



15 December 2021

Committee Secretary  
State Development and Regional Industries Committee  
Parliament House, George Street  
Brisbane Qld 4000  
Email: [sdric@parliament.qld.gov.au](mailto:sdric@parliament.qld.gov.au)

Dear Committee Secretary

**Brisbane Residents United submission to the Inquiry into the Functions of the Independent Assessor and the Performance of those Functions**

Thank you for the opportunity to make a submission to the State Development and Regional Industries Committee re this inquiry.

This submission is made on behalf of Brisbane Residents United (BRU), Brisbane's peak body for community resident actions groups. Whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice Governments on matters pertaining to urban planning and development.
- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

BRU is a non-partisan and not-for-profit incorporated association that represent the interests of the broader community.

## Introduction

### TERMS OF REFERENCE

*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.*

BRU encourages and generally supports the Government's actions in undertaking various reforms to improve local government in Queensland in response to Crime and Corruption Commission (CCC) investigations: Operation Belcarra and Operation Windrush.

The functions of the Office of the Independent Assessor (OIA) should be considered as an important element in a suite of independent agencies (including the CCC, the Ombudsman and the Queensland Audit Office) which co-exist to ensure the public interest is well served by those who are paid from the public purse.

These various accountability agencies depend upon the support and involvement of the community to raise issues of concern about the behaviour of mayors or local councillors.

The community's capacity to fulfil this role is currently challenged by:

1. Local government becoming less transparent through artifices such as:
  - a. Discussing matters in closed or non-public meetings;
  - b. Establishing companies to undertake activities such as property development thereby avoiding or reducing public scrutiny; and
  - c. Restricting access to information about local council activities (which is facilitated by Queensland's inadequate Right to Information laws).
2. Declining quality and quantity of mainstream media reporting on local government activities. Some local newspapers now print as news stories the media releases issued as propaganda by local councils - with no additional investigation and analysis.

In view of such challenges to local government accountability, it is important that accountability agencies including the OIA be empowered and resourced to investigate and deal with misbehaviour by people elected to public office.

While there needs to be a high level of confidence in the OIA within the local government sector but we would argue that equally, if not more important, is the level of confidence in the OIA within the broader community.

In response to the terms of reference for this inquiry, the OIA has provided a submission which clearly explains important issues and recommends actions including legislative changes to improve the process of dealing with complaints about local councillors.

BRU supports in general the OIA's recommendations contained in its submission to this Inquiry.

We wish to provide some specific comments on the following matters.

### **Transparency and accountability**

We believe the transparency of the OIA is exceptional with the regular reporting of their activities and statistics contained in the “Insight” publication on their website, which reports the work of the OIA in the management and outcomes of councillor conduct complaints in Queensland. It contains complaints data, trends, issues and case studies and is published in the interests of transparency and accountability. The OIA also releases regular media statements reporting on complaint outcomes which are published on their website.

BRU supports the suggestion to amend section 150AS(2) of the LG Act to require publication of Councillor Conduct Tribunal decisions in full. We agree that transparency of Tribunal decisions and the reasons for them is a key element in building the capacity of councillors to identify and avoid misconduct risks and to act as a deterrent to repeated conduct. Understanding the reasons for a Tribunal decision allows councillors to see how standards are being applied and enforced in different circumstances – and to apply this reasoning to their own circumstances.

We do not support the amendment of sections 150DX, 150DY and 150DZ to remove requirement to record in council conduct registers matters that have been dismissed or subject to no further action by the assessor. We **strongly disagree** with this suggestion from the OIA. The educative value of such complaints still being subject to publication in Council Conduct Registers far outweighs the costs incurred by either the OIA or councils.

These registers serve as a useful guide to the community in general, and potential complainants, about the nature of complaints that are dismissed. Provided councils provide sufficient detail about the nature of each complaint, this serves as a very useful resource for the community and over time will potentially reduce the number of complaints made by members of the public.

BRU supports the development of case studies to be published on the OIA’s website; these would provide examples of the range of complaints that the OIA has considered and the reason for its decision in such cases. Over time this could constitute a knowledge base of typical/representative examples of complaints. Of course, such case studies would remove names of councillors, councils and any information that might enable a reader to identify the actual situation that gave rise to a complaint.

