

Office of the **Independent Assessor**

Handling Councillor Conduct Complaints

Presented by Kathleen Florian, Independent Assessor, Office of the Independent Assessor

Local Government – Roles and Functions of Queensland Integrity Agencies
Wednesday 20 May 2020



Queensland
Government

What is conduct?

Inappropriate Conduct

Referred to Office of the Independent Assessor

Office of the Independent Assessor may refer to Local Government to Investigate and make recommendations about how investigation is undertaken. Local Government may obtain assistance from the Councillor Complaints Tribunal to investigate.

Misconduct

Referred to Office of the Independent Assessor

Investigated by the Office of the Independent Assessor

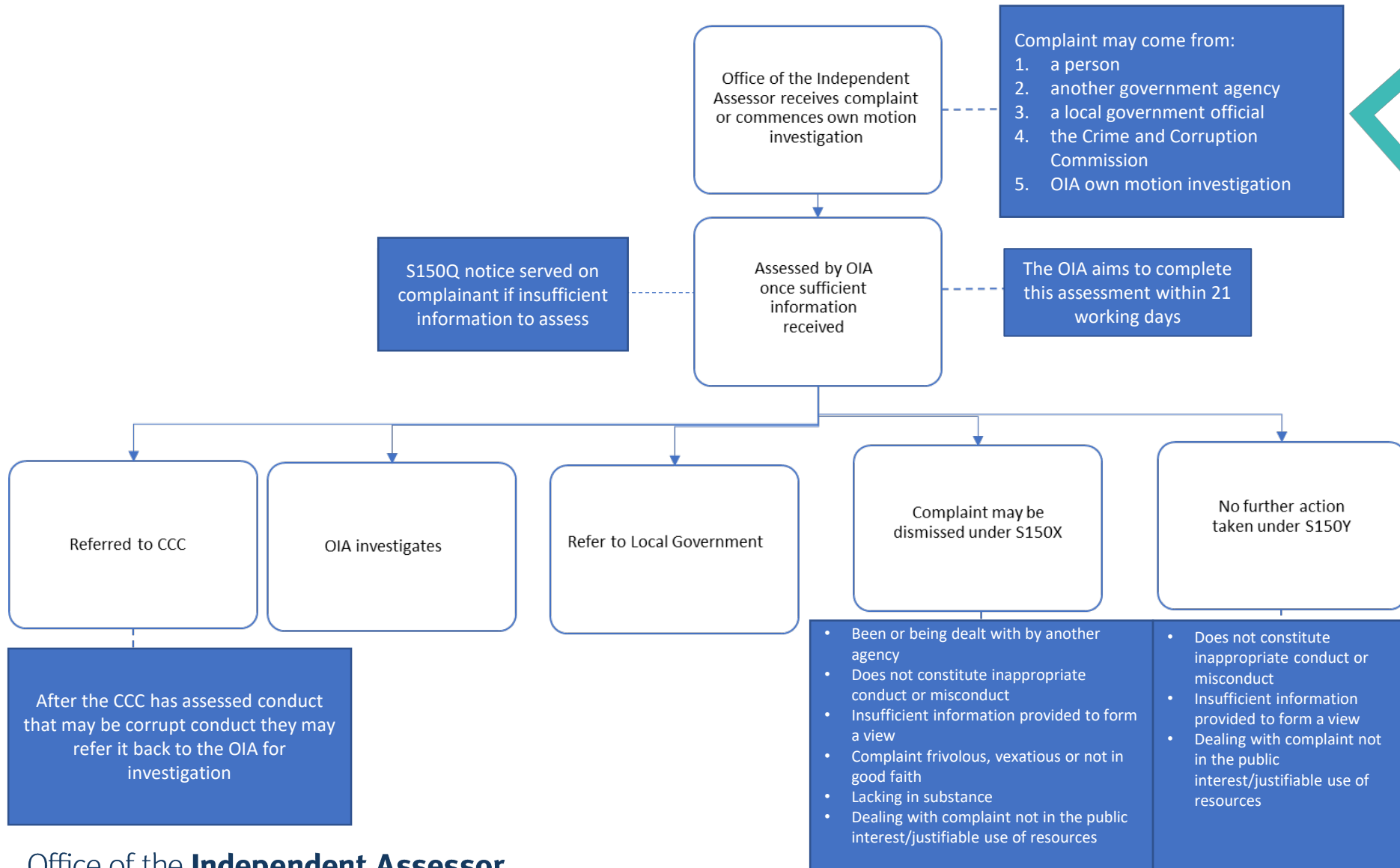
Corrupt Conduct

Referred to the Crime and Corruption Commission (If the Office of the Independent Assessor receives a complaint in relation to Corrupt Conduct the Independent Assessor must refer it to the CCC)

CCC May refer less serious matters back to the Office of the Independent Assessor for investigation

Assessment

The OIA is assessing a complaint: What to expect?



