

**Parliamentary Enquiry into the Office of the Independent Assessor**

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That the State Development and Regional Industries Committee inquire into and report to the Legislative Assembly on the functions of the Independent Assessor and the performance of those functions, in particular:

- whether the performance by the Independent Assessor of the Independent Assessor's functions is consistent with the intent of the local government complaints system,
- whether the powers and resources of the Independent Assessor are being applied in accordance with the public interest, and
- 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.

Please find following a submission from Dave Burges, CEO, Southern Downs Regional Council to the Parliamentary Enquiry into the Office of the Independent Assessor.

Council supports this enquiry being held and is thankful for the opportunity to contribute.

***Whether the performance by the Independent Assessor of the Independent Assessor's functions is consistent with the intent of the local government complaints system.***

1. The Independent Assessor appears to be overly zealous on some issues. An example from the Southern Downs Regional Council is a complaint against a councillor having a conflict of interest in the Council owned and operated saleyards and decisions made to upgrade the site.

The councillor in question has been appointed by Council to the Saleyards Advisory Committee in accordance with the Local Government Act. The matter has been with the OIA for more than twelve months and was investigated by the OIA. The investigator made numerous requests for information from Council and it appeared as though they were trying desperately to get an outcome to their liking. Is this a case of the OIA trying to establish case law as outlined by Kathleen Florian at the recent LGAQ Annual Conference? If so it is viewed by Council as an irresponsible use of public funds.

The OIA investigation has recently been finalised and the matter escalated to the OIA legal team for consideration of prosecuting the matter before the Councillor Conduct Tribunal as suspected misconduct.

2. The OIA has been investigating the matter of a councillor remaining in the room and not declaring a conflict of interest where a report mentioning a matter that could be a DCOI was being received ie no decision was being made by the Council. This investigation has been ongoing for over 2 years. Council and the councillor involved have incurred considerable and excessive legal costs to date.

Is this again an attempt by the OIA to set a precedent?

3. An email was sent to the OIA advising that they had been informed that a complaint was going to be lodged against a Councillor and that if that eventuated they had information relating to the likely complaint. The email included a very brief summary of the incident.

The OIA took this email as being a complaint against a councillor and referred the matter to the CEO for investigation.

Once again this incurred considerable resources from the organisation for what should have been very obviously not a complaint in and of itself.

**Whether the powers and resources of the Independent Assessor are being applied in accordance with the public interest.**

1. The timeliness, or lack thereof, of the handling of some complaints by the OIA is of concern in relation to the cost for both the State Government and the affected Local Government authority and it needs to be asked whether the investigation of low level issues consuming such resources is in the public interest.
2. There have been many complaints lodged against SDRC elected members with the vast majority not upheld. It would appear to Council that the OIA does not take a sufficiently strong position on repeat complainants or vexatious complainants. Frivolous or vexatious complainants need to be taken out of the system as soon as possible and not wait until there is an overly abundant amount of suspicion or evidence. The submitter of vexatious complaints should also be held to account in some way.

**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.**

1. SDRC has on numerous occasions received conflicting advice from our legal advisors, the Department of State Development, Infrastructure, Local Government & Planning (The Department), the Integrity Commissioner and the Office of the Independent Assessor on various issues. In several instances the advice has been diametrically different to the extent that it indicates the legislation is fundamentally flawed. If experts in the area of Conflicts of Interest can have such widely divergent views, it is completely inappropriate that elected members and council staff be expected to get the interpretation right every time or endure the wrath of the legislation.

The amount of money spent by SDRC on legal advice in relation to conflicts of interest is completely disproportionate to importance of the matters under consideration. The legislation needs to be “black and white” and not try to capture every conceivable potential conflict of interest.

The scrutiny and legislative oversight on local government is more onerous than on any other level of government and is disproportionate to the perceived problem trying to be solved.

2. Complaints by councillors against fellow councillors and indeed simply claims of potential conflicts by councillors against fellow councillors can lead to the “weaponising” of the system to achieve a desired outcome.

Should repeated complaints against fellow councillors result in disciplinary action by way of misconduct if (say) three claims are not upheld?

Should the responsibility for deciding if a councillor has a conflict of interest rest with the councillor and not the balance of unconflicted councillors as the penalty for failing to declare ultimately rests with the potentially conflicted councillor were the matter to be referred to the OIA with an unfavourable finding being made?

3. The matter of “ordinary business matters of a local government<sup>1</sup>” requires greater clarification in the Act. The definition could be expanded to include things like core infrastructure such as water and sewerage infrastructure and more clarity around .

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<sup>1</sup> LGA s150EF

4. The term “stands to gain a benefit or suffer a loss in relation to the matter that is no greater than the benefit or loss that a **significant proportion of persons** in the local government area stand to gain or lose” requires greater clarification.<sup>2</sup>
5. The matter of “influence” requires greater clarification. A councillor could be perceived to have a conflict of interest (particularly a DCOI) and exercise what is often loosely referred to as an abundance of caution by declaring same and then be overly restricted by the influencing provisions of the Act<sup>3</sup> whereas if they hadn’t declared due to the cautionary approach they could have contributed meaningfully and informatively to the discussion.
6. If the OIA refers a matter to the CEO for investigation, the OIA needs to advise the CEO if the complaint was made by a Councillor and if so the name of the complainant as this person needs to be excluded from the next step in the process ie the referral must be forwarded to the Mayor and Councillors (excluding the Councillor who is the subject of the complaint and the Councillor who was the complainant if applicable) as a confidential document. Should the Major or a Councillor/s disagree with any recommendation from the Assessor’s referral notice, or form the opinion the complaint should be dealt with in a way other than under the policy, the Mayor or Councillor/s may request the matter be placed on the agenda of the next meeting of Council for the Council to decide, by resolution, the appropriate process. I can only assume the complainant Councillor would have a DCOI in this instance.

Alternatively the legislation would need to be clear that the complainant Councillor does not have a DCOI and can participate in the process.

7. If a matter is escalated by the OIA to the Councillor Conduct Tribunal and the matter is not upheld, the OIA (State Government) should reimburse all costs incurred by the local government from the commencement of proceedings with the OIA.
8. Elected members often have strong views on particular matters and in fact can get elected on a platform of pursuing particular issues. The issue of “bias” or “perceived bias” needs to be clarified in that it does not form a COI. If an elected member has a view on a matter, including a very strong view, and this is expressed verbally or in writing such as a Letter to the Editor of a newspaper as being their personal view, it needs to be clear that this does not mean that the councillor’s participation in a decision about the matter might lead to a decision that is contrary to the public interest.

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<sup>2</sup> LGA s150EF (2A)

<sup>3</sup> LGA s150EZ