

Office of the **Independent Assessor**

Annual Report 2021-22



Queensland
Government



The Queensland Government is committed to providing accessible services to Queenslanders of all cultural and linguistic backgrounds. If you have difficulty understanding this publication and need an interpreter, please call the Translating and Interpreting Service (TIS National) on 131 450 and ask them to telephone the Office of the Independent Assessor on 1300 620 722.

An electronic copy of the Office of the Independent Assessor's Annual Report is available online at www.oia.qld.gov.au

ISSN: 2652-2195 (Online)

ISSN 2652-2187 (Print)

© The State of Queensland, September 2022. Published by the Office of the Independent Assessor, Level 13, 53 Albert Street, Brisbane Qld 4000, Australia.

This annual report is licensed by the State of Queensland (Office of the Independent Assessor) under a Creative Commons Attribution (CC BY) 4.0 International Licence.



CC BY Licence Summary Statement: In essence, you are free to copy, communicate and adapt this annual report, as long as you attribute the work to the State of Queensland (Office of the Independent Assessor). To view a copy of this licence visit <http://creativecommons.org/licenses/by/4.0/>

Attribution: The State of Queensland, Office of the Independent Assessor, Annual Report 2021-22.

The Queensland Government supports and encourages the dissemination and exchange of information. However, copyright protects this publication. The State of Queensland has no objection to this material being reproduced, made available online or electronically but only if it is recognised as the owner of the copyright and this material remains unaltered.

Contents

| | | | |
|---|----|---|----|
| Message from the Independent Assessor | 6 | Chapter 4 Inappropriate conduct | 20 |
| Chapter 1 About us | 8 | Section 150AA process | 20 |
| Our vision | 8 | Referrals to local governments | 21 |
| Our values | 8 | Outcomes | 21 |
| What we do | 8 | Issues | 21 |
| Oversight | 9 | Chapter 5 Investigations | 22 |
| Legislation | 9 | Misconduct investigations | 23 |
| <i>Human Rights Act 2019</i> | 9 | Investigation backlogs addressed | 23 |
| Operating environment | 9 | Investigation timeframes | 24 |
| OIA financial and non-financial performance information | 9 | Types of misconduct investigations | 24 |
| Organisational structure | 9 | Notices issued | 25 |
| Impact of the COVID-19 pandemic | 9 | Review of completed misconduct investigations | 25 |
| Chapter 2 Complaints | 11 | Investigations of a breach of conduct provisions | 25 |
| Complaint volumes | 12 | Vexatious complaint issues | 26 |
| Source of complaints | 13 | Search warrants | 26 |
| Complaint allegations | 14 | Chapter 6 OIA legal | 27 |
| Anonymous complaints | 14 | Natural justice | 27 |
| Independent Assessor initiated matters | 14 | Public interest | 28 |
| Impact on corruption complaints | 14 | Matters dealt with by OIA legal | 28 |
| Chapter 3 Assessment | 15 | Legal timeframes | 29 |
| Assessment outcomes 2021-22 | 16 | Chapter 7 Disciplinary matters and reviews | 30 |
| Dismissed or no further action | 17 | CCT applications | 31 |
| Vexatious or improper complaints | 18 | CCT decisions | 31 |
| Inappropriate conduct | 19 | QCAT review of CCT decisions | 32 |
| Misconduct – OIA to investigate | 19 | Judicial reviews | 32 |
| Corrupt conduct | 19 | Glossary and terms | 33 |
| Review of assessment decisions | 19 | | |

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

Dear Deputy Premier

I am pleased to submit for presentation to the Parliament, the Annual Report for 2021-22 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 2021 to 30 June 2022.

Yours sincerely



Kathleen Florian
Independent Assessor
Office of the Independent Assessor

Message from the **Independent Assessor**

I am pleased to present the Annual Report 2021-22 for the Office of the Independent Assessor (OIA).

The year has been marked by the work of the Parliamentary State Development and Regional Industries Committee (SDRIC) and its Inquiry into the functions of the Independent Assessor and the performance of those functions.

Throughout the year, the OIA worked with the SDRIC to offer and consider solutions to improve the councillor conduct framework. After three years of operation, the OIA welcomed the SDRIC Inquiry as a good opportunity to review the legislation and procedures to make improvements for councillors, complainants and the OIA.

In its submissions to the Inquiry, the OIA was able to identify the parts of the framework that are working well, as well as those areas that could be improved. The OIA acted on suggestions advanced in submissions made to the Inquiry to improve information on the OIA website and in standard correspondence.

In 2021-22, the OIA was also able to address investigation and legal backlogs. This was due to funding for temporary staff through to 30 June 2023, the continued output and commitment by OIA employees and an 18 per cent drop in the number of complaints received in the financial year. This is the first year since 2018 that complaint numbers have not increased year on year.

As of 30 June 2022 the OIA had,

- 87 active investigations down from 160 the previous financial year
- no investigations on hold awaiting the availability of an investigator down from 57
- 22 matters with OIA legal undergoing a natural justice process down from 33
- the majority of matters with OIA investigations and legal had been there for three months or less duration.

These improvements have also been made possible by the OIA's rigorous management of complaints through the complaint handling process. Since its establishment in 2018 to 30 June 2022, the OIA has received a total of 3,810 complaints about the conduct of councillors across Queensland.

Following robust assessment and investigation processes, approximately six per cent of these complaints have been referred to OIA legal to commence a statutory natural justice process for misconduct. Following this process, four per cent of all complaints (163 matters) have been referred to the Councillor Conduct Tribunal (CCT) for determination since 2018.

In 2021-22, 64 per cent of complaints received were dismissed on assessment and 18 per cent of complaints went on to be fully investigated. A further five per cent of matters were referred to local government to be dealt with as potential inappropriate conduct.



In overview the OIA:

- received 881 complaints containing 968 allegations
- assessed 91 per cent of all incoming complaints within 21 working days
- completed 290 misconduct investigations (including investigations commenced in the previous year)
- assigned 56 complaints against 34 councillors with 61 allegations to OIA legal
- referred 40 complaints against 24 councillors with 59 allegations to the CCT for determination.

As of 30 June 2022, there were 89 matters against 43 councillors involving 135 allegations waiting to be heard before the CCT.

This 2021-22 Annual Report revisits the issues with the current inappropriate conduct scheme: a topic which was also canvassed by the SDRIC Inquiry.

In 2021-22, the OIA referred 46 complaints back to 21 councils to investigate and deal with as potential inappropriate conduct. Follow up enquiries by the OIA found only 22 per cent of matters had been dealt with. This is a drop in the resolution of these complaints with 53 per cent dealt with in the previous financial year.

Now that backlogs have been dealt with, the OIA performance focus for 2022-23 will be to:

- continue to substantially reduce investigation and legal timeframes
- assist councillors and the CCT to expedite matters where misconduct is agreed before the CCT
- work with SDRIC and the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) to implement any recommendations arising from the SDRIC Inquiry.