- Complaint may come from:
1. a person
 2. another government agency
 3. a local government official
 4. the Crime and Corruption Commission
 5. OIA own motion investigation

The OIA aims to complete this assessment within 21 working days

S150Q notice served on complainant if insufficient information to assess

Online complaint form
www.oia.qld.gov.au

After the CCC has assessed conduct that may be corrupt conduct they may refer it back to the OIA for investigation

- Been or being dealt with by another agency
- Does not constitute inappropriate conduct or misconduct
- Insufficient information provided to form a view
- Complaint frivolous, vexatious or not in good faith
- Lacking in substance
- Dealing with complaint not in the public interest/justifiable use of resources

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Vexatious, frivolous, not in good faith

What you need to know

The OIA has a 3-step escalation process to deal with complainants and complaints that are frivolous, vexatious and other improper complaints. It is recognised that there may be occasions where complainant behaviour is so serious that the OIA's response will move directly to Step 3.

Clearly the OIA will not consider a complaint to be vexatious or otherwise improper if it has substance.

Step 1 – OIA dismisses a borderline improper complaint

Step 2 – OIA dismisses as vexatious and warns

Step 3 – OIA may commence an investigation into the complaint



The most effective strategy for managing motivated complainants is to focus, not on the complainants, but the councillor's own conduct to ensure they are compliant with the conduct provisions of the Act.

Misconduct – OIA Investigations

Conduct categorised as misconduct includes:

- breaches of the trust placed in a councillor as an elected official
- misuse of information or material acquired in or in connection with the performance of the councillor's function for the benefit or detriment of the councillor or another person
- giving directions to local government employees
- releasing information confidential to council
- failing to report suspected conflicts of interest of other councillors
- failing to comply with an order of the council or the Councillor Conduct Tribunal
- failing to comply with acceptable request guidelines of the council
- failing to comply with a council policy about the reimbursement of expenses
- being disciplined for inappropriate conduct three times in one year.

The Office of the Independent Assessor can also deal with certain statutory offences as misconduct under the Local Government Act 2009 including:

- Failure to properly declare or manage conflict of interest or a material personal interest in a council meeting.
- Failure to record particulars of an interest in their register of interests
- Taking retaliatory action against another councillor or reprisal action against another councillor or council employee.
- Offences in relation to the use or misuse of council information;
- Influencing or attempting to influence a council decisionmaker where a councillor has a conflict of interest or a material personal interest.



Our ref:

Date

Name of Councillor

By email:

Dear Councillor xxxxx

On [date], the Office of the Independent Assessor (OIA) received a complaint about your conduct as a Councillor of the [name of council].

It is alleged you engaged in misconduct [insert high level summary of type of misconduct]

The Independent Assessor's initial assessment of the complaint is that the behavior could, if proven, be categorised as misconduct and your matter has been assigned to [name of investigator] to conduct further inquiries.

(Investigator Name) can be contacted on 07 3334 XXXX or XXX.XXX@oia.qld.gov.au.

You now have a say in how this matter proceeds.

1. Early co-operation and resolution of the matter

You may believe the allegation is correct and that you wish to have this matter dealt with by the Councillor Conduct Tribunal (CCT) as soon as possible. In this option, the CCT may take into account your demonstrated insight and early co-operation in determining what sanction may be appropriate. Your co-operation must be genuine. Should you wish to proceed or discuss this option, you or your legal representative, should contact [name of investigator].

Alternatively

2. Dispute allegation and full OIA investigation

You may dispute the allegation. In this case the OIA will fully investigate this matter to determine the appropriate course of action. Investigators of the OIA have a wide range of powers to investigate the conduct of councillors under Chapter 5A, Part 4 of the Act. Should you want to understand more about what to expect when you are the subject of an OIA investigation please view this link here. This information also sets out the possible outcomes of an investigation. While every effort will be made to finalise this investigation as soon as possible a full investigation may take a number of months to finalise depending on the complexity of the matter. Again, should you wish to proceed or discuss this option, you or your legal representative, should contact [name of investigator].