We believe the best way to improve the handling of councillor conduct complaints, and therefore reduce the costs to the OIA and councils, is through better education of councillors and the public. Much is made about “capacity building” within councils but it is equally important that members of the public have as much guidance as possible when contemplating lodging a complaint about councillor conduct.

Irrespective of the outcome of the OIA’s proposal to amend the LG Act to require regular strategic review of OIA, it would seem sensible for regular reporting from the OIA to the Parliament, via this Committee. It is our understanding that this already occurs and we would strongly support this continuing.

The conduct of Parliamentary committees, via public hearings/briefings, the opportunity for submissions from stakeholders, and the availability of transcripts of hearings, all contribute to community confidence in the integrity and transparency of statutory bodies like to OIA. We need to note however that there is however a view amongst some of our members that Parliamentary oversight might hinder the independence of the OIA, particularly where complaints are made on a partisan basis.

BRU supports the amendment to the LG Act to require regular strategic review of OIA. This provision provides a regular, transparent review of the role and functions of the Independent Assessor and provides a regular opportunity to revisit whether the councillor conduct system is achieving its policy intent. It provides an opportunity to consider law reform proposals that may address issues identified. The OIA has suggested sections 86-88 of the Integrity Act 2009 as being a suitable model for such review.

### **Timeliness**

The overall process of dealing with complaints about misconduct and inappropriate conduct is unacceptably slow, from the community's perspective.

We are aware of a misconduct complaint which was lodged several months before the 2020 local government elections that still has not been resolved.

This lengthy timeframe for dealing with such matters (which involves activities by both the OIA and the Councillor Conduct Tribunal) appears to be typical.

Potentially, people who have engaged in misconduct are being allowed to campaign for re-election without their misconduct being drawn to the attention of voters.

In considering the issue of timeliness, we invite the Committee to consider how disciplinary processes operate in other activities.

In many sporting codes matters which can't be resolved during the game e.g. by a video referee are then considered by a judicial process which is usually held before the players concerned are due to play their next match.

If conduct decisions can be achieved by most sports codes in a few days, why does it take over two years for a decision about whether or not a mayor or councillor is guilty of misconduct or inappropriate conduct?

In addition the proposal of the OIA to amend the LG Act to allow the use of material in its possession and obtained under notice for other investigations to which the same material relates seems a reasonable suggestion in the interests of timeliness and efficiency.

We recognise that if the OIA were able to withdraw matters referred to the Councillor Conduct Tribunal where there was a change of circumstances that is relevant to the public interest in proceeding it would streamline current processes, improving the efficiency and cost of the councillor complaints system.

### **Inappropriate conduct**

The definition of unsuitable meeting conduct should be extended to cover informal government meetings such as workshops and briefings provided to councillors before ordinary/special meetings of council.

The OIA has drawn attention to the problems of excessive costs and the time taken where allegations of inappropriate conduct are referred back to a local council for investigation and decision. We would contend that this cost is one that ratepayers are more than prepared to bear in the interests of transparency and ensuring the integrity of local government is maintained at the highest possible level.

If individual councils are finding the time and cost of dealing with inappropriate conduct complaints this would again suggest the need for internal training to ensure there are fewer complaints in the first instance.

BRU believes that it would be better for inappropriate conduct and misconduct to be dealt with in the same way i.e. with the matter being investigated by the OIA and determined by the Councillor Conduct Tribunal.

We endorse the OIA's recommendation: "That investigations and decisions be undertaken quickly and, in a manner, proportionate to dealing with lower-level conduct".

We support the OIA's proposal to create a central inappropriate conduct scheme to remove duplication, improve consistency and potentially deliver cost savings.

This should allow matters to be considered as being either misconduct or inappropriate conduct and dealt with accordingly once the facts have been established. Under the current legislation if a complaint comes within the definition of misconduct in section 150L the OIA must either deal with the matter as misconduct and refer the matter to the Tribunal or dismiss or take no further action on the matter (usually on the basis that taking further action is not a justifiable use of resources). This tends to create **an all or nothing outcome**.

Therefore, we support the OIA recommendation that the LGA be amended to confer on the Independent Assessor a statutory discretion to refer allegations of lower-level misconduct to be dealt with as inappropriate conduct, in appropriate circumstances. Such allegations to be dealt with by the OIA and not referred back to the respective council.