As always, the OIA team remains dedicated to dealing effectively, fairly and consistently with councillor conduct matters and continues to listen to the concerns of complainants and councillors alike.



Kathleen Florian
Independent Assessor

Chapter 1

About us

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 OIA assesses complaints about councillor conduct to enhance the integrity of the local government system. It investigates and prosecutes councillor misconduct and corrupt conduct when referred by the Crime and Corruption Commission (CCC). Inappropriate conduct matters must be referred to the relevant local government to investigate and decide.

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

- delivering a disciplinary framework that is balanced, timely and effective
- supporting and fostering a culture of accountability and ethical practice in local government.

Oversight

The SDRIC is responsible for monitoring and reviewing the performance of the Independent Assessor.

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 and set out the legislative framework for the councillor conduct scheme.

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 Brisbane City Council under the OIA's jurisdiction.

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

Human Rights Act 2019

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

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 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.

Operating environment

The OIA works with its key stakeholders including community members, Queensland's 77 local governments; the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure, and DSDILGP.

It also engages with other stakeholders including the CCC, the Queensland Integrity Commissioner, Queensland Audit Office, the Queensland Electoral Commissioner and the Queensland Ombudsman. The OIA is part of the Local Government Liaison Group and the Queensland Integrity Agencies Committee.

OIA financial and non-financial performance information

OIA financial information is located in the 2021-22 DSDILGP Annual Report.

OIA non-financial performance information based on the Service Delivery Statement is also in the 2021-22 DSDILGP Annual Report.

Organisational structure

In 2021-22, the OIA was budgeted for 11 full-time equivalent employees (FTE) and eight temporary FTE. The OIA has funding to support the temporary positions until 30 June 2023. The OIA also has one unfunded, risk-managed position, transferred to it by DSDILGP.

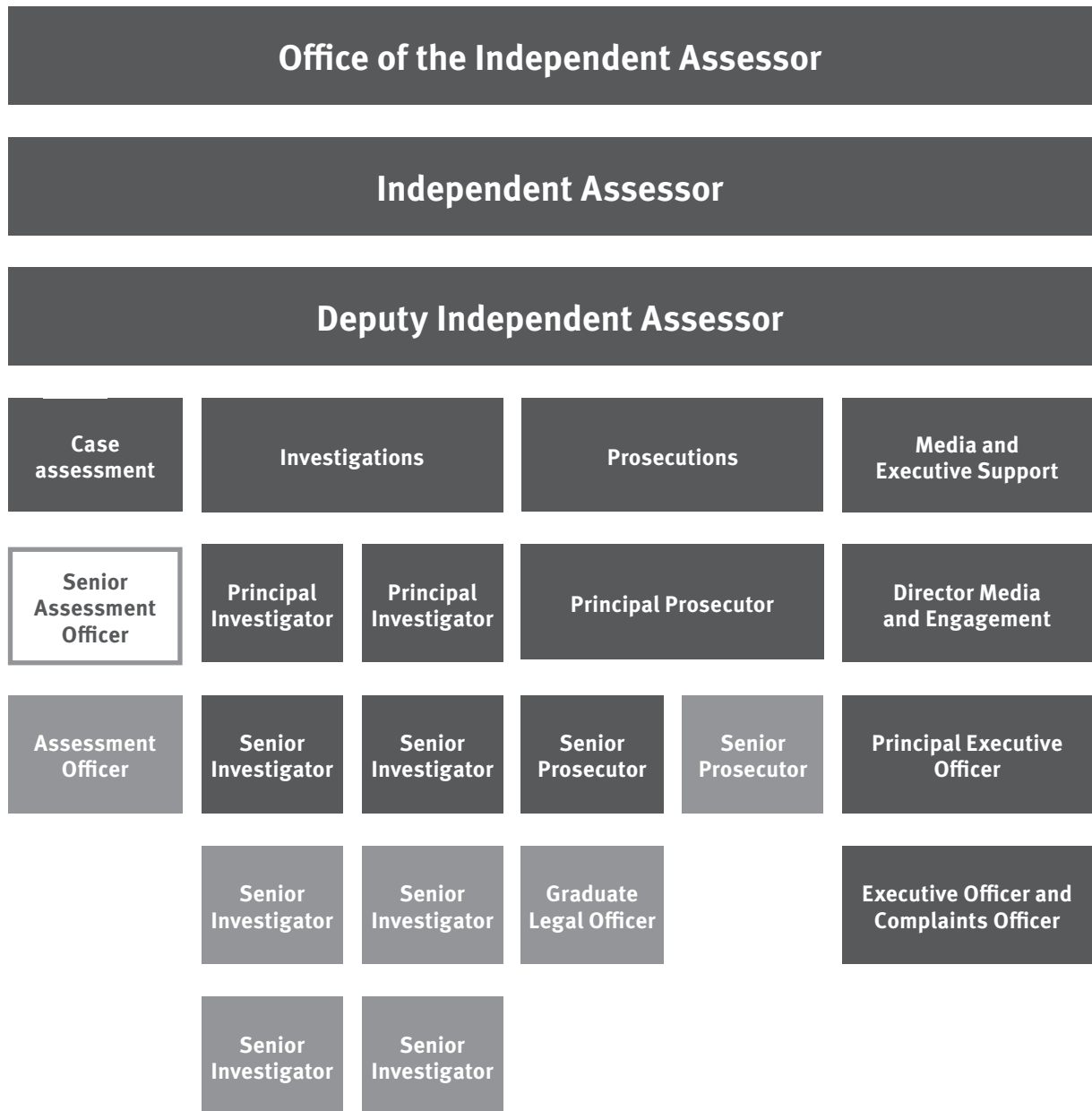
The OIA receives support from DSDILGP for human resources, finance, procurement and IT services.

Impact of the COVID-19 pandemic

In 2021, the OIA continued to manage the challenges presented by the COVID-19 pandemic. In particular, investigations continued to be conducted from the OIA office rather than in the field to limit travel. This impacted investigation timeframes. In the latter part of the financial year, investigators began to travel again to conduct interviews.

The OIA has flexible work arrangements to facilitate social distancing and to reduce the number of staff in the office each day. However, the office has been impacted by sick leave and the need to quarantine to protect fellow employees.

Organisational structure – as of 30 June 2022



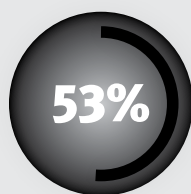
Permanent FTE
 Temporary/Contract
 Risk-managed position

Chapter 2

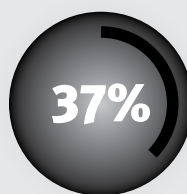
Complaints

2021-22 complaints snapshot

881 complaints received with **968** allegations



**from the local
government sector**



from the public

A small number of councils are disproportionately reflected in complaints data

From establishment on 3 December 2018 to 30 June 2022, the OIA received 3,810 complaints about councillor conduct involving 72 of the 77 local governments in Queensland.

In 2021-22, the OIA received 881 complaints containing 968 allegations. This is an 18 per cent reduction in the number of complaints received in the previous financial year. Since establishment, the OIA has received on average more than 1,000 complaints a year.

