

Jared Cassidy

Councillor for Deagon Ward

Inquiry into the functions of the Independent Assessor and the performance of those functions

Submission No 045



Wednesday 15th December 2021

Mr Chris Whiting MP Chair of Committee and Member for Bancroft
State Development and Regional Industries Committee
Parliament House
George Street
Brisbane Q 4000
sdric@parliament.qld.gov.au

Dear Mr Whiting,

Re: Parliamentary Committee Inquiry into the functions of the Independent Assessor and the performance of those functions

The Brisbane City Council Labor Opposition welcomes the opportunity to submit on this matter after writing to the Deputy Premier to seek a review of how the relevant legislation is being interpreted and implemented by the Office of the Independent Assessor (OIA) and processes adopted by Councils such as Brisbane City Council.

At the very outset, Opposition Councillors wish to make it clear that we fully support efforts to make local government more open and accountable, and ensure Councillors and the Lord Mayor are held to the highest standards of behaviour when carrying out our roles, responsibilities and obligations.

We believe local government decision-making must be open and inclusive, and the behaviour of Councillors must be ethical and lawful.

The establishment of a new Councillor Code of Conduct describing the minimum behaviour of local government representatives and the subsequent establishment of the Office of the Independent Assessor was a welcome move towards achieving this aim.

Although the Office of the Independent Assessor was established in December 2018, Brisbane City Councillors only came under its jurisdiction after the 2020 Local Government elections when the State Government's Councillor Code of Conduct replaced the Councillor Conduct Review Panel process.

Now some twenty months under this new process, we have feedback we wish to raise with the Parliamentary Committee in this submission for your consideration.

As BCC is unlike most other Queensland Councils with its own Act and Regulations and where it has a more political structure (with a Council Administration, Opposition and cross-bench Councillors), what may work well in other Councils may not be best for Brisbane.

Your hard working local

BRISBANE CITY COUNCIL'S ETHICS COMMITTEE

As previously mentioned, until the Council elections in March 2020, Brisbane City Councillors were subject to Council's internal Code of Conduct which was enforced by the Councillor Conduct Review Panel.

However, since then, Brisbane City Council (BCC) has fallen under the same Councillor Code of Conduct process which has applied to the other local governments across Queensland.

At the Council meeting held on the 26th May 2020, a Councillor Ethics Committee was created as a Standing Committee of Council to consider the findings and recommendations arising from a *Councillor Conduct Tribunal Report*.

Other models available to Council included the Lord Mayor or the Chief Executive Officer having the power to consider and act on these reports – however, the Establishment and Coordination Committee proposed the formation of an Ethics Committee.

As part of the responsibilities outlined in this decision, (Attachment 1):

"the Councillor Ethics Committee has the power to:

- adopt the findings and penalty in relation to the Councillor conduct;*
- adopt, with amendments, the findings and penalty in relation to the Councillor conduct; or*
- adopt a separate finding and penalty in relation to the Councillor conduct."*

The membership of the Committee comprises three Administration Councillors and three Opposition Councillors, with the Committee Chair (one of the three Administration Councillors) having the casting vote in the instance of a tied vote.

As this was established as a Standing Committee of Council, documents relating to these matters were published on Council's website (like any other Council Standing Committee) and meetings were open to the media and the public. This transparency was a welcome change from the former Councillor Conduct Review Panel process where decisions were made behind closed doors.

Indeed, Opposition Councillors welcomed this greater openness and transparency on how Council dealt with these matters.

However, as these meetings progressed Opposition Councillors were disappointed to find:

- Motions moved in the Ethics Committee were not recorded;
- No transcripts of the deliberations were recorded and published;
- A complete lack of natural justice in the processes; and
- Committee members were not supplied with the same evidence as was supplied to the OIA – which made decisions difficult at times due to a lack of information.

Opposition Councillors attempted to make changes to address these concerns, however, due to the Administration possessing the majority vote on the committee this was not possible.

During the deliberations on one particular matter, one of the Opposition Councillors voted differently from the rest of the Opposition Councillors on the Ethics Committee.

While all members of the same political party, the Opposition Councillors exercised a conscience vote on the Ethics Committee with each member considering the information presented and voted accordingly.

This was met with ridicule and derision from Lord Mayor Adrian Schrinner, who went on Twitter¹ and then radio to express that he found it “*extraordinary that when it came to a vote... the Labor Councillors divided over this*” and went on to exclaim “*it was quite extraordinary to see a split in the opposition Labor Councillors*” and “*there’s five Labor councillors and it seems to be five different opinions on what they believe*”.²

While not a member of the Ethics Committee himself and therefore not part of the deliberations, the comments from the Lord Mayor clearly show he expected Opposition Councillors to vote politically and as a group.

The Opposition members felt these comments undermined the Ethics Committee and the ability of members to act in accordance with the responsibilities defined in the policy.

Following these actions by the Lord Mayor to politicise the BCC’s Ethics Committee and due to the other concerns previously mentioned about how the committee was being conducted, Opposition Councillors made the difficult decision to resign from the Committee.³⁴⁵

To improve the impartiality and transparency of the way Councils are managing reports from the OIA, there should be strong guidelines to ensure there is a clear and consistent approach to responding to breaches of the Councillor Code of Conduct.

Furthermore, in our view, BCC seems to also exercise a large amount of discretion when Councillors are notified of complaints - including what information and documents Ethics Committee members are provided and how often the Ethics Committee is convened, amongst other matters.

This leads to the potential for further politicisation of the process particularly around election periods, and a lack of sufficient information being provided to allow for proper decision making.

There have been cases where Councillors have had to make specific requests for all documents relating to a matter, and Councillors were not being advised of the availability of further documents despite them being in BCC’s possession.

