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14 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

**Subject: INQUIRY INTO THE FUNCTIONS OF THE INDEPENDENT ASSESSOR AND THE  
PERFORMANCE OF THOSE FUNCTIONS**

This submission is a joint one from the Organisation of Sunshine Coast Association of Residents Inc (OSCAR) and the Queensland Local Government Reform Alliance Inc (QLGRA)

OSCAR is the peak body representing resident and community organisations on the Sunshine Coast. The QLGRA is a peak group representing community and resident groups across the whole of Queensland. Both organisations are non-partisan and not-for-profit incorporated associations that represent the interests of the broader community.

We wish to have our submission published and we would appreciate the opportunity to appear before the Committee at the public hearing/s to be held in early 2022. We are also prepared to appear as part of a community-based presentation to the Committee in the interests of efficiency if that is preferred.

We wish the Committee well in its deliberations.

Yours sincerely

Melva Hobson PSM  
President, OSCAR

Conny Turni  
President, QLGRA

Note: Email is our preferred form of communication.

# 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.*

Given the broad nature of the Inquiry's Terms of Reference and the lack of specific criteria to guide responses from submitters, we have predominately based this submission on points made in the letter to the Deputy Premier from the Local Government Association of Queensland (LGAQ) dated 22 October 2021 in which the LGAQ supported the Minister's decision to conduct a review and listed several issues for the State Government's to consider.

We have also taken account of the Office of the Independent Assessor's submission to the Inquiry in shaping our response.

OSCAR/QLGRA agrees with the LGAQ that 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 Office of the Independent Assessor (OIA) within the broader community.

The LGAQ is focussed, quite justifiably we acknowledge, on the interests of its council members and councillors but **it does not represent** the interests of the broader community and the State Development and Regional Industries Committee (the Committee) needs to keep that in mind during this review. The "public interest" around the operation of the OIA is not the same as that of the LGAQ.

Beyond media coverage of certain complaints (eg Cr Sean Dillon, Margaret Strelow, Fassifern Guardian & Tribune) and the letters to the Minister from the LGAQ and the Queensland Council of Civil Liberties (QCCL) we do not see significant dissatisfaction with the operation of the OIA coming from the community organisations we represent or indeed from the public in general.

We note that the letter to the Minister from the QCCL was based on recent articles in the Courier Mail newspaper; while we are not suggesting these examples are not significant, relying on how the Courier Mail reports issues as a definitive source of accurate information would be highly problematic in our view.

There is no doubt that there are members of the public, and indeed within our organisations, who have not been satisfied with a decision of the OIA concerning a particular conduct complaint that has been dismissed, but this does not mean that there is dissatisfaction with its operations in general.

The Independent Assessor, and her Office, enjoys the confidence of our organisations and we believe the performance by the Independent Assessor of the Independent Assessor's functions is consistent with the intent of the local government complaints system.

In saying this we are not suggesting that the Minister's actions in initiating this review are not welcome; we agree that the review of the OIA is timely given the time that has elapsed since its establishment, but we would caution against overreaction to perceived shortcomings in the performance of the OIA, in some cases from parties which may have a vested interest in limiting the powers of the OIA.

## Comments relating to the LGAQ's identified issues

We have used the LGAQ's list of issues, listed in their letter to the Deputy Premier, as the basis of the responses in this section of our submission.

The constitutional right of elected local government representatives to freedom of political expression and how this intercedes with the code of conduct for councillors in Queensland;

We agree that the right of councillors to freedom of political expression is vital. It may be appropriate to ensure the Code of Conduct for Councillors does assist in dealing with this matter more clearly.

However, there are limitations to the rights of free speech, and these have to do with discrimination legislation such as racial discrimination. The balance between the human rights and the obligation of a councillor according to the Local Government Act 2009 (LGA) have not been tested yet to our understanding. Clear lines have been drawn for racial discrimination, offending religious tolerance, sexual discrimination, however, there also needs to be intervention if a councillor is involved in name-calling members of the public, staff or other councillors. This is a job for the legislation to draw boundaries to help bodies such as the OIA establish where their boundaries lie.