Complaint

It is alleged [insert wording of full allegation and particulars if required – sufficient detail to ensure that councillors can make an informed decision about how they might like to progress the matter] ...

What happens next

If you chose the first option of early co-operation and resolution a statement of facts will be prepared for the Tribunal as soon as possible and provided to you for your feedback pursuant to Section 150AA. If you chose to dispute the allegation, a full OIA investigation will be conducted. The Independent Assessor will then make a decision about your conduct, pursuant to section 150W of the Act. You may be required to participate in an interview as part of this investigation and you will be given the opportunity to comment on the allegation and the evidence, before any decision is made to refer the matter to the Tribunal. The Independent Assessor must consider any statement or information you provide before making a final decision under section 150W of the Act. You are requested to maintain strict confidentiality about this matter, with the exception of seeking your own independent legal or other appropriate advice. The same request has been made to the complainant in this matter.

Please note (Investigator Name) may be contacted on 07 3334 XXXX or by email at XXX.XXX@oia.qld.gov.au.

Yours sincerely

Kathleen Florian

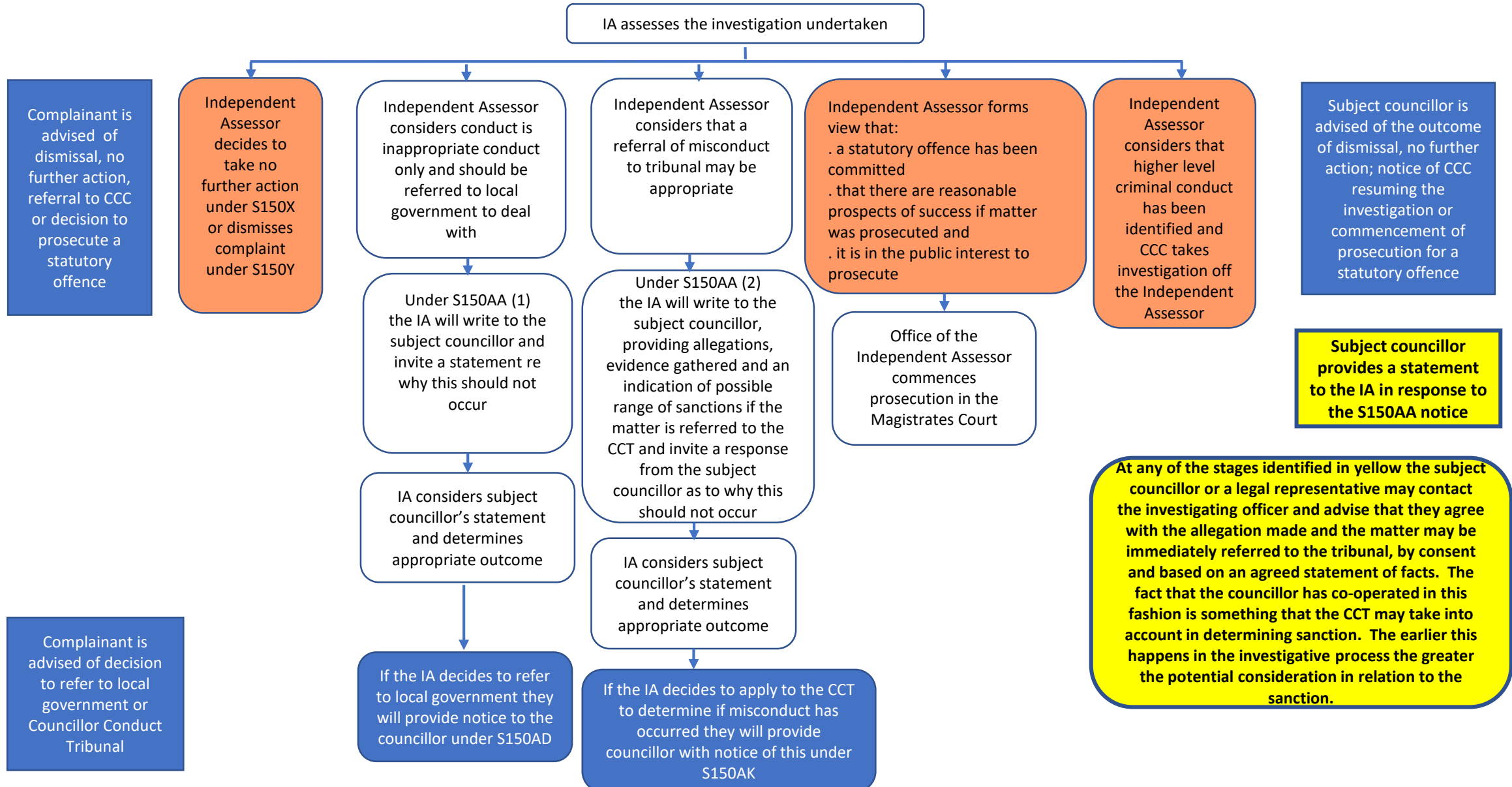
Independent Assessor Office of the Independent Assessor or

