

Office of the **Independent Assessor**

Annual Report 2022-23



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

Dear Deputy Premier

I am pleased to submit for presentation to the Parliament, the Annual Report for 2022-23 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 2022 to 30 June 2023.

Yours sincerely



Kathleen Florian
Independent Assessor
Office of the Independent Assessor

Message from the Independent Assessor

The OIA was established as a new integrity body in 2018 during a peak in community concern about councillor conduct. The OIA's underpinning legislation delivered new mandatory reporting requirements for councillor conduct, a new high bar for the conduct of Queensland councillors and the assessment of complaints by a body independent of local governments.

These changes have been a significant cultural change for Queensland councillors and mayors.

Mayors and councillors are key stakeholders in a councillor conduct system, but it is the communities across Queensland that are the key beneficiaries of the work the OIA.

Effective independent oversight is an investment in the longer term strength, accountability and resilience of a local government sector whose elected representatives make decisions about the strategic management of approximately \$148 billion in assets and the expenditure of approximately \$14 billion worth of ratepayer revenue and government grant funding each year.

An effective councillor conduct framework operates to consistently reinforce conduct standards and to prevent or to mitigate the risks of more serious conduct issues arising, including potential corrupt conduct or systemic cultural issues.

In most cases dealing with misconduct is an opportunity for a councillor to learn from it and move on, and or to fill capacity gaps. Corrupt conduct conversely has much more serious and enduring consequences, both for councillors individually, and trust in local governments generally.

The positive impact of the councillor conduct complaints system is revealed in figures which demonstrate that when misconduct does occur, it is being brought into public view and dealt with to an extent not previously seen in Queensland including:

- 137 applications with 222 complaints of misconduct progressed to the Councillor Conduct Tribunal (CCT) since 2019
- CCT had made 71 decisions, a bank of guidance that is, for the first time, publicly available to councillors and constituents
- 76 per cent of decided misconduct applications have been sustained in whole or in part
- Crime and Corruption Commission (CCC) statistics show a continuing downward trend in complaints related to the local government sector from a high of 1,246 allegations of corruption in 2019-20 down to 386 allegations in 2022-23
- no more under-reporting of complaints with a yearly average of 1,000 received compared to the 160 a year prior to establishment
- improved reporting culture in councils where the sector has been responsible for the majority of complaints at 53%
- low cost of investigations of \$4,400 where external investigations could cost councils up to \$30,000 under the previous system
- increased focus on building capacity of councillors where the OIA has identified systemic issues on 26 occasions and referred councils for a training intervention.

Councillors and mayors are making high value, high frequency, high volume decisions directly impacting on the communities from which they are drawn and, in many cases, inextricably connected. In this way the role of a councillor or mayor is very different

from elected representatives at a State and Federal level. This is both a councillor's greatest asset and their greatest risk, if councillor conduct standards around transparent and impartial decision making are not observed.

Councillors are a diverse group, drawn from all walks of life and selected for their connection to and commitment to their community. Many are part time. The business of local government is complex, the legislation governing it is complex and ever changing; training in a councillor's obligations is voluntary. Councillors are also an atypical regulatory group. They are politically savvy, networked and influential across all levels of government and in the media.

As an Independent Assessor an understanding of the unique complexities and challenges of the role of a councillor is essential, but so too is a commitment to act independently in the public interest to ensure that a balance is kept, that the longer term implications of more serious conduct is forestalled and that there is an incentive for councillors to both understand the conduct standards and to apply them in their everyday work for their communities.

A key measure of the effectiveness of a councillor conduct framework is the timeliness of it. The consequences of non-compliance with conduct standards, or indeed a finding that a councillor has not engaged in misconduct, must be timely.

For the OIA, timeframes were impacted from establishment but as a consequence of the OIA's staff being increased from 10 to 19 from 2020, the OIA has been able to remove all backlogs in progressing misconduct matters and the timeframes being delivered by the OIA are now comparable to, or better, than any other like agency.

As of 30 June 2023:

- 94 per cent of complaints were assessed and an outcome communicated within 21 working days
- OIA investigation timeframes averaged two months with the natural justice process, just over four months
- all but one active investigation was under three months duration.

There are however ongoing significant delays in having misconduct matters heard by the CCT, and on review by Queensland Civil and Administrative Tribunal (QCAT). As the councillor conduct system is a disciplinary system, not a criminal one and its purpose is to provide councillors with the opportunity to learn and move on; it is impossible for the framework to service this intent if these Tribunals are not supported to do so.

In concluding my term as the first Independent Assessor I wish to acknowledge the professionalism and tireless efforts of the staff of the OIA, the councillors and the local government CEO's who have taken the time to understand the conduct system and the sometimes challenging role of the OIA in regulating it, the legal representatives who helped navigate new legislation and a new tribunal process and a parliamentary oversight committee which has taken the time to understand that the OIA is an essential, but not the only, part of a councillor conduct complaints system.

Kathleen Florian
INDEPENDENT ASSESSOR

01 | 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 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 doing the following:

- ⇨ Holding councillors accountable to the communities they serve by delivering a disciplinary framework that is balanced, timely and effective
- ⇨ Enhancing the integrity of local governments as part of the councillor conduct complaints system by supporting and fostering a culture of accountability and ethical practice in local government.

01 | About us

Oversight

The State Development and Regional Industries Committee (SDRIC) is responsible for monitoring and reviewing the performance of the Independent Assessor (IA).

Legislation

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

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

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

Human Rights Act 2019

The OIA complies with the requirements of the *Human Rights Act 2019* (HR Act) and respects, protects and promotes human rights in decision-making and the OIA's actions.

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

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

Operating environment

The OIA works with its key stakeholders including members of the community, councillors and staff from Queensland's 77 local governments and the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP).

It also engages with the CCC, QCAT, Queensland Integrity Commissioner, Queensland Audit Office, Queensland Electoral Commissioner and Queensland Ombudsman.

OIA financial and non-financial performance information

OIA financial information is located in the 2022-23 DSDILGP Annual Report.

OIA non-financial performance information based on the Service Delivery Statement is also in the 2022-23 DSDILGP Annual Report.

Organisational structure

During 2022-23, the OIA was funded for 11 permanent and eight temporary full-time equivalent (FTE) positions and had one unfunded, risk managed position transferred by DSDILGP.

In 2023-24, the OIA will be funded for 19 permanent FTE with the additional risk managed position.

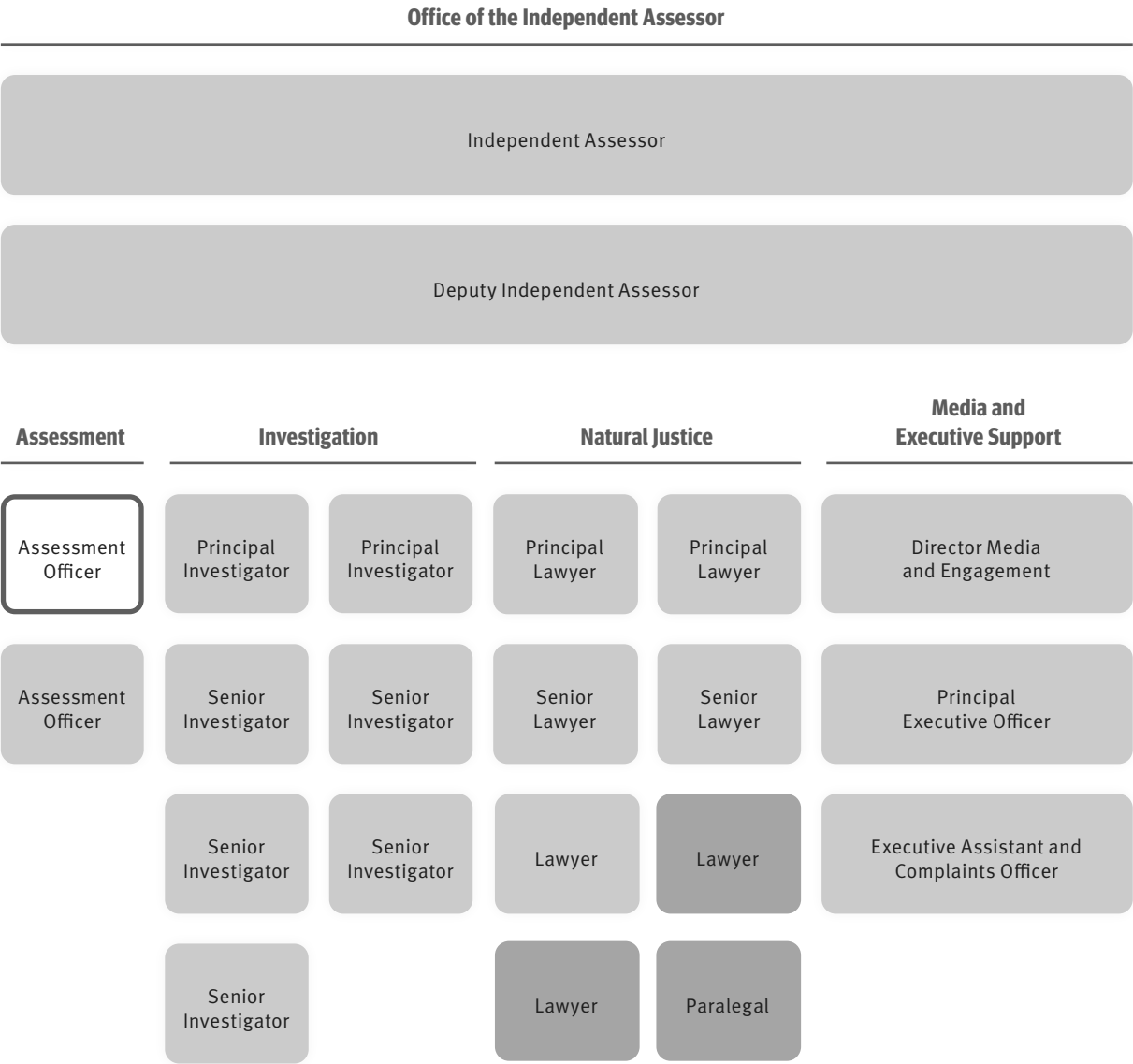
The funding to transfer eight temporary to permanent FTE was a recommendation from the OIA's parliamentary oversight committee.