The general assessment process of complaints and investigation priorities of the OIA;

Given every statutory body has only limited funding, the OIA has to set priorities. These priorities are clearly stated by the OIA. One such priority is dealing with complaints referred to it by the CCC. Another is determined by the judgement that if a possible outcome does not justify the resources required to pursue it then it is not pursued. Another reason that determines priorities is whether the complaint is in the public interest.

In our opinion, limited resources are making these kinds of decisions necessary and may give rise to a further examination of the appropriateness of current levels of funding for the OIA.

The assessment of frivolous and vexatious complaints and the process of dealing with deemed frivolous and vexatious complaints;

We believe vexatious/frivolous complaints are more than adequately dealt with in the LGA which provides for substantial penalties in these cases (150AU).

Given that over half of all complaints to the OIA currently come from within councils themselves and although we are not aware of how many councillor-initiated complaints are deemed vexatious/frivolous) it may suggest this is an area that requires more training for councils/councillors.

Whether the acceptance of anonymous complaints supports natural justice for a councillor subject to an allegation;

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.

On balance, our view is that complaints should not be anonymous but the name of the person making the complaint should not be divulged to other parties by the OIA where matters of inappropriate conduct are referred back to the local government.

In cases where the OIA suspects misconduct it is our understanding that if a complaint is referred to the Councillor Conduct Tribunal (CCT), the identity of the complainant is disclosed to the subject

councillor. This would appear to be required for procedural fairness in our view and is therefore anonymous complaints should not proceed to this stage.

**The timeliness of investigations of complaints and whether KPIs need to be set and reported upon each year;**

Not all complaints can be dealt with in the same timeframe as it depends on many factors including the number of witnesses and the availability of these witnesses. The timeframe for handling complaints is not unreasonable in our view given the volume of complaints the OIA has had to deal with in its first 3 years of operation.

We believe the transparency of the OIA is already very good 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.

**Whether unsubstantiated complaints still need to be listed on a publicly available register;**

We strongly support the continued listing of dismissed or unsubstantiated complaints on the Councillor Conduct Register that Councils are required to maintain (s150DX). Keep in mind, in these situations, the name of the Councillor against whom the complaint was made remains confidential as it should.

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.

In discussions the QLGRA has had with the Independent Assessor (IA) in the past, we have advocated for 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.

**The cost of and time taken for councils to assess inappropriate conduct complaints that are referred back to them by the OIA;**

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.

**The process of dealing with matters relating to councillors who are no longer in office;**

In situations where the OIA finds that inappropriate behaviour has occurred concerning an ex-councillor, we can see no justification for the matter to be referred to the council for further action. In these cases, we would agree that the cost and time incurred by a council in pursuing such a complaint is a waste of resources, particularly when the most likely action a council could take in this instance is to require an apology from the ex-councillor or issue a reprimand. Both these outcomes are unlikely to weigh heavily on the offender!

In a recent case considered by the Sunshine Coast Regional Council (SCRC) a significant amount of time was spent in an Ordinary Meeting determining what action to take in such a situation; the outcome was a reprimand for the ex-councillor. The Council did not choose to take the most punitive action available to it under the LGA (s 150HD (1) (b) (vii)), ie an order that the ex-councillor reimburse the local government for all or some of the costs arising from the ex-councillor's inappropriate conduct. We suspect that most councils, in similar situations, would not consider applying that particular penalty

Where an ex-councillor has been deemed to have engaged in misconduct or corrupt conduct these cases are referred to bodies other than the council and this should remain the case.

**The legislation relating to the OIA and whether there needs to be further statutory amendments to ensure key objectives are being met;****OSCAR/QLGRA amendment suggestions**

We would like to make the following suggestions for amendments to the LGA 2009.

**Who can make a complaint?**

We understand that the OIA 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 organisations like 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. 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.

We would also like to see the Committee consider ways in which the complaints process might be made more equitable and efficient for the general community whether via legislative amendment or the provision of guidelines. Much of the focus of this Inquiry appears to be about the conduct complaints system as it relates to councils and councillors. We believe that there needs to be much more emphasis on the needs of members of the community.

