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State Development and Regional Industries Committee  
Parliament House  
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Dear Chair,

[Inquiry into the functions of the Independent Assessor and the performance of those functions.](#)

I am making my comments based not on my experience working at one local government authority, but rather a number of local government authorities that I have worked at in Queensland, New South Wales and Victoria. I am also the immediate past Vice President of the Local Government Managers Australia (Queensland) and former Committee Member of LG Pro.

The current review of the Office of the Independent Assessor (OIA) is welcomed, albeit that the review is occurring a little earlier than one would normally expect. Since the OIA was established in December 2018 there have been concerns about its effectiveness and whether it has improved the conduct of Councillors through its investigations and recommendations. I am not sure if any qualitative and quantitative research has been undertaken on the success or otherwise of the OIA.

From a Chief Executive Officer's (CEO) perspective there was originally a great deal of hope and anticipation with regard to the role the OIA might play in managing complaints about Councillors. Many CEO's had highlighted the difficult position they were placed in when investigating complaints about Mayor's and to a lesser degree Councillors prior to the establishment of the OIA. The prospect of another oversight agency such as the OIA, taking on this role was initially a welcomed reform, however over the past three years it is important to check and review what has actually changed for elected officials, CEOs and for that matter, the local government sector as a whole.

The establishment of the OIA brought forward the perception that complaint matters would be dealt with in a swift and effective manner. This has not necessarily proven to be the case. Many complaints and investigations for example straddled the 2020 election which does not sit well in relation to good governance, natural justice or procedural fairness. A Councillor should not have to contest an election with an ongoing investigation underway. In the future it would be important to ensure that the OIA is adequately resourced so as to clear or complete all investigations prior a local government election.

It is noted that a number of investigation timeframes have been extended by those Councillors being investigated drawing the process out through the engagement of legal representation or being slow to respond to requests from the OIA, which are often based on original requests made to the local government authority.

The CEO of a local government authority remains the key contact for any investigation, I would have thought. Based on my experience this is not the case. In one circumstance, I was made aware of two staff members being contacted directly by the IOA, as part of ongoing investigations. One staff member was at a Coordinator level and the other at a Director level. It may be that other staff in the organisation have been contacted by the OIA, but I am not sure how my Governance Coordinator or myself would know. In this instance the Coordinator let me know and that they were required to prepare and sign an affidavit. I would be keen to understand if the employee was obligated to provide this information.

It would be important to understand the protocols or procedures that exist around direct contact between representatives of the OIA and local government employees, as well as the manner in which information is requested and obtained. For example;

- Can the council employee have a support person provided? (union or otherwise)
- Is the council employee required to complete an affidavit?
- Under what obligation or legislation is an employee required to provide information? (verbal or written)
- Can an employee refuse to be involved in the investigation?
- Is the Chief Executive Officer informed that an employee is being interviewed?
- Is the supervisor of the Council employee made aware of the employee is being interviewed?
- Have any Council employees been directed to provide Council documents or records by the OIA, without the knowledge of the CEO or records staff?
- Are Council employees permitted to supply these materials? (this information usually emanates from and is provided by the office of the CEO)
- Will the employee be provided with the notes taken by the investigator?
- Will the Council employee be informed as to the outcome of the investigation?
- Is the employee assistance program offered to the council staff member by the Office of the Independent Assessor?
- Are staff from the Office of the Independent Assessor aware of the employee assistance program and is the employee made aware of the program after the discussion?

Many of the councillor complaints or referrals back to the local government relate to conflicts of interest. The failure to declare a conflict of interest often occurs during an Ordinary Meeting of Council. It would be useful to understand how many OIA assessors have attended Council meetings, both virtually and physically. If this information could be provided that would be appreciated. It is submitted that by attending at least one Council meeting per year OIA assessors may have a better understanding of the dynamics of the Meeting and where potential improvements can be translated in to better training for Councillors.

Additionally, it would be helpful to understand how many of the OIA's assessors have been previously employed in local government and have a reasonable understanding as to how local government operates. In dealings with the OIA it has become apparent that many of the staff at the OIA are very skilled in compliance and investigations, but very few hold direct experience in the operations of a local government, especially in relation to managing issues associated with elected officials.

