



TORRES SHIRE COUNCIL

To lead, provide and facilitate a sustainable, safe and culturally vibrant community

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Torres Shire Council Submission - Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019

Introduction

Torres Shire Council (Council) notes that the policy objective of the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 (the Bill) is to continue the Queensland Government's rolling Local Government reform agenda guided by four key principles of integrity, transparency, diversity (reflecting electorate diversity) and consistency, as appropriate, with State and Commonwealth electoral and governance frameworks.

The policy objective of the Bill includes implementing the Queensland Government's response to the following Soorley Report recommendations:

- recommendation 41 (earlier timeframes for receipt of an application for a postal vote)
- recommendation 44 (amended process for local governments to apply to the Minister local government election to be held by postal ballot)
- recommendation 61 (pre-election processing of postal votes)
- recommendation 74 (amendments relating to operational electoral matters).

Along with all Queensland Local Governments, Council attended the LGAQ Special Conference on Tuesday 2nd April 2019 in Brisbane that considered several matters as contained in this Bill.

Council consequently endorses the resolutions carried at this conference – i.e. supports the democratic will of Local Governments as expressed at the meeting. It is Council's understanding that LGAQ has subsequently communicated these resolutions to the Queensland Government.

Consequently, this submission addresses matters not canvassed or voted on at the Special Conference of 2nd April 2019.

Specific measures addressing the local government system

In relation to the local government system and decision-making, Council supports the following measures contained in the Bill:

- 1 clarification and strengthening of how councillors' conflicts of interest are managed in so far as it supports Belcarra Report Recommendation 6: *that the relevant details for gifts in section 109 of the LGEA be amended to state that, for a gift derived wholly or in part from a source [other than a person identified by s.109(b)(iii)] intended to be used for a political purpose related to the local government election, the relevant details required also include the relevant details of each person or entity who was a source of the gift. Section 120(6) regarding loans should be similarly amended to reflect this requirement;*¹
- 2 amendments regarding a councillor complaints framework, including the streamlining of investigations where alleged corrupt conduct of a local government employee is linked to alleged corrupt conduct of a councillor or where alleged inappropriate conduct and misconduct of a councillor are linked;
- 3 improved access to information for all councillors;
- 4 clarification of the status of suspended councillors in relation to their absence from local government meetings;
- 5 clarification regarding decisions that councils are prohibited from making during a caretaker period; and
- 6 prohibition on publishing or distributing election material during a caretaker period to local government-controlled entities.

Gifts

- 7 Belcarra Report Recommendation 18 *that the definition of relevant details in section 109 of the LGEA be amended to include:*
 - (a) *for a gift made by an individual, the individual's occupation and employer (if applicable)*
 - (b) *for a gift purportedly made by a company, the names and residential or business addresses of the company's directors (or the directors of the controlling entity), and a description of the nature of the company's business*
 - (c) *for all gifts, a statement as to whether or not the person or other entity making the gift, or a related entity, currently has any business with, or matter or application under consideration by, the relevant council;*²

¹ As cited in the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 Explanatory Notes

² Ibid p75

8. Whilst the proposed Bill supports this Recommendation, Council awaits further information regarding the scope of details to be disclosed, privacy implications for individuals, who makes the determination (for an individual) as to whether their occupation and employer is disclosable, and whether failure to disclose should be an offence. Until such time as these details are finalised, the Bill is incomplete, and Council cannot support or otherwise this aspect of the Bill.

Reverse Onus of Proof

9. Council notes that there is a considerable body of legal argument around reverse onus of proof.
10. The presumption of innocence developed at common law towards the end of the 18th century. In his *Commentaries on the Laws of England* (1765), William Blackstone said that ‘it is a maxim of English law that it is better that ten guilty men should escape than that one innocent man should suffer’. In 1935 the UK House of Lords said the presumption of innocence principle was so ironclad that ‘no attempt to whittle it down can be entertained’. More recently, the House of Lords has said that shifting the burden of proof onto a defendant was ‘repugnant to ordinary notions of fairness’. In the High Court of Australia, French CJ called the presumption of innocence ‘an important incident of the liberty of the subject’. Andrew Ashworth has summarised some of the rationales for the presumption of innocence. “[T]he presumption is inherent in a proper relationship between State and citizen, because there is a considerable imbalance of resources between the State and (because)... respect for individual dignity and autonomy requires that proper measures are taken to ensure that such censure does not fall on the innocent”³.
11. Council also notes that a person could be charged for something done in circumstances where the individual had an honest and reasonable mistake rather than deliberate law-breaking, which is plainly unfair (see *Anglo Coal and Construction, Forestry, Mining and Energy Union v Endeavour Coal Pty Ltd* [2015] FCFC 76). Accordingly, the public interest must be served in providing for reversing an onus of proof with an appropriate safeguard of a defence of honest and reasonable mistake.
12. The Bill provides for a reverse onus of proof as follows: *that an election participant is presumed to know the following matters, unless the contrary is proven—*
- (a) *that the gift or loan was made to the election participant;*
 - (b) *the identity of the entity that is the source of the gift or loan.*
13. Council seeks that this matter is given further consideration; as it is entirely possible, especially where donors wish to remain anonymous, that this proposed anti-corruption measure may flounder on the altar of donor privacy and candidate ignorance.

³ Cf Traditional Rights and Freedoms—Encroachments by Commonwealth Laws, Chapter 9

Conclusion

Council appreciates the opportunity to respond to the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 and hereby tenders its submission for the House of Assembly Economics and Governance Committee's consideration.

Yours faithfully



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