



15 November 2021

Committee Secretariat
State Development and Regional Industries Committee
Parliament House George Street
BRISBANE QLD 4000

SDRIC@parliament.qld.gov.au

Dear Chair Mr Chris Whiting MP

Re Inquiry into the functions of the Independent Assessor and performance of those functions

Please accept this submission from Mount Isa City Council ("Council") in relation to the State Development and Regional Industries Committee Inquiry into the functions of the Independent Assessor and the performance of those functions.

Council notes the terms of reference for the Inquiry are:

1. Whether the performance by the Independent Assessor of the Independent Assessor's functions is consistent with the intent of the local governments complaints system
2. Whether the powers and resources of the Independent Assessor are being applied in accordance with the public interest, and
3. 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.

Council has encountered difficulties with the duration in dealing with Councillor complaints and the Council resources required to assist the Independent Assessor in dealing with these complaints.

On 30 October 2020, the CCC advised Council of a complaint that was assessed to be an unjustifiable use of resources and did not warrant referral to any other agency.

On 3 August 2021, the Independent Assessor directly contacted a Council employee, requesting information be provided regarding this same matter, which occurred in December of 2019, 20 months after the matter in question.

The Independent Assessor did not advise the Council employee that a complaint had been made. During this 20 month period, Council had a staff turnover of approximately 48% including all persons involved in the matter.

Council was able to provide the resolution of the Council decision, however the Independent Assessor wanted details around which employees were involved in the matter prior to the Council decision. Fulfilling this request required multiple employees to search for the information, creating considerable pressure on

Correspondence ABN
Chief Executive Officer
PO Box 815 MOUNT ISA QLD 4825

48 701 425 059
Phone (07) 4747 3200
Fax (07) 4747 3209

Web www.mountisa.qld.gov.au
Email city@mountisa.qld.gov.au

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Council's limited resources. It is also Council's understanding that the Independent Assessor investigates Councillors and not Council employees.

To date, it has been more than three months since the request from the Independent Assessor was made and there is still no outcome.

Where the Independent Assessor is investigating a Councillor complaint, the investigation can cause substantial stress for the Councillor, especially where the investigation has no set timeframe, and no support system is offered to the Councillor being investigated.

Additionally, having Councillors going through an investigation process can at times change the atmosphere within the Council Chamber and does not encourage a team approach to issues.

It is very damaging to sitting Councillors to have complaints that are not upheld to be placed in the public domain, even under the confidentiality arrangements. This has the latent consequence of damaging the reputation of Councillors and the Council itself by giving these complaints "airtime", even though false/frivolous/vexatious, and developing a very staining perception of Councillors who are doing their job and receiving such allegations. These complaints should not rate for mention.

Being cleared of a false complaint does not go anywhere close to rectifying the damage done by these detrimental, unnecessary complaints to the well-being, productivity and mental health of the falsely/frivolously/vexatiously accused Councillor.

The Independent Assessor has historically contacted various Council employees, directly for information. This can be confronting and uncomfortable for employees, especially those not in management roles or where the employee is new to the local government sector.

Contacting various employees directly ties up valuable Council resources, sometimes on multiple fronts which minimises Council's service to the community, especially with smaller Councils such as Mount Isa City Council.

Where the Independent Assessor involves employees directly, Council is of the understanding that conversations, recordings and affidavits should be treated as official Council records and as such has a responsibility to treat such records in accordance with *Public Records Act 2002*. This responsibility requires additional resources which will ultimately cost ratepayers either financially or in reduced services.

Council would like to highlight the role of the Councillor Conduct Tribunal ("the Tribunal") in the Councillor complaints process. It is Council's understanding that since its inception in 2019, not one complaint regarding a Mount Isa City Council Councillor has been dealt with by the Tribunal.

This supports Council's position that the majority of Councillor complaints are either dismissed or have no further action taken, whilst creating a substantially increased burden on Council resources.

Council would also like to take this opportunity to reiterate its position to charge a lodgement fee for complaints about Councillors and the refusal of the Independent Assessor to accept and investigate anonymous Councillor complaints.

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Mount Isa City Council Position and Proposals

1. Council believes the performance of the Independent Assessor is not consistent with the intent of the local governments complaints system as detailed by Council's experiences above.
2. Council believes the powers and resources of the Independent Assessor are not being applied in accordance with the public interest and propose the following for consideration:
 - a) Independent Assessor should better scrutinise complaints that are frivolous or vexatious in nature or made other than in good faith and complaints that lack substance or credibility.
 - b) Where these types of complaints are identified, the complainant should be issued with a written warning from the Independent Assessor. Any subsequent complaints made of the same nature should have the penalty as prescribed in Part 3, Division 3, s150R(3) applied to the complaint.
 - c) The Independent Assessor should be provided more resources to manage councillor complaints to remove the burden from Councils in dealing with these matters.
3. Council proposes to amend the *Local Government Act 2009*, for the more effective operation of the Independent Assessor in dealing with local government complaints by having the:
 - a) Independent Assessor to set timeframes for investigations (eg 30 business days or 90 business days depending on complexity).
 - b) Decisions by the Independent Assessor to dismiss a complaint or take no further action should be provided in writing to the complainant, the Councillor and the local government, within a set timeframe (eg 10 business days).
 - c) Independent Assessor investigate matters of suspected inappropriate conduct and misconduct and not to refer the matter back to the local government to deal with as prescribed in Part 3, Division 5, s150AC of the *Local Government Act 2009*.
3. Council proposes the following changes to the functions, structures or procedures of the Independent Assessor for the more effective operation of the Independent Assessor:
 - a) The Councillor being investigated be provided access to support (similar to that of an employee assistance program).
 - b) Councillors be provided training in the Independent Assessor's complaints process so as to have a better understanding of what will take place.
 - c) Councillors be allowed to provide a written response to the Independent Assessor's outcome of the complaint investigation and proposed disciplinary action.
 - d) Council proposes the Independent Assessor limit all contact with Council to an official OIA Liaison Officer, like that of a CCC Liaison Officer.
 - e) That members of the Office of the Independent Assessor attend one Council ordinary meeting for each Council, to better experience the goings on of Council meetings.
 - f) That the Independent Assessor publicly report on the number of complaints assessed as vexatious, frivolous or having no merit.

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 MountIsaCityCouncil  @IsaCouncil



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- g) That the Independent Assessor be provided more resources to better assess, investigate and respond to councillor complaints.

Yours faithfully

David Keenan
Chief Executive Officer

Correspondence ABN
Chief Executive Officer
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