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STATE DEVELOPMENT AND REGIONAL INDUSTRIES COMMITTEE

Members present:

Mr CG Whiting MP—Chair
Mr MJ Hart MP
Mr RI Katter MP
Mr JE Madden MP
Mr JJ McDonald MP
Mr TJ Smith MP

Staff present:

Ms S Galbraith—Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE FUNCTIONS OF THE INDEPENDENT ASSESSOR AND THE PERFORMANCE OF THOSE FUNCTIONS

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 8 MARCH 2022

Bundaberg

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The committee met at 11.05 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the functions of the Independent Assessor and the performance of those functions. My name is Chris Whiting, the member for Bancroft and chair of the committee. I respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past, present and emerging. We are fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people whose lands, winds and waters we all share.

Other committee members with me here today are Mr Jim McDonald, the deputy chair and member for Lockyer; Mr Jim Madden, the member for Ipswich West; Mr Michael Hart, the member for Burleigh; Mr Tom Smith, the member for Bundaberg—thank you, Tom, for insisting that the committee come to Bundaberg; and Mr Robbie Katter, the member for Traeger. This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. Media may be present and are subject to the committee's media rules and the chair's directions at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages.

DEMPSEY, Mr Jack, Mayor, Bundaberg Regional Council

GOREY, Mr Michael, Chief of Staff, Bundaberg Regional Council

CHAIR: I welcome Mayor Jack Dempsey. We are first going to have a private hearing for 10 minutes—what is called in camera. I am glad everyone was in here to hear our opening spiel, but I ask everyone to leave the room for 10 minutes and then we will reopen the public hearing.

Proceedings suspended from 11.06 am to 11.21 am.

CHAIR: We have finished our in camera session and we are now in public session. Mayor Dempsey, I invite you to make an opening address and then we will have some questions for you.

Mr Dempsey: Thank you, Mr Chair. First of all, I want to welcome you and the committee to Bundaberg and thank you for taking the time and effort for this important overview. I also would like to acknowledge the traditional custodians of the land on which we meet and pay my respects to their elders past, present and emerging with regard to continuing raising recognition and connection to country. I again thank you for the opportunity to address the committee.

I want to highlight three issues: the weaponising of complaints; conflict of interest; and overreach by the OIA in relation to social media. I have had around 30 complaints made against me and many contain similar allegations. The OIA has dismissed some of these complaints and then investigated and dismissed them again. The OIA justifies this on the basis that new information was provided. The pattern I have observed is the OIA informs a complainant why a particular matter was dismissed. The complainant is effectively given a tip on what to do next if they want the matter to be taken forward to be reconsidered.

I have no doubt, based on my experience, that there is collusion between people to put forward complaints. In fact, I am certain that nearly all of the 30 or so complaints against me are connected in some way. The same individuals are involved either directly or indirectly by also using proxies and making anonymous complaints. I have provided evidence to the OIA about collusion, but this appears to be something that they do not consider or deem relevant. I have been directly informed that each complainant—and I can understand as an ex-police officer—is treated on the merits of the evidence. However, I am hoping the committee will revisit the recommendations of the Solomon, Playford and Kellar review in 2017 in relation to vexatious complaints as referred to in my earlier paper submission that was provided.

In relation to conflict of interest, after also being a state member of parliament and a minister I make the observation that local councillors are now held to a much higher threshold of accountability than members of parliament. Councillors are scared to even have a cup of coffee with a constituent Bundaberg

in case that person later submits a planning or another development type application. We have conversations about whether a councillor who owns a dog can vote on animal control matters, whether a councillor who follows a particular faith can vote on something related to the church, whether a councillor with grandchildren at a school can vote on something related to that school. I waited several months for the OIA to finalise a complaint about me being the vice-patron of Surf Live Saving. I believe the Governor and many elected MPs are vice-patrons of the same organisation. Whilst most of these are dissolved as perceived conflicts, there is anxiety among my fellow councillors and other councillors around Queensland that they may inadvertently fail to make a declaration and a complaint could be made against them.