The flexibility of the complaints process is a vital pre-condition to assisting residents and ratepayers through the complaint process, therefore 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 would be useful. It may also be necessary to waive or change timeliness requirements 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 could be cost-effective for the government to consider.

Advocates are also able to act as a filter for government entities, 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 they have a reduced, or no, budget or resources. However, we consider that a properly managed and funded complaints process with a focus on ratepayers and residents can save time and money by preventing ongoing disputes and can assist the OIA to achieve outcomes that are aimed at underpinning the community’s confidence in the integrity of the complaints process.

### **The role of the Ombudsman**

We would like clarification as to whether the Queensland Ombudsman is deemed to be “another government agency” and whether it can refer complaints to the OIA.

If this is not the case, we would like to see the LGA further amended to give the Ombudsman this referral role.

### **Response to OIA suggested amendments to the LGA 2009**

The OIA, in its submission to this Inquiry, which has been published on the Committee’s website, makes several suggestions about amendments to the LGA 2009.

Our view on these is outlined in the following section. Unless otherwise indicated, the rationale for the amendments outlined in the OIA’s submission is consistent with our view on this matter and we do not believe it is useful to subject Committee members to an unnecessary reading of similar material.

#### **1 Unsuitable meeting conduct**

We agree that 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 Code of Conduct for Councillors in Queensland contains the following words (Page 8):

*“Under the legislation, any conduct by a Councillor that is contrary to the standards of behaviour in the Code of Conduct that occurs within a meeting of Council (including standing committee meetings), is dealt with as unsuitable meeting conduct. Unsuitable meeting conduct by a Councillor is dealt with by the Chairperson of the meeting. It is important that the Chairperson deal with matters of unsuitable meeting conduct locally, and as efficiently and effectively as possible so that Council can continue with their business of making effective decisions in the public interest.”*

We would like to see the words and “and with impartiality” added to that statement so that the last part reads as follows:

*“and as efficiently and effectively as possible **and with impartiality** so that Council can continue with their business of making effective decisions in the public interest.”*

#### **2 Making the inappropriate conduct scheme more effective**

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

We would welcome changes that prevent decisions being made based on any particular voting or meeting bloc or lack of impartiality by a Mayor or CEO. We do not support the Mayor, CEO or any other delegated person, or meeting of council, determining inappropriate conduct.



### **3 Redirecting some misconduct matters into an effective Inappropriate Conduct Scheme**

Under the current legislation if a complaint comes within the definition of misconduct (s 150L) the IA 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**.

This is exactly the experience of several complaints that we are aware of – ie the complainants believed (correctly in our view) the conduct was inappropriate but did not constitute misconduct or corruption, but the OIA escalated it to misconduct where it subsequently “failed” the higher bar and was dismissed.

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

### **4 Discretion not to deal with certain complaints**

We agree with the OIA’s recommendation that section 150T be amended to reflect that an initial assessment is undertaken to determine whether an investigation of the matter is appropriate and to provide the IA with the discretion to deal with complaints that are out of jurisdiction as enquiries only. We agree this amendment has the potential to increase the OIA’s efficiency.

### **5 Amend sections 150DX, 150DY and 150DZ to remove the requirement to record in council conduct registers matters that have been dismissed or subject to no further action by the assessor.**

For reasons outlined previously in our submission, 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.

### **6 Inappropriate Conduct, Misconduct and the Implied right to freedom of political expression**

Review of the Code of Conduct for Councillors in Queensland and the LG Act to consider whether the implied right to freedom of political expression might operate as a limitation on legislative power.

The right to freedom of expression contained in section 21(2) of the *Human Rights Act 2019 (Qld)* creates challenges for employers in circumstances where the expression of an opinion, observation or belief by an employee is contrary to their employer’s expectations and could lead to a conduct complaint even though councillors are not technically employees of their council.