Charles Kohn

Deputy Independent Assessor Office of the Independent Assessor

Investigations -

The OIA is investigating a complaint: What to expect?



Amnesty: 5 May – 5 August 2020

The OIA will not investigate or prosecute first-time councillors, unless the matter is serious.

Instead, the OIA will communicate with the subject councillor to help them to understand their legal obligations and the standards expected of elected representatives.



Data Dashboard – as at 18 May 2020



1739

Total complaints,
received by OIA



59

Under assessment



1100

Dismissed/NFA



83

Completed Reviews



37

Referred back to council



91

Referred to CCC



211

Active investigations



30

With legal team pending
possible referral to CCT



30

Currently before
Councillor Conduct
Tribunal



36

CCT Decisions

Resources for councillors

It is a central function of the Office of the Independent Assessor to educate councillors about the complaints process and to offer training and information to avoid them being the subject of complaints.

In many cases the OIA will partner with other organisations to develop guidelines to assist. We encourage all councillors to make use of these resources.

[Councillor Conduct Tribunal and other decisions](#)

The OIA will provide a synopsis on decisions of the Councillor Conduct Tribunal which may be useful in guiding councillors' understanding of the standards being applied by the Tribunal.

Decisions of the Tribunal can also be appealed to Queensland Civil and Administrative Tribunal and these decisions may also be discussed as will other relevant decisions.

[Management of Conflicts of Interest](#)

Read our advice for declaring and managing some high risk categories of conflict of interest issues.

The Office of the Queensland Integrity Commission (QIC) and the Office of the Independent Assessor have developed a meeting aid and conflict of interest framework to assist councillors to make good decisions.

There is also an aid for councillors to determine Material Personal Interests and an aid to assist councilors to determine when they have a Duty to Report another councillor's interest.

[Social media guidelines for councillors](#)

Comprehensive social media guidelines are now available for Queensland councillors to help manage their online presence.

The OIA and the Local Government Association of Queensland collaborated on the [Your Social Media and You guide](#) (PDF, 2.3MB) and the [Queensland Councillor Social Media Community Guideline](#) (PDF, 277KB).

Your Social Media and You guide discusses a councillor's official, election and private social media pages, how the Councillor Code of Conduct applies, how to moderate comments and how to recognise and deal with posts which are public records.

The *Queensland Councillor Social Media Community Guideline* is for councillors to post, or link to, on their social media sites.

[Register of Interests](#) (PDF, 212KB)

Advice on how to manage risk areas relating to a councillor's Register of Interests including a related person's interests.