There is a lack of consistency in how the OIA triages complaints. I am not going to identify anything, but I know, for example, of three similar types of complaints with different investigators and one got up when the other two did not when, if you looked at them overall, it could be suggested that the other two had more merit than the one. I am not going to interfere with the process, but the triaging and the consistency needs to be looked at and I believe that that can be completed, but that raises another issue. In some instances the OIA does not have precedents on which to make a decision. I believe the backlog at the tribunal—and they are only doing the work that is given to them by the OIA—and QCAT exists largely because the OIA, as we all know, is testing the law to get a ruling which can then be applied to subsequent cases and to continuously keep testing what I believe is inadequate legislation.

Finally, the committee should make recommendations to stop the OIA's intrusion into social media management. I have no problem with councillors being responsible for what they say on social media. If an elected member writes something that is false or offensive, they should be held to account for that. I have no problems with that. However, it is an overreach for the OIA to investigate how councillors moderate and manage their personal Facebook pages.

A comment on my Facebook page was deleted and the person blocked because it was irrelevant to the topic and the individual was also trashing me on other local Facebook forums. He was also actively colluding, again with one of my political opponents. Coincidentally, I had seen this coming and I provided evidence of this for the OIA before they investigated the person's complaint to show that collusion against me. The complaint was only dismissed on a technicality. The OIA warned me that relevance was not a reason for councillors to hide or delete comments. They said that the Human Rights Act overrides a councillor's right to manage content on their own Facebook page, and I am happy to provide that to the committee.

In my view, councillors are under no obligation to provide a platform for their opponents who are free to post whatever they wish on their own Facebook pages or others or elsewhere in other public media forums. It is like having an angry constituent turn up on your doorstep and saying that you must invite them in and give them a cup of coffee. I can table that correspondence in confidence, as discussed earlier, in relation to this matter. Chair, I thank you for the opportunity to highlight those three particular issues here today.

CHAIR: Thank you, Mayor Dempsey. On the issue of social media, you said you wanted to table a letter from the OIA talking about how the management of social media could potentially breach human rights.

Mr Dempsey: That is right. I am happy to provide that in confidence, if that is okay, so no-one can be identified.

CHAIR: That should be fine. We can table that and keep that in confidence. Mayor, on the issue of social media management, a few people have pointed out that there has been an overzealous reach on the management of social media, which is different to social media content. Some councillors have been reported for what they have said on social media; others have been reported for how they have managed it. Can you talk a bit more about that? You have provided a lot of information to us about the comments, but you talked about social media management and how that should be the prerogative of a councillor.

Mr Dempsey: I will be brief because of time. While previous legislation has been written, there has been much change with how social media is weaponised and used by third parties and other people. With the social media aspect, from an OIA perspective anyone can say anything; they are not held to the same standard. The other levels of government certainly are not held to the same standard. But if someone personally attacks me and takes offensive action on Facebook sites, from the OIA's perspective I am just to leave that there. I was able to show, in this particular instance, how these people had colluded with the same people who had indirectly been attached to the other almost 30 complaints.

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An investigator in a room—and that person might change for each different complaint—would not understand the complexity of an organised campaign against us. With social media, as far as Freedom of Information goes, I agree: a councillor or elected member—or anyone; not just an elected member but any Australian—should not be putting offensive matter on their Facebook site. But if you have that material there and people have other opportunities to put it elsewhere on their own personal Facebook sites, I believe that you should have the right to be able to remove that person.

CHAIR: I refer to the issue of being able to express an opinion in other places. For example, you put up a post and you turn off the comments. According to the ruling that you have, that would be breaching someone's human rights potentially because they are not able to—

Mr Dempsey: That is correct.

CHAIR: But at the same time, that person could take a screenshot of your post and post it on a community page and it is a free-for-all.