The recommendation followed the Committee's inquiry into the councillor conduct complaints system, with its report, *'Inquiry into the Independent Assessor and the councillor conduct complaints system'* tabled in October 2022.

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

Organisational structure

AS OF 30 JUNE 2023



Legend

Permanent FTE

Temporary/Contract

Risk-managed position

02 | Inquiry into the Independent Assessor and councillor conduct complaints system

State Development and Regional Industries Committee

The Queensland Parliament's State Development and Regional Industries Committee (SDRIC) has oversight of the OIA. This was requested by the Independent Assessor when the OIA was first established in 2018.

Following its *'Inquiry into the Independent Assessor and councillor conduct complaints system'*, the Committee tabled a report on 14 October 2022 with 40 recommendations to improve the councillor conduct complaints system. The Queensland Government response was tabled on 12 January 2023 and supported, or supported in-principle, all 40 recommendations.

The Committee expanded its original inquiry to examine all aspects of the councillor conduct complaints system, which is made up of a number of independent bodies, and made recommendations for the OIA, Councillor Conduct Tribunal (CCT), the department responsible for local government and councils, to create a more effective framework.

Timeframe improvements

A key theme of the inquiry was the time taken for councillor conduct matters to be dealt with.

For the OIA, timeframes were impacted from establishment with an average 1,000 complaints a year received, when the OIA was set up to deal with 160 a year. That was received in the first 11 days.

An expanded jurisdiction followed with the Brisbane City Council coming into the OIA's remit in March 2020.

From December 2020 the OIA was supported with additional temporary funding and FTE positions to address the time taken to deal with the volume of complaints.

As a consequence of this support, the OIA was able to remove all backlogs in progressing misconduct matters and has substantially reduced timeframes.

As of 30 June 2023:

- 94 per cent of complaints were assessed and an outcome communicated within 21 working days
- OIA investigation timeframes averaged two months with the natural justice process at just over four months
- all but one active investigations were under three months duration.

The key driver for extending timeframes is delays due to other parties. This includes responses to requests for information from councils, affidavit responses, natural justice responses from councillors or their legal representatives and requests for extensions of time.

OIA budget and staff

The Queensland Government 2023-24 State Budget recognised the work of the Parliamentary Committee and its inquiry with budget and permanent FTE for the OIA to transfer eight temporary staff to permanent positions (recommendation 3).

The Budget approved extra funding of \$6.894 million over four years made up of approximately \$1.764 million a year on-going to fund the transfer of the eight temporary to permanent positions.

The OIA is now funded for 19 permanent FTE.

The OIA's actual operational budget for 2023-24 is \$4.223 million.

QCAT reviews are not part of the OIA's jurisdiction under the *Local Government Act 2009* (LG Act) and consequently the OIA has not been funded to perform this function since establishment.

02 | Inquiry into the Independent Assessor and councillor conduct complaints system

Action on other recommendations

Out of the 40 recommendations made by the Committee, the OIA was directly responsible for implementing six, three of which were already part of the OIA’s annual reporting:

- the OIA continue to publish complaints dismissed or no further action (NFA) in annual report (recommendation 31)
- the OIA continue to publish information of inappropriate conduct matters referred to councils (recommendation 16)
- the OIA continues to publish information on vexatious complaints and complainants and action taken (recommendation 28).

The OIA is once again providing councillors with information about likely CCT orders in the event that misconduct is sustained. This information is provided at the natural justice stage for the five per cent of all complaint matters that reach this part of the complaints process (recommendation 22).

The OIA has updated other correspondence and website content to reduce the ‘fear factor’ as described in the Committee’s report (recommendation 14.2).

The OIA considered and encouraged people with local government experience to apply for positions at the OIA (recommendation 32), and the Independent Assessor continued to take part in

tripartite meetings (recommendation 38).

The OIA assisted other stakeholders within the councillor conduct complaints system with a further four recommendations.

The remaining recommendations are the responsibility of DSDILGP, the CCT, councils and the Committee to implement.

The Committee also accepted 10 recommendations that were advanced by the OIA to improve the system.

The OIA has also progressed other initiatives to improve the efficiency of the councillor conduct framework.

For example, following the CCT introducing a new expedited procedure for dealing with matters where councillors agree that they had engaged in misconduct, the OIA wrote to all councillors with matters before the Tribunal to make them aware of the new process.

The OIA provided councillors with information about what submissions the Independent Assessor would make in relation to disciplinary orders in the event councillors elected to expedite matters, sparing the resources of the Tribunal in dealing with a matter as a full hearing.

In 2022-23, four councillors expedited their misconduct matters and received an outcome from the CCT within two to four months (recommendation 9). One further expedited matter was being considered by the CCT as of 30 June 2023.

03 | Complaints and notifications

The OIA has received 4,707 complaints about councillor conduct since the establishment of the OIA on 3 December 2018 to 30 June 2023.

In 2022-23, the OIA received 897 complaints or notifications containing 958 separate allegations. This represents a two per cent increase in the number of complaints or notifications received in 2021-22. Since establishment, the OIA has consistently received on average 1,000 complaints or notifications a year.

Since establishment, the OIA has not received a complaint or notification from, or about, councillors at four local governments, that is, in more than four and half years.

The complaints and notifications may allege that a councillor has engaged in inappropriate conduct, misconduct and, if referred by the CCC, corrupt conduct.

Under the OIA's broad discretion, complaints or notifications are dismissed on assessment as subject to no further action if it is out of jurisdiction; is not inappropriate conduct or misconduct; does not contain sufficient information for a proper assessment; it is not a justifiable use of resources to take further action; is not in the public interest; or is improper, that is, vexatious or frivolous.