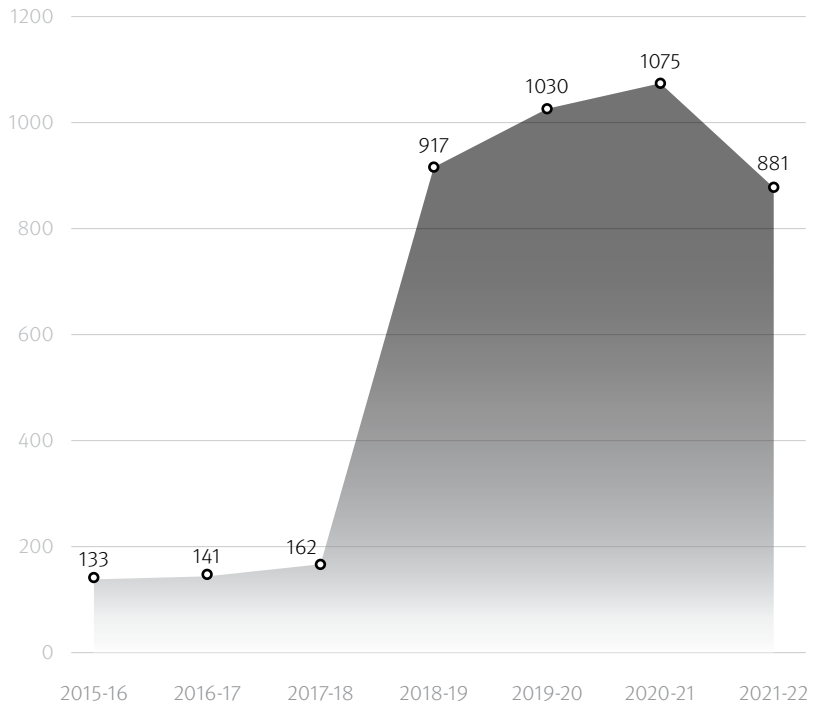
The OIA deals with complaints that a councillor has engaged in inappropriate conduct, misconduct and, when referred by the CCC, corrupt conduct.

Complaint volumes

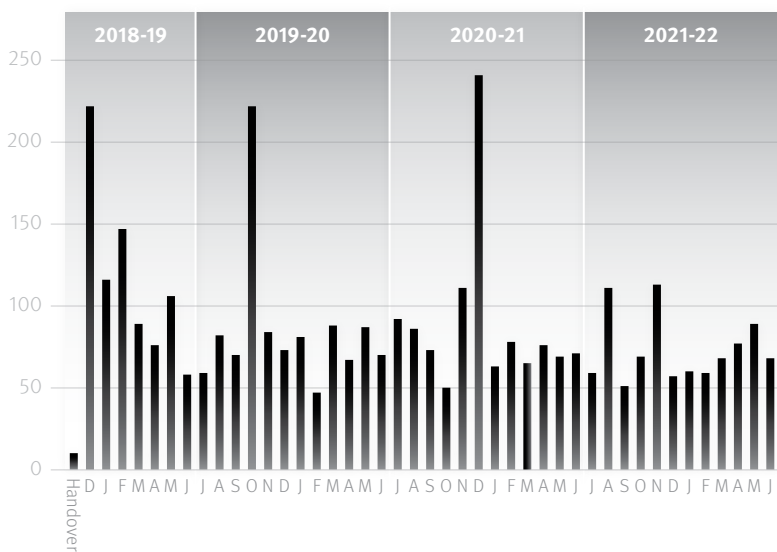
This graph depicts the number of complaints lodged with the OIA and previously, the Department, which received conduct complaints prior to the establishment of the OIA on 3 December 2018. The establishment of the OIA saw the responsibility for receiving and assessing councillor complaints shift from council Chief Executive Officers (CEO) across Queensland to the OIA. The previous councillor conduct model placed council CEOs in the difficult position of receiving and assessing complaints against their employers.

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

Historical complaints as at 30 June 2022



Complaints to the OIA since 3 December 2018



This graph demonstrates complaints received each month since the establishment of the OIA. The number of complaints received each month has remained broadly consistent since March 2019. A distinguishing feature of 2021-22 was that there was no one-off incident that resulted in a large number of complaints. In 2019-20, there were 130 complaints against one councillor and in 2020-21 there were 109 against one councillor.



Source of complaints

Councillors continued to increasingly report their own conduct with 32 self-referrals in 2021-22; 30 in 2020-21; 11 in 2019-20; and five in 2018-19.

Analysis of the source of complaints in 2021-22 showed:



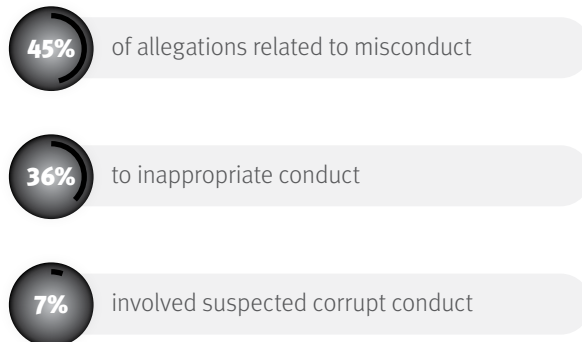
This data also reflects mandatory reporting obligations for local government officials under sections 150P and 150R of the *Local Government Act 2009* (LG Act).

Of note, since establishment, just 10 councils accounted for:



Complaint allegations

In 2021-22 many complaints involved multiple allegations:



Anonymous complaints

In 2021-22, the OIA received 140 anonymous complaints which accounted for 16 per cent of all complaints received. The outcome of those complaints as of 30 June 2022 included;

- 102 (73 per cent) dismissed or no further action (NFA) on assessment
- 20 investigated (10 later dismissed)
- three referred to CCC
- one referred to council as potential inappropriate conduct
- 13 dealt with as enquiries only.

Of those complaints that were investigated, two complaints progressed to OIA legal for a natural justice process. Eight anonymous complaints remained under investigation as of 30 June 2022. One complaint was under assessment.

Since the establishment of the OIA, 12 per cent of complaints (440) have been lodged anonymously. Of these, 22 per cent (97) have been investigated, 44.5 per cent (20) have progressed to OIA legal to undergo a natural justice process and three per cent have been referred to the CCT.

Many anonymous complaints concern First Nations councils where, in small communities, there is an increased fear of reprisal or conflict. Since establishment, the OIA has received 421 complaints regarding First Nations councils, the anonymous complaint rate is 16 per cent (64) compared to 10 per cent for other councils.

The OIA observed a demonstrable increase in anonymous complaints after September 2021.

Independent Assessor initiated matters

Under the LG Act, the Independent Assessor may initiate investigations and commenced eight own-motion investigations in 2021-22. This was a reduction from 12 the previous financial year. The Independent Assessor raised these own motion investigations in circumstances where it was alleged that a councillor had engaged in making vexatious complaints; and, where the assessment of a complaint identified the conduct of other councillors in allegedly failing to declare a conflict of interest.

