



Hon Steven Miles MP
Deputy Premier
Minister for State Development, Infrastructure,
Local Government and Planning
Minister Assisting the Premier on Olympics Infrastructure

Our ref: OUT21/5117

25 October 2021

Mr Chris Whiting MP
Chair of Committee and Member for Bancroft
State Development and Regional Industries Committee
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ABN 65 959 415 158

Dear Mr Whiting

In the last week there has been considerable media coverage of matters involving the Office of the Independent Assessor (OIA). This coverage has concerned, in particular, the actions of the OIA in respect of complaints against Cr Sean Dillon, Mayor of Barcaldine Regional Council, and Margaret Strelow, former Mayor of Rockhampton Regional Council. This follows recent media coverage of the OIA's actions towards the Fassifern Guardian and Tribune in connection with a complaint of its motion against Scenic Rim Regional Councillor Derek Swanborough.

Media coverage of these matters has generated a public discussion about the role of the OIA and the performance of its functions. I have also received correspondence from the Queensland Council of Civil Liberties (QCCL) and the Local Government Association of Queensland (LGAQ) expressing concern about the reported actions of the Independent Assessor and support for a review by the Parliamentary Committee into these matters. This correspondence is attached.

As the Committee will recall, the local government integrity system that commenced in 2018 involved the establishment of two independent statutory bodies and key appointments, being the Independent Assessor and the Councillor Conduct Tribunal (CCT).

Earlier this year my department undertook an analysis of arrangements, resourcing, activity levels, some stakeholder assessment and general effectiveness of the local government integrity system. The report made some observations and recommendations that have assisted in addressing operational matters, stabilizing resourcing in the Office of the Independent Assessor (OIA) for two years, additional support for the CCT, the working arrangements between the OIA, CCT and my department and also to identify areas for potential future law reform.

The department concluded that the application of the councillor complaints system as defined under the *Local Government Act 2009* is leading to overly legalistic, complex and adversarial practices not anticipated or intended by Government. Specifically, impacts on both councillors and the system itself are greater than forecast, by reference to higher than expected numbers of complaints received, the number of investigations undertaken by the OIA, the number of applications that proceed to the CCT for hearing and now a number of those decisions being reviewed in the Queensland Civil and Administration Tribunal (QCAT).

I note under the Standing Orders (SO 194A), the functions of the State Development and Regional Industries Committee with respect to the Independent Assessor are to monitor and review the Independent Assessor's performance of the functions of the office; and-

- report to the Legislative Assembly on:
 - any matter concerning the Independent Assessor, the Assessor's functions, or the performance of those functions that the committee considers should be drawn to the Legislative Assembly's attention
 - any changes to the functions, structures and procedures of the Independent Assessor that the committee considers desirable for the more effective operation of the Independent Assessor or of the *Local Government Act 2009*.
- examine the annual report of the Independent Assessor and, if appropriate, comment on any aspect of the report.

I request the State Development and Regional Industries Committee to exercise its functions to report to Legislative Assembly on the Independent Assessor's functions and the performance of those functions. I ask that the report consider:

- whether the performance by the Independent Assessor of the Independent Assessor's functions is consistent with the intent of the local government complaints system,
- whether the powers and resources of the Independent Assessor are being applied in accordance with the public interest, and
- any amendments to the *Local Government Act 2009* or changes to the functions, structures or procedures of the Independent Assessor that the committee considers desirable for the more effective operation of the Independent Assessor and/or the local government complaints system.

In undertaking this review I ask that you give consideration to the matters raised in correspondence by the QCCL and the LGAQ, and the findings and recommendations of the departmental review of the local government complaints and integrity framework undertaken earlier this year.

If you require any further information regarding this matter, please contact Ms Danielle Cohen, Chief of Staff in my office, by email at [REDACTED] or by telephone on ([REDACTED])

Yours sincerely



STEVEN MILES MP
DEPUTY PREMIER
Minister for State Development,
Infrastructure, Local Government and Planning
Minister Assisting the Premier on Olympics Infrastructure

Encs: (2)



22 October 2021

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

Dear Deputy Premier

Office of Independent Assessor

I write on behalf of the Local Government Association of Queensland and its 77 member councils to thank you for commencing a parliamentary review of the Office of the Independent Assessor (OIA).

The LGAQ strongly believes the system of local government should be accountable, democratic, efficient, sustainable and transparent, and that local governments have a responsibility to comply with appropriate standards relating to applicable governance arrangements.

However, the LGAQ believes it is timely that the OIA is reviewed, to ensure it is meeting its core objectives, to ensure there is a high level of confidence within the local government sector, and to achieve what the then Minister for Local Government, the Hon Stirling Hinchliffe MP said in his introductory speech to legislation establishing the body, that the councillor complaints system is 'beyond reproach'.