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

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

2022-23 COMPLAINT SNAPSHOT

897 received with
958 allegations

4,707 since establishment

53%

from local government sector

38%

from the public

44%

decrease in councillor
self-referrals

14%

anonymous complaints

03 | Complaints and notifications

Complaint volumes

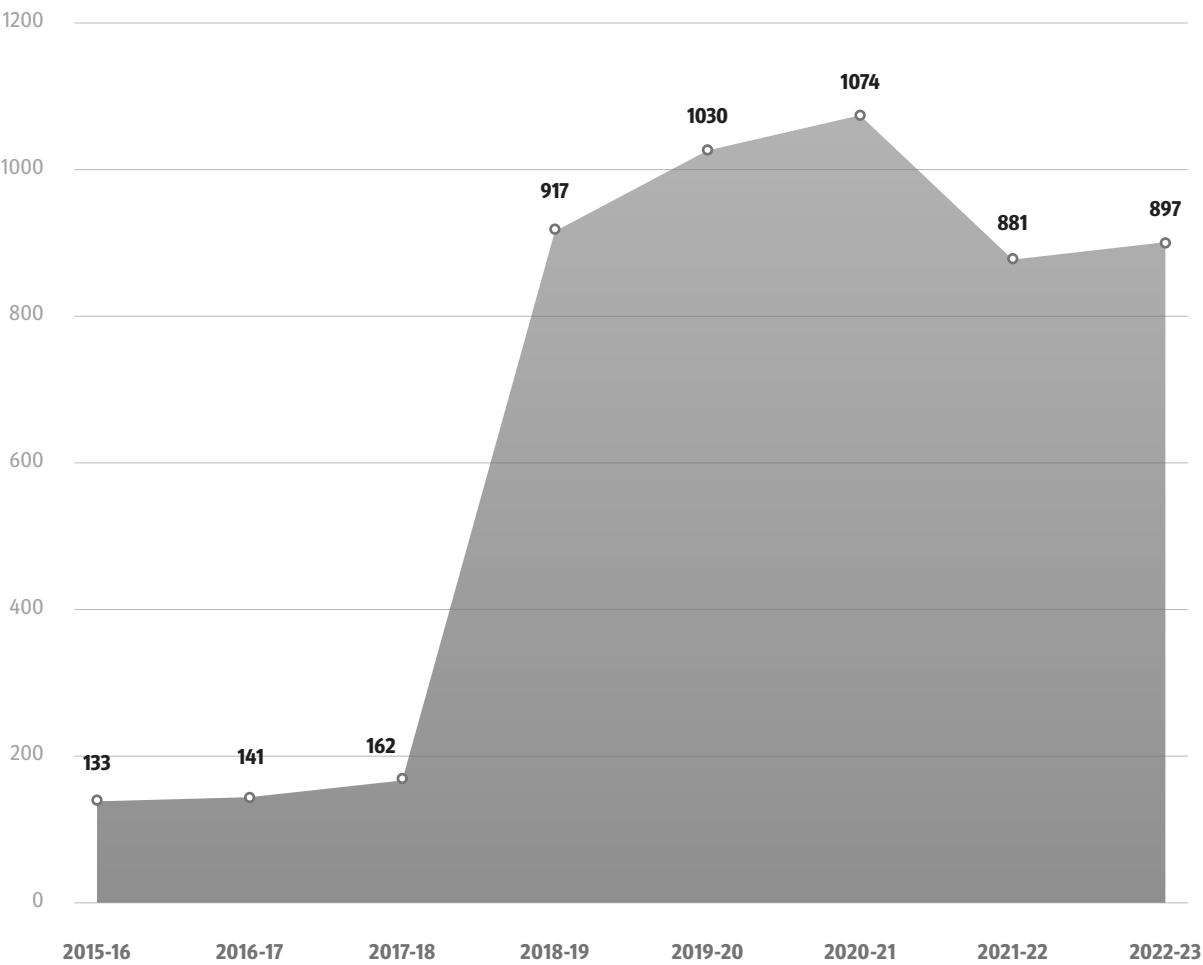
The previous councillor conduct model placed council Chief Executive Officers (CEOs) in the difficult position of receiving and assessing complaints against their employers. With the establishment of the OIA that responsibility shifted from CEOs to the OIA.

The surge in complaints since the establishment of the OIA is likely because of the introduction of

mandatory reporting for CEOs and councillors in 2018; previous under-reporting of complaints; and increased confidence in a complaints process that is independent of council.

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

Figure 1: Complaint volumes

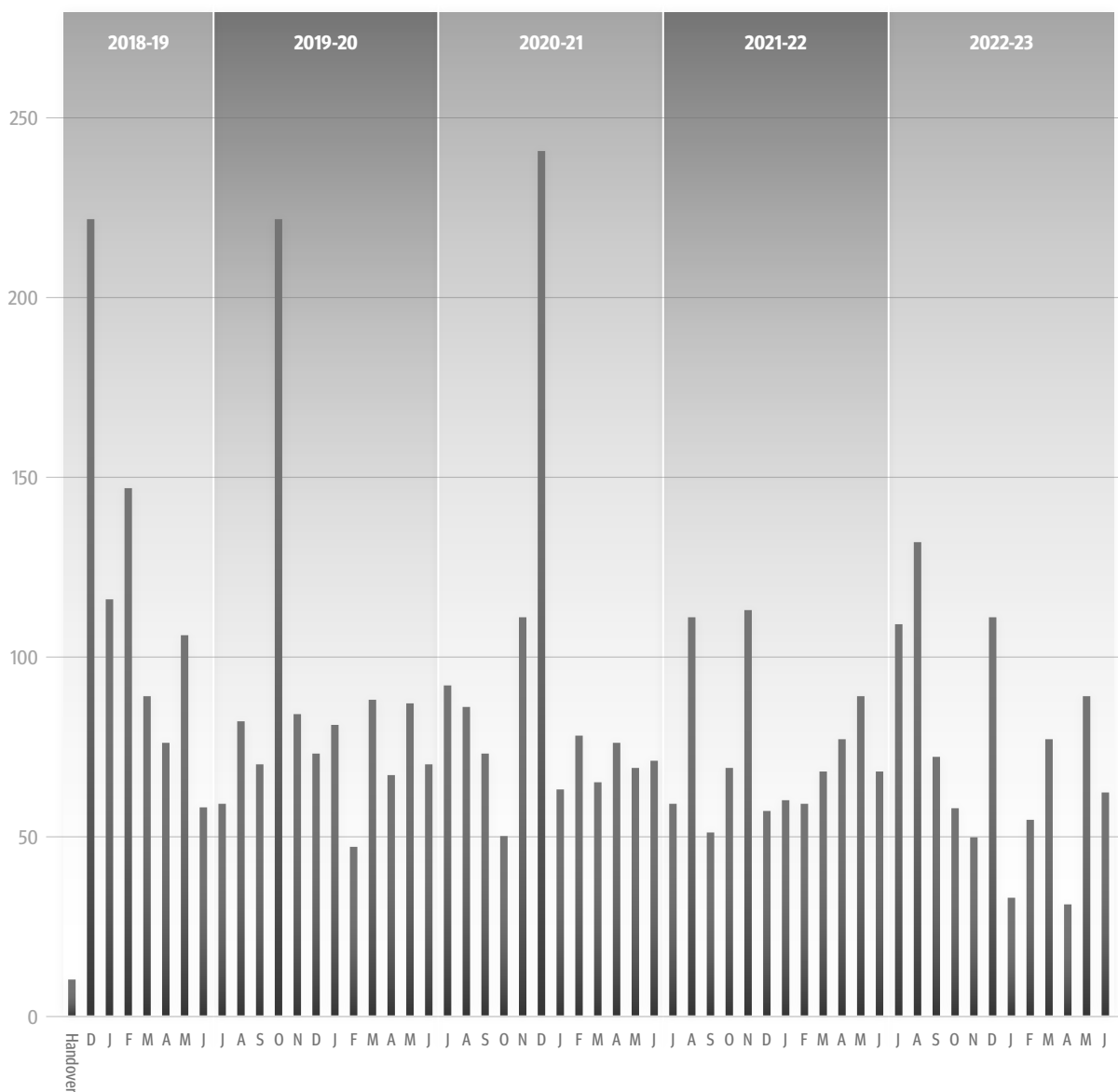


03 | Complaints and notifications

The next graph indicates complaints received each month since the establishment of the OIA. The number each month has remained broadly consistent since March 2019. There has not been a

spike of a large number of complaints since 2020-21. In 2019-20, there were 130 complaints against one councillor and in 2020-21, 109 against one councillor.

Figure 2: Complaints received each month since OIA establishment



03 | Complaints and notifications

Source of complaints

Councillors referring their own conduct to the OIA is an indicator of a strong integrity culture.

In 2022-23, there was a 44 per cent decrease in the number of councillors reporting their own conduct. Only 18 councillors self-referred their conduct.

In 2021-22 there were 32 self-referrals and 30 the year before that.

In comparison, complaints or notifications from one councillor about the conduct of another councillor accounted for 22 per cent of all complaints or notifications received, up from 19 per cent the previous year.

The source of complaints in 2022-23 were:

- 53% from local government sector, including councillors, councillor self-referrals, CEOs and council staff
- 38% from members of the public
- 2% referred by the CCC
- 6% from other sources.

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

The OIA received no complaints against councillors from:

- 17 councils in 2022-23
- 4 councils since establishment of the OIA (4.5 years).

Complaint allegations

In 2022-23 many complaints involved multiple allegations, with:

- 49% of allegations related to alleged misconduct, up from 45%
- 41% related to alleged inappropriate conduct, up from 36%
- 3% related to suspected corrupt conduct, down from 7%
- 7% were other matters, down from 12%.