Impact on corruption complaints

CCC statistics reveal that corruption allegations about the local government sector, including elected officials and employees, have almost halved since the first full year of operation of the OIA. In 2019-20 the CCC received 1,246 allegations of corruption in the local government sector. In 2021-22, the CCC received 644 such allegations. According to the CCC, corruption allegations about local governments rose in 2017-18 and remained high until dropping sharply in 2020-21.¹

¹ CCC Annual Report 2020-21.

Chapter 3

Assessment

2021-22 assessment snapshot



The OIA must, by law, investigate all complaints it receives about councillor conduct.

If a complaint is received that is out of the OIA's jurisdiction, the OIA will speak to the complainant to seek agreement for the complaint to be re-categorised as an enquiry. Where this is agreed, the matter is not further dealt with as a complaint and the complainant is re-directed to the appropriate place to have their concerns considered.

The OIA has also, from its inception, established an early triage or assessment process. It assesses all complaints against

the threshold of whether the complaint raises a reasonable suspicion of inappropriate conduct or misconduct. This process and threshold have been self-imposed to robustly manage complaint volumes within resource limitations.

If a complaint contains insufficient information to investigate a matter, the Independent Assessor 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 Independent Assessor may decide not to investigate the complaint.

The OIA assesses matters to determine whether they raise a reasonable suspicion of inappropriate conduct, misconduct or corrupt conduct, or whether under the OIA's broad discretion a complaint should be dismissed or subject to no further action.

Inappropriate conduct: Breaches the Code of Conduct, a council policy, procedure, or resolution; assessed by OIA but investigated and dealt with by councils.

Examples: 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.

Examples: Failing to declare conflicts of interest, influencing council decision makers when a councillor is conflicted, releasing confidential council information, breaches of trust, giving directions to council employees or breaching acceptable request guidelines.

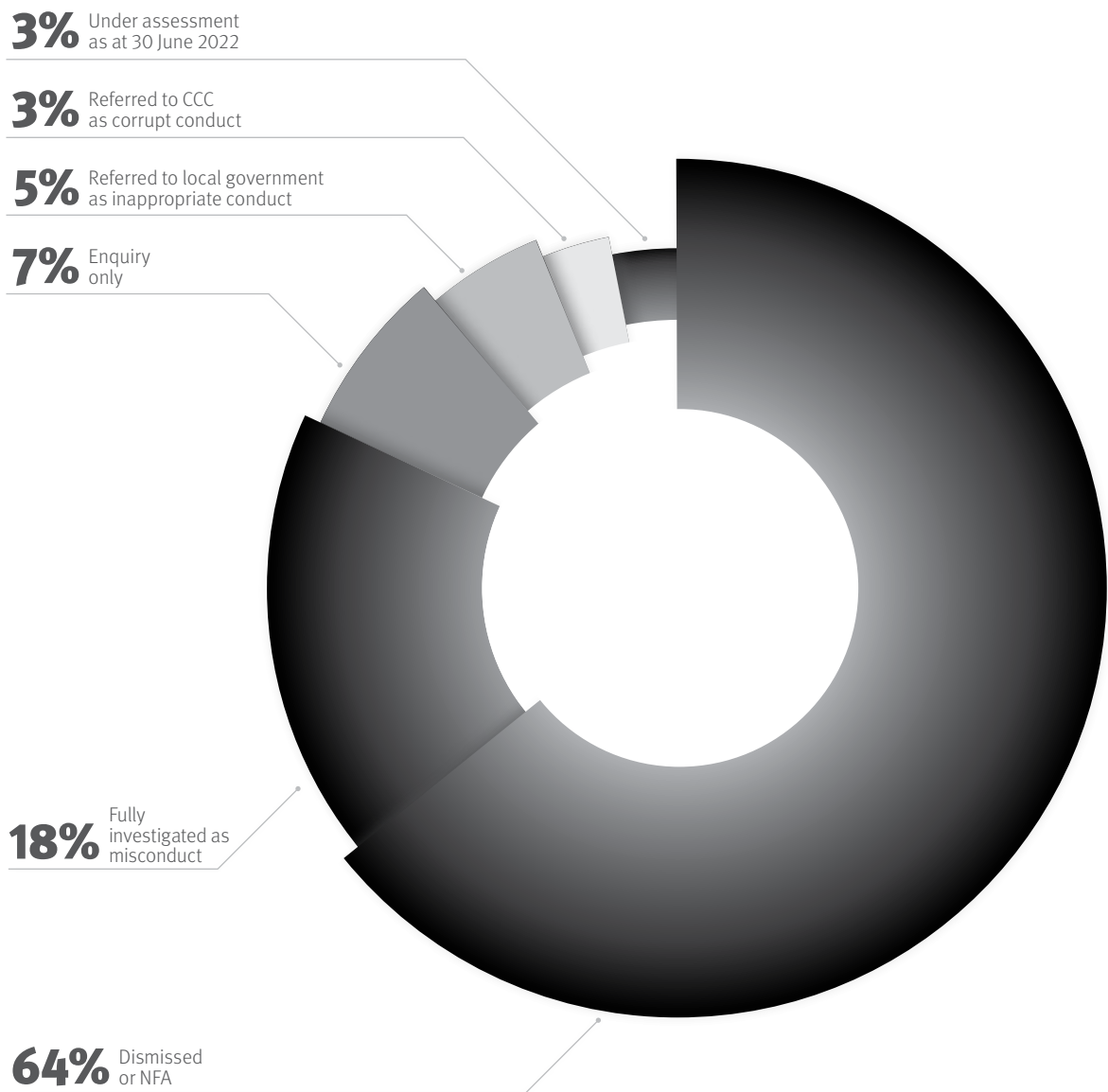
Corrupt conduct: Conduct that may be a criminal offence or disciplinary matters which may result in termination as a councillor.

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

Assessment outcomes 2021-22

In 2021-22, the OIA assessed 91 per cent of complaints within 21 working days of lodgement.

2021-22 assessment outcomes





Dismissed or no further action

In 2021-22, a total of 567 complaints or 64 per cent of all complaints received in the financial year, were dismissed or marked no further action (NFA) on assessment.

Under the LG Act complaints may be dismissed or marked NFA where:

- the conduct complained of is not inappropriate conduct or misconduct
- the complaint contained insufficient detail or was lacking in substance
- the complaint had already been dealt with or was being dealt with by another agency
- the complaint was vexatious or improper
- further action was not a justifiable use of resources or not in the public interest.

The ability to dismiss complaints as not a justifiable use of resources or not in the public interest² provides a means to manage investigation work volumes. For example, matters are dismissed 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
- systemic capacity issues involving all councillors in a local government where a capacity building intervention is a better outcome

- 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
- where the councillor has since retired and the conduct is low-level misconduct
- where a councillor was seriously unwell at the time of the conduct or has since become seriously unwell, on the provision of a medical certificate
- 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 their register
- where a councillor self-refers for relatively minor conduct and demonstrates insight, particularly if the councillor is inexperienced
- where councillors demonstrate that they had, in good faith, followed guidance previously provided by the OIA
- where having regard to the particular circumstances of the matter, there is not a public interest in pursuing it.

