



31 December 2020: Edition 8

## From the Independent Assessor Kathleen Florian



Welcome to the first Insight for 2021.

Since our last edition, the Office of the Independent Assessor (OIA) marked its second anniversary on 3 December 2020.

Over the two years, we received 2273 complaints, commenced 827 investigations, finalised 542 investigations, and 128 investigations were progressed to the OIA legal team. As at 3 December 2020, 86 matters involving 140 separate allegations were referred to the Councillor Conduct Tribunal (CCT)<sup>1</sup>.

Last December the OIA also experienced its busiest month on record, receiving 241 councillor conduct complaints.

During the second quarter of the 2020 -21 financial year and for the first time since the OIA began, the local government sector made or referred the highest number of complaints, lodging 62 per cent. Usually the public is the main source, but it ranked second after raising 34 per cent of matters.

This increased reporting by local government was not sector-wide and was mainly due to a high number of complaints from the Western and Torres Cape region, as shown in graphs further below.

As always, I caution against assuming the number of complaints alone points to a problem within a council or region. It may equally indicate a commitment to integrity and accountability or be driven by one-off events.

Encouragingly, 17 councillors referred themselves to the OIA during the first half of this financial year. I respect the readiness of councillors to take responsibility for issues up front when this is appropriate. If such matters result in a referral to the CCT, a councillor's self-awareness and co-operation is acknowledged and taken into account.

Not all complaints received by the OIA are investigated but each one is formally assessed to determine whether it raises a reasonable suspicion of councillor conduct. To better understand the assessment process and what it means for subject councillors and complainants, see the article below in this Insight.

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<sup>1</sup> 130 complaints about one councillor were dealt with as one matter on referral to the OIA legal team and to the CCT.

Also, in this edition, we look at complaints in First Nations communities to understand some of the unique issues faced by those councils. Some councillors in these areas face technology-related challenges when responding to the OIA's requests for information after a complaint's been lodged.

To help overcome these, the OIA is undertaking a trial that aims to provide more options for Indigenous councillors seeking to provide information or respond to the OIA in circumstances where easy access to a computer or internet connectivity is not guaranteed. For more on this see the case study on Indigenous councils.

I welcome feedback on any OIA initiatives and look forward to another productive year.

## Kathleen Florian

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## OIA complaint management at a glance 1 July to 31 December 2020



**653**

Total complaints,  
received in current  
financial year



**149**

Under assessment  
as at 31 December  
2020



**2**

Reviews



**32**

Referred back to local  
government



**20**

Referred to Crime and  
Corruption Commission

\*The number of matters under assessment is due to the high volume of complaints received in December 2020.

## How are complaints assessed?

One of the enquiries the OIA receives about the handling of complaints relates to the assessment and investigation processes, and the difference between them.

Just because the OIA receives a complaint does not mean the subject councillor is automatically being investigated. Instead the OIA assesses each complaint to determine whether an investigation is warranted.

Undertaking an assessment process is standard practice in complaints agencies. It allows the OIA's investigative resources to be focused on those misconduct or corrupt conduct<sup>[1]</sup> complaints which appear to be the most substantive.

## The OIA's process

An assessment starts with a complaint being assigned to an assessment officer who accesses relevant supporting information, such as streamed council meetings or minutes, relevant agenda

papers, policies, registers of interest or newspaper articles. The matter is then presented at a bi-weekly *case consultation* meeting where each complaint is considered by a multi-disciplinary panel. Consideration of a complaint will be held over to a future meeting if further information is required to form a view or persons with direct information can be spoken to.

When there is sufficient information to understand the nature and extent of the complaint in the context of the available records, a complaint may be **dismissed or subject to no further action** if it does not raise a reasonable suspicion of councillor conduct, is vexatious or improper, lacks substance, or is not in the public interest. A complaint may also be dismissed if it is out of the OIA's jurisdiction.<sup>2</sup>

If, on the other hand, the preliminary inquiries raise a reasonable suspicion of **misconduct** or more substantive enquiries are needed to discern this, an investigation is commenced and the matter is assigned to an OIA investigator.

When a complaint indicates **inappropriate conduct**<sup>3</sup> may have occurred, a notice is issued to the subject councillor to allow them to respond to the allegation. This notice doesn't mean the councillor is being investigated at this time - it is simply a part of the natural justice process that helps the OIA to determine whether the matter is possible inappropriate conduct.