Out of the 41 per cent of complaints or notifications about alleged inappropriate conduct, 37 per cent of these related to alleged breaches of the mandatory Code of Conduct for Councillors in Queensland, up from 33 per cent in 2021-22 and 24 per cent in 2020-21.

03 | Complaints and notifications

Anonymous complaints

In 2022-23, the OIA received 130 anonymous complaints which accounted for 14 per cent of all complaints received. There were 10 fewer (two per cent) than the previous year with the rate of anonymous complaints remaining generally consistent for the past three financial years.

The outcomes of anonymous complaints in 2022-23 included:

94 dismissed or NFA on assessment (72%)
22 investigated (17%)
1 to CCC
2 referred to councils as potential inappropriate conduct
9 dealt with as enquiries only.

Of the 22 anonymous complaints that were investigated, 14 were dismissed at the end of the investigation and six remained under investigation as of 30 June 2023. Five complaints, including some received in the previous year, progressed to OIA legal for a natural justice process.

Many anonymous complaints concerned First Nations councils where, in small communities, there is an increased fear of reprisal or conflict. In 2022-23, the overall anonymous complaints rate relating to First Nations councils was 16 per cent compared to 12 per cent for other councils.

Independent Assessor initiated complaints

Under the LG Act, the Independent Assessor may initiate investigations and commenced 12 own-motion investigations in 2022-23. There were eight in the previous financial year.

The Independent Assessor raised these own-motion investigations in circumstances where the assessment of a complaint identified the conduct

of other councillors in allegedly failing to declare a conflict of interest; and where potential criminal conduct was widely publicised.

At least three of these matters resulted in the OIA identifying a systemic issue and writing to the department and requesting a training intervention. See Chapter 4 for more on training intervention requests.

Impact on corruption complaints

The OIA referred 24 complaints to the CCC in 2022-23, three per cent of all complaints assessed.

CCC statistics reveal complaints to the CCC involving the local government sector, including elected officials and employees, decreased in 2022-23, continuing a downward trend over the last three years. The CCC states that several factors may have driven this trend, including the establishment of the OIA.

In 2022-23, the CCC received 243 complaints related to the local government sector, which was a 19 per cent decrease on the previous year. The complaints contained 386 allegations, a 40 per cent decrease from 2021-22.

According to the CCC, corruption allegations about local governments increased noticeably in 2017-18 and remained high until dropping in 2020-21.

It is noted however that changes to the LG Act which commenced in October 2020, operated to reduce the number of complaints that would meet the definition of corrupt conduct, as section 201D created a new high threshold for a statutory offence under the LG Act.

04 | Assessment

OIA's robust assessment

Since 2018 the OIA has had a robust process for the assessment of all complaints or notifications.

An assessment process is not a requirement of legislation, but rather a process proactively put in place by the OIA to:

- manage complaint and notification volumes
- ensure that the OIA's finite resources and efforts are focussed on those matters that may result in a referral to the CCT and potential disciplinary action.

All complaints and notifications undergo a preliminary assessment, most within 21 working days.

Under this process a complaint or notification may be dismissed on assessment or subject to no further action if it:

- is out of jurisdiction
- is not, or does not, raise a reasonable suspicion of councillor conduct
- does not contain sufficient information for a proper assessment
- is not a justifiable use of resources to take further action
- is frivolous, vexatious or improper (only applies under the LG Act to complaints made by the public, not councillors), or
- is not in the public interest (only applies under the LG Act to complaints made by the public, not councillors).

2022-23 ASSESSMENT SNAPSHOT



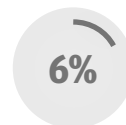
assessed in 21 working days



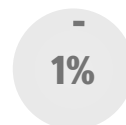
dismissed or NFA on assessment



full misconduct investigation



potential inappropriate conduct



refer to CCC

16 training and capacity building intervention requests

25 dismissed as vexatious or lacking substance

04 | Assessment

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

In 2022-23, 65 per cent of all complaints and notifications were dismissed or subject to no further action on assessment.

Since 2018, 75 per cent of complaints or notifications received have been dismissed or no further action taken including those dismissed after investigation or after a natural justice process.

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

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

CONDUCT EXAMPLES

Inappropriate conduct

Breaches the Code of Conduct for Councillors in Queensland², a council policy, procedure, or resolution; assessed by OIA but investigated and dealt with by councils³.

Example

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

Misconduct

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

Example

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, performing responsibilities or exercising powers in a manner which is not honest or impartial.

Corrupt conduct

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

Example

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

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

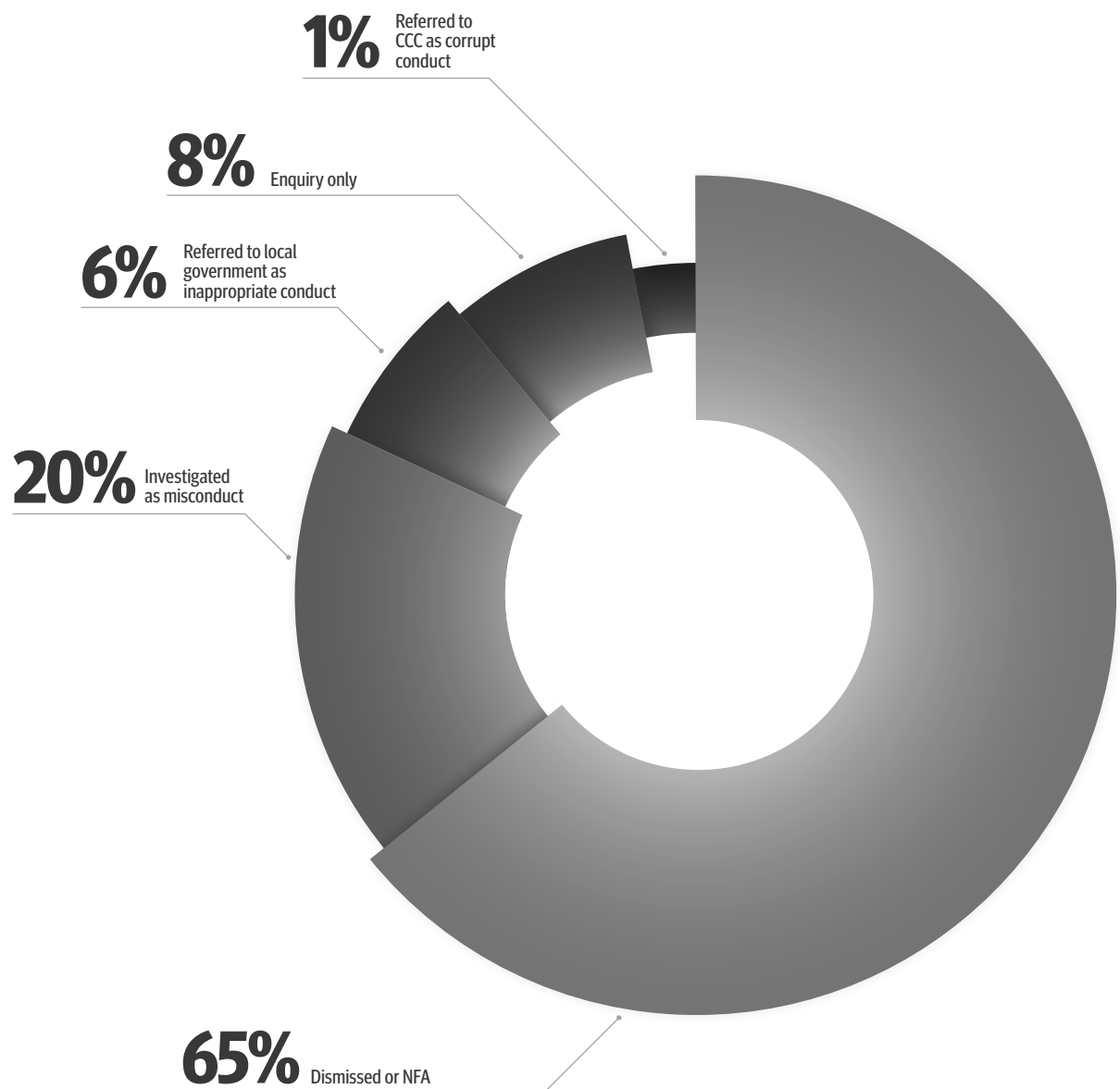
² Code of Conduct for Councillors in Queensland, August 2020

³ Section 150K of the LG Act

04 | Assessment

Assessment outcomes 2022-23

Figure 3: 2022-23 assessment outcomes



04 | Assessment

Complaints dealt with as enquiry only

Complaints assessed as being out of the OIA's jurisdiction are recorded as an enquiry. It is the OIA's usual practice to communicate with a complainant to explain the circumstances and, where possible, refer them to the correct agency. The complaint is then recorded as an enquiry only. This occurred for eight per cent of complaints assessed in 2022-23.