This ability to dismiss complaints has allowed the OIA to focus its finite investigative resources on matters where there is a reasonable suspicion of misconduct or corrupt conduct, and where there is a public interest in pursuing the complaint.

² A complaint can only be dismissed as not in the public interest if the complaint came from a member of the public. In practice, complaints that come from the local government sector are dismissed as an unjustifiable use of resources where public interest considerations are fairly raised.



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 may receive a vexatious or improper complaint from a member of the public, another councillor or a CEO.

The OIA uses a 3-step escalation process for managing and deterring potentially vexatious, frivolous, or other improper complaints.

Warnings make complainants aware of section 150AV of the LG Act, which creates a summary offence of making a complaint which is assessed as vexatious or not made in good faith. This is heard in the Magistrates Court and is punishable by a fine of more than \$12,200.

In 2021-22, there were 22 complaints from members of the public which reached Step 2 and were dismissed as vexatious and a warning was issued.

This escalating response worked effectively to manage vexatious complaint behaviour from members of the public. Only one persisted to Step 3 in the reporting period.

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.

Vexatious or improper complaints from other councillors or CEOs are more difficult to manage as they also have a mandatory statutory reporting obligation to report complaints or information ‘*indicating a councillor may have engaged in conduct that would be inappropriate conduct or misconduct*’ (sections 150P and 150R). Contravention of this reporting obligation by a councillor may in itself be misconduct.

There is no option under section 150Y of the LG Act to take no further action on a complaint, or referral from another councillor or CEO, on the basis that they are vexatious or improper. However, there is a summary offence under section 150R (3) for another councillor or CEO to refer information vexatiously, or other than in good faith, to the OIA.

As of 30 June 2022, the OIA was undertaking two criminal investigations for lodging a vexatious or improper complaint in relation to one member of the public and one councillor. These investigations are referred to in chapter 5.

3-step escalation process

Step 1

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

Step 2

The complaint is dismissed as vexatious/improper and an offence warning is issued (applies only to members of the public).

Step 3

The OIA commences an investigation ahead of a possible prosecution, a fine of more than \$12,200 may apply.

The OIA may move directly to Step 3 in cases where the complainant behaviour is very serious.

Inappropriate conduct

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 2021-22, 46 complaints (five per cent of all complaints received), were referred to 21 local governments to deal with.

Inappropriate conduct matters are discussed further in chapter 4.

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.

In 2021-22, 160 complaints or 18 per cent of all complaints received, became subject to a full OIA misconduct investigation.

Misconduct investigations are explored in more detail in chapter 5.

Corrupt conduct

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

Changes to the LG Act which commenced on 12 October 2020 have resulted in fewer matters reaching the threshold of corrupt conduct within the meaning of the *Crime and Corruption Act 2001* (CC Act).

In 2021-22, 28 matters or three per cent of all complaints received in the financial year, involved suspected corrupt conduct and were referred to the CCC. By contrast, in the first seven months of the OIA's operation, 74 matters or eight per cent of complaints, involved suspected corrupt conduct and were referred to the CCC.

Further, under section 40 of the 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 provides a monthly schedule of these matters to the CCC and the agency can resume responsibility for a case at its discretion.

No matters were resumed by the CCC in 2021-22.

During 2021-22, the OIA reported 13 suspected corrupt conduct complaint files to the CCC under the section 40 schedule. This was in addition to the 28 referrals above.

Review of assessment decisions

Consistent with best practice complaint management,³ the OIA offers an internal review of a 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 2021-22, the OIA received 12 requests for internal review of an assessment decision and ten reviews were completed. In all cases the original decisions were upheld.

Internal reviews are carried out by the Independent Assessor.

³ AS/NZS 10002:2014 Australian/New Zealand Standard Guidelines for complaint management in organisations.

Chapter 4

Inappropriate conduct

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

2021-22 inappropriate conduct snapshot



347 complaints received alleged inappropriate conduct
(39 per cent of all complaints)



46 of these complaints were referred back to councils to deal with
(5 per cent of all complaints)



301 complaints were dismissed or NFA

In 2021-22, the OIA received 347 complaints alleging inappropriate conduct by councillors which accounted for 39 per cent of all complaints lodged in the year.

The OIA does not have the power to investigate inappropriate conduct unless it is closely tied to alleged misconduct. By law, suspected inappropriate conduct must be referred to the relevant local government to investigate under the terms of the council's investigation policy, and for it to decide the matter.

As this is the lowest level of councillor conduct assessed by the OIA, the OIA aims to deal with these complaints quickly.

Section 150AA process

If a complaint raises a reasonable suspicion of inappropriate conduct, or further information is needed from the councillor to determine this, the OIA will ask a councillor for their view on the substance of the complaint (their side of the story) before the OIA makes a final assessment of the complaint. The OIA is required to do this under section 150AA of the LG Act.

In 2021-22, the OIA received 347 inappropriate conduct complaints and issued section 150AA notices on 60 of these complaints. This equates to seven per cent of all complaints received.

If after reading the councillor's response, the Independent Assessor still reasonably suspects inappropriate conduct, or there are further reasonable inquiries that are able to be undertaken in relation to the matter to resolve it, the complaint is referred to the relevant local government.

The local government investigates and decides if the councillor engaged in inappropriate conduct and makes any disciplinary orders.

Referrals to local governments

In 2021-22, after undergoing the section 150AA process, 46 complaints (five per cent of all complaints received) were referred back to 21 councils to investigate and deal with as potential inappropriate conduct. In the previous financial year, 54 suspected inappropriate conduct matters were referred to 26 councils for investigation.

The Independent Assessor 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.

Outcomes

Councils are not required to inform the OIA of the outcomes of inappropriate conduct referrals.

Based on follow up enquiries on the 46 matters referred back to local government in 2021-22, the OIA understands:

- 36 matters had not been dealt with as of 30 June 2022
- two matters were withdrawn as a result of the councillor agreeing to mediation
- eight complaints had been decided by councils with five matters sustained.

In effect, only 22 per cent of inappropriate conduct complaints referred back to local government had been dealt with by the end of the financial year.

This is a drop from 53 per cent of matters which were finalised by councils in the previous financial year.

Overall, since the establishment of the OIA to 30 June 2022, 158 inappropriate conduct matters had been referred back to local government to deal with. The OIA has not been notified of an outcome, or the matter is ongoing, in 64 (40 per cent) of these matters.

The oldest complaint, dating back three years and two months, was sent back to a council to deal with in April 2019 and despite several follow up requests for an outcome, none has been provided. This involved an allegation that a councillor with family members threatened a resident at their home.

There are four outstanding suspected inappropriate conduct complaints that were referred to councils in 2019-20 including an allegation of sexual harassment involving council staff and abusive behaviour toward council staff. From 2020-21, 18 complaints remained outstanding including allegations of bullying, intimidation and harassment of council employees and offensive comments and belittling residents on social media.