The *Ridd v James Cook University* case is a good example of the inherent tension that can often arise between the right to freedom of speech and expectations in documents that can potentially curtail that, for example in a Code of Conduct.

When considering whether an employee has engaged in misconduct, employers need to consider the interplay between all relevant rights and obligations, including those set out in any Code of Conduct.

### **7 Improve the efficiency of investigations**

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 efficiency.

### **8 Remove the requirement in section 150AK for the IA to provide to a subject councillor the details of the day, time and date of a Councillor Conduct Tribunal hearing at least seven days prior to a hearing and insert a provision that requires the Tribunal to provide that information to both parties**

We would support such an amendment in the interests of efficiency by removing unnecessary duplication.

**9 Amend the LG Act to allow the IA to withdraw matters referred to the Councillor Conduct Tribunal, where there is a change in the circumstances that is relevant to the public interest in progressing the matter**

We recognise that if the OIA were able to withdraw CCT applications, where there was a change of circumstance impacting on the public interest in proceeding, it would streamline current processes, improving the efficiency and reducing the cost of the councillor complaints system.

**10 Amend section 150AS (2) of the LG Act to require publication of Councillor Conduct Tribunal decisions in full**

We agree that the transparency of CCT decisions and the reasons for them is a key element in councillor capacity building 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.

The proposal also removes the need for the Tribunal to produce two documents for each decision which appears to us to be a waste of resources.

**11 Amend the LG Act to remove the right of review from a misconduct finding and replace it with a right of appeal on a point of law**

We do not have an informed view on this proposed amendment.

**12 Insertion of a provision which makes it clear that a former councillor is required to comply with the Councillor Conduct Tribunal's orders**

The rationale for this amendment seems sound to us.

**13 Amend the LG Act to require regular strategic review of OIA**

A provision to provide a regular, transparent review of the role and functions of the IA and provide a regular opportunity to revisit whether the councillor conduct system is achieving its policy intent and to consider law reform proposals that may address issues identified seems a suitable amendment which we support.

The OIA has suggested sections 86-88 of the Integrity Act 2009 as being a suitable model for such review.

**A general review of the code of conduct for councillors in Queensland:**

As indicated previously in our submission, we believe 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.

**Whether there needs to be more Parliamentary oversight of the OIA's operations.**

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 IA 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 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.

## **Additional comments**

### **Resourcing**

It appears to us that 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 resourcing arrangements.

### **Stakeholder engagement**

The IA has made herself available to community stakeholder groups like ours.

The QLGRA has an arrangement in place to meet with the IA on a half-yearly basis to discuss matters of mutual concern. Two such meetings have occurred this year. The IA also spoke at the QLGRA AGM in Hervey Bay in November 2020 and has attended a meeting of the South East Queensland Community Alliance (SEQCA) in July 2021.

The IA's willingness to engage with us and similar stakeholders is very much appreciated.

### **Comment on OIA statistics**

We believe the level of reporting of the OIA's performance statistics is acceptable.

We note with interest that according to the OIA website, in the 2020-21 financial year, the local government sector was the main source of complaints, however, we understand this result was affected by a high number of notifications from one council regarding a single issue in the second quarter.,which highlights the need for training for councillors.

It will be interesting to see if this level of council-initiated complaints reduces over time with an improved understanding of the complaints process and what constitutes a legitimate complaint as a result of ongoing training provided, ideally in our view, by the Local Government Division of the Department.

### **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 there is nothing in the App to prevent it from being used by an informed 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 online 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, again ideally under the auspices of the Local Government Division of the Department in our view.

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.

### **Lodgement fee for complaints to the OIA**

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

At the recent Annual Conference of the LGAQ, a motion from the Mt Isa City Council supporting the introduction of a lodgement fee was defeated to the best of our knowledge. If this was the case, we applaud that outcome.

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 council-initiated complaint (keeping in mind this is currently the source of the majority of complaints handled by the OIA) might be met from Council resources.

The significant number of complaints (1074 complaints received in the financial year from 1 July 2020 to 30 June 2021) makes it apparent that there are many issues relating to councillor conduct in Queensland 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.