

**State Development and Regional Industries Committee
Submission to the Inquiry into the OIA
Due 5.00pm 15th December 2021.**

**Send to The Committee Secretary
sdric@parliament.qld.gov.au**

**PART 1
Executive Summary**

I have prepared a detailed and lengthy submission to the OIA Inquiry. Only this executive summary Part 1 can be published. Part 2 contains examples and evidence. It may contain information that is confidential in some way, to either the Local Government or the OIA, or it mentions personal information. Part 2 information is solely for the use of the Inquiry.

This submission reflects my personal views.

The OIA complaints system is simply not working and needs serious review or a complete rethink. Councillors do not sign up to represent their communities only to find the OIA becomes the weapon of choice for political agendas.

I have accumulated 48 known OIA complaints in the last 20 months yet I have not breached any behavioural standard. In my whole career of 43 years in local government I think I understand how I should behave. My behaviour has always been professional. I am not reactive, never lose my temper, have never used bad language in my life. I am always respectful and considered. My record speaks for itself. I have not changed my behaviour, so the question is asked what has occurred to accumulate so many complaints?

The answer lies in the creation of a complaints system and OIA that isn't working.

I have lived on Tamborine Mountain for 35 years and my own residents know my personality, values, and contribution to the community. In 2012 in a two-person contest for Mayor, I received a record 85% of the primary vote on Tamborine Mountain.

My local Government experience spans over 40 years, with 25 years in Executive Management positions mostly in large local governments in SEQ and northern NSW.

In Part 2 of this submission, I will endeavour to provide insight into the operations of the OIA, but it is just a snapshot. My OIA directory on my computer contains over 10 gigabytes of data with 1600 files used to provide evidence and refute frivolous accusations. I have been burdened with more than 500 hours of work, to prove my innocence to the OIA and defend my integrity and character. There is potentially another few hundred hours in the pipeline. This is time I could have spent servicing my community.

My estimate is that 95% of complaints against me are generated from the Scenic Rim Council executive, managers, Mayor or Councillors utilising their considerable governance and support officers. It is well known how the complaints are formulated, as everything I write, say, and do is scrutinised at every level and advanced on a well-planned production line. The culture starts at the top and is against me. Those that participate in the process know that this action generates currency with leadership. In short, leadership have political axes to grind and would prefer I not be there. They believe the OIA processes are the best tool to achieve their aims.

Whilst I have tried to make observations at a macro level in this submission, I am not party to what happens across other Councils, except what I read in the press. I found it difficult not to talk about my own experience, and many examples relate to my own dealings with my council and the OIA. I include them because it is a story that can add value to the committee's assessment.

I have talked to a CEO of a larger SEQ council than Scenic Rim who chooses to work out differences between councillors in an adult, professional way, before they become a problem. They have not had a single OIA complaint lodged. Surprisingly, the law as it stands says this an unlawful process! Perhaps the Inquiry should give serious consideration to such a model.

The below dot points represent my views and experiences of my dealings with the OIA. I am sure common problems will emerge from the inquiry and experiences will differ between Councils. Often, it all comes down to the quality of leadership in a Council, and the divergence between what the law says and how it is interpreted and implemented.

- I do not believe the performance of the independent assessor, or the functions of the Office are consistent with the intent of the local government complaints system. I believe that local government in Queensland is a lot poorer because of the new complaints system.
- The local Government Act makes it an obligation of Councillors to “Dob In” each other to the OIA. for a mere suspicion of misconduct or inappropriate conduct. This is at the heart of the problem. It creates a toxic culture of confidential “tittle tattling” and the result is a behemoth organisation to process them. Queensland Local Government is being NANNY managed at great cost. It is unnecessary.
- I believe the OIA should be disbanded. It is a flawed model.
- The OIA has become politicised, and its resources often used as a weapon, Councillor against Councillor.
- The OIA is inconsistent in its findings and or shows bias. The cost to ratepayers of administering investigation reports they recommend council commission, is a serious misuse of resources. I will deal with this in Part 2 of the submission.

- The code of conduct should be used only for serious offences. The OIA deals too much with trivia. It is totally prescriptive in its assessment of breaches of the code of conduct. It gives insufficient weight to seriousness, ramifications, consequences, impacts or community or political opinion.
- The charge of inappropriate conduct is now so far devalued because of its frequency of dismissed charges published on councils' websites, that it means nothing in the community.
- The OIA has difficulty in separating complaints about criticisms of Council decisions or even just explaining them, with free speech. The code of conduct should not be used to hinder free speech or to quash or interpret opinions which might be uncomfortable. (The awful truth).
- The Local Government Act provisions defining misconduct are completely contradictory to the way the High Court has interpreted misconduct, The case law has set solid precedent that has not been overturned, and the OIA and Conduct Tribunal have reduced its meaning to complete trivia such as: -

“Failing to abide by a council policy is misconduct (Code of Conduct) Therefore forwarding a council with information to be passed on to a constituent has been found to be misconduct. See my next dot point also.