The case consultation meeting considers all councillor responses in these cases. Complaints may be dismissed at this point if it appears inappropriate conduct has not occurred, or they may be referred to the relevant council for investigation when concerns remain<sup>4</sup>.

## Who is notified of the outcome?

The OIA aims to assess all complaints within 21 working days of lodgement<sup>5</sup>. This timeframe may vary for a variety of reasons including the volume of complaints received, the number of allegations they contain, the quality of information provided, and the time taken by councils, councillors or other nominated witnesses to respond to requests for information or notices.

As required by the *Local Government Act 2009*, correspondence will be sent to the complainant, subject councillor and council chief executive officer (CEO) advising them of the outcome of an assessment and setting out the reasons for it. CEOs are notified as they are responsible for ensuring the decision is recorded on the council's Councillor Conduct Register.

Councillors are usually only identified on the register when they are found to have engaged in misconduct or inappropriate conduct. When an allegation is unsubstantiated, the councillor is not named.

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1. Suspected corruption is generally referred to the Crime and Corruption Commission (CCC), however the OIA may commence an investigation into some categories of corrupt conduct as part of an agreement with the CCC pursuant to section 40 of the Crime and Corruption Act 2001.
  2. The OIA can only deal with the conduct of Queensland councillors, and generally cannot investigate council decisions or the conduct of councillors before they were elected to office.
  3. Inappropriate conduct involves a breach of the Councillor Code of Conduct, a council policy, procedure or resolution.
  4. The OIA only has the power to investigate alleged inappropriate conduct when it is closely connected to a misconduct matter.
  5. In the 2019-20 financial year, 75 per cent of complaints were assessed within 21 working days.
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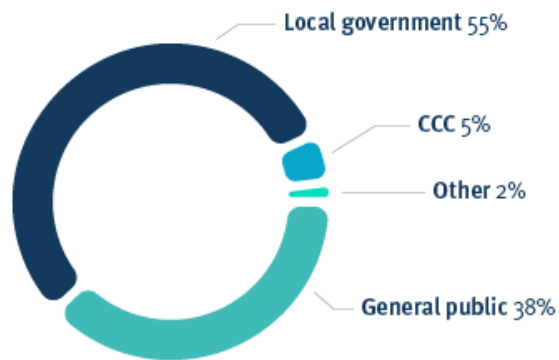
## Complaints: data & trends

Usually the public is the main source of complaints to the OIA however the local government sector took the lead in the first half of this financial year.

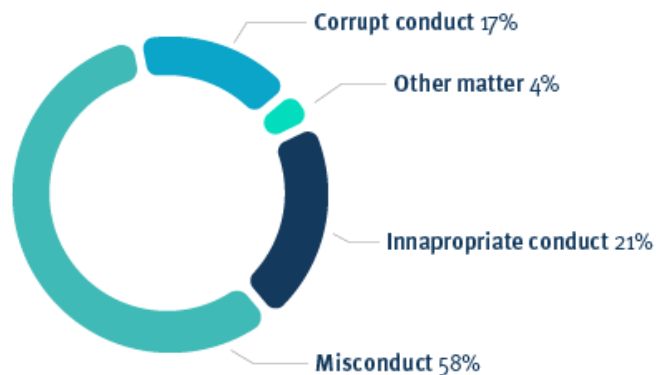
Between 1 July - to 31 December 2020, the sector lodged 55 per cent of complaints while 38 per cent came from members of the public. This result was affected by a high number of complaints from one local government in the Torres and Western Cape region.

Seventeen councillors referred themselves to the OIA during the same period.