Mr Dempsey: That is correct.

CHAIR: Hence they are exercising their freedom of expression.

Mr Dempsey: It goes to the other side, as well. The OIA will give a complainant information as to what they are dealing with, with a complaint. I believe that an elected member rightly should not be able to respond and put words out until a complaint has been made. I am happy to provide cases to the committee to show where these matters have been weaponised even before they have been finalised and even when they have been given directions from the OIA, because it is smoke and mirrors. They can't do it anyway because it is not in the legislation so people continue to stretch that out. How is that to the benefit of the community, at the end of the day?

CHAIR: Of the submissions, yours was one of the only ones that pointed to the Playford-Solomon review in terms of picking up the specific recommendation made in that report about vexatious complaints. Can you explore further why we should take up that recommendation?

Mr Dempsey: Certainly. That report was written by three eminent individuals. I have the highest respect for those people. It contained a recommendation for legislation, including a section that makes it an offence if a person—

- (a) makes a complaint to the commission—
 - (i) vexatiously; or
 - (ii) not in good faith; or
 - (iii) primarily for a mischievous purpose; or
 - (iv) recklessly or maliciously; or
- (b) counsels or procures another person to make a complaint to the commission as mentioned in paragraph (a).

I note that the government of the day did not accept those recommendations, which is why what you are doing is so important in reviewing this after two years. I urge the committee to reconsider this. Without such an amendment, councillors will continue to be subjected to multiple baseless, mischievous and obviously malicious complaints.

Mr McDONALD: Mayor Jack, I appreciate the submission from both the Bundaberg Regional Council and yourself. I will not go into it as we do not have time. I note in the information that you have given us that you refer to the time frames of investigations. Can you tell us how that has impacted yourself and your family?

Mr Dempsey: On a personal level, I have been in a lot of dry gullies and put up with a lot of stuff, but I have never seen this type of consistent attacks that are more or less manipulated, and not just on myself. I have had family members abused by people who are connected to some of these complaints. I am a very motivated and positive person but we are dealing with complaint after complaint. An average complaint is nearly 'that high' and I have 30 of them. I want to go to work, as every other Queensland councillor does, to take my community forward. But when I am dealing with a small handful of politically motivated individuals—and I have 30 of these—it is about time and effort and it is not in the best interests of the community. I believe that, yes, like everyone, it is good that we have a process, but what will come hopefully is a rejig of the current rules and regulations to make it better. I am really positive about the outcomes going forward.

Mr McDONALD: Having regard to time frames, through this inquiry we have discovered that the Councillor Conduct Tribunal is only just investigating matters that were complained about in June 2020. How does that make you feel?

Mr Dempsey: I have no doubt that that is occurring. There will be matters that will still go on for many years to come while councillors use their right of appeal in these processes, simply because the matters are getting tested in the tribunal and QCAT and then into other levels of test cases, which Bundaberg

I believe will end up going to other levels of court action. We have to get the foundations correct so that everyone is clear. That is why I believe we need that semi-independent process so that everyone agrees. Some of these matters are so minimal and technical that they could be solved in a matter of days, rather than dragging on for years and years. And while this goes on, you cannot respond. Your whole persona is just dragged through the ground, while the people who are making the complaints can get on with their lives. At the end of the day, we are all here to make our communities better. This is certainly an area that needs improvement.

Mr McDONALD: You could you take this matter on notice and provide it to us confidentially.

Mr Dempsey: Yes.

Mr McDONALD: One of the things that we have discovered across the state is the cost to councils, whether that be in the time of office staff or for independent legal advice. Could you give us a snapshot of what this has cost the Bundaberg council? Could you perhaps provide us with that information in confidence so that we can build a picture?

