peers or to substantiate a conduct allegation, the impact of alliances on objectivity and issues surrounding compliance with council investigation policies.

To assist councils to overcome some of these issues the OIA developed initiatives which were provided to all Queensland councils in September 2020.

They included the identification of a panel of external investigators, who could assist councils by quickly and independently examining allegations. Three companies were selected from the whole-of-government preferred suppliers list, based on cost and experience in the local government context.

The OIA conducted a workshop with the companies to facilitate a uniform approach to investigations and application of the Code of Conduct. A template investigation report was agreed to support timely investigations that complied with natural justice and best practice.

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

Before making these referrals, the OIA must issue a notice to the subject councillor, providing the councillor with an opportunity to respond to the allegation/s.

After that process, and if the Independent Assessor (IA) still suspects inappropriate conduct, the complaint is referred to the relevant local government to investigate, decide whether the subject councillor engaged in inappropriate conduct, and apply sanctions where required.

The IA may make a recommendation to the local government on how the investigation is to be undertaken. If the local government rejects this recommendation, it must pass a resolution in a council meeting stating the reasons.

Throughout the year, 54 suspected inappropriate conduct matters, were referred to 26 separate councils for investigation.

To assist councillors to determine an appropriate sanction when an allegation is substantiated, the OIA provided a decision-making matrix which was developed in consultation with the interim Logan City Council (LCC) in 2019.

Local governments were advised that the resources listed above may also be of assistance when undertaking their own investigations, when read in conjunction with the council's investigation policy.

A further initiative was introduced in 2021 to specifically assist councillors in First Nations communities. On 1 March, a six-month 'telephone trial' commenced, giving councillors the option to respond to OIA notices by phone, rather than in writing, when they became the subject of an inappropriate conduct complaint.

The trial recognised the challenges faced in reliably accessing the internet and devices in remote communities. It allowed councillors to respond to complaints as they arose in order to learn from any mistakes in timely way or to move on from unsubstantiated allegations.

Outcome statistics demonstrated the effectiveness of the OIA's initiatives.

In 2020—21, 53 per cent of inappropriate conduct matters were finalised representing a significant improvement on 2019-20 when 15 per cent of inappropriate conduct complaints were finalised by local governments.

Despite this marked increase, opportunities for continued improvement remain. It is important that consistent standards apply to all councillors for the benefit of their communities and the local government sector.

The OIA will continue to work with councils to help ensure that inappropriate conduct is dealt with fairly and effectively. Early interventions are an important way to prevent lower-level breaches escalating to misconduct or corrupt conduct, which can cause significant harm.

Chapter 4

Misconduct – OIA investigations

The Office of the Independent Assessor (OIA) undertakes an investigation when a complaint raises a reasonable suspicion of misconduct or further inquiries are necessary to determine this, or where there is a reasonable suspicion that a conduct provision has been breached.



37 per cent of all complaints received by the OIA in 2020–21 became investigations.

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

- Conduct which directly or indirectly affects the honest and impartial performance of a councillor's functions, or the exercise of the councillor's powers
- Breaches of the trust placed in a councillor as an elected official
- Misuse of information or material acquired in connection with the performance of the councillor's function for the benefit or detriment of the councillor or another person
- Failing to comply with an order of the council or the Councillor Conduct Tribunal (CCT)
- Failing to comply with acceptable request guidelines of the council
- Failing to comply with a council policy about the reimbursement of expenses
- Not reporting the suspected inappropriate conduct or misconduct of another councillor
- Failing to comply with conflict of interest provisions
- Failing to report suspected conflicts of interest of other councillors
- Influencing or attempting to influence a council decision-maker where the councillor has a conflict of interest
- Giving directions to local government employees
- Failing to comply with register of interests provisions

- Releasing information which is confidential to council
- A councillor being disciplined for inappropriate conduct three times in one year.

The OIA can also investigate breaches of conduct provisions, which are offence provisions in the *Local Government Act 2009* (LG Act) or the *City of Brisbane Act 2010* (CoBA), as follows:

- Where a councillor makes a complaint vexatiously or not in good faith
- Where a complainant makes a complaint which is frivolous or improper
- Where a councillor takes retaliatory action against another councillor or reprisal action against another councillor or council employee
- Offences arising out of non-compliance with investigation powers
- Where a councillor fails to leave a meeting or comply with a decision of council in relation to the declaration of conflicts of interest
- Dishonest conduct by a councillor
- Use of council information to gain a financial advantage or to cause a detriment to the local government
- Prohibited conduct of a councillor in possession of inside information
- Obstructing or impersonating the Independent Assessor (IA), an investigator or a CCT member
- The provision of false and or misleading information to the IA, a staff member of the OIA or a member of the CCT.