### Source of complaints 2020-21

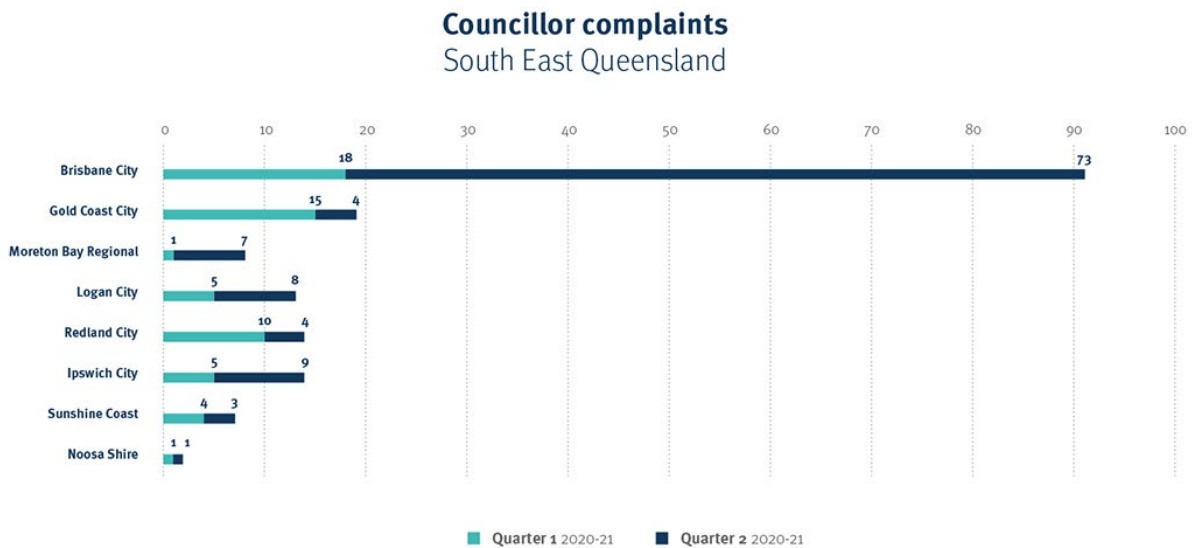


### Issues 2020-21



# Complaints: South East Queensland 2020-21

The following graph shows the number of complaints received about the conduct of councillors in South East Queensland for the first two quarters of this financial year.



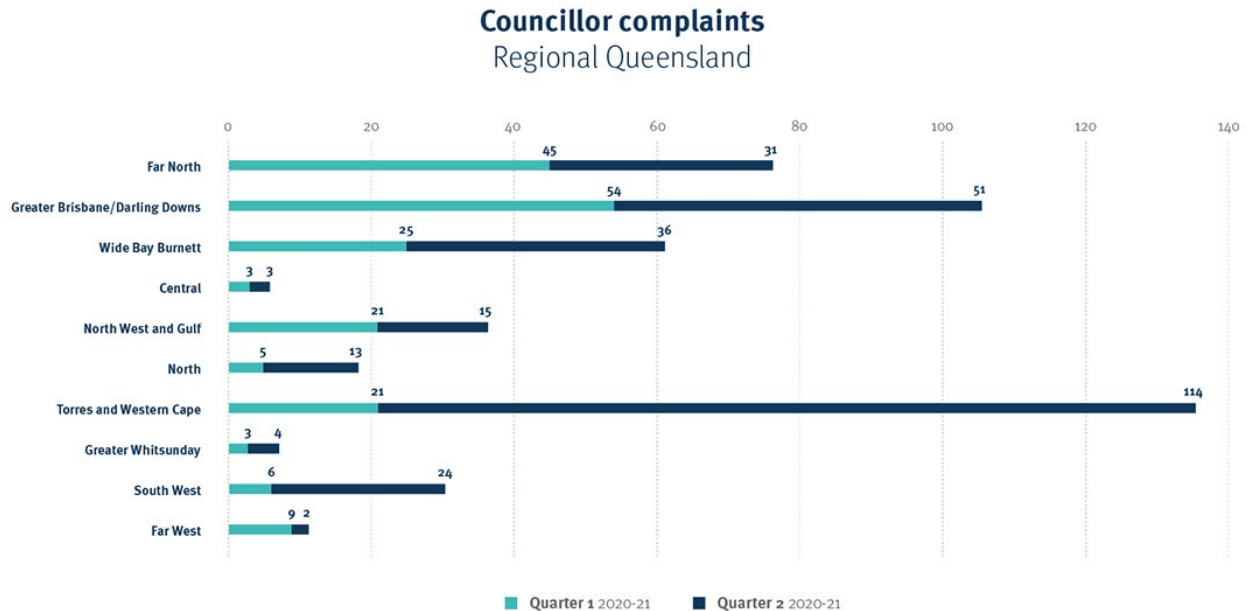
\*NB: One additional complaint from in Q1 was identified and added in Q2 for Redland City Council.

