



*Dedicated to a better Brisbane*

13 December 2021

Queensland Parliament  
State Development and Regional Industries Committee  
[sdric@parliament.qld.gov.au](mailto:sdric@parliament.qld.gov.au)

Dear Committee Secretary

I provide this submission on behalf of Brisbane City Council (Council) in response to the call for submissions for the inquiry into the functions of the Independent Assessor and the performance of those functions.

Council believes transparency, accountability and good governance are fundamental to the operation of all public sector entities, in particular, the responsibility of local governments to comply with appropriate standards relating to their conduct and the role of the Office of Independent Assessor (OIA) in that process.

However, there are a few matters which go to the process surrounding the OIA and the outcomes and impacts that the current system is delivering that must be addressed to ensure the integrity of the entire process.

### **Legislative provisions**

The predictability of the application of the legislation and the Code of Conduct for Councillors in Queensland (the Code of Conduct) is causing unnecessary stress, time and costs to Councillors, councils, and ratepayers.

In regulating any matter, the primary focus must be ensuring that the rules and expectations are clear and unambiguous. Council's concerns primarily relate to the uncertainty provided by the relevant instruments which form the basis of the assessment for the OIA.

The relevant legislative provisions and the standards of behaviour in the Code of Conduct are drafted in such broad terms that permitted behaviours are being unnecessarily captured. This is not resulting in Councillors being found to have breached the provisions, but it is creating an industry whereby Councillors are being forced to engage solicitors on every matter which is listed before the OIA.

For example, under standards of behaviour in the Code of Conduct, section 2 requires Councillors treat fellow Councillors, Council employees and members of the public with courtesy, honesty, and fairness. The general and subjective nature of this provision means that a Councillor or member of the public can lodge a complaint against another on the basis that they feel that they were not afforded the courtesy they expected. This is resulting in Councillors having to engage solicitors to defend matters which are extremely subjective.

In the case of Council, there have been 14 occasions where it has been necessary for Councillors to engage the Councillor and Officer Liability Cover to brief solicitors because of complaints to the OIA. This is resulting in significant costs to ratepayers, which could be avoided or reduced, if the legislation and Code of Conduct was drafted with greater certainty.

With greater certainty comes a greater understanding by both Councillors of the expectations of their role and the complainants of what matters ought to be referred to the OIA for investigation.

### **Practical operation of the OIA**

Council receives a wide range of information requests from the OIA to investigate complaints alleged against Councillors. While it is recognised that oftentimes these requests for information will be necessary to provide background information and context for the alleged conduct, concerns have been raised on occasion regarding the appropriateness and relevance of these requests along with the powers being relied upon to raise them.

While section 150CH of the *Local Government Act 2009* (the Act) provides the OIA with the power to require information, section 150V also provides the OIA with broad investigative powers including the ability to “make any inquiries the assessor considers appropriate”.

Requests for information appear to be made under both provisions but are not always clearly stated if a request is being made under section 150V of the Act. In addition, Council has previously received requests verbally from the OIA. While Council makes all reasonable efforts to comply with requests from the OIA, there is a noticeable consequence for not complying with requests made under section 150CH with a maximum penalty of 50 penalty units. For this reason, there is a preference for a more consistent approach to requests for information, made in writing, by the OIA.

Further, issues have arisen in relation to the amount of time taken by the OIA to finalise investigations. In one particular case, a Brisbane City Councillor was accused by a member of the public of misleading listeners during a radio interview. Despite the Councillor proving early evidence that all statements were made in good faith based directly on information provided by Council officers, a full misconduct investigation was undertaken. It was then eight months before the OIA advised that the allegations were dismissed. The burden of being the subject of a misconduct investigation on such a relatively simple matter for this period of time is considered unreasonable. Appropriate resourcing of the OIA should be considered to ensure this is not repeated.

Finally, concerns over the timeliness of the Councillor Conduct Tribunal (the Tribunal) to determine applications have also been raised. The volume and resourcing of the Tribunal will understandably impact on the timeframes taken to process complaints, however, in some circumstances, these delays have been unreasonable and may be seen to have an adverse impact on Council's ability to respond appropriately to complaints, as well as causing distress to the parties involved. One example is a matter that was referred to the OIA by Council on or around 15 April 2020 as part of a bulk case handover. This matter was subsequently referred to the Tribunal on 13 July 2020, however, as of 11 November 2021 an outcome had not yet been supplied, resulting in a delay of approximately one year and four months.

Should you wish to discuss the matter further, please contact Mr Mark Pierce, Manager, Governance, Council and Committee Services, City Administration and Governance, 3403 4716 or by email at [Mark.Pierce@brisbane.qld.gov.au](mailto:Mark.Pierce@brisbane.qld.gov.au).

Yours sincerely



Scott Stewart  
**A/CHIEF EXECUTIVE OFFICER**