In 2020—21, 297 new investigations were commenced, including two investigations raised by the OIA into potentially vexatious complainants. The OIA finalised 187 investigations¹, some of which started prior to 2020—21. It had 225 active investigations as at 30 June 2021.

Investigations involved 46 of the state's 77 councils and the top five categories of alleged misconduct investigated by the OIA were:

1. Breaching the trust placed in a councillor [breach of local government principles/councillor responsibilities] (145)
2. Failing to declare a conflict of interest (67)
3. Influencing or attempting to influence a decision-maker when a councillor has a conflict of interest (21)
4. Releasing information confidential to council (20)
5. Directing council staff (13).

To address the number of complaints requiring investigation, within resource capacity, a formal case prioritisation model was used. Investigations are prioritised when referred to the OIA by the Crime and Corruption Commission (CCC) and where the allegations are particularly serious and/or impact on a council's ability to function. Otherwise, investigations are undertaken in date order.

An investigation is classified as finalised once the matter is referred to the OIA legal team, dismissed or subject to no further action.

In 2020—21, 54 matters were subject to no further action following investigations, while 62 matters were dismissed at this stage.²

Notices issued

Chapter 5A, Part 4 of the LG Act provides the OIA with investigation and enforcement powers. The following were exercised in 2020—21:

The OIA exercised powers under section 150CH of the LG Act on 119 occasions. This power allows investigators to request information that is reasonably necessary to investigate a councillor's conduct or a breach of a conduct provision.

Under Section 150CJ of the LG Act, 14 notices were issued requiring the attendance of a person at an interview with investigators.

In addition to the above notices, the Independent Assessor (IA) may issue a notice under section 150CK of the LG Act, stating 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. Twenty-eight confidentiality notices were issued.

Search warrants

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

No search warrants were obtained in 2020—21.

¹ 106 complaints about one councillor and a single issue were treated as one investigation.

² One matter included 106 complaints about one councillor and a single issue (which were dealt with in one investigation).

Chapter 5

Disciplinary or prosecution matters

Misconduct (disciplinary matters)

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

Matters which are not fast-tracked are fully investigated.

If the investigation does not support the allegation the matter will be dismissed or subject to no further action (NFA). When an investigation supports a reasonable satisfaction that a councillor has engaged in misconduct, the matter is referred to the OIA legal team.

In 2020—21, 67 matters involving 31 current or former councillors and 72 allegations moved from investigations to the OIA legal team to undertake a natural justice process.

As at 30 June 2021, 33 matters involving 17 councillors or former councillors and 49 separate allegations were being prepared for or were undergoing a natural justice process.

At this point the OIA legal team issues a notice, pursuant to section 150AA of the *Local Government Act 2009* (LG Act). This provides the subject councillor with a statement of facts that sets out the allegation/s, the particulars, and the facts that have been gathered as part of the investigation. The statement of facts also clearly sets out how the alleged conduct may constitute misconduct.

Any submission by the subject councillor or a legal representative in response to the 150AA notice must be considered by the Independent Assessor (IA).

Following this consideration, a decision may be made to refer the matter to the CCT, or to do so with amendments

(i.e. in matters involving multiple allegations, the IA may remove some allegations for which a reasonable satisfaction of misconduct no longer exists). Alternatively, the IA may decide to dismiss the matter or take no further action at that time.

In 2020—21, the IA referred 49 matters involving 21 councillors or former councillors and 75 allegations to the CCT.

After considering councillors' submissions the IA took no further action on seven matters involving seven councillors and seven allegations.

When the CCT is ready to proceed with a matter, it is listed for a directions hearing where consideration is given to matters such as applications for legal representation or a contested hearing where witnesses may be cross-examined. When possible the CCT proceeds on the papers by receiving the parties' evidence in affidavit form, narrowing the scope of issues in contest, and receiving written submissions from both parties on the particular facts or law.

As of 30 June 2021, 71 matters, involving 37 councillors and 105 separate allegations, were before the CCT.

CCT outcomes

In 2020—21 the CCT decided 16 matters involving 12 councillors, including three matters that had been referred to the CCT in 2018—19 and 13 that had been referred in 2019—20.

The CCT sustained allegations against 10 councillors while allegations against two councillors were not sustained.

The CCT publishes a written summary of each decision on the Department of State Development, Infrastructure, Local Government and Planning website, recording its findings and reasons.