In relation to elected officials and staff the slow processing of OIA complaints has an immediate impact on the "health of the chamber." Regardless of the level of confidentiality placed on an investigation, both the complainant and the subject officer of the complaint will have an awareness of the ongoing investigation. Some Councillors actively highlight the number of OIA investigations they are involved in.

This awareness of the investigation in many cases will influence the dynamics within the chamber and has the potential to lead to poor decision-making outcomes, including further complaints. It would be challenging for any Councillor to continue to politely interact with a colleague in the chamber over an extended period of time knowing that one or more investigations are underway. Again, this impacts on good decision-making processes and key aspects of governance

In relation to elected officials perhaps the following could be considered;

- Do elected officials have the opportunity to access support, similar to an employee assistance program, or is their only option to contact LGAQ?
- Are elected officials able to utilise a support person in their discussions with the OIA or under the Investigations Policy?
- Do elected officials have the opportunity to appeal an OIA decision and is information provided as to how this can be undertaken?
- Should there be a limit placed on the number of complaints that can be made by one Councillor against another Councillor?
- Can Councillors request information from staff to respond to an investigation or conversely request assistance with the development of a complaint?
- Do the notes associated with complaints migrate to the Council records or only the OIA records?

Each year all local government authorities spent a significant amount of time on preparing a budget. The Department and organisations such as Queensland Treasury Corporation and the Queensland Audit Office encourage local government authorities to make accurate forecasts. The last few years has seen each local government expend un-forecasted funds on issues such as investigations. It has been reported that some local government authorities spend more than \$150,000 per year addressing complaints, as well as significant staff time. It is more than likely that these amounts are not forecasted in the budget, so therefore funds will be cut from another activity or service. It is noted that this amount does not include the time that Councillors would be involved in the complaint making process.

For that level of investment, there have been no discernible changes of behaviour in those who have been the subject of complaints, nor has the level of complaints necessarily dropped.

Perhaps the following could be considered;

- Should each local government authority be making budget provisions to deal with complaints and investigations?
- If a complaint is not substantiated should the complainant be responsible for some or all of the funds that have been expended on the matter?
- Why is local government paying for the actions and recommendations from an oversight agency such as the OIA?
- Is there an assumption that local government will always have the capacity to meet the costs of the directions from the OIA which include mediation, training or other directions of the OIA?
- Is there an assumption that those persons that are recommended to be fined have the capacity to pay?

There are some instances where complaints are submitted to the OIA for alleged misconduct or inappropriate conduct that occurred over 18 months ago. In many of these circumstances it is difficult to gather the relevant information or locate the appropriate people involved in the matter. It should be noted that this continuity of information is more challenging in regional or remote local governments that experience high staff turnover meaning that in many cases the corporate memory can be weak.

It is also noted that there is the potential for those making complaints to “sit” on a number of complaints and wait for an opportune moment to submit these complaints. In some instances this will have nothing to do with the substance of the complaint, but everything do with the political environment of the chamber. I believe the OIA saw a spike in complaints just prior to the last election.

It may be that if local government authorities are receiving more than five complaints from a Councillor or perhaps more than 15 from the Council as a whole over a 12-month period that there are significant issues that require intervention by the Department, rather than targeted actions recommended by the OIA that are often only responding to singular or specific issues. Are Councillor complaints a signal to more immediate problems?

Receiving a large number of complaints in a short period of time also stretches the resources of Council and no doubt the OIA.

Perhaps the following could be considered;

- Should there be a requirement that all complaints must be reported within a three-month period from the date of the action occurring?
- Should a limit to the number of complaints submitted by an individual Councillor be determined, say five per annum?
- Is there a number of complaints that triggers intervention by the Department to ensure good governance is occurring at a local government authority?

Over the last three years the OIA has demonstrated that it has the capacity and skills to investigate complaints. It may be that the OIA needs to be supported with additional resources and consider more carefully how it works with the local government sector. It is hoped that this review will bring forward some recommendations and actions that will support the operations of the OIA into the future.

Yours faithfully

David Keenan