Mr Dempsey: I am more than happy to provide all of that information, in confidence. What we have to realise is that these investigations were originally dealt with by local government and the CCC. Then, all of a sudden, an extra cost burden was put on communities around Queensland that never existed before. When you look at what has been achieved, the cost-benefit factor does not stack up in efficiencies, costs and so forth. What you have to remember is that that was not there before and now it is. In a public forum Mount Isa has said that it is in the hundreds of thousands and they have to budget for that. It is a real dilemma, but I believe we can work through it and fine-tune it to get a better result.

Mr McDONALD: Mayor, in your opening you talked about the membership of different community organisations. I want to ask a question around training and the inconsistencies in the interpretation of what is inappropriate conduct or misconduct. You have the LGAQ, the department, the Office of Independent Assessor and the CCT making their own determinations. Can you expand on that?

Mr Dempsey: I put this as a motivating factor: because the OIA is very unique and only deals with elected local councillors, what is the first thing that an investigator asks of the organisation when it is investigating? It wants all of your training records. Mine go back nearly five to six years. Then it is the gotcha moment to get you on a technicality by saying, 'Now, Councillor, you were shown this but you were doing that.' I am a big believer in education and I always have been, but when it is used as the first tool to attack you then what is the motivation for any councillor to undertake further training going forward? That is something that needs to be addressed in a very simplistic way, because it has never been addressed before.

Whilst we get different councillors coming in—well, it is going to be interesting to see who puts their hand up in the future. There was LGAQ training, local government training, and you went through the whole list. There are numerous opportunities for different types of training, but then it is taken up and used against you. You may have a day or two of training when you are trying to run a council and the community, and suddenly it comes back at you. I do not believe it is being used in the proper context. I am happy after this, because I believe I have ways and solutions to be able to achieve that so we can raise the bar, raise the standard, to get a better outcome that meets community expectations.

Mr MADDEN: Mayor, thank you very much for coming in today. My questions relate to the confidentiality of communications between the Office of the Independent Assessor and parties like yourself. I appreciate that you have attached appropriately redacted copies of correspondence between yourself and the Office of the Independent Assessor. Was that communicated to you via email, with these documents as a PDF, or was it communicated with you as a hardcopy document?

Mr Dempsey: Anything from the OIA is through an email process, yes.

Mr MADDEN: Was that sent to a private email address that only you would have seen?

Mr Dempsey: They were all listed as 'Confidential' across the top.

Mr MADDEN: The email address that they were sent to, can anyone else see the emails in that address in your office?

Mr Dempsey: An EA possibly, but they are bound by confidentiality within the Local Government Act, as well as within the council.

Mr MADDEN: You mentioned, both in your opening address and in your answer to a question from the member for Lockyer, that you suspect that the Office of the Independent Assessor may be sending matters to the tribunal to serve as test cases.

Mr Dempsey: Correct.

Mr MADDEN: This is a very serious allegation. Can you outline the basis of your suspicion that that takes place?

Mr Dempsey: I would love you to get a recording of the last Local Government Association meeting held in Mackay recently. The head of the OIA explained that these are matters that need to be taken forward to the tribunal to be looked at because it is not comprehensively covered in the current legislation or policies and procedures, so those matters certainly are then acted upon. That is why the legislation needs to be tweaked because we have some minor matters—and I am supportive of the tribunal, but it is what is being sent to them and they hold a high standard to be judged on. I am happy to provide, in confidence later, matters that I would presume certainly could be dealt with at a lower level and triaged differently. I mentioned three previous examples. If the same person had looked at those three matters, two of the matters would have had graver consequences than the matter that actually went forward.

Mr MADDEN: To clarify: are you alleging that there are matters that did not pass the threshold that would normally apply for a matter to go to the tribunal, but the Office of the Independent Assessor sent them there simply because they want to get clarification as to a section of the act?

Mr Dempsey: They want to be able to test it so that they are able to then give running instructions back to their organisation. I believe that should not be the case for other areas. The OIA should already have that in their policies and procedures, to be able to then make those determinations rather than sending matters to be tested.