1300 620 722



OIAcomplaints@oia.qld.gov.au



Level 13
53 Albert Street
BRISBANE QLD 4000

Useful links

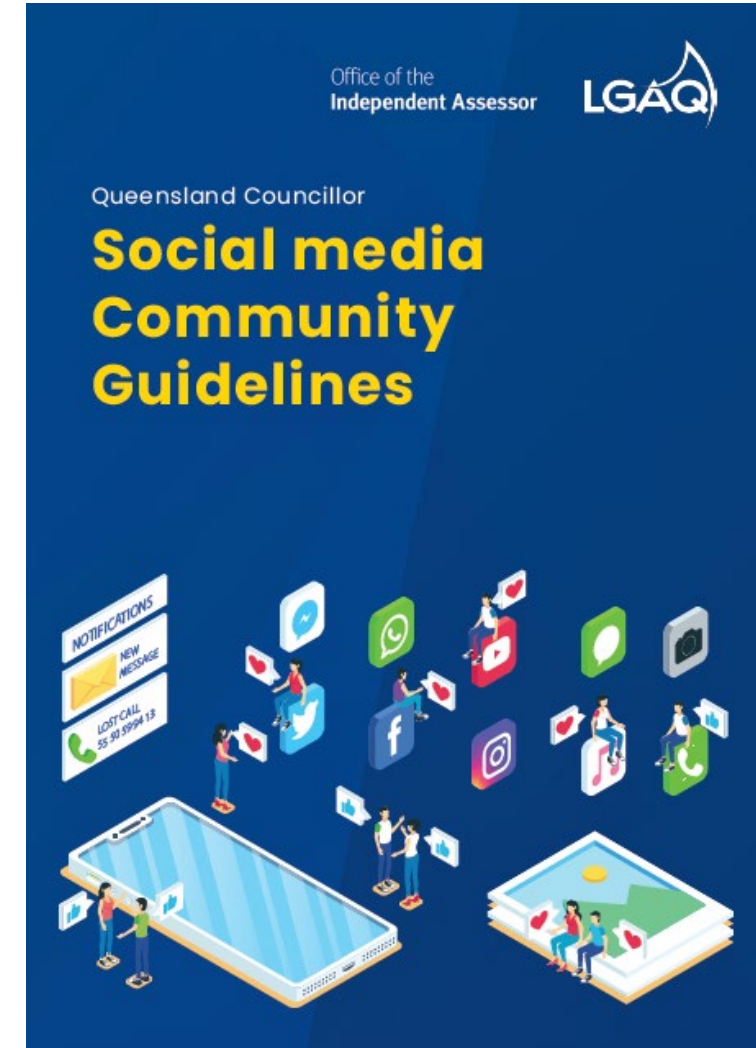
- [Councillor code of conduct](#) (PDF, 150KB)
- [Example Investigation Policy](#) (DOC, 437KB)
- [Model Meeting Procedures](#) (PDF, 495KB)
- [Councillor Conduct Tribunal's summaries of decision and reasons](#)

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First Name*

Social media guidelines – collaboration with LGAQ



Guide for Messaging Applications – collaboration with QSA




OIA TWEETS

 **@OIAQld** @oiaqld · May 5
The OIA announces a 3-month amnesty for all first-time mayors & councillors accused of misconduct or inappropriate conduct, unless the matter is serious. The amnesty runs 5 May - 5 August 2020. Read more in the latest edition of Insight: oia.qld.gov.au/office-of-the-... @LGAQ @LGMA_Qld



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 **@OIAQld** @oiaqld · May 8
Election candidates and their spouses lodged more than a quarter of all complaints received by the OIA in the lead-up to the March polls. See more election stats in the latest edition of Insight: oia.qld.gov.au/office-of-the-... @LGAQ @LGMA_Qld



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 **@OIAQld** @oiaqld · May 11
There are some pitfalls for Qld mayors & councillors using messaging apps to conduct council business. Learn what they are and how to avoid them in a new guide by the OIA and Qld State Archives: oia.qld.gov.au/resources/oia/... @QSArchives @LGAQ @LGMA_Qld



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 **@OIAQld** @oiaqld · Jan 30
Deputy Independent Assessor Charlie Kohn will be at the Logan Entertainment Centre from 6pm tonight for the candidate information session ahead of the March election. Charlie and the team will talk about how the OIA deals with complaints about councillor conduct. @logancc



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What can you proactively do:

- ☐ Understanding your conflicts of interest
- ☐ Updating your register of interest
- ☐ Have Code of Conduct, local government principles and section 12 nearby
- ☐ Review social media guide to inform your social media presence and management
- ☐ Follow OIA and CCC on Twitter to receive regular updates @OIAQld and @CCC_QLD

The Office of the Independent Assessor



Level 13, 53 Albert Street, Brisbane Qld
Office hours 9am to 5pm.
Mon to Fri, excluding public holidays



1300 620722



oiacomplaints@oia.qld.gov.au



PO Box number is PO Box 15031, City East, 4002



www.oia.qld.gov.au





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