Crown law should seriously reconsider the law on misconduct in the Local Government Act to avoid a higher court challenge.

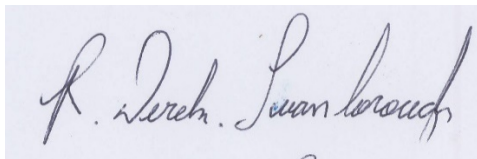
- I recommend that Councils' policies, procedures, and guidelines be scrutinised by a State interest check against the Local Government Act and Regulations before they can be adopted by a Council, otherwise, Councillors can be guilty of a misconduct charge for breaching an Ultra-vires policy, procedure or guideline which is completely misaligned with legislation. Remember Nigel Waistall's case, a former Councillor for Tamborine Mountain I replaced, who was also treated very poorly by the Council using the OIA complaints system as a weapon, for political reasons. He also printed in the local newspapers the Council culture was toxic. His case went all the way to the Tribunal and was found guilty of forwarding an email. This occurred 12 months after his term of office ended. I have many other examples of policies, procedures and guidelines that reinterpret legislation wrongfully and are applied with no scrutiny from the State.
- I believe there are serious structural issues demeaning local government and hindering Councils' transparency in Queensland. Some are related to the OIA, others to the Department of Local Governments role and impotency as an oversight body with powers it now seems reluctant to use to enforce its own legislation and Belcarra reforms. More in Part 2.
- The OIA has demonstrated it can't deal with serious issues. See Discussion in Part 2
- **There is no natural justice** in the way inappropriate conduct complaints are handled in my council.in closed session. I complained to both the OIA and to the Ombudsman and to the Department of Local Government that this was against Belcarra reforms legislated amendments. There is no provision in the regulations to do this, yet I recently am now a victim of the process and had no natural justice in defending spurious allegations.
- The OIA is guilty when assessing complaints, of implying inference to words published in newspaper columns. It then proceeds to prosecute the inference they have created, when clearly there was none. This has happened several times. In short, many times I am charged with defending “THOUGHT CRIMES.
- The OIA uses intimidating tactics. For example, when invited to an interview in their office about a complaint, I thought it was for me to argue my defence. Instead, I was asked to sign, and initial pages of evidence called “exhibits” in preparation for a referral to the Tribunal. It seemed I was wasting my time and judgement was already passed.
- It has been my experience that the OIA secretly audio records interviews which shows a lack of transparency and bias and is contrary to their own code of conduct.

- By not dealing sufficiently with frivolous and vexatious complaints, especially from serial complainants, the OIA is complicit in creating an unsafe workplace. It is totally foreseeable if a Councillor is being subject to systematic bullying and harassment by complaints, that it could lead to personal injury.
- The OIA is inconsistent or could be biased. It completely dismissed a serious complaint I made about a retaliation for a Public Interest disclosure and breaches of various Queensland legislation as well as the Code of Conduct. The exact same complaint was lodged with the Human Rights Commission and was accepted in full and is proceeding to Conciliation and QCAT. Why is that?
- The OIA bundles complaints and it could be 12-18 months after they are made that they address them, causing massive amounts of time to rework and defend, this is unfair.
- I believe the legislation should be changed so that complainants are charged a significant fee, say \$200 lodge a complaint to the OIA. It would be refundable if proved to be upheld. This would likely weed out 90% of complaints to the OIA.
- The OIA has not increased the Integrity of Local Government, rather, it has diminished it. Recent cases in the media are all the evidence needed.
- The OIA has lost sight of its sense of proportionality, evidenced by its attempt to use its considerable power inappropriately to coerce the Fassifern Guardian newspaper to reveal its sources and notes about a conversation on the Household plebiscite I was conducting on whether my constituents wanted me to work towards an application to the Minister for Local Government for a boundary referral, to investigate a change to determine the merits of Tamborine Mountain leaving Scenic Rim and going to the Gold Coast City Council. That action reflects a lack of balance in the performance of the functions of the organisation.
- The OIA has by its well-publicised action against the Fassifern Guardian newspaper and subsequent dismissal of the misconduct charge initiated against me by the Independent Assessor, brought the office of the OIA into disrepute. Queenslanders have lost confidence in this organisation. I have asked the OIA how it intends to deal with the bias against me in all future assessments. I am yet to receive a reply.

PART 2

Confidential Information for the Use of the Inquiry only

Forwarded under separate cover.

A handwritten signature in black ink on a light blue background. The signature reads "Derek Swanborough" in a cursive script.

**Derek Swanborough
Councillor Division 1
Scenic Rim Regional Council.
14/12/2021**