This would also prevent decisions being made based on any particular voting or meeting bloc or lack of impartiality by the Mayor or CEO. BRU does not support the Mayor, CEO or any other delegated person or meeting of council determining inappropriate conduct. The current display of the misuse of this power is distasteful and brings some local government authorities into disrepute.

BRU believes a review of the Code of Conduct for councillors should be an ongoing process but find it surprising that the LGAQ has asked for a review of the Code of Conduct so soon after it was revised in 2020 by the Department of Local Government, Racing and Multicultural Affairs. The original Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 was formulated with heavy involvement by the LGAQ.

However, if such a review is undertaken we suggest that bullying and harassment of other councillors, officers or members of the community be included in the Code of Conduct in the Misconduct section of the Code of Conduct.

### **Who can make a complaint?**

We understand that the LGA currently specifies that complaints may come from:

- A person
- Another government agency
- A local government official
- The CCC
- An OIA initiated investigation.

We would like to see the legislation amended to allow for a complaint to be lodged by the Ombudsman and organisations such as community groups such as ours. In this way, a properly constituted group (ie an incorporated association) could make a complaint on behalf of an individual or group of individuals or on a motion at a properly constituted meeting of the organisation. This might have the two-fold effect of ameliorating concerns an individual might have about their confidentiality being breached and potentially result in fewer similar or frivolous complaints being made.

Flexibility of response is a vital pre-condition to assisting residents and ratepayers through the complaint process, it can often be helpful to have specific actions available that can be used in particular cases. Assistance with language, is one of these tools that is useful and widespread.

May waive or change timeliness requirements in order to effectively deal with a complaint.

One method of assistance that could be more widely used is the use of advocates and advocacy groups to assist complainants through the complaint process. Advocates who have experience working with both government and people can save time and money by resolving long-standing or potentially intractable problems.

Funding advocates to assist people through the complaints process can be cost-effective for government organisations.

Advocates are also able to act as a filter for government organisations, conducting their own assessment of need and identifying where early intensive intervention can prevent disputes in the future. To be most effective, agencies should ensure that advocates have access to key staff at the OIA to resolve problems at an early stage. Advocates are often able to explain decisions in a way that ratepayers and residents can understand and will accept.

It can be difficult for advocacy groups to provide individual, specialised, “gold-standard” service, particularly when it has a reduced budget or reduced management committee. However, we consider that if properly managed, a modified complaints process for particularly ratepayers and residents can save time and money by preventing further disputes, and can assist an organisation achieve program outcomes that are aimed at supporting the community.

### **Councillor on councillor complaints**

It appears that a significant proportion of complaints about councillors are being lodged by other councillors. In response to Question on Notice 1141, the Deputy Premier advised that in the case of Redland City Council, 22 of 109 complaints lodged with the OIA between 3 December 2018 and 17 September 2021 were lodged by councillors in relation to another councillor.

It should be noted that these statistics would not include any anonymous complaints that councillors may have lodged about other councillors.

It may be that a councillor is well positioned to make a complaint about another councillor because they have access to far more information about councillors’ activities than the general community. But it is may also be the case that the complaints process is being used vexatiously by some councillors as a weapon to attack councillors who they perceive to be their political opponents.

The Committee should consider whether or not the OIA’s powers are adequate to deal with vexatious complaints being lodged by councillors about other councillors.

### **Anonymous complaints**

At present it is possible to lodge anonymous complaints about the conduct of councillors. The OIA says in its submission to this Inquiry that about 10% of complaints are submitted anonymously.

We understand that the reason why complaints can be made anonymously is to err on the side of encouraging disclosure of misbehaviour and that it is presumed that some people would fear the consequences for them if they put their name to a complaint.



In an ideal world, people making complaints should expect to be able to do so on a confidential basis without fear of their whistleblowing role being disclosed to the subject of the complaint, potentially exposing the whistleblower to retribution.

Until such time as there is general confidence in the level of confidentiality guaranteed to whistle-blowers, it is appropriate and necessary that complaints can be made anonymously.

Those councils and councillors who are concerned about the lodgement of anonymous complaints could usefully reflect on whether or not the culture of their council is mature and supportive enough to encourage employees and others in their community to put their names to councillor complaints.

We are mindful of the fear that a complainant might have about their identity being provided to the respondent councillor; this may be a significant problem in smaller councils serving small communities or where councils are divided on party-political lines or where voting blocs exist where a complainant fears retribution. In these circumstances the question of how to protect whistleblowers is important.

