



Our Ref: CEO:SLO
Your Ref:

BY EMAIL sdric@parliament.qld.gov.au

15 December 2021

Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
Brisbane Qld 4000

**TORRES STRAIT ISLAND REGIONAL COUNCIL – SUBMISSION TO
PARLIAMENTARY COMMITTEE INQUIRY INTO THE FUNCTIONS OF THE
INDEPENDENT ASSESSOR AND THE PERFORMANCE OF THOSE FUNCTIONS**

I thank the Committee for the opportunity to make a submission to the Committee's *Inquiry into the Functions of the Office of the Independent Assessor (OIA) and the Performance of those Functions*.

I consider the introduction of the OIA to be an improvement to the local government complaints system. The existence of the OIA allows Council staff to remain at arm's length from the assessment of complaints relating to councillor conduct. This is important given the close working relationship between the Mayor, Councillors and the Chief Executive Officer and the elected Council's role in engaging and managing the CEO. The OIA's decision gives authority to the complaints handling process.

The OIA's functions of assessing and, where appropriate, dismissing or referring complaints for investigation also promote the consistent application and interpretation of the *Code of Conduct for Councillors in Queensland*. This function provides helpful oversight and guidance to local government in handling councillor conduct matters under the Investigations Policy that each council is required to have in place for handling allegations of "inappropriate conduct".

I have had some experience with referring councillor conduct matters to the OIA and receiving referrals from the OIA. The OIA appears to be functioning effectively, considering that it is handling all of the councillor conduct complaints for the entire State of Queensland. However, more serious and complex allegations tend to take longer to be assessed and resolved, and in the interim the OIA has not provided Council or the subject Councillor with an update on the status of the complaint. Our experience with matters referred to the Crime and Corruption Commission (CCC) has been similar. It would be helpful if the OIA provided the parties with status and progress updates.

Section 150P of the *Local Government Act 2009* requires the local government to refer to the assessor any complaint it receives about the conduct of a councillor.





I am aware that some councillors and local governments are very frustrated at the time it takes for the assessor to assess and respond to a complaint. I am told that in some cases it takes up to 12 months for the OIA to deal with a complaint. There is one ongoing matter that has been passed between Torres Strait Island Regional Council, the Department (in 2019), the CCC and (from 2020) the OIA, where the subject Councillor is very frustrated that no agency appears to be able to finalise the matter.

My understanding of the current local government complaints system is that, aside from "unsuitable meeting conduct" matters, the local government must refer every complaint against a councillor to the OIA and that it is the OIA's function to assess how such a complaint should be handled. I referred a complaint to the OIA knowing that it was lacking in substance and I expected that the OIA would conclude that the allegations did not actually relate to the subject's conduct as a local government councillor, but given section 150P I did not consider it within my power to dismiss the complaint. The OIA's assessment was as anticipated and was completed within one month.

The Committee may want to consider whether it would be appropriate to give the local government CEO the power to dismiss a complaint and notify the assessor of that decision (with the OIA having powers to review, request further information or overrule the local government's decision), where the CEO considers a complaint to be frivolous or vexatious or lacking in substance. While the OIA's function is important in ensuring the integrity of the councillor complaints regime, giving the CEO such discretion to dismiss a complaint may be an appropriate way to respond to concerns about the OIA's processing time, and would acknowledge that in some cases the local government is best placed to assess the circumstances of the complaint.

Section 150P of the *Local Government Act 2009* provides that the government entity must refer the complaint to the assessor and "give the assessor all information held by the entity that relates to the complaint". I note that where the allegations in the complaint cannot be assessed without further information from the local government, this essentially requires the local government to undertake a preliminary investigation to gather relevant documentary evidence, which can delay the local government's referral of the complaint to the OIA.

Should you have any queries, please contact Julia Maurus, Senior Legal Officer, on [REDACTED] or email [REDACTED]

Yours faithfully,

David Baldwin
Acting Chief Executive Officer