Mr HART: Following on from the member for Ipswich, does that indicate to you that the OIA does not understand the legislation and, if it does, where would you seek advice that you could rely on before you acted on anything?

Mr Dempsey: I think the OIA, the staff and the investigators, fully understand the legislation, but it is because of the inadequacies they have to work with that they then have to test those cases elsewhere, which means they get tested in the tribunal. When you see some of the matters occurring over a period that have been dismissed, you have to then look into—I am glad the committee asked that—what is the sheer cost? What is the pain and suffering? What is the extent of the public value to be able to do these things? We want the OIA. The people in there are only doing what they can with the current tweaks in the legislation and policies and procedures. I believe they are good people who are doing the right thing.

Mr HART: With regard to social media, have you sought legal advice or do you understand the requirements around defamation in social media, and how does that impact on whether you can control or delete things from your social media so they are not referred to the OIA as you doing something wrong?

Mr Dempsey: In the first instance, this is your own Facebook site, which is different. We have policies and procedures, as most councils do, to deal with our own Facebook and media guidelines; that is there. But you can have your own Facebook site and someone may obviously be mischievous in relation to that. This is irrelevant to the topic, but I have written to the institute for online safety and they agree with my comments, and that is from their lecturers as well. I am happy to provide that.

CHAIR: That would be very useful.

Mr Dempsey: Basically it is about looking at how we can meet community expectations while having that consistency, because it is not the same. State members do not have that. Federal members certainly do not have that. Why should you have one level of government that is different around individual Facebook sites where a person has so many other opportunities to deal with those matters? If I have a council Facebook, yes, certainly that is controlled by the council.

Mr HART: Is there a conflict between laws around defamation and what you are required to comply with under the Local Government Act?

Mr Dempsey: Defamation is quite clear, but it is obviously the interpretation of the OIA. I think I may have provided that already. If not, I am happy to provide it in confidence—so I do not identify names—how the OIA dealt with it and could have then changed the parameters. I have talked to other councillors from right around Queensland who have a similar anxiety, which I believe is just not needed.

Mr HART: In Mount Isa it was suggested to us that municipal monitors—I am not overly fussed with that name—might be made available by the department. They could come into a council, sit there for a couple of weeks and give advice on procedures that the council should or should not be following and what their councillors should or should not be doing. Do you see any benefit to that? Should you Bundaberg

be able to rely on advice that any person gives you as a defence to the OIA? If, for instance, somebody says to you, 'My advice says you don't do this, you do that or you tick this box,' should that be a defence when a case goes to the OIA?

Mr Dempsey: Yes. It works in reverse. They already do the training. There are already policies and procedures in place, but it is the interpretation of the OIA of the Human Rights Act in relation to your own personal Facebook. This is not the council or the state government department. I believe there are opportunities for the OIA to look at this in a different manner. That information has been provided to the OIA by me as well—not about those particular instances—about how these matters are determined, not just elsewhere. We have even spoken to the head of Facebook for the whole of South-East Asia in relation to their interpretation of how they use it. They are certainly aghast that this would have been used from a human rights perspective.

Mr HART: Can you tell us whether you or your CEO is informed if there is a complaint made to the OIA about anybody in your council or any decision of the OIA? Is that informed to yourself or your CEO?

Mr Dempsey: We have a register. I put that in my submission. That is another whole piece that can be changed as well. If you have complaints that have been dismissed, in a small community it does not take much to identify who that person is. If you identify a person who happens to have a certain business and is on council, you are only choosing from there. It stands out. It is obvious. The registers need to be looked at to see what benefit they are actually getting out of that, because those registers again are used as another way to weaponise the complaints system when you have no chance to comply.

Mr HART: Some councils have suggested to us that if you become a declared vexatious complainant you should not be allowed to make a complaint in the future. Would you support that?

