



15 December 2021

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

SENT BY EMAIL: SDRIC@parliament.qld.gov.au

Dear Chair Mr Chris Whiting MP

I welcome the opportunity to make this submission in relation to the State Development and Regional Industries Committee inquiry functions of the Independent Assessor and the performance of those functions.

The intent underlying the establishment of the Office of the Independent Assessor (OIA) following the 2018 Queensland Government reforms of the councillor conduct complaint system to create an improved, more efficient, consistent and transparent system for addressing complaints is to be commended. With the benefit of three years now passing since the introduction of the OIA, a number of issues have been observed impacting the performance of the OIA and the overarching intent of the Queensland Government reforms.

This submission seeks to inform the Committee of those issues observed from application of the OIA's functions since its inception and proposals for improvements to the councillor complaints process for consideration in line with the Terms of Reference of the current inquiry.

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

The January 2017 report by the Councillor Complaints Review Panel noted the State's overall objective was to maintain public confidence in transparent, accountable, well-governed, efficient and effective local government; to hold councillors to high standards of ethical and legal behaviour which puts the public interest ahead of their own individual interest; and to deter councillors from poor behaviour or abuse of their positions of trust...<sup>1</sup>

As it relates to the establishment of the OIA, the Explanatory Notes to the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 notes that the intent of the Bill

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<sup>1</sup> Solomon, D., Playford, N. & Kellar, G. (2017). [Councillor Complaints Review: A fair, effective and efficient framework](#), p.18

was “...to provide a simpler, more streamlined system for making, investigating and determining complaints about councillor conduct in Queensland.”

#### *Code of Conduct for Councillors in Queensland*

It is submitted that one of the significant barriers to achieving the policy objectives of the Queensland Government and the performance of the OIA relates to the provisions of the Code of Conduct for Councillors in Queensland (Code of Conduct).

The broad nature of the standards of behaviour applying to Councillors and consequences of failure to comply detailed in the Code of Conduct and specifically the absence of any additional prescriptive/explanatory points for express guidance has implications in both the application and interpretation by the OIA in the assessment of complaints, but also for Councillors in terms of facilitating compliance and creating uncertainty about activities which are and are not permitted by the Code of Conduct.

As it relates to OIA assessments of complaints relating to alleged breaches to the Code of Conduct, the absence of additional guidance with respect to the standards of behaviour in particular leaves the OIA in a position of interpreting legislative intent within the parameters of limited existing case law impacting the efficiency and timeliness of resolution of complaints. The lack of guidance and legal precedent also results in Councillors having difficulty in assessing the relevant standards when considering application to their own circumstances when faced with a conduct complaint, or alternatively deter councillors from poor behaviour.

In addition to amendments to the Code of Conduct, further training and the availability of additional online resources to Councillors from the Department of State Development, Infrastructure, Local Government and Planning would assist to proactively inform and educate Councillors on the overarching local government complaints system and processes.

#### *Communication*

During the initial assessment of conduct complaints against Councillors by the OIA, it is noted that “...the OIA considers whether a complaint raises a reasonable suspicion of inappropriate conduct or misconduct. This is a self-imposed threshold and not a requirement of the Act. In assessing matters the OIA does not use its investigative powers.”<sup>2</sup>

Regardless of whether a complaint is categorised as inappropriate conduct or alternatively misconduct or corrupt conduct, the absence of a system and practice whereby the OIA may communicate with a local government, particularly CEO's, at an early stage of particularly complex investigations, prevents relevant background information and material to potentially be available to the OIA as part of that initial assessment process. I am aware of a number of complaints against Councillors which have eventually been dismissed by the OIA which may have been resolved at an earlier stage and more efficiently if such background information from an organisational perspective had been sought and obtained.

During the period of time under which a complaint is under initial assessment, the practice of the OIA to make contact with Council CEO's (or other nominated representative) to request any relevant background information to the OIA during the initial assessment of a complaint has the potential to

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<sup>2</sup> [Office of the Independent Assessor – Submission](#), (November 2021), Inquiry into the functions of the Independent Assessor and performance of those functions, p.13.



improve efficiency and effectiveness of the OIA's functions and further streamlining of the complaints management process.

Further, it is submitted that consideration may be given for the requirement of local governments to appoint a dedicated OIA Liaison Officer, similar to the framework existing with the Crime and Corruption Commission, to act as a central point of contact is another potential mechanism to streamline and improve effectiveness and efficiency of the OIA.

While recognising the confidential nature of a complaint and legislative PID protections available, circumstances of ongoing contact between the Councillor subject to a complaint and Council officers who may in turn be involved as witnesses potentially exist. To avoid unintended consequences arising from such ongoing contact, at the time a Councillor subject to a complaint is notified by the OIA, benefits would exist in the relevant local government (dedicated liaison officer) being notified accordingly on a confidential basis to allow for such contact to be managed appropriately. Similarly, consideration is recommended to be given to notifying Councillors of the importance of not contacting potential witnesses to a complaint to discuss the matter.