Issues

The OIA has raised concerns with the operation of the inappropriate conduct scheme in its 2019-20 and 2020-21 Annual Reports and has raised these matters with the SDRIC Inquiry into the functions of the Independent Assessor and performance of those functions.

While some councils are dealing with inappropriate conduct complaints fairly and objectively, the OIA regularly receives enquiries and concerns from CEOs and councillors about a council's ability to deal with inappropriate conduct matters effectively and fairly. This is a particular issue in councils where there are fractured or partisan relationships between councillors or involving the CEO.

Issues raised have included:

- a reluctance amongst councillors to sit in judgment of their peers or to substantiate a conduct allegation against another councillor
- the impact of alliances or fractured relationships between councillors on objectivity, fairness and consistency
- issues surrounding compliance with council investigation policies and natural justice provisions
- dealing with inappropriate conduct at council meetings and conflicts of interest
- the number of matters where complainants withdrew complaints when a matter was referred back to local government.

Consistent with the terms of reference of the SDRIC Inquiry, the OIA has made submissions about options to simplify and strengthen the inappropriate conduct scheme.

Chapter 5

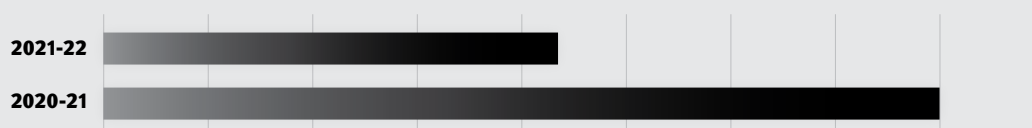
Investigations

The 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 provision⁴ has been breached.

2021-22 investigation snapshot

291 misconduct investigations completed

As of 30 June 2022 there were **87** active misconduct investigations, down from **160** the previous year



No misconduct investigations on hold awaiting an available investigator, down from 57 the previous year

⁴ These are summary offences which may be prosecuted in the Magistrates Court.

Misconduct investigations

Investigation backlogs addressed

Since establishment, more than 1,000 complaints or 27 per cent of all complaints, have been investigated.

In 2021-22, the OIA was able to address the backlog of investigations by completing 290 investigations in one year, including investigations carried over from the previous year.

As of 30 June 2022, there were 87 current investigations, down from 160 current investigations the previous year, with 11 of these matters parked pending other decisions before the courts or the CCT.

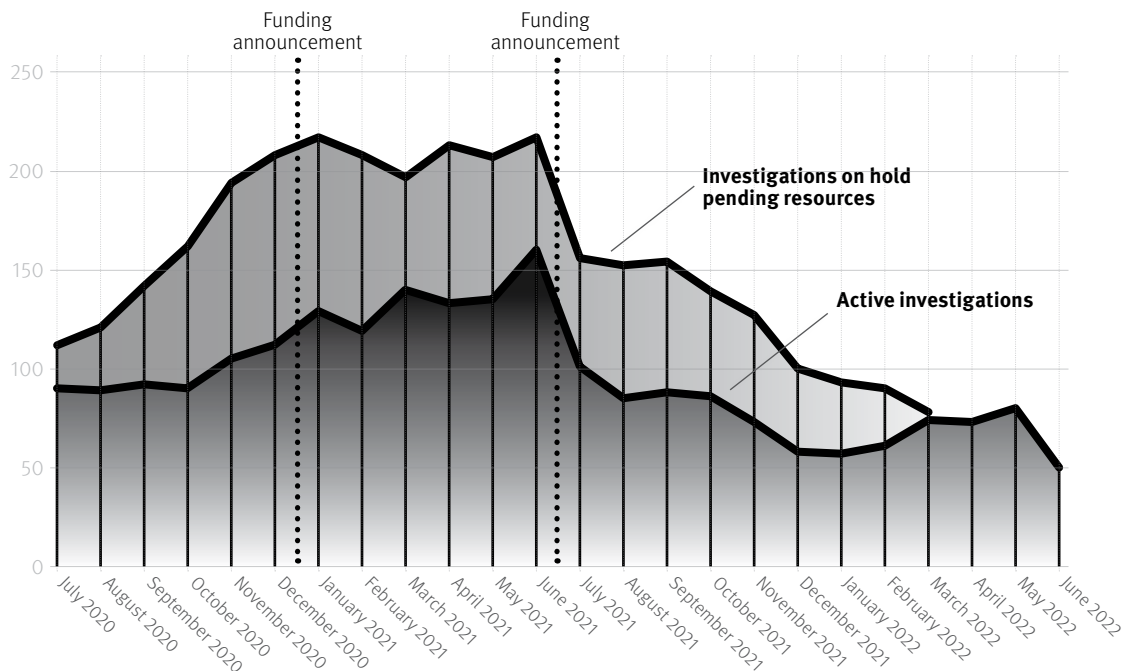
Since 2019-20 the OIA has been required to place investigations on hold pending the availability of an

investigator due to the volume of complaints and flow on impacts on investigations. At the end of 2020-21, there were 57 investigations on hold pending the availability of an investigator.

A year later, as of 30 June 2022, there were no investigations on hold with all matters allocated to an investigator. Each OIA investigator had an average of 15 investigations, down from 27 each in the previous year.

The graph depicts the reduction in backlogged investigations and matters placed on hold awaiting an investigator, since the Queensland Government announced temporary increases in funding and FTE allocations to the OIA. These funding announcements are indicated by the dotted lines.⁵

Allocated and on hold investigations by month



⁵ In December 2020, \$250,000 funding to maintain temporary staff until 30 June 2021. In July 2021, \$1.3 million funding over two years announced.

Investigation timeframes

With investigation backlogs addressed, this has provided the OIA with the opportunity to reduce investigation timeframes.

As of 30 June 2022, there were no investigations that exceeded 12 months in duration, down from nine matters the previous financial year and the majority of OIA investigations were three months or less in duration.

The table depicts the age of all active investigations as of 30 June 2022.

Active investigation timeframes 30 June 2022

| Active investigation duration | Number of active investigations |
|-------------------------------|---------------------------------|
| 0-3 months | 43 |
| 3-6 months | 15 |
| 6-9 months | 12 |
| 9-12 months | 6 |
| 12 months plus | 0 |

These results were made possible by:

- funding in the State Budget through to 30 June 2023 for the employment of temporary staff which also allowed two investigators, previously re-deployed to assist backlogs in OIA legal, to be returned to investigations
- a reduction in complaints received in the financial year
- the intensive ongoing work effort of OIA employees.

