

Cr Nicole Johnston

Councillor for Tennyson Ward



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Mr Chris Whiting MLA
Member for Murrumba
Chair, State Development and Regional Industries Committee
Parliament House
George Street
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Dear Chris

I am writing to make a submission into the functions of the Independent Assessor and performance of those functions with respect to the Local Government complaints process.

I suspect many Councillors may be afraid to speak up about the current inadequacies in the Office of the Independent Assessor functions for fear of what may happen but I am concerned about their operations and feel I must go on the record.

The previous complaints process at Brisbane City Council was overtly political and unfair. On three occasions I have taken Brisbane City Council to court appealing decisions that were ultimately overturned by the Supreme Court. This was a very difficult and costly process but the only way to defend myself. I was a great supporter of an independent assessment process when it was initially announced believing it would bring transparency and fairness, but I can only see after almost two years of operation significant problems and failures.

The failure of the OIA to consider complaints in a timely way is its biggest failing and, in my view, is not consistent with the intent of the local governments complaints system nor in the public interest. Currently, the uncertainty, stress and cost of the process, which can have serious reputational outcomes, hangs over Councillors heads for years. Councillors and the public need to have confidence in our democratic system and it is being undermined by a flawed process.

Two years ago in December 2019, the CEO of Council made a complaint about me regarding a tweet about a proposed road project on Ipswich Rd, Annerley. He never progressed that complaint through the then Brisbane City Council system.

Five months later, he then made a complaint to the OIA in April 2020 (one day after the 2020 election result was declared) when BCC came under the OIA's purview. **20 months ago this complaint was lodged with the OIA and it still has not been initially assessed.** The lack of procedural fairness and unreasonable timeframes are not consistent with intent of the scheme nor in the public interest. I am now afraid to speak about a significant road safety issue in my ward for fear of further complaints and I presume that this was the intention of the CEO, to stifle public debate about an important road safety project in my ward with city-wide significance.

Worse still, for the past **six months** verbally the OIA has advised my solicitor that they do not believe that the CEO's complaint can be sustained. They say Council is providing more 'materials', material I have never seen and after some 20 months has not been produced to my knowledge. If a complaint cannot be assessed and actioned in a timely way, based on evidence, then a professional investigative body should realise it does not exist.

Two years on from the complaint first being made, it may still be years before I can contest the matter, if the OIA refers it for investigation. I strongly dispute the CEO's unfounded and unsubstantiated allegation but am in limbo until the OIA complete their assessment.

In my view this also indicates an institutional bias towards the complainant, the CEO of Brisbane City Council. If after two years BCC cannot produce any evidence to support their complaint, why has it not been dismissed by the OIA?

My first recommendation is to set time limits on complaints regarding the production of evidence to support claims. Complaints should be dismissed if no evidence can be produced to support the claims within a reasonable time frame.

Time limits should also be set on the OIA's initial assessment of matters. There is no reason that the decision to investigate should take many months or even years, as is currently the case.

It is disappointing to have to say this, but if the OIA cannot deal with complaints efficiently and fairly then time limits should be set on the assessment phase or matters dismissed.

I understand from the Committee hearings to date that the OIA says there are 7 complaints older than one year. Most I suspect are related to Brisbane City Council. I am aware of other Councillors who have complaints against them that are still active but have not been progressed/ resolved by the OIA. This is unreasonable for those Councillors, like myself, who remain in limbo.

Based on media reports and my awareness of complaints about other BCC Councillors, the OIA also appears to be bogged down with minor, frivolous and vexatious complaints. As public officials, Councillors have a right and responsibility to advocate on behalf of their residents. The OIA's pursuit of public comments that they or some members of the public do not like (remedies exist for defamation elsewhere) is a form of censorship and interferes with a Councillors right to carry out their elected duties. Again, this seems to be a failure of the assessment process and an inability to recognise vexatious, frivolous or minor complaints.

This definition should be broadened with great scope to dismiss minor, frivolous or vexatious complaints. These matters should not be referred back to politically divided Councils like Brisbane City Council.

I understand that the OIA is seeking to have Councillors' appeal rights removed. I am strongly opposed. As a matter of public interest and fairness, it is critical that a right to appeal OIA decisions is maintained. As a statutory body, procedural fairness in decision making is integral to transparent operations and an appropriate appeal mechanism is QCAT. Matters in the Supreme Court are complex and expensive for everyone.

The reputational impacts of their decision making can be severe for Councillors and having complaints ongoing for years without resolution or having an appeal right blocked would be contrary to the public interest.

The legislation also contains provisions to double punish Councillors. This provision, s150K (2)(b) LGA should be removed from the legislation. Chamber matters should be dealt with in

Chambers as the Local Government Act, City of Brisbane Act and Meetings Local Law currently allows. The Chair of Council has extraordinary powers to remove, expel and name in the Council annual report and online. A second complaint about the same issue, unsuitable meeting conduct, should not be within the purview of the OIA as is currently the case, as it is contrary to the public interest and provisions of the Queensland Human Rights Act.

The democratic process provides a mechanism to remove Councillors who are not responsive or accountable to their constituencies through the election process.

Finally, earlier this year, the Lord Mayor of Brisbane City Council, Cr Adrian Schrinner publicly made inappropriate, political comments about Labor Councillors who were undertaking their role on the BCC Ethics Committee in good faith. As a result, those members resigned and the Ethics Committee now comprises solely LNP Councillors. No other Councillors have been invited to join the Committee to replace them.

Brisbane City Council is a party political Council fully controlled by the LNP majority Councillors and directed by the Lord Mayor Adrian Schrinner. Further powers to oversight Councillor behaviour should not be given to Brisbane City Council.

I encourage the Committee to scale back the scope of matters that can be assessed by the OIA and ensure that their powers are carried out in a fair and timely way.

Should you require any further information please let me know.

Yours sincerely



Nicole Johnston
Councillor for Tennyson Ward