The circumstances in which misconduct findings were made in 2020—21 included:

- the release of confidential information
- the use of discriminatory and offensive language
- making unauthorised, dishonest and misleading comments
- making false and misleading statements to the media
- failure to declare conflict of interests
- failure to maintain an accurate register of interests.

Some of the sanctions applied by the CCT included reprimands, orders that the subject councillor make a public admission of misconduct and fines.

Delays were experienced in progressing matters through the OIA legal team and the CCT. From the OIA's perspective these delays were due to limited legal resources. However, in December 2020 the OIA received funding to engage two additional temporary legal positions. As at 30 June 2021, the OIA's legal team was made up of one PO6 lawyer, two PO5 lawyers and one PO2 graduate legal position.

Review of CCT decisions

Under Chapter 5A of the LG Act which is adopted by the City of Brisbane Act 2010 (CoBA), CCT decisions may be reviewed to the Queensland Civil and Administrative Tribunal (QCAT).

During 2020—21, six councillors reviewed a CCT decision to QCAT and the IA reviewed one CCT decision. One matter which was reviewed by a councillor in 2019—20 was before QCAT.

As at 30 June 2021, all QCAT matters were at preliminary stages, awaiting compulsory conferences or directions hearings.

Prosecutions: breaches of conduct provisions

The OIA may commence a prosecution into the breach of a conduct provision before the Magistrates Court. Conduct provisions are statutory offences created by the LG Act and CoBA and are discussed in more detail in chapter 4.

In some circumstances the IA may deal with a breach of conduct provision by a councillor as misconduct. The OIA has a prosecution policy on its website which sets out when the IA will deal with a matter as misconduct or as a statutory offence. Generally, the IA will deal with a matter as misconduct unless it is serious, involves repeat conduct and/or dishonesty, and is not being dealt with by the Crime and Corruption Commission (CCC).

As at 30 June 2021, the OIA had not commenced a criminal prosecution for breach of a conduct provision.

Judicial reviews

In August 2020, the Supreme Court of Queensland conducted a hearing into a judicial review which was commenced by the IA in May 2020. The review was undertaken to seek clarity on whether the IA has the power to revoke or rescind a referral to the CCT in circumstances where public interest considerations in pursuing a matter had changed since the matter was referred.

A ruling was delivered on 16 October 2020 stating that while the OIA did not have the power to formally revoke or rescind an application to the CCT, it may apply to the CCT to do so.

In October 2020, a former councillor applied to the Supreme Court of Queensland for a dismissal or permanent stay of CCT proceedings. The proceedings related to an IA referral to the CCT in October 2019, to decide an allegation of misconduct against the councillor; the CCT issued directions for this matter in June 2020.

A hearing into the former councillor's request for a dismissal/permanent stay was set down for one day in February 2021 but proceeded for an additional two days in May 2021. A decision was reserved.

Chapter 6

Prevention activities

As part of its commitment to strengthening integrity in local government, the Office of the Independent Assessor (OIA) worked to prevent misconduct and inappropriate conduct by councillors.

In 2020—21, the OIA identified and responded to emerging and ongoing issues in individual councils and across the local government sector by providing information and insights, targeted training and resources.

The focus areas included:

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

A key plank in the OIA's prevention activities was building councillor capacity to abide by their legal obligations as defined in the *Local Government Act 2009* (LG Act) and the *City of Brisbane Act 2010* (CoBA).

The OIA delivered tailored training to four councils where emerging, repeat or systemic issues were observed. These sessions predominantly focused on identifying and managing conflicts of interest.

The OIA also raised awareness about misconduct risks and highlighted areas of concern through its publications, made available to the local government sector and the broader community.

The quarterly *Insight* report transparently detailed complaint volumes, investigations and disciplinary matters, trends and issues, while providing broader guidance on prevention priorities and opportunities.

The IA also routinely shared decisions made by the Councillor Conduct Tribunal (CCT) in relation to misconduct allegations. Key findings were highlighted to increase councillors' understanding of points of law and the standards expected of them as leaders of Queensland communities.

In addition to its own work the OIA contributed to publications by the Local Government Association of Queensland (LGAQ) and Local Government Managers Australia (LGMA Queensland).

Reports

In February 2021 the OIA released a report on the complaints landscape in the state's 17 First Nations council areas, examining data recorded from 29 March – 31 December 2020.

It showed an increase in complaint numbers in recent years, consistent with the trend across local government in Queensland. There were 170 complaints about the 17 councils in the last half of 2020, compared to 34 matters in the 2016—17 financial year.

Members of the public were the main source of complaints, however there were more anonymous allegations in relation to First Nations councils than across the sector generally.

