



PO Box 3130
Bundaberg QLD 4670
E ceo@bundaberg.qld.gov.au
ABN 72 427 835 198

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State Development and Regional Industries Committee
Queensland Parliamentary Service
Parliament House
George Street
Brisbane QLD 4000

Via Email: sdric@parliament.qld.gov.au

Submission: Inquiry into the functions of the Independent Assessor and performance of those functions.

I wish to make a submission to the State Development and Regional Industries Committees Inquiry into the functions of the Independent Assessor and performance of those functions.

I am the Chief Executive Officer of the Bundaberg Regional Council (BRC), a position I've held since April 2017.

Prior to this role, I was the Deputy Director-General (Local Government) in the Queensland Department of Infrastructure, Local Government and Planning.

In that role, I provided advice to the Council Complaints Review Panel, which produced the report 'A fair, effective and efficient framework'.

Introduction

Since the Office of the Independent Assessor (OIA) was established in December 2018, BRC has had some 88 complaints dealt with by the OIA. All but two of these complaints have been dismissed. My understanding is that up to a further ten complaints are currently still under investigation by the OIA.

Therefore, BRC has had close to 100 complaints lodged with the OIA in the past three years.

This submission will highlight my concerns with the performance of the OIA during that period under the following subheadings.

- Inconsistency
- Timeliness
- Lack of knowledge of Local Government and
- Investigative Process.

I would also encourage the Committee to review the Complaints Review Panel's final report to see whether the goal of 'A streamlined complaints system that is fair, more efficient and more effective' (Page 9 – Councillor Complaints Review Panel) has been achieved.

Inconsistency

There have been a number of complaints assessed by the OIA where the findings seem to be inconsistent in terms of how they are resolved. It's difficult not to surmise that in some cases, the OIA's resourcing may have led to different approaches into how matters have been dealt with. Some examples are as follows:

The OIA considered a matter referred to it in March 2019 from a former Councillor that related to a newspaper article in 2015. The Councillor had to prepare a response to an innocuous, aged matter that had occurred four years previously, and it was eventually dismissed.

Contrast that situation with complaints that were made in March 2020 about a candidate for election who deliberately posted lies on Facebook and was subsequently not re-elected with the complaint dismissed "that further dealings with these matters would be an unjustifiable use of resources".

In February 2021, a Councillor spoke separately to two other Councillors and made potential defamatory and untrue statements about staff and the OIA dismissed the complaint noting "that the conversation between the Councillor and two other Councillors was not a public conversation".

Timeliness

The Council has had a number of complaints that have taken over 12 months to investigate and make a finding. Several others remain undetermined (due to confidentiality requirements, I cannot release those case reference numbers).

There also seems to be an inordinate amount of time taken to actually progress a matter to the Tribunal for a determination.

Whilst I accept the "average" time taken to deal with complaints as highlighted by the OIA looks reasonable, the focus should be on the "outliers" and what the justification is for taking longer periods of time for those.

Lack of knowledge of Local Government

There does not appear to be a general understanding of the way in which Local Government operates "on the ground" by the OIA, particularly by some of the investigative staff who may be clear on the legislation Council's operate under but don't understand the practicality of a Council's operations. The dearth of experience about Local Government is also reflected in the composition of the Tribunal.

Whilst I don't support a return to the Department having responsibility for complaint assessments, it's worth noting that the Department, when it had that role, had two senior members of staff involved in the assessment process who had previously been Council CEOs in Queensland. That experience was, in my opinion, invaluable in providing insight into the operation of Councils and, in particular, the relationship between Local Government Councillors and staff.

Investigative Process

There have been several contacts made by the OIA directly to Council staff and bypassing the CEO. When I initially queried this practice, the OIA responded as follows:

“You may also wish to consider that there will be occasions from time to time in every Council where a CEO (or other officer) are not looped in on inquiries for operational reasons which are not known to council. In these situations, keeping a senior officer at arms-length from these inquiries (both directly and indirectly) may be in the best interests of the assessment/investigation and the senior officer in question”.

In these cases, the staff have been bound to the confidentiality requirements under section 150CK, effectively sidelining the CEO or their immediate supervisor/manager from knowing what information is being released and in what context.

I don't accept that reasoning, and it potentially undermines the role of the CEO in managing the whole organisation. We have further examples of this practice where relatively junior staff have been contacted directly for information without understanding the broader organisational context, which resulted in wasted resources and time delays that could have been avoided.

Summary

My concerns with the operation of the OIA are not intended to suggest that body is not the appropriate forum for Councillor complaints to be assessed and determined. However, based on my experience of their performance in the past three years, it is patently obvious there is room for substantial improvement in the manner in which they operate.

I have deliberately not included case reference numbers that could identify the matters referenced in this submission but can provide them in confidence if required.

Yours faithfully



Steve Johnston
Chief Executive Officer