
From: [REDACTED]
Sent: Wednesday, 15 December 2021 9:06 PM
To: State Development and Regional Industries Committee
Subject: SEQ Community Alliance submission to inquiry into the functions of the Independent Assessor

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

Dear Committee Secretary

Redlands2030 is a community based organisation based in Redland city. We appreciate the opportunity to make a submission to the inquiry into the functions of the Independent Assessor. While the Committee no doubt believes it has provided ample time for organisations such as ours to compile a petition what may be not appreciated is that community organisations are involved in multiple issues and one time frame might seem reasonable on its own but in the mix of the issues that the Government and councils are seeking comment and input to the available time for a few people to respond to many issues is not appreciated.

Our organisation has a supporter base of well over 3500 people plus a healthy following on Facebook. I raise these figures only to give the Committee a sense of scale of the community interest in the activities of Redlands2030 and by extension our submission to the committee.

While an inquiry into the OIA is welcome it is only a snapshot our concerns. There are multiple agencies responsible for the accountability of Local Government and it is our view the "broader system" itself is not working, it is slow to process complaints, not responsive to enquiries and not well integrated. Hence when the functions of the 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 accountability agencies rely on the support and involvement of the community to raise issues of concern about the behaviour of mayors or local councillors (and at times officers. 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 (often called Investment corporations) to undertake activities such as property development thereby avoiding or reducing public scrutiny this happens by design with a company has certain obligations under the Companies legislation but no obligation to the public interest. Public interest of course being central to the role of a Council. The Council owned companies blur the public interest;
 - c. Restricting access to information about local council activities (which is facilitated by Queensland's inadequate Right to Information laws), and
 - d. publishing a record of closed session decisions so the community can baseline the performance of their council.
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.

Redlands2030 has had access to the submission by SEQCA and strongly echoes those opinions. Given we were restricted in our ability to respond we have adopted the bulk of the SEQCA submission as follows:

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?

Inappropriate conduct

The OIA has drawn attention to the problems where allegations of inappropriate conduct are referred back to a local council for investigation and decision.

SEQCA 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".

This should allow matters to be considered as being either misconduct or inappropriate conduct and dealt with accordingly once the facts have been established. At present we understand that if a matter is investigated as misconduct and the complaint is not sustained it can't then be considered as inappropriate conduct.

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 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.

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, SEQCA supports this recommendation.

The cost of the complaints process

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.

Conclusions

Our experience with the OIA has been largely positive but its failures usually revolve around timeliness. A complaint lodged months prior to the last election is yet to be resolved and so the community was not even aware there was an unresolved issue in the lead up to the last election. That is an untenable outcome. An effective and efficient complaints process is a requisite for effective community engagement in accountable and transparent government.

While our submission is delayed and will arrive after the deadline, please accept our submission and accept the reasoning outlined for our lateness (and acknowledge same).

Steve MacDonald
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