Further, despite a large number of complaints and investigations involving BCC councillors, the Ethics Committee has only convened on 3 occasions since it was established in May 2020.

¹ [Lord Mayor's Tweet 5 May 2021](#)

² [4BC Radio Interview – 13 May 2021](#)

³ [Brisbane Labor councillors quit ethics committee citing 'politicisation'](#)

⁴ [Council's ethics committee in turmoil as Labor councillors resign – Courier Mail](#)

⁵ [Labor councillors cite politicisation in resignation from ethics body – Brisbane Times](#)

OIA INVESTIGATIVE METHODS

We are aware of the OIA contacting Councillors' staff via the phone with no notice or context and requesting comments/information about potential OIA matters.

This was in circumstances where the Councillor had not yet been notified and the matters were in the very early investigative stages.

The Councillor's office staff felt very uncomfortable with this occurring.

When the OIA was then contacted by the relevant Councillor, the OIA produced the initial complaint a few days later and then proceeded to make a formal request for the same information but this time in writing.

COUNCILLORS' SOCIAL MEDIA ACCOUNTS

As mentioned previously, this is a politically divided Council and as such there will be a vigorous discussion on differences of opinion expressed in Council meetings, media reports and on various social media platforms.

We are concerned about any moves to prevent Councillors from expressing their opinion on issues through their platforms.

The OIA has formed the clear view that social media accounts and pages run by Councillors are official Council channels. We disagree.

In Brisbane, we are party divided and it's clear that Council has its official channels and we have our own as elected representatives.

At no other level of government are those channels treated as government pages – they are clearly party-political.

TROLLING AND ABUSE ON SOCIAL MEDIA

Recent reports of Councillors being investigated for blocking abusive people on their social media is also concerning.

These are public platforms where abusive comments can be viewed by anyone, and be offensive to anyone reading them.

Further, in some instances, these pages are being managed with the support of staff. We would not tolerate the abuse of our staff in any way – whether it's over the phone, face-to-face, via email or social media.

In our view, elected members provide many different ways of being contacted. Social media is not the only way.

If someone is behaving inappropriately (eg being racist, sexist, or being abusive in any other way), Councillors should have the right to block those individuals without the threat of investigation by the OIA.

Further, Opposition Councillors are concerned that the OIA deems that Councillors are required to monitor and moderate all comments on our social media pages.

When social media pages have not been moderated, or not moderated in a way the OIA agreed with, complaints against those Councillors have ensued.

This is a resourcing issue where Councillors simply cannot monitor and moderate all comments on our pages.

LACK OF RESOURCES FOR OIA

There have been occasions on matters which have been raised with the OIA by Opposition Councillors where the response to these complaints states the matter could not be pursued due to resourcing issues.

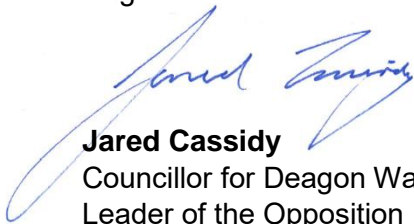
Complaints should not be dropped from investigation simply due to resourcing issues.

Again, we appreciate the opportunity to provide a submission to the Committee on these matters.

Please contact me should you require any further information.

The BCC Opposition Councillors are more than happy to assist with providing any additional information or answer any questions you may have.

Regards



Jared Cassidy
Councillor for Deagon Ward
Leader of the Opposition

RESPONSIBILITIES AND MEMBERSHIP OF THE COUNCILLOR ETHICS COMMITTEE

COUNCILLOR ETHICS COMMITTEE

Functions and Duties

Responsibilities

The Councillor Ethics Committee is responsible for considering the findings and recommendations put forward in the report of the Councillor Conduct Tribunal regarding suspected inappropriate conduct by a Councillor.

Powers

To decide pursuant to section 150AG of the *Local Government Act 2009* whether or not a Councillor has engaged in inappropriate conduct and what action Council will take under section 150AH of the *Local Government Act 2009* to discipline the Councillor.

In considering the findings that have been put forward in a report of the Councillor Conduct Tribunal, the Councillor Ethics Committee has the power to:

- adopt the findings and penalty in relation to the Councillor conduct;
- adopt, with amendments, the findings and penalty in relation to the Councillor conduct; or
- adopt a separate finding and penalty in relation to the Councillor conduct.

Membership of Committee

Membership of the Committee is bipartisan, where possible, and includes six Members, including the Chair and Deputy Chair, comprising six eligible Members nominated by the Lord Mayor, of which three eligible Members will be nominated after consultation with the Leader of the Opposition.

After appropriate consultation by the Lord Mayor, a motion will be brought to Council, through the Establishment and Coordination Committee, requiring Council resolve to appoint the Committee Members. The motion will also include appointment of a Chair and Deputy Chair of the Committee.

Councillors will not be eligible for appointment to the Committee if they have had:

- any finding of corrupt conduct made against them; or
- multiple findings of either misconduct or inappropriate behaviour made against them (by either the former Councillor Conduct Review Panel, the Office of Independent Assessor or Council) in the preceding five years.

If a complaint is either made by, or made against a Member, the Member must not participate in the consideration or decision of that matter. In such a case, another eligible Councillor is to be appointed by a resolution of Council at the first available Council meeting. Depending on which Councillor is standing aside, the nomination is to be made by the Lord Mayor or the Lord Mayor after consultation with the Leader of the Opposition.

If the bipartisan composition of the Committee cannot be achieved, Council must decide, by resolution, to appoint Councillors.

Membership of the Committee

Councillor Adam Allan (Chair)
Councillor Kara Cook (Deputy Chair)
Councillor Peter Matic
Councillor Tracy Davis
Councillor Peter Cumming
Councillor Charles Strunk