The report cited some of the complexities faced by First Nations councillors in fulfilling their roles, including:

- differences between legal and cultural concepts of relationships that might give rise to a conflict of interest
- tensions between legislated councillor conduct standards and cultural or family expectations
- councillors' dual roles in corporations, organisations and/or trusts which are active in the community and closely linked to the business of council.

Faced with these unique and complex conduct risks, complaints often related to:

- conflicts of interest arising from relationships in small communities where there are strong family or cultural ties
- perceptions of favouritism and/or a lack of impartiality in the awarding of housing, contracts and projects
- a councillor's involvement as an office holder or trustee in other community corporations (including council-owned entities and land trusts)
- conduct on social media
- engagement in broader community disputes
- failures to appropriately record business interests on registers of interest, particularly when bidding for council work or positions at corporations which are active in the community.

Another key finding was the high turnover of councillors (including mayors) at quadrennial elections. At the March 2020 local government elections, there was a 100 per cent turnover in three councils, while only 29 of the 97 councillors in First Nations communities returned to office.

The full report can be found on the OIA website.

Resources

During the 2020—21 financial year the OIA produced resources to assist councillors to comply with their legal obligations. Some projects were done in collaboration with key stakeholders to maximise their reach and effectiveness while minimising costs.

The major projects were as follows:

Conflict-of-interest app

The OIA collaborated with the LGAQ to produce an innovative conflict of interest 'app'. This online tool was developed to help councillors to comply with new legislation governing conflicts of interest which took effect on 12 October 2020.

The 'app' guides councillors through a series of questions to determine whether they have a prescribed or declarable conflict of interest. It advises councillors when and how to declare conflicts of interest and allows them to email an outcome report to their chief executive officer to assist with the management of issues.

It was launched in October 2020, prior to the commencement of the new laws. The 'app' was subsequently updated, making it easier to navigate. The streamlined version was released in June 2021.

Conflict of interest guide: duty to report

The OIA worked with the Queensland Integrity Commissioner to produce a guide that outlined a councillor's legal obligation to report another councillor's suspected (and undeclared) conflict of interest. This was developed in October 2020 to reflect the new conflict of interest laws which commenced that month.

Example policy and guidance: councillors' interactions with property developers

After extensive consultation, the OIA developed an example policy and supporting guidance in relation to councillors' interactions with property developers, lobbyists and other submitters to council (submitters).

They aimed to give councillors the confidence to engage with developers in the economic interests of their local government areas, when appropriate, while helping them to be alert to the misconduct risks which may arise in certain circumstances i.e. should a councillor have a conflict of interest, or when matters before council are at critical stages.

The example policy was not mandatory and had no regulatory effect. It was developed to assist councils seeking to implement or update a policy in this area.

Unsuitable meeting conduct video

The Independent Assessor worked with the LGAQ and King and Company Solicitors to produce a training video for 'Mayors and Chairs' to upskill them on how to deal with unsuitable meeting conduct. A failure by a chair to properly deal with unsuitable meeting conduct may be misconduct if it is serious or represents a pattern.

Telephone trial for councillors in First Nations local governments

See chapter 3 – inappropriate conduct.

Strategies to improve the management of inappropriate conduct complaints by local governments

See chapter 3 – inappropriate conduct.

Amnesty for first-time councillors, post 2020 quadrennial local government elections

From 5 May-5 August 2020 the OIA provided an amnesty for first-time councillors who were the subject of a conduct complaint, except where the matter was serious.

Instead of taking further investigative action, the OIA provided detailed feedback to councillors about their legal obligations and where they may have made a mistake.

This initiative aimed to build the capacity of newly elected councillors and was in recognition of the steep learning curve in local government, at a time when councillors were also dealing with the challenges of COVID-19.

Events and presentations

During 2020–21, the OIA took part in several stakeholder events including presentations to the Corruption Prevention Network, an







Ethics and Integrity Webinar conducted by the Institute of Public Administration Australia, the Queensland Law Society's Disciplinary Law Conference, the Queensland Local Government Reform Alliance's annual conference, and the LGAQ's Indigenous Leaders Forum.

The OIA also participated in the Local Government Liaison meeting which is used to discuss prevention strategies and to develop a multi-agency response to topical issues

Topics covered at these events included:

- Councillor conduct complaints of relevance to council finance staff
- Conflicts of interests in First Nations councils
- The OIA's jurisdiction and councillor misconduct
- Corruption risks and 'blind spots' in detecting and managing conflicts of interests
- The interrelationship of workplace bullying and corruption.

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