Dismissed or no further action

In 2022-23, a total of 594 complaints or 65 per cent of all complaints received were dismissed or marked no further action (NFA) on assessment.

Under the LG Act complaints or notifications 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 interest⁴ provides a means to manage investigation work volumes and ensure that the OIA's finite resources are focussed on those investigations and disciplinary matters where there is a public interest in advancing.

The LG Act does not define what is in the public interest or what is a justifiable use of resources.

However, the OIA has proactively implemented a process to consider the public interest and

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

- for new inexperienced councillors, a three-month amnesty for low-level misconduct has been provided to allow time for councillors to be trained in their new roles
- where legislation has changed but the councillor has not had the opportunity to receive training
- where the councillor has obtained legal advice before the conduct and followed that advice in good faith and produces a copy of that advice
- where 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 the register
- where a councillor self-refers for relatively minor conduct and demonstrates insight, particularly if the councillor is inexperienced
- where having regard to the particular circumstances of the matter, there is not a public interest in pursuing it.

⁴ 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.

04 | **Assessment****Intervention requests**

Up until 2021, the OIA dismissed matters where councillors could demonstrate that they had, in good faith, followed guidance previously provided by the OIA.

At this time the OIA had a Ministerial Direction which included a prevention function focusing on recurring or high-risk areas of misconduct. In October 2021, the Ministerial Direction was revoked, removing the OIA's ability to engage with councils experiencing systemic capacity issues and to prevent future misconduct.

Since then, the OIA has generally raised investigations but parked⁵ the matters and written to the department responsible for local government requesting it conduct training on the issues that the OIA has identified. The investigations remain parked by the OIA until the councillors have received the relevant training, noting that any such training is not mandatory.

Again, this is not a requirement of the LG Act but a step proactively taken by the OIA when systemic capacity issues have been identified.

In 2022-23, the OIA forwarded 16 training intervention requests to the department concerning 12 councils and where two of the requests involved issues that affected all councillors. In 2021-22, the OIA made 10 requests for training at 10 councils.

Intervention requests included:

- failure to impartially deal with inappropriate conduct complaints as required by the LG Act
- failures to properly declare, raise the interests of other councillors, and/or manage conflicts of interests by all councillors. This included failure to capture in the minutes information required by the LG Act to be recorded
- inaccurate or out of date registers of interests involving all councillors failing to (a) lodge registers of interests or (b) to record interests required to be captured and (c) provide annual updates on their and their related-party registers of interests

- all councillors becoming involved in council issues at an operational level, and not understanding the strategic nature of a councillor's responsibilities.

For two councils, the department also appointed a local government adviser under section 117(2) of the LG Act.

If the OIA receives confirmation from the council or department that the training has been delivered, the OIA may dismiss or take no further action on the complaint as an unjustifiable use of resources or on public interest grounds.

Such matters are diverted to a training intervention on the clear understanding that if the conduct were to continue after that training, it would be dealt with as councillor conduct.

Vexatious or improper complaints

The OIA has a responsibility to enforce the legislative standards for councillor conduct but 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.

A warning about a vexatious complaint makes members of the public aware of section 150AU and 150AV of the LG Act, and if it is a councillor or council CEO, they are made aware of section 150R(3) under the Act. These sections create a summary offence of making a complaint which is assessed as vexatious or not made in good faith. This offence is heard in the Magistrates Court and can attract a fine of more than \$13,000.

In 2022-23, there were 25 complaints from members of the public which reached Step 2 of the escalation process and were dismissed as vexatious, lacking substance and/or not in good faith, and nine where a warning was issued.

⁵ An investigation is 'parked' while awaiting other decisions before the courts, the CCT or other agency action or advice.

04 | Assessment

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 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.

In 2022-23, the OIA undertook four criminal investigations in relation to vexatious or improper complaint behaviour in relation to two members of the public and one councillor. These investigations are referred to in Chapter 9.

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 (Under legislation this only applies to members of the public)
- Step 3**
The OIA commences an investigation ahead of a possible prosecution, a fine of more than \$13,000 may apply

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

Inappropriate conduct – refer local government

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

In 2022-23, 57 complaints or six per cent of all complaints assessed were referred to 27 local governments to deal with.

Inappropriate conduct matters are discussed further in Chapter 5.

Misconduct – OIA to investigate

Complaints or notifications that raise a reasonable suspicion of misconduct at the time of assessment are investigated by the OIA.

Again, this is not a legislative requirement but a threshold applied by the OIA to ensure its finite resources are focused on matters most likely to be in the public interest and may result in a referral to the CCT to determine if a councillor has engaged in misconduct.

In complex matters further investigation may be required to determine whether a complaint meets this threshold.

In 2022-23, 181 complaints or notifications, 20 per cent of all matters assessed including matters from previous years, became OIA misconduct investigations.

Misconduct investigations are explored in Chapter 6.

Corrupt conduct – refer CCC

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

Changes to the LG Act which commenced on 12 October 2022 have resulted in fewer matters reaching the threshold of suspected corrupt conduct within the meaning of the *Crime and Corruption Act 2001* (CC Act).

04 | Assessment

In 2022-23, 24 matters or three per cent of all complaints involved suspected corrupt conduct by a councillor 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.

By its very nature, corrupt conduct is difficult to detect. Of the 24 complaints, only six were identified as suspected corrupt conduct on assessment. The further 14 complaints of suspected corrupt conduct by councillors were identified only during an investigation.

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 then provides a monthly schedule to the CCC and it can take responsibility for a case at its discretion. Again, changes to the LG Act have greatly reduced these referrals.

During 2022-23, the OIA reported two suspected corrupt conduct complaint files to the CCC under the section 40 schedule of the CC Act. In the previous year there were 13 referrals and the year before there were 29 files.

Review of assessment decisions

Consistent with best practice complaint management⁶ the OIA offers an internal review of an assessment decision⁷ 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 2022-23, there were 40 requests for an internal review of an assessment decision. The high number was due to requests to review from either a councillor or member of the public who complained about multiple councillors from the same council, or when a group of councillors each complained about one of their fellow councillors over the same issue. This occurred on five occasions adding to the number of reviews of an assessment decision.

All reviews were completed and the original decisions were upheld.

Internal reviews are carried out by the Independent Assessor.

Under the *Public Sector Act 2022*, the OIA is required to publish details of customer complaints. This includes complaints about decisions made which may include requests for an internal review of an assessment decision.

The OIA has had no customer service complaints.

⁶ AS/NZS 10002:2014 Australian/New Zealand Standard Guidelines for complaint management in organisations.

⁷ OIA internal review of an assessment decision policy is available at oia.qld.gov.au

05 | Inappropriate conduct

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

In 2022-23, the OIA received 391 complaints or notifications alleging inappropriate conduct by councillors which accounted for 44 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 as quickly as possible.

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 2022-23, the OIA received 391 inappropriate conduct complaints or notifications and, after preliminary assessment, issued section 150AA notices on approximately 70 of these complaints or notifications.

2022-23 COMPLAINT SNAPSHOT

391 complaints alleging inappropriate conduct
(44% of complaints received)

57 complaints were referred back to **27** councils to deal with (includes **6** from previous year)
(6% of complaints)

27 (47%) of these complaints were dealt with by councils in the financial year

316 inappropriate conduct matters were dismissed or NFA (**81%**)

05 | Inappropriate conduct

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 2022-23, 57 matters were assessed and referred back to 27 councils to investigate and deal with as potential inappropriate conduct. This included complaints from the previous financial year and accounts for six per cent of all complaints received in 2022-23. In 2021-22, 46 suspected inappropriate conduct matters were referred to 21 separate 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 have not been required to inform the OIA of the outcomes of inappropriate conduct referrals. However, the Parliamentary Committee report has made a number of specific recommendations including:

- councils in future to publish the number of inappropriate conduct matters referred by the OIA, the number addressed and the average time take to resolve matters
- and the OIA to publish information on the matters referred including those resolved and those that remain unresolved or outcomes not reported back to the OIA.⁸

In 2023-23, the OIA referred 57 inappropriate conduct matters back to local governments. Given the intention is to deal with inappropriate conduct complaints quickly (within the year) the OIA was able to ascertain:

- 30 (53%) of these complaints were not dealt with or reported to OIA as of 30 June 2023
- 27 (47%) of these complaints were dealt with by councils in the financial year
- 13 complaints were sustained and 9 were not sustained
- 5 were resolved by alternative dispute resolution.