As you would be aware, it was a previous LGAQ Annual Conference resolution that called on the State Government to establish an independent assessor to replace council chief executive officers, mayors and the Department, in deciding whether a complaint about councillor conduct involves misconduct or inappropriate conduct, or should be treated as frivolous, vexatious, lacking in substance or is about another matter.

In response, the government established the Independent Councillor Complaints Review Panel (the Review Panel) led by Dr David Solomon AM, Noel Playford OAM and Gary Kellar PSM, which provided a report to the then Minister for Local Government in January 2017.

The Review Panel's report provided for the establishment of the OIA to investigate and assess complaints about councillor conduct. The OIA was established on 3 December 2018 following amendments to the *Local Government Act 2009* ensuring the integrity agency had jurisdiction to investigate and prosecute complaints made against councillors from all local governments in Queensland. While the OIA has some oversight from the State Development and Regional Industries Parliamentary Committee, the legislation provides that the Independent Assessor is not subject to direction by another person in exercising its powers and therefore has limited oversight.

The strategic directions of the Review Panel's report included:

- Increasing natural justice and fairness for all concerned and introduce a limited right of appeal; and



- Reducing the number of unwarranted or misdirected complaints by requiring complaints to be lodged on a standard form that collects essential basic information, defines clearly what may constitute a councillor conduct complaint, and provides advice on how other concerns can be handled in a different way.

Following ongoing feedback from member councils and several high-profile cases of what has been considered by members to be significant overreach, the LGAQ is concerned that these strategic objectives are not being met.

We also believe that, given it has been almost three years since its establishment, it is timely for the government to review the role of the OIA to ensure it is meeting its core objectives, as established in the legislation.

At the time the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* was passed in the Queensland Parliament establishing the OIA, Minister Hinchliffe said:

“This bill delivers on the government’s election commitment to continue to work on strengthening and improving the councillor complaints process, putting the system beyond reproach.”

While there have no doubt been some improvements in the councillor complaints process through the OIA’s establishment, we believe there are still issues that need to be resolved.

Recent media examples have highlighted that the OIA needs significant re-direction. Impinging on an elected local government representative’s constitutionally protected right to freedom of political expression is overreach and a bridge too far.

As we stated publicly this week, mayors are elected to represent their council and to be the first spokesperson on important issues in their community. Anything that encroaches on that right significantly undermines the role of elected local government representatives in Queensland.

2020/21 OIA Annual Report

We note the statistics published in the 2020/21 OIA Annual Report (the Annual Report). It concluded that for the last financial year, 1074 complaints were lodged, a four per cent increase on the previous year. For historical context, in 2015/16 (prior to the establishment of the OIA) there were 133 complaints received. Of the complaints that were deemed valid, 37 per cent of those were investigated by the OIA.

In relation to vexatious or frivolous complaints, it was found that 34 complaints received an offence warning and were dismissed, with two complaints proceeding to an investigation ahead of a possible prosecution (a successful prosecution would lead to a fine of more than \$11,000). It is unclear if anyone has ever been successfully prosecuted for a vexatious or frivolous complaint since the OIA was established.

The Annual Report notes that in 2020/21, 297 new investigations were commenced, including the two investigations raised by the OIA into potentially vexatious complainants. The OIA finalised 187 investigations, some of which started prior to 2020/21, with 225 active investigations as at 30 June 2021. There is no reporting standard for the clearance rate of investigations, and therefore no transparency regarding the timeliness of the investigation process. The lack of timeliness is an issue that has been consistently raised by our members.



Of the 1074 complaints received in 2020/21, the Annual Report found six per cent were received from 'other sources' including government departments and anonymous complaints, however there is no specific number of anonymous complaints provided.

We re-iterate our comments from our original submission to the Review Panel, that complaints should be accompanied by a statutory declaration. This is a matter of natural justice: no one should be subjected to anonymous complaint.

In considering the performance of the OIA, it should be noted that:

- a) There is no investigation clearance rate;
- b) The average cost of investigations for 2020/21 was \$2704, more than double the target of \$1340. This does not take into consideration the cost to councils in dealing with inappropriate conduct allegations or the time consumed in council meetings on these matters, particularly compared with the time required for ordinary council business.
- c) The costs incurred – both direct and in time spent – are all met by taxpayers so this process must be transparent and accountable.

OIA review

In supporting your decision to conduct a review, we would also request there are no delays in progressing the important Conflict-of-Interest law clarifications that we have been discussing with you since our submission earlier this year. As you would appreciate, clarifying the interpretation and application of these conflict-of-interest laws are a significant priority for our member councils.