The top five complaint issues in South East Queensland between 1 July-31 December 2020 were: breaches of trust \* 41%; Code of Conduct breaches 21%; conflicts of interest 18%; release of information 6%; issues outside the OIA's jurisdiction & social media 4% each.

\*A breach of trust occurs when a councillor breaches a councillor responsibility (section 12 *Local Government Act 2009* section 14 *City of Brisbane Act 2012* or a local government principle (section 4 LGA section/4 CoBA).

# Complaints: Regional Queensland 2020-21

The graph below shows the complaints received about the conduct of councillors in regional Queensland for the first two quarters of this financial year. See the councils in each area [here](#) (PDF, 150KB).



\*NB: One additional complaint received in Q1 was identified and added in Q2 for Greater Brisbane/Darling Downs.

The top five complaint issues in regional Queensland between 1 July – 31 December 2020 were: breaches of trust 39%; conflicts of interest 22%; Code of Conduct breaches 15%; issues outside the OIA’s jurisdiction 4%; dishonest/impartial performance of councillor functions, social media issues, reprisal and influence 3% each.

## Investigations 1 July to 31 December 2020



**193**

New investigations  
commenced



**91**

Investigations  
finalised



**219**

Active investigations  
as at 31 December  
2020

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

The top five issues that became the subject of an investigation between 1 July-31 December 2020 were: breaches of trust (37%), conflicts of interest (33%), releasing information (8%), dishonest/impartial performance of councillor functions (5%), Code of Conduct breaches, influence and directing staff (4% each).

Other issues included failure to update registers of interest, reprisal, failure to report another councillor's conflict of interests, breaches of policy and social media issues.

## Disciplinary matters as at 31 December 2020



New matters  
referred to the legal team  
this financial year:

**36** new matters involving  
**15** councillors  
**34** allegations



With the legal team as at  
31 December 2020:

**48** matters involving  
**19** councillors  
**59** allegations



With the CCT as at  
31 December 2020:

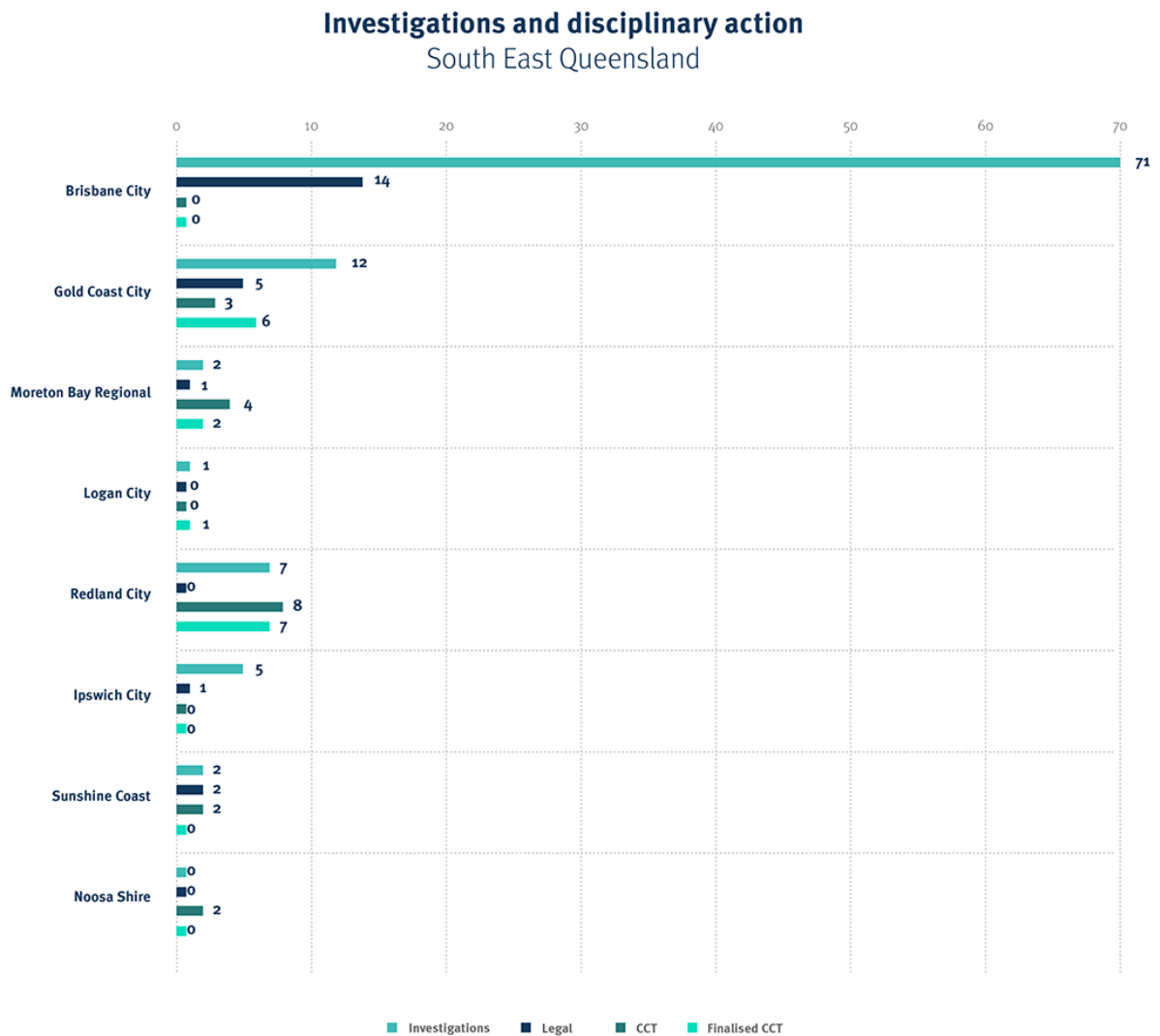
**46** matters involving  
**30** councillors  
**96** allegations