The rate of dealing quickly with an inappropriate conduct complaint has improved to 47 per cent compared to only 22 per cent for the previous year.

It should be noted that also in the reporting year, many councils dealt with significantly older complaints referred in previous years. During 2022-23, councils resolved a total of 53 inappropriate conduct complaints including 10 that were referred in 2020.

The Brisbane City Council also re-established its Councillor Ethics Committee and decided 10 inappropriate conduct matters relating to conduct dating from September 2019 to April 2022. The OIA was advised of the outcomes in April 2023.

Issues

The OIA made submissions to the Parliamentary Committee inquiry, under Terms of Reference 3, on options to simplify and strengthen the inappropriate conduct scheme. The OIA's concerns about the inappropriate conduct scheme have been outlined in its Annual Reports since 2019-20.

⁸ Report No. 28, 57th Parliament State Development and Regional Industries Committee October 2022, page 41

05 | **Inappropriate conduct**

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

Issues raised include:

- ⇨ councillors refusing to participate in decisions
- ⇨ councillors resisting participation including by declaring conflicts of interest where there is no conflict of interest
- ⇨ subject councillors not provided with natural justice
- ⇨ councillors not accepting the outcome of external investigations and making decisions not supported by the investigation and evidence without providing reasons
- ⇨ councillors dealing with inappropriate conduct where they are either using, or it is perceived they are using, their responsibility as a means to undermine political opponents
- ⇨ a councillor threatening a Supreme Court judicial review of an inappropriate conduct decision resulting in council overturning a finding of inappropriate conduct and not making any decision on the matter
- ⇨ a council attempting to refer inappropriate conduct matters back to the OIA when the LG Act does not allow this
- ⇨ councils making decisions that all further like complaints must be dealt with as misconduct.⁹

In 2022-23, half of all training intervention requests, eight out of 16, made by the OIA to the department raised systemic issues with councillors having to deal with inappropriate conduct allegations against their colleagues.

⁹ This is an order that can be made under section 150AH (1)(b) (vi) of the *Local Government Act 2009*.

06 | Investigations

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

The OIA's practice of investigating matters that raise a reasonable suspicion is not a requirement of the LG Act but a threshold applied internally by the OIA to ensure its finite resources and efforts are focussed on those complaints and investigations that may result in a referral of councillor conduct to the CCT and potential disciplinary action.

Investigation timeframes addressed

Since establishment, more than 1,197 complaints, or 25 per cent of all complaints or notifications,¹⁰ have been investigated.

In 2022-23, 181 complaints or notifications or 20 per cent of all matters assessed, including matters from previous years, became an OIA misconduct investigation.

During the year, the OIA continued to address the backlog of investigations by completing 205 investigations, with 290 investigations completed in 2021-22, including investigations carried over from a previous year.

2022-23 INVESTIGATION SNAPSHOT

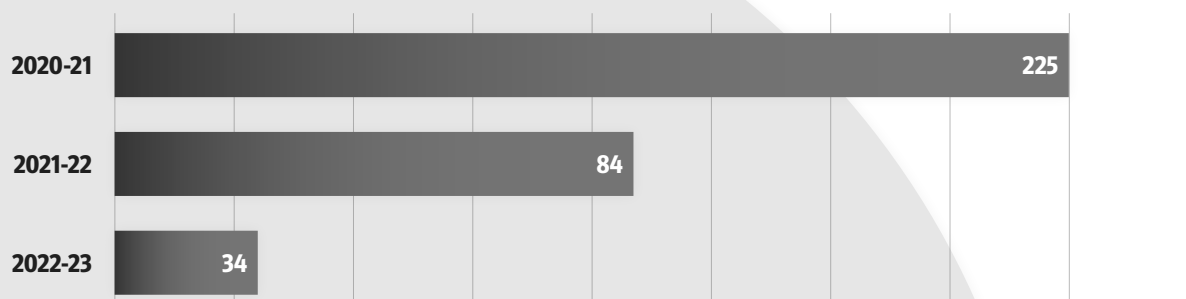
205 misconduct investigations completed, **290** the previous year

181 matters became a full misconduct investigation

34 current investigations as of 30 June 2023.

Down from **84** in 2021-22 and **225** in 2020-21

Figure 4: Decreasing number of investigations by financial year



¹⁰ In 2018-19, 2019-20 and 2020-21 this included large numbers of complaints received in relation to one councillor and one incident. A similar complaint incident did not occur in 2021-22 or 2022-23.

06 | Investigations

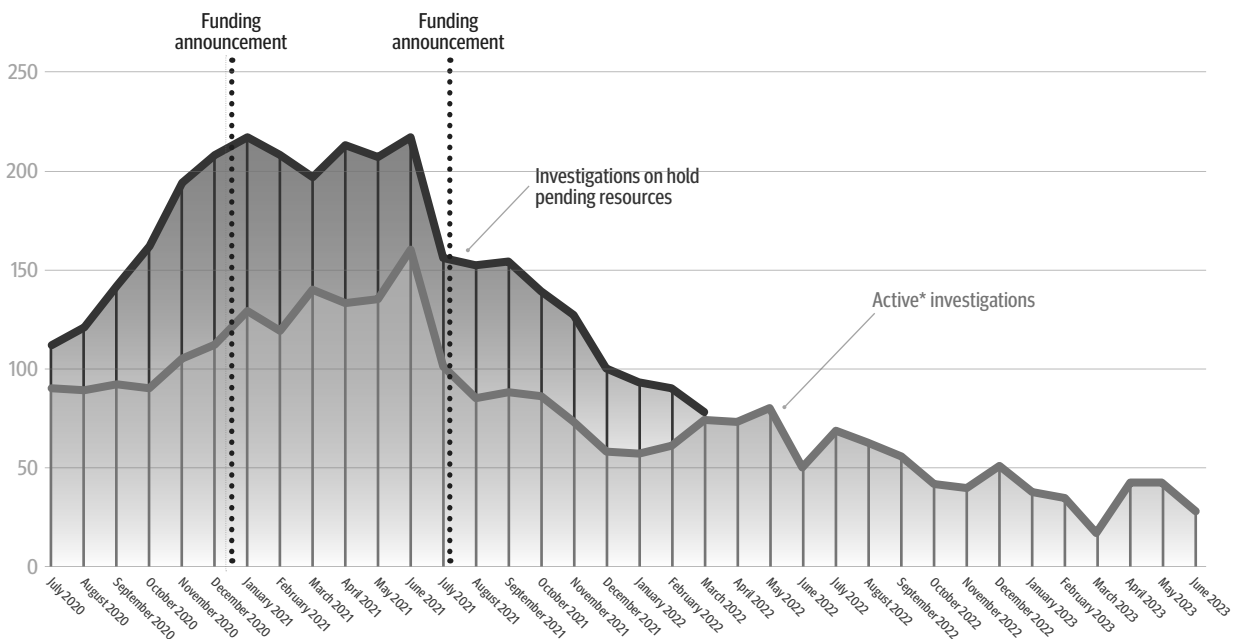
The reduction in the number of outstanding investigations was a direct result of increased temporary resourcing of the OIA. From December 2020, the OIA was able to double the number of investigators applied to these matters, from four to eight investigators.

At its peak in June 2021, the OIA had 225 investigations and four investigators. To manage this workload, investigations were required to be placed on hold¹¹ until an investigator became available to commence a matter.

As at 30 June 2023, there were 27 investigations (plus seven parked) with no investigations on hold awaiting the availability of an investigator, down from a total of 84 in 2021-22 and 225 in 2020-21.

This graph depicts the reduction in backlogged investigations and matters placed on hold awaiting an investigator. Funding announcements are indicated by the dotted lines.¹²

Figure 5: Allocated and on hold investigations by month



*Active does not include parked investigations

¹¹ Investigations were placed 'on hold' pending the availability of an investigator.

¹² In December 2020, \$250,000 funding announced to maintain temporary staff until 30 June 2021. In July 2021, \$1.3 million funding over two years announced. Budget and eight permanent FTE were announced in the June 2023-24 State Budget.

06 | Investigations

The removal of backlogs has meant that the OIA has been able to focus on reducing investigative timeframes over the last two performance years.

As of 30 June 2023, most OIA investigations were less than three months in duration and only one matter was just over that timeframe.