In undertaking a review, we believe the State Government should consider the following issues:

- The constitutional right of elected local government representatives to freedom of political expression and how this intercedes with the code of conduct for councillors in Queensland;
- The general assessment process of complaints and investigation priorities of the OIA;
- The assessment of frivolous and vexatious complaints and the process of dealing with deemed frivolous and vexatious complaints;
- Whether the acceptance of anonymous complaints supports natural justice for a councillor subject to an allegation;
- The timeliness of investigations of complaints and whether KPIs need to be set and reported upon each year;
- Whether unsubstantiated complaints still need to be listed on a publicly available register;
- The cost of and time taken for councils to assess inappropriate conduct complaints that are referred back to them by the OIA;
- The process of dealing with matters relating to councillors who are no longer in office;
- The legislation relating to the OIA and whether there needs to be further statutory amendments to ensure key objectives are being met;
- A general review of the code of conduct for councillors in Queensland; and
- Whether there needs to be more Parliamentary oversight of the OIA's operations.



Thank you again for your announcement of a parliamentary review. If you would like to discuss this matter in more detail, please do not hesitate to contact me on [REDACTED]

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alison Smith', is written over a light blue horizontal line.

Alison Smith
INCOMING CHIEF EXECUTIVE OFFICER



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

Watching Them While They're Watching You

22 October 2021

The Hon Dr Steven Miles
Deputy Premier and Minister
Parliamentary Committee for State Development,
Infrastructure, Local Government and Planning
Deputy.premier@ministerial.qld.gov.au

Dear Minister

RE: **OFFICE OF THE INDEPENDENT ASSESSOR**

I refer to recent articles in the Courier Mail in relation to the involvement by the Office of the Independent Assessor (OIA) in relation to the following matters:-

- Barcaldine Regional Mayor Sean Dillon;
- The Fassifern Guardian & Tribune issue; and
- Former Rockhampton Mayor Margaret Strelow.

In relation to the Barcaldine Mayor it has been reported that his critical comments about vaccine rollout plans by the Local Public Health Service were the subject of a Notice from the OIA of a suspicion of inappropriate conduct on the basis of an alleged assertion by the OIA that "*To make such statements in the public forum is not in the best interests of the community*".

In relation to the Fassifern Guardian & Tribune the Courier Mail has reported that two journalists were ordered to the OIA 'Star Chamber' in relation to a quote that newspaper ran from a Local Councillor concerning that Councillor's involvement with the OIA.

It is this Council's view that the Courier Mail has raised important public issues as to the extent to which the OIA may be improperly exercising its powers where it is arguably contrary to the provisions of the OIA's statute with the result that free speech incursions are occurring in relation to the ability of Local Councillors to exercise their public duty to engage in appropriate criticism of matters affecting Local Government in Queensland.

qccl.org.au



[@LibertyQld](https://twitter.com/LibertyQld)

PO Box 2281, Brisbane QLD 4001 forum.qccl@gmail.com Enquiries: [REDACTED]

Media Enquiries: Terry O'Gorman, Vice President: [REDACTED]

I respectfully submit that the above issues should be referred to the State Development and Regional Industries Committee of the Queensland Parliament for its investigation and assessment as to whether the statute governing the OIA needs to be amended to ensure that that Office is restricted to its core duties and not engage in overreach that affects Local Councillors' fundamental rights to freedom of expression.

It is to be observed that the OIA has significant Crime Commission style powers in that its statute provides for the ability to obtain a Magistrate's Warrant for entry, search and seizure as well as 'Star Chamber' proceedings forcing Councillors and others to attend closed Hearings for questioning.

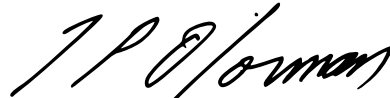
The current Inquiry being conducted by the supervising Parliamentary Committee of the Crime and Corruption Commission demonstrates the importance of the detailed forensic examination of that Crime Commission in relation to the controversy raised by the prosecution of the so-called Logan 8 Councillors.

The Office of the Independent Assessor has been in existence now for a number of years and has not been the subject of a public Parliamentary Committee examination as to whether the manner in which it carries out its duties is consistent with the aims and goals of its originating statute.

This Council urges you to refer the above issues to the State Development and Regional Industries Committee of the Queensland Parliament for examination and a public hearing similar to that which has recently been conducted by the Parliamentary Committee in respect of the Crime and Corruption Commission.

Yours faithfully

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES



TERRY O'GORMAN
VICE-PRESIDENT