\*The OIA legal team conducts a natural justice process for each matter, prior to a possible referral to the Councillor Conduct Tribunal (CCT).

# Investigations & disciplinary matters: South East Queensland

The following graph shows by council, as at the 31 December 2020:

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

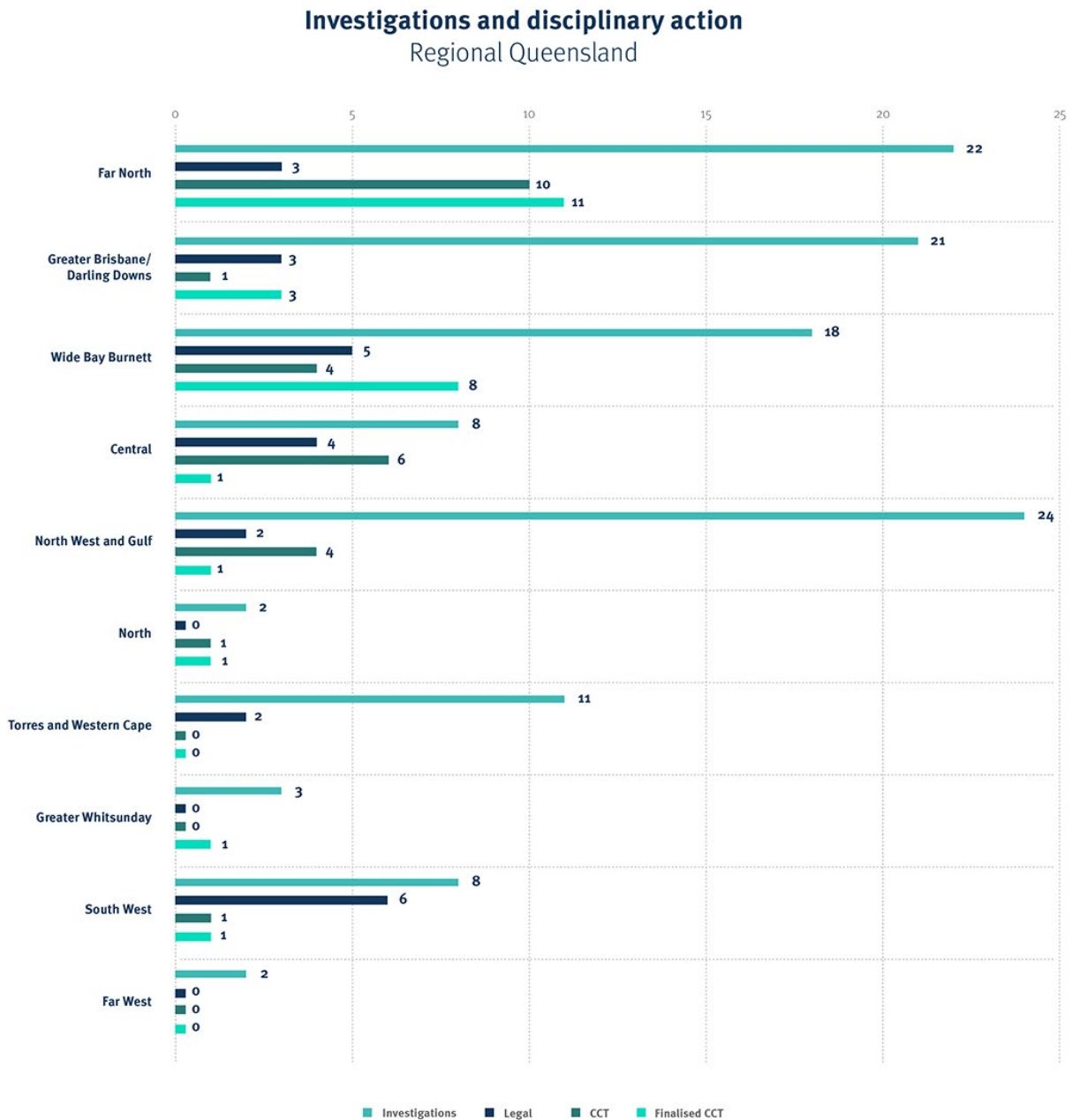


\*Brisbane City Council came under the OIA's jurisdiction on 30 March 2020. All other Queensland councils came within the OIA's remit as of 3 December 2018.



# Investigations & disciplinary matters: Regional Queensland

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



## Case study: Indigenous councils

The OIA uses the unique insights obtained from our complaints data to identify trends and issues.

Recently we looked at the state's 17 Indigenous local governments, examining data recorded from the day after the elections in March 2020 through to the end of the year (i.e. 29 March-31 December 2020).

One of the key findings was the high turnover of councillors\* at quadrennial elections. Last year there was a 100 per cent turnover in three Indigenous councils, while only 29 of the 97 councillors in First Nations communities returned to office.

Complaint numbers increased in recent years, consistent with the trend across local government in Queensland. In the 2016-17 financial year 34 matters were raised in relation to the 17 councils, while 170 complaints were lodged in the last half of 2020 alone.

The complaints predominantly came from members of the public and there were more anonymous allegations in relation to Indigenous councils than across local governments generally.

The report explored common themes in the complaints and some of the unique challenges and tensions experienced by councillors in First Nations communities.