The table depicts the age of all investigations as at the end of the performance year for the past three years.

Table 1: Reducing timeframes for complaints under investigation

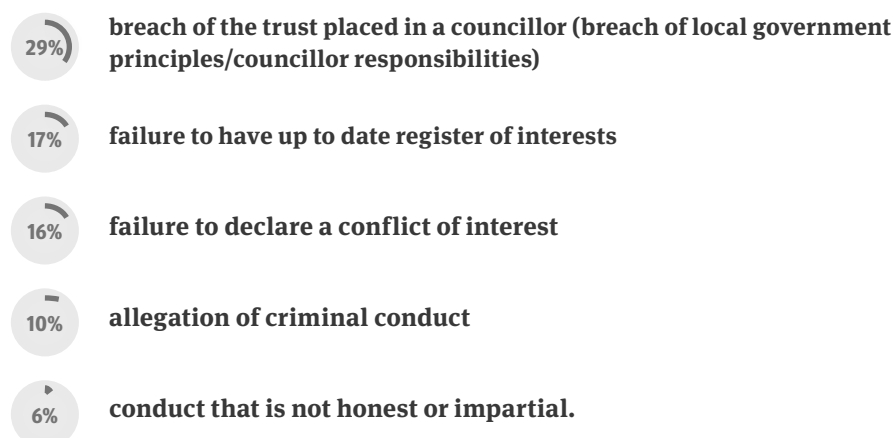
Timeframe	2020-21	2021-22	2022-23
0 - 3 months	59	43	26
3 - 6 months	30	12	1
6 - 9 months	92	12	Nil
9 - 12 months	26	6	Nil
12+ months	10	Nil	Nil
Total	217 with 57 on hold*	73 with nil on hold	27 with nil on hold
	8 parked**	11 parked	7 parked
	Total 225	Total 84	Total 34

*Investigations were placed 'on hold' pending the availability of an investigator.

**Parked investigations are awaiting the outcome of criminal investigations or other agency advice.

Types of misconduct investigations

The top five categories of alleged misconduct investigated by the OIA in 2022-23 were:



06 | Investigations

The number of investigations commenced for conflict of interest matters has decreased since October 2020 due to an issue with the wording of sections 150EL and 150EQ¹³ which were new conflict of interest provisions.

This has resulted in a reduction in matters being investigated and/or referred to the CCT on the basis of a failure to declare a prescribed or declarable conflict of interest and has operated as a limitation on the extent to which compliance with the current conflict of interest scheme can be enforced.

Notices issued

The LG Act under Chapter 5A, Part 4 provides investigation and enforcement powers to the OIA. The following were exercised in 2022-23:

- section 150CH allows investigators to request information that is reasonably necessary to investigate a councillor's conduct: 107 notices issued.
- section 150CJ notices require the attendance of a person at an interview with investigators: 29 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: 17 notices issued.

Search warrants

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

No search warrants were issued in 2022-23.

Review of completed misconduct investigations

At the conclusion of a misconduct investigation all matters are reviewed by an OIA multi-disciplinary group which includes the 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 no further action taken at this point.

Since establishment of the OIA, six per cent of matters have reached the threshold of a reasonable satisfaction of misconduct after a full investigation. These are the matters which were referred to OIA legal to commence a natural justice process. This step in the complaint management process is further detailed in Chapter 7.

¹³ These provisions commenced on 12 October 2020.

07 | Natural justice

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

2022-23 NATURAL JUSTICE SNAPSHOT

70 misconduct complaints or notifications referred for natural justice process

34 misconduct applications referred to CCT

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

In 2022-23, 70 misconduct complaints or notifications concerning 33 councillors and more than 84 allegations were referred to OIA legal to undertake this process.

The natural justice process involves OIA preparing a statement of facts which sets out the allegation, the particulars and supporting facts, and explains what category of misconduct is alleged. This statement is shared with the councillor and/or their legal representative who may provide a further response. This is a statutory natural justice process that is required under section 150AA of the LG Act.

A councillor's response must be considered by the 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 a matter is subsequently referred to the CCT.

As of 30 June 2023, nine misconduct complaint or notification matters were undergoing the natural justice process. A further three matters were parked pending other outcomes before the CCT.

This is down from 19 active matters at the same time the previous year.

Natural justice timeframes

The OIA has made significant inroads into timeframes and as of 30 June 2023, the average time for the natural justice process to be undertaken and an outcome communicated was just over four months.

Again, this reduction in timeframes has been driven by the OIA receiving temporary resources and funding from December 2020.

As of 30 June 2023, the majority of matters had been with OIA legal for less than three months with eight active cases in this category, down from 15, the previous financial year. Only one complex matter was six months old.

Delays in waiting for responses from other parties such as legal representatives, witnesses, council officers, councillors and complainants, are now the key drivers for delays.

Table 2: Reducing timeframes for complaints undergoing natural justice process following increased temporary budget and FTE

Timeframe	2020-21	2021-22	2022-23
0 - 3 months	8	15	8
3 - 6 months	11	2	Nil
6 - 9 months	4	1	1
9 - 12 months	6	1	Nil
12 - 15 months	0	Nil	Nil
15 - 18 months	4	Nil	Nil
Total	33	19*	9*

*There are 3 parked matters that are not reflected in this table. These matters are parked awaiting CCT decisions in related matters.

07 | Natural justice

Public interest

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

The Independent Assessor has regard to the following public interest considerations¹⁴:

- the seriousness of the alleged misconduct
- whether there are reasonable prospects of a finding of misconduct
- the experience of the councillor
- are there any mitigating or aggravating circumstances
- the availability and effectiveness of any alternatives to making an application to the CCT
- whether the subject councillor has previous disciplinary history, including for like matters
- is the alleged breach a continuing or subsequent breach
- how often misconduct of this kind occurs and whether there is a need for deterrence
- the length of time since the alleged misconduct occurred
- the physical or mental health of the subject councillor
- the length and expense of any misconduct hearing
- if the alleged misconduct is sustained, what are the possible sanctions available
- the need to maintain public confidence in the councillor conduct framework.

Matters referred to the CCT

In 2022-23, a natural justice process was undertaken in respect of 70 complaint or notification matters with a further 11 matters carried over from 2021-22.

Following natural justice, public interest and human rights considerations, the Independent Assessor referred 34 applications¹⁵ with 61 allegations to the CCT to determine whether 28 councillors had engaged in misconduct.

The Independent Assessor dismissed or decided to take no further action on 23 complaint or notification matters at the natural justice stage.

Since establishment, only five per cent of all complaints or notifications have been referred to the CCT for a decision on councillor misconduct allegations.

¹⁴ OIA policy on the exercise of the IA's discretion to refer matters to the CCT is available at oia.qld.gov.au.

¹⁵ An application may contain multiple complaints or notifications and/or involve multiple allegations.

08 | Tribunal hearings and reviews

A referral to the Councillor Conduct Tribunal (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 it is to ensure compliance with the standards of conduct set out in the LG Act, to promote future compliance and to uphold confidence in the integrity of councillors.

While councillors are given every reasonable opportunity to receive training (noting once a councillor is elected training is not mandatory) and matters are not progressed for a range of public interest reasons set out in Chapter 7, ultimately, standards of conduct will not be observed if they are not enforced.

Given the complexity of the councillor conduct scheme, particularly as it relates to conflicts of interest, the application of the scheme is enhanced by decisions of the CCT and ultimately Queensland Civil and Administrative Tribunal (QCAT) on review, providing the sector and the OIA with important feedback.

CCT applications

The CCT receives councillor misconduct applications 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 in relation to an application, the CCT must decide whether or not the councillor has engaged in misconduct and, if so, decide what disciplinary order is appropriate.

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

2022-23 CCT SNAPSHOT

66 misconduct applications with **146** allegations waiting for hearing before CCT

18 applications decided by CCT

12 full-merit reviews waiting before QCAT

08 | Tribunal hearings and reviews

Table 3: Timeframes for matters before CCT as of 30 June 2023

Timeframe	Applications with CCT	Number of complaints reflected in application	Number of allegations
0 - 3 months	16	23	30
3 - 6 months	3	4	5
6 - 9 months	7	9	16
9 - 12 months	7	21	9
12 - 15 months	13	22	18
15 - 18 months	3	3	18
18 - 21 months	7	11	17
21 - 24 months	2	2	4
24+ months	7	27	28
Total – 30 June 2023	65*	122*	145*

*Note: One CCT matter is not reflected in this table which is on hold. The councillor reviewed the matter to the Supreme Court (SC) seeking a stay of the application referred to the CCT by the IA. A SC judge refused the stay application. The councillor has since appealed the SC judge's decision to the Court of Appeal. Matter before CCT is therefore on hold.