Types of misconduct investigations

Investigations of complaints received in the financial year involved 36 of Queensland's 77 councils. These were the top five categories of alleged misconduct investigated by the OIA:

1. Breaching the trust⁶ placed in a councillor (breach of local government principles/councillor responsibilities) (68)
2. Failing to declare a conflict of interest (45)
3. Influencing or attempting to influence a decision-maker when a councillor has a conflict of interest (36)
4. Releasing information confidential to council (18)
5. Directing council staff (13)

The number of investigations commenced in relation to conflict of interest matters has reduced due to an issue with the wording of sections 150EL and 150EQ.⁷

⁶ Certain conduct including conflicts of interest, influence, and register of interest matters were required to be dealt with as a breach of trust between 3 December 2018 and 12 October 2020 as they did not exist independently as a category of misconduct. As a consequence the use of the breach of trust category disproportionately increased for allegations that relate to this period.

⁷ These provisions commenced on 12 October 2020.

Notices issued

The LG Act under Chapter 5A Part 4 provides investigation and enforcement powers to the OIA. The following were exercised in 2021-22:

- Section 150CH allows investigators to request information that is reasonably necessary to investigate a councillor's conduct: 130 notices issued.
- Section 150CJ notices require the attendance of a person at an interview with investigators: 19 notices issued.
- 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: 26 notices issued.

Review of completed misconduct investigations

At the conclusion of a misconduct investigation all matters are reviewed by an internal multi-disciplinary group which includes the Independent Assessor and Deputy Independent Assessor. Matters that do not reach the threshold of a reasonable satisfaction of misconduct at the conclusion of an investigation are dismissed or there is NFA taken at this point.

Since establishment of the OIA, six per cent of matters have reached the threshold of reasonable satisfaction of misconduct after a full investigation. These are the matters which are referred to OIA legal to commence a natural justice process. This step in the complaint management process is further detailed in chapter 6.

Investigations of a breach 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 the *City of Brisbane Act 2010* (CoBA) and may be preferred against either a councillor or complainant.

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.⁸

For breaches of conduct provisions by councillors, it is open to the Independent Assessor to deal with a breach of a conduct provision by a councillor as misconduct only.

Since establishment, the OIA has not charged or prosecuted a councillor or a complainant for a breach of a conduct provision, although breaches of conduct provisions by councillors have regularly been dealt with as misconduct.

⁸ From 3 December 2018 - 12 October 2020, all conflict of interest and register of interest breaches were a breach of a conduct provision.

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

- the seriousness of the alleged offending
- are there any mitigating or aggravating circumstances
- the availability and effectiveness of any alternatives to dealing with the matter as a breach of a conduct provision (i.e. 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.

The OIA has undertaken investigations into a breach of a conduct provision on five occasions since the establishment of the OIA. In this financial year, the OIA conducted investigations into one councillor and two members of the public for making vexatious complaints.

Vexatious complaint issues

Under the LG Act, the OIA can only prosecute a vexatious 'complaint' and not the course of conduct of a 'complainant' which is vexatious or improper.

The OIA has submitted to the SDRIC Inquiry that the LG Act should be amended in line with the original 2017 Councillor Complaints Review (Solomon Review) recommendation to apply to the course of conduct of a 'complainant' and not just a 'complaint'.

As an example, one complainant made 17 complaints against six councillors from the one council. Consideration of the evidence in relation to each complaint concluded that no individual complaint reached the threshold of proof for a criminal prosecution. However, if the offence provision allowed the OIA to lead evidence of the overall course of complainant conduct, the prospects of a criminal prosecution would have been significantly enhanced.

Search warrants

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

No search warrants were obtained in 2021-22 and none have been obtained since the establishment of the OIA.

Chapter 6

OIA legal

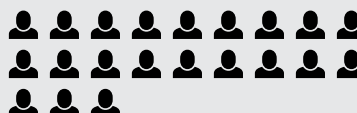
OIA legal conducts a natural justice process following a misconduct investigation.

2021-22 OIA legal snapshot

56 misconduct complaints against
34 councillors with **61** allegations
referred to OIA legal



40 matters against **21** councillors with
75 allegations referred to the CCT



Natural justice

At the end of an OIA investigation, if there is a reasonable satisfaction of misconduct, the matter will progress to OIA legal to prepare for a natural justice process and possible referral to the CCT.

In 2021-22, 56 misconduct complaints against 34 councillors with 61 allegations were referred to OIA legal to undertake this process. This is slightly fewer matters than in the previous financial year when 67 matters involving 31 current or former councillors with 72 allegations progressed from investigations to OIA legal to undertake a natural justice process.

The natural justice process involves OIA legal 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 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 is considered by the Independent Assessor 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 referred to the CCT.



Public interest

Any decision by the Independent Assessor to make an application to the CCT is made with two concepts in mind: given the evidence available, are there reasonable prospects of the application being sustained; and is it in the public interest to make the application?

In referring a matter to the CCT, the Independent Assessor has regard to the following public interest considerations :

- the seriousness of the alleged 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 dealt with by OIA legal

Due to the number and complexity of some matters referred to OIA legal, the limited legal resources of two permanent legal officers, and the impacts of increasing QCAT reviews, it became necessary from September 2019 to re-deploy up to two investigators into OIA legal to assist with the preparation of statements of fact. Temporary FTE and funding allocations in December 2020 and June 2021 however allowed the OIA to employ two further temporary legal officers and a paralegal.

An intensive effort in progressing a number of older and or more complex matters in OIA legal followed.

In 2021-22 following the natural justice process, the Independent Assessor referred 40 matters against 21 councillors with 75 allegations to the CCT. Since establishment, four per cent (163) of all complaints have been referred to the CCT.

In 2021-22 after considering councillors' submissions in response to the natural justice process, the Independent Assessor took no further action on 24 matters involving 12 councillors with 29 allegations.

The OIA has consistently referred approximately 50 matters a year, or four per cent of all complaints, to the CCT until this financial year where the number of matters referred was reduced to 40.

This was due to the OIA dismissing an increased number of matters where misconduct could be made out, but it was not considered a justifiable use of resources (section 150Y) or in the public interest (section 150X) to refer to the CCT in circumstances where there are substantial delays in matters being heard.

Some misconduct matters were also not pursued in 2021-22 because of the issue in the conflict of interest legislation referred to in chapter 5. This issue has been referred to DSDILGP for policy consideration.

As of 30 June 2022, 19 matters involving 14 councillors with 25 separate allegations were

with OIA legal, down from 33 the previous financial year.

Legal timeframes

With legal backlogs reduced, this provides the OIA with the opportunity to further reduce legal timeframes in 2022-23.

As of 30 June 2022, there were no legal matters that exceeded 12 months in duration, down from four such matters the previous financial year. The majority of matters had been with OIA legal for three months or less.

Legal timeframes 30 June 2022

| Timeframe in Legal | Matters | Councillors | Allegation No. |
|---------------------------|-----------------|--------------------|-----------------------|
| 0-3 months | 15 | 10 | 20 |
| 3-6 months | 2 | 2 | 2 |
| 6-9 months | 1 ⁹ | 1 | 1 |
| 9-12 months | 1 ¹⁰ | 1 | 2 |
| Totals | 19 | 14 | 25 |

Note: Three further complaint matters involving one councillor were on hold in legal awaiting a decision in a related matter before the CCT.