We also acknowledge the potential for denial of natural justice for a respondent of an anonymous complaint.

### **Appeals to the Queensland Civil and Administration Tribunal (QCAT)**

The OIA has recommended in its submission that matters only be reviewed by QCAT on points of law.

Given that a QCAT rehearing would add significant cost and a lengthy delay to resolving a complaint, BRU supports this recommendation.

### **The cost of the complaints process**

BRU are strongly opposed to the imposition of a fee to lodge complaints to the OIA.

Community people should not be required to pay a fee for making complaints that may have merit but are ultimately dismissed by the OIA. We also have concerns that if such a fee was introduced, the fee payable for a councillor-initiated complaint (keeping in mind this is currently the source of the majority of complaints handled by the OIA) might be met by his/her Council rather than the individual.

The significant number of complaints (1074 complaints received in the financial year from 1 July 2020 to 30 June 2021) it becomes apparent that there are major issues at hand and it requires an engaged community to report them.

Nothing should inhibit the preparedness of community members to report failings in councillor conduct as they are the ultimate weapon against breaches of conduct and even potential corruption; they need to be encouraged to speak up without barriers to that action because of financial imposts.

Through submissions and presentations to the Inquiry we have learnt that some councils may spend thousands of dollars on investigations of inappropriate conduct. Councils are also funding some costs of insurance that cover councillors who are responding to a complaint.

We suggest that in their annual reports, local councils be required to disclose, for a financial year the costs incurred by the Council in dealing with councillor conduct complaints.

### **Fines and other sanctions**

The consequences of a finding of misconduct or inappropriate conduct may include fines, requirements to make apologies or requirements to undergo training.

We think it would be useful if public reporting by either a local council or the OIA were to include information confirming that fines and/or other sanctions have been complied with.

### **The benefits of the councillor complaints process**

It is remarkable that the number of councillor complaints has increased enormously since an independent investigation process has been put in place.

While the process may have some costs associated with the investigation and determination of complaints it should be bringing about improved behaviour of mayors and councillors.

We can observe that in public council meetings that mayors and councillors are now being much more fulsome in disclosing conflicts of interest than used to be the case before the OIA was established.

### **Resourcing**

With the maintenance of current funding levels for the OIA, the implementation of all or some of the legislative reforms recommended by the OIA, and the internal efficiencies already being achieved by the OIA as it matures, there is no reason to assume that it is not sufficiently resourced. However, a biennial review such as the current review should also consider whether current resourcing arrangements are adequate.

### **Conflict of Interest (Col) App**

The LGAQ has developed a Conflict of Interest App (<https://coiapp.lgaq.asn.au/>) which is useful in determining whether a councillor may have a Col concerning a matter to be considered by their council. This is a very useful and intuitive portal that guides anyone using it through a series of questions to assist in determining whether a Col exists, and if so the nature of the conflict. Interestingly, it appears that the app can be used by a member of the public.

This portal is co-branded by the OIA and the LGAQ and a link to it was previously available on the OIA website but this appears to be no longer the case.

We believe it would be very useful to develop a similar App for use by a member of the public wishing to determine whether a councillor complaint has merit. This could be developed using elements of the existing on-line Conduct complaint form on the OIA website (<https://oia.resolve.hosting/prd?EntityType=case&LayoutCode=CaseWebFormLayout&refresh=true>) and the LGAQ's App.

The development of such an App, while not a trivial exercise, may well contribute to fewer complaints being lodged with the OIA. Of course, this would require resourcing that we doubt the OIA could provide under its current budget, and we would urge to Committee to consider a recommendation such an App be developed.

Coupled with our suggestion above for the development of a case study knowledge base, this could provide a valuable suite of resources for use by anyone contemplating lodging a councillor conduct complaint.

### **Conclusion**

BRU supports measures and actions to improve the effectiveness of the OIA generally in line with the recommendations contained in the OIA's submission to this inquiry.



We consider that an effective councillor complaints process is an important component of various measures to ensure that local government operates in the public interest. The OIA needs to be utilised in the most effective manner to bring maximum benefit to the community as a whole. We are happy for our submission to be made public and would welcome the opportunity to appear at one of the Committee's public hearings. Should you require any further information I can be contacted on [REDACTED]

Yours sincerely

Elizabeth Handley

President.

The Brisbane Residents United Inc Steering Group