Mr Dempsey: I think that is again a matter for the OIA. If the person is declared a vexatious complainant then there is another side to that as well because, as they say, they deal with each individual matter themselves. It needs to be looked at. It gets back to what I mentioned before. In their submission Solomon, Playford and Kellar identified what was going to happen, and they were dealing with that at the time. I think there may have been some unintended consequences when it was written. After two years, particularly in relation to the social media aspect of it where things are moving so fast, there are opportunities to make those tweaks.

Mr SMITH: I begin by acknowledging that I know all of the witnesses who will appear before us, obviously through a professional working relationship. I just put that out there. Mr Dempsey, thank you for coming along. In relation to vexatious complainants and the term you used, 'weaponising', moving forward do you support protections for anonymous complainants?

Mr Dempsey: I have included that in my written submission. The fact is that we have to have confidence in our institutions and departments. The OIA has strict determinations as to how they deal with complainants and the protection of their identity. The CCC also has that; it has whistleblower status. It has legislation in place. Even this committee has certain strong compliance measures to protect those people who come forward with information.

As identified in the recommendations of Solomon, Playford and Kellar, when these matters are used vexatiously and consistently, then realistically we have to look at the need for people to have confidence when putting their names forward. The difference here is, if you remember, that the OIA is only dealing with local government elected officials. It is not dealing with wider issues within an organisation, it is dealing with individual people. They have so many other checks and balances to make sure the person is not identified. We need to have community confidence in this so that people can put their name forward knowing they are going to be protected by those organisations.

Mr SMITH: One of the things that was raised in Mount Isa was about a fee for each complaint being put forward. Mount Isa came up with a figure of roughly \$200. That is not something reflected anywhere else. Can you please give your view on whether or not you support that? Also, in a community such as Bundaberg is it viable for members of our community—and you and I represent many of the same people—to put a price on justice?

Mr Dempsey: I have heard that matter described with 200,000 in Mount Isa; I have heard it described as a playground in Townsville. The thing is that, because of the lack of clarity within the legislation and the interpretation of the legislation, it is nearly impossible to put a figure on who is going to make a complaint in the future. So how can you budget for something when you do not know whether people are going to make a complaint? Then you have to go back to before this legislation was put in place. It has certainly been very difficult. We have had arguments about financing the organisation, the number of staff and everything else. It is going to become an endless piece of string Bundaberg

if we do not give it clarity. I think that is one way we can have oversight and confidence and reduce the cost on the people of Queensland, particularly those in local government. By having consistency we are then able to reduce costs and not have complaints going to legal determinations where the majority are dismissed. It is costing Queenslanders unnecessarily because of some changes that could be made going forward.

Mr SMITH: If person X wishes to make a complaint, do you believe they should be charged by the OIA to make that complaint?

Mr Dempsey: I do not personally, no, but I know that recommendation was put forward at the local government conference. I think when you put monetary amounts to certain things it can come to, for want of a better word, the people who can afford it and the people who cannot afford it. I do believe that people need to identify who they are and have confidence in those organisations.

Mr SMITH: Mr Dempsey, one of my big issues has been around the code of conduct and whether or not some of the wording and language in the code of conduct is practically achievable by councillors. Can you please try to explain to me the difference between 'highest ethical standards' and 'ethical standards'? Is there a difference and is it an achievable difference?

Mr Dempsey: I think that comes back to how the determination of the OIA exists. You have to put what a breach of trust is in each of those because there is no determination of what a breach of trust is. Provide clear definitions of 'deliberately misleading', because the breach of trust is not determined for those particular matters you have discussed. That is why the OIA is an open plate. And where do they test it? The only place to test it is in the tribunal.

CHAIR: Member for Traeger, do you have any questions?

Mr KATTER: No, I am right.

CHAIR: The time allocated for this session has expired. Thank you very much, Mayor Dempsey, for helping us today.

The committee adjourned at 12.58 pm.