⁹ Statement of facts with the subject councillor/legal representative for consideration.

¹⁰ Statement of facts with the subject councillor/legal representative for consideration.

Chapter 7

Disciplinary matters and reviews

The councillor conduct framework is a disciplinary, not a criminal framework. Orders of the CCT are not intended to be punitive, they are intended to enforce compliance with legislated conduct standards.

2021-22 CCT snapshot

21 matters¹¹ against **18** councillors with 
29 allegations decided by the CCT 

Six matters reviewed to QCAT

As of 30 June 2022,

89 matters against **43** councillors with 
135 allegations were before the CCT 

Total **16** matters before QCAT 

¹¹ Throughout the complaints framework the OIA uses 'complaints' as the unit of counting so that the number of complaints that proceed through each stage of the complaints management process can be consistently and transparently reported. This also allows the OIA to consistently compare performance from year to year. The only exception to this is where the OIA receives a very large number of complaints about one councillor relating to the same incident on one day. For example, in 2019-20 the OIA received 130 complaints in one day relating to one councillor and the same incident. This was counted as 130 complaints as it required communication with 130 complainants but was counted as one investigation and one referral to the CCT. This approach more accurately reflects the workload in this anomalous situation.

CCT applications

The CCT hears and decides complaints of misconduct against councillors as referred to it by the Independent Assessor. The Independent Assessor is the applicant in all matters and bears the onus of proof. After conducting a hearing, 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 as 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.

The CCT primarily conducts hearings 'on the papers' by reading written submissions from both the OIA and the councillor. However, either party can apply for an oral hearing. For example where there are issues of credit that require the examination of witnesses.

As of 30 June 2022, 89 matters involving 43 councillors and 135 separate allegations were before the CCT awaiting a hearing or decision. The oldest matter waiting to be heard at the CCT had been there for two years and four months.

CCT decisions

In 2021-22, the CCT decided 21 matters (up from 16 the previous year) involving 18 councillors and 29 allegations with 90 per cent of the matters wholly or partly sustained.¹² The majority of these cases were referred to the CCT in 2019-20.

Since establishment, the CCT has decided a total of 74 matters against 43 councillors involving 104 allegations of misconduct.

A referral to the CCT is a disciplinary process, not a criminal one. The purpose of a disciplinary process is not to punish but, in the context of councillor conduct, 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.

The CCT publishes a written summary of its decisions on the DSDILGP website, recording its findings and reasons.

The following findings and orders reinforce the need for councillors to remain vigilant to identifying and managing their interests and to learn from CCT decisions.

The circumstances in which misconduct findings were made in 2021-22 included:

- complaints against several councillors who failed to declare their conflicts of interest were sustained, with CCT orders on penalties including public admissions to undergo training, a reprimand and, or to pay council up to \$2,000 in costs
- influencing others in relation to a matter in which a councillor had a conflict of interest, which resulted in a councillor undergoing training at their own expense
- a mayor directing a CEO to cease disciplinary proceedings against a local government employee in a manner which was not consistent with the local government principles or the CEO's legislated responsibilities was sustained with the mayor ordered to make a public admission on Facebook and pay council almost \$3,500
- social media posts condoning violence towards women or minorities which attracted reprimands, training and for one councillor with a history of conduct matters, an order to pay council almost \$5,000
- three councillors who met with a developer involved in litigation with council and in a manner which was not transparent received penalties according to their experience. One was reprimanded, ordered to undergo training and pay \$1,000 to the council; another made a public admission with training at their expense; and the third, a public admission and training but not at their expense
- for not complying with previous disciplinary orders, the CCT reprimanded a councillor and ordered they pay almost \$700
- for releasing confidential information, a councillor paid \$250 and made a public admission
- misuse of information attracting an order to undergo training and to pay council \$300 in costs.

¹²A matter will sometimes involve multiple allegations. A matter will be taken to be partly sustained if one or more allegations are sustained.



While there are delays with matters progressing through the CCT, the framework is a substantial improvement on the prior councillor conduct scheme. For example, over a three-and-a-half-year period prior to the establishment of the OIA and the CCT in December 2018:

- 42 matters were referred to a tribunal
- 14 matters were decided
- 37 per cent of matters were sustained.

By contrast, in the three-and-a-half-years since the establishment of the OIA and the CCT:

- 163 matters were referred to the CCT
- 74 matters were decided
- 83 per cent were wholly or partly sustained.

Prior to the establishment of the CCT, there was no publication of decisions or guidance to councillors on circumstances in which misconduct was made out. The councillor conduct framework is starting to develop a body of decisions providing guidance to councillors that helps to build their capacity to recognise misconduct risks and avoid complaints by applying CCT learnings to their own circumstances.

QCAT review of CCT decisions

A CCT misconduct decision may be reviewed to the QCAT under Chapter 5A of the LG Act which is adopted by the CoBA.

As of 30 June 2022, there were 16 matters involving 11 current or former councillors under review in QCAT.

Six were former councillors who account for 11 (69 per cent) of the matters under review in QCAT. Almost all were councillors at the time the CCT proceedings began. The Independent Assessor filed one review. A further review has been withdrawn by one councillor.

As of 30 June 2022, no QCAT review had been heard or decided and the oldest matter has been before QCAT for two years and two months.

As of 30 June 2022, any party to the matter may apply to QCAT for a review of the decision.

The function to re-prosecute matters before QCAT is not part of the Independent Assessor's statutory functions and the LG Act is also silent on the scope of a review from a CCT decision and who are the relevant parties on review.

In June 2022, a QCAT member decided the Independent Assessor should not, as a matter of course, be a party to review proceedings and the Independent Assessor was removed as a party to those proceedings.¹³

Judicial reviews

As of 30 June 2022 there was one outstanding judicial review involving a CCT matter.

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 Independent Assessor referral to the CCT in October 2019 to decide an allegation of misconduct against the councillor. A hearing into the former councillor's judicial review was finalised in May 2021. A decision was reserved and had not been delivered as of 30 June 2022.

A further review of a decision to issue a notice to produce and a related confidentiality notice was filed in the Supreme Court of Queensland on 28 July 2021 and withdrawn on 13 August 2021.

¹³This decision has been appealed by the CCT.

Glossary and terms

| | |
|----------------------|--|
| 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. 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 awaiting other decisions before the courts or before the CCT |
| CCC | Crime and Corruption Commission |
| CCT | Councillor Conduct Tribunal |
| CoBA | City of Brisbane Act 2010 |
| DSDILGP | Department of State Development, Infrastructure, Local Government and Planning |
| LG Act | Local Government Act 2009 |
| OIA | Office of the Independent Assessor |
| QCAT | Queensland Civil and Administrative Tribunal |
| SDRIC | State Development and Regional Industries Committee of the Queensland Parliament |

Level 13, 53 Albert Street, Brisbane Qld 4000

1300 620 722

independentassessor@oia.qld.gov.au

OIAcomplaints@oia.qld.gov.au

PO Box 15031, City East Qld 4002

www.oia.qld.gov.au