It also found that investigating the conduct of councillors in these areas can present challenges due to limitations on recordkeeping in some councils and other factors including travel restrictions in 2020 due to COVID-19.

Dealing with these complaints highlighted some of the issues faced by councillors trying to reliably access the internet and devices, when communicating with the OIA. To help overcome these, we are conducting a six-month trial for councillors in Indigenous areas who become the subject of an **inappropriate conduct complaint**.

When responding to a notice requesting information, councillors will be given two options:

- 1 they can respond in writing, as normal; or
- 2 they can provide the information over the phone.

### **The trial will run from 1 March – 1 September 2020.**

It is hoped this initiative will help to ensure matters are dealt with as quickly as possible.

The [full report](#) (PDF, 442KB) on Indigenous councils is available on the OIA website.

(\*The term councillors includes mayors)

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# Toolkit

Download a printable version of Insight 8 [here](#).

Check the OIA website for helpful resources including:

- The OIA-LGAQ [Conflict of Interest App](#). This online tool guides councillors through a series of questions to determine whether they have a prescribed or declarable conflict of interest. The Local Government Association of Queensland (LGAQ) is working to make the app easier and faster to navigate.
- [Your social media and you](#). Comprehensive guidelines to help Queensland councillors manage their online presence.
- And coming soon... a new guide to recordkeeping for councillors produced by Queensland State Archives and the OIA.