#### *Review/Appeal*

It is noted that from the OIA's submission to this inquiry that *"the extra burden of re-prosecuting QCAT reviews is unsustainable,"*<sup>3</sup> with a recommendation submitted for further regulatory reform to remove the right of review from a misconduct finding and replace it with a right of appeal on a point of law.<sup>4</sup>

While noting the resourcing issues impacting the OIA's functions and timeliness of resolution of complaints, it is submitted that careful consideration be given by the Committee in implementing such a recommendation solely on the basis of resourcing constraints.

Firstly, from purely a consistency perspective, it is noted that the Queensland Civil and Administrative Tribunal (QCAT) has jurisdiction over a wide range of regulatory matters arising from similarly established tribunals and excluding Councillors group from the QCAT review process on the basis of resourcing alone would appear to be contrary to legislative intent.

Secondly, in protracted matters or in the absence of an agreed set of facts being presented to the Councillor Conduct Tribunal (CCT), the factual circumstances relevant to a complaint may continue to have relevance to any subsequent review, rather than purely a matter of law.

Further, I note that the consequences of a finding of misconduct (in particular) and subsequent disciplinary action are varied, but regardless of this, any finding against a Councillors related to an integrity matter has implications beyond any immediate penalty imposed.

Based on the above submission relating to issues associated with the drafting of the Code of Conduct, the accompanying uncertainty and lack of legal precedent potentially impacting consideration and assessment by a Councillor of a complaint, it is neither unsurprising or unexpected that there has been an increase in the number of disputed complaints and challenges to CCT decisions. It is submitted that taking steps to address some of the underlying factors leading to increased reviews of CCT reviews to QCAT would be preferred.

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

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<sup>3</sup> Ibid, p.34

<sup>4</sup> Ibid, p.45

The inability of the OIA to withdraw a matter previously referred to the CCT, particularly those that are at the lower end of the scale in terms of alleged misconduct in circumstances where there has been a change in circumstances and there is a corresponding absence of public interest in the matter being pursued further is of concern.

The current judicial interpretation of the inability of the OIA to withdraw a matter previously referred to the CCT creates inflexibility and is contrary to the stated aims of the Queensland Government with respect to the local government complaints process, particularly relating to streamlining of the process and creating efficiencies and timeliness of resolution.

Similarly however, the length of time taken by the OIA to investigate a complaint in similar circumstances where this is corresponding limited public interest is of equal concern. I am aware of one OIA investigation of a then Councillor who retired in advance of the 2020 local government quadrennial elections and was a former Councillor by the time the OIA commenced its investigation. Whilst eventually the matter was dismissed, the time and resources of both the OIA and Council in the OIA reaching this conclusion was manifestly excessive.

Well-publicised issues related to the timeliness of assessment and determination of complaints by the OIA and CCT, particularly where there are no set timeframes established for resolution or limitations of time in the making of complaints is far from ideal, both in terms of the public interest, but particularly in those instances where complaints are assessed as non-serious misconduct matters which are ultimately being dealt with in a manner disproportionate to the conduct subject to the complaint, particularly where the orders or recommendations from the CCT are relatively minor. The absence of flexibility being provided to the OIA in how such a matter can be disposed of other than a potentially costly and inevitably lengthy process through the CCT weighs heavily against the public interest.

While acknowledging there is a wide range of complexity involved in complaints under investigation by the OIA, a staged approach to establishing such timeframes would provide not only much needed certainty to the relevant Councillor, but also to the relevant Council, in meeting the overarching intent and objectives of the local government complaints system.

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.

**Recommendation 1 – The Code of Conduct for Councillors in Queensland be reviewed and amended to provide greater guidance to Councillors and the OIA on both expectations related to standards of behaviour and consequences of failing to comply.**

**Recommendation 2 - Councillors be provided with additional training and resources in the OIA's complaints management framework and processes.**

**Recommendation 3 – The OIA to use investigative powers where appropriate to request from Council CEO's or nominated representative background information during the initial assessment of certain complaints.**

**Recommendation 4 – Local Governments appoint a nominated person as OIA Liaison Officer to report, liaise and act as a central point of contact with the OIA within the complaints management framework.**



**Recommendation 5 – The OIA notify Council CEO’s or nominated representative to provide notification when Councillor’s subject to a complaint are advised by OIA.**

**Recommendation 6 – The current provisions in the Local Government Act 2009 related to review mechanism of CCT reviews to QCAT are retained whilst ensuring adequate resources are provided to the OIA in order to fulfil its functions in a timely and efficient manner.**

**Recommendation 7 – Amend the Local Government Act 2009 to provide the OIA with discretion to refer non-serious misconduct matters to local governments for investigation and resolution.**

**Recommendation 8 – Amend the Local Government Act 2009 to establish timeframes for completion of investigations by the OIA and commencement of complaints within prescribed timeframes.**

**Recommendation 9 - Amend the Local Government Act 2009 to allow the OIA to withdraw matters referred to the CCT, where there is a change in circumstances that is relevant to the public interest in progressing the matter.**

Thank you for the opportunity to make this submission to the inquiry and should further clarification or information be required, please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Evan Pardon', with a long horizontal stroke extending to the right.

Evan Pardon  
Chief Executive Officer  
Rockhampton Regional Council