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

CCT backlogs

Initially the CCT dealt with referrals in a timely way but in 2019-20 matters started to backlog while waiting to be determined. Over the past two years, CCT backlogs have increased.

As of 30 June 2023, there were 66 applications with 146 allegations of misconduct outstanding before the CCT waiting for a hearing or decision. These matters concern 50 current and, a small number of now, former councillors.

Matters are dealt with in order of the date of referral to the CCT with the oldest matters waiting two years and two months before the CCT as of 30 June 2023.

Since establishment, the OIA has referred a total 137 misconduct applications and the CCT has decided a total of 71 applications.

CCT decisions

In 2022-23, the CCT decided a total of 18 applications, the same number as the previous year.

The 18 decided applications involved 24 complaint or notification matters, 18 current or former councillors and 50 allegations. Of the 18 applications, 11 were wholly or partly sustained.

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

08 | Tribunal hearings and reviews

The circumstances in which misconduct findings were made in 2022-23 included:

- a councillor who had 23 misconduct allegations sustained for failing to declare a conflict of interest between 2012 and 2020 when council awarded infrastructure contracts and preferred supplier arrangements to the value of more than \$20 million to an electoral donor of a group of councillors of which the councillor was the leader¹⁶
- a councillor who had a physical altercation with a member of the public in a car park outside council offices and in front of other members of the public
- a councillor who breached council guidelines for interacting with council staff
- a councillor who, over a series of incidents, filmed a woman working out at a gym without her permission and forwarded an image of her to another person
- a councillor who publicly disclosed the sale price of a car park development which was confidential to the local government
- a councillor who admitted releasing information confidential to the council via a post on a social media page. It was the second time the councillor had released confidential information on their social media page
- a councillor who admitted a failure to declare a conflict of interest when council was deciding to purchase land for a purpose that was expected to increase the amenity and value of the area and the councillor's wife owned land in close proximity to the property.

Expedited misconduct matters

On 18 July 2022, the CCT issued a practice direction to deal with matters where misconduct is accepted by a councillor. This practice direction was updated on 12 April 2023.

Following this, the OIA wrote to all councillors with misconduct matters waiting before the CCT making them aware the new practice direction. As a result, three councillors elected to expedite their matters and the CCT took the councillor's co-operation into account when determining any order.

In addition, two councillors admitted their misconduct early and elected to go straight to the expedited process.

In 2022-23, four of these expedited matters were decided by the CCT within two to four months once the facts were agreed.

In summary

While there are delays with the CCT, the framework is still a substantial improvement on the prior councillor conduct scheme. In the 4.5 years since the establishment of the OIA and the CCT:

- 137 applications have been referred to the CCT
- 71 applications have been decided
- 76 per cent of applications have been 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 developing a body of decisions providing guidance to councillors that helps to build their capacity to recognise misconduct risks and avoid complaints by applying CCT decisions to their own circumstances.

¹⁶ This CCT decision has been reviewed by the councillor to QCAT.

08 | Tribunal hearings and reviews

QCAT review of CCT decisions

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

Any party to the matter may apply to QCAT for a review of the decision and the Independent Assessor filed one in 2019 soon after establishment to obtain clarity on a number of then unknown issues. That review was determined after 30 June 2023 and will be dealt with in the 2023-24 Annual Report.

As of 30 June 2023, there were 12 reviews involving 12 councillors or now former councillors awaiting directions, a hearing or a decision. Three were initiated this financial year. No QCAT review had been decided and the oldest matter had been before QCAT for three years and two months.

Since establishment, three councillors have withdrawn their reviews.

Judicial reviews

As of 30 June 2023, the OIA was dealing with two judicial reviews filed by councillors in superior courts after a misconduct application was referred to the CCT, but before it was heard.

The first matter has been before the courts for three years.

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 a misconduct application referred to the CCT in October 2019. A hearing into the former councillor's first judicial review was finalised in May 2021. The decision was delivered two years after the challenge was filed, and the judge finding for the OIA. On 21 November 2022, the former councillor appealed that decision to the Queensland Court of Appeal.

Another councillor has filed in the Supreme Court of Queensland to dismiss the OIA's decision to refer a misconduct matter to the CCT on 31 March 2023. The councillor filed the review on 21 June 2023.

09 | Breach of conduct provisions

It is also part of the functions of the Independent Assessor to prosecute offences against ‘conduct provisions’ before the Magistrates Court. The conduct provisions that the Independent Assessor may deal with are set out in section 150AY of the LG Act.

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

Examples of conduct provisions include dishonest conduct of a councillor, use of council information for a benefit or detriment, prohibited conduct of a councillor in possession of inside information, making a complaint vexatiously or not in good faith, and failing to leave a meeting after declaring a prescribed conflict of interest¹⁷.

In 2022-23, the OIA was dealing with five alleged breaches of conduct provisions.

Vexatious complaints

Four of the potential breaches of conduct provisions investigated related to criminal investigations into alleged vexatious complaints.

In 2022-23 three investigations were commenced against two members of the public and one councillor. A further matter against a member of the public was raised in the previous financial year with the investigation continuing into this financial year.

To date no criminal prosecution has commenced against a vexatious complainant.

Vexatious complaint issues

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

Similarly, under section 150R(3), it is a potential breach of a conduct provision for a local government official to make a complaint vexatiously or not in good faith.

A local government official for the purposes of section 150R is a CEO of the local government or a councillor. See section 150R(4).

In both cases however, the OIA can only prosecute a vexatious or improper ‘complaint’ and these offences do not allow the OIA to prosecute for a course of conduct of a complainant which is vexatious or improper, which would be significantly easier to prove.

Additionally, it is difficult to prove this offence to the criminal standard of beyond reasonable doubt against a local government official where there is also a mandatory obligation to notify potential councillor conduct; where the reportable threshold is low; and it is potential misconduct if a councillor fails to report.

While there are limitations on how the OIA can deal with an alleged pattern of improper complaints made by a local government official, it is the case that notifications received that are without merit can be dealt with quickly and effectively on assessment by dismissing it or taking no further action.

The OIA submitted to the Parliamentary Committee’s 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’. The report recommendation 29 is that the Queensland Government consider adopting recommendation 4.6 in the 2017 Independent Councillor Complaints Review Panel report regarding repeatedly vexatious complainants. The government gave in-principal support to this recommendation.

¹⁷ From 3 December 2018 - 12 October 2020, all conflict of interest and register of interest breaches were a breach of a conduct provision.

09 | Breach of conduct provisions

Breach of conduct provisions by a councillor

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

In the fifth statutory offence matter investigated by the OIA in 2022-23, a councillor was investigated for a potential criminal offence against section 171(1) of using information acquired as a councillor to gain a financial advantage or cause a detriment to the local government.

While it was considered that there were prospects for success before the Magistrates Court, on the facts of this matter it was not considered to be in the public interest, or proportionate, to deal with this matter criminally. The matter was referred to the CCT to be dealt with on a disciplinary basis in December 2022 and was yet to be decided.

Where investigating or prosecuting 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 (that is, dealing with it as misconduct)

• the councillor's previous disciplinary history or compliance with disciplinary orders

• is the alleged breach a continuing or subsequent offence

• how often offences of this kind occur and whether there is a need for deterrence

• statutory time limits on bringing a prosecution

• the age and physical or mental health of the councillor

• the length and expense of any court hearing

• if the councillor is convicted, what are the possible penalties available

• whether charging a councillor may result in their immediate suspension; whether this is proportionate given the prospects of success upon prosecution; and the likelihood of a conviction being recorded

• whether charging a councillor may result in their immediate suspension; whether this is proportionate given the impact on constituents; and proximity to a local government election

• the need to maintain public confidence in local government.

Glossary 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' while awaiting other decisions before the courts, the CCT or other agency action or advice.
BCC	Brisbane City Council
CCC	Crime and Corruption Commission
CCT	Councillor Conduct Tribunal
DSILGP	Department of State Development, Infrastructure, Local Government and Planning
FTE	Full-time equivalent
HR Act	<i>Human Rights Act 2019</i>
IA	Independent Assessor
LG Act	<i>Local Government Act 2009</i>
OIA	Office of the Independent Assessor
QCAT	Queensland Civil and Administrative Tribunal
SC	Supreme Court
SDRIC	State Development and Regional Industries Committee of the Queensland Parliament

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