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OUR REF: #6273094

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Committee Secretary
Economics and Governance Committee
Parliament House
BRISBANE QLD 4000

Email: egc@parliament.qld.gov.au

Dear Sir/Madam

We welcome the opportunity to provide feedback on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019. Our feedback is outlined below.

Overarching Comment

As an overarching comment, this legislation is long overdue. Cairns Regional Council along with other local governments have been suffering the unintended consequences of poor legislation passed by the State Government in May 2018. Despite repeated assurances to the contrary, it is now some nineteen months on and those unintended consequences are still to be rectified. The content of the legislation currently being considered will, in our view address those unintended consequences and we urge the government to pass this legislation with immediate effect as soon as possible.

Ministerial Discretion – Section 150EV

Section 150EV does not allow the Minister to exercise discretion on a case by case basis. The use of “and” between Section 150EV1(a) and (b) constrains the Minister. We believe use of “or” would be more appropriate.

There may be instances where the ability to exercise of Ministerial discretion will give rise to outcomes which are more consistent with local government principles.

By way of example, it is our experience that amendment of policies which affect how Council interacts with not-for-profit entities sees all Councillors declaring interests due to the extensive ties they with the community, particularly not-for-profit clubs and associations. It is almost impossible to see a circumstances where a Councillor does not have a personal involvement on the management committee of a club or an association or has a close associate who is involved with the management committee of a club or an association.



It may well be that the CEO of the organisation does not have such an interest to declare (and in fact is not required to make such a declaration in any case).

The Minister cannot exercise discretion under the current drafting of Section 150EV as the matter can be delegated to the CEO.

We believe the drafting of Section 150EV(1) should be amended to include the word “or” between (a) and (b) to provide the Minister with discretion to act where the outcomes would be consistent with the local government principles.

Declarable Conflicts of Interest and Groups of Candidates – Section 150EN and 150EO

When determining the quantum of a gift or benefit applicable to an individual Councillor where that gift or benefit was provided to a group of Councillors, Section 150EG(3) indicates that the value of the gift or benefit is divided by the number of candidates in the group. This is however only applicable for a prescribed conflict of interest.

We believe Section 150EN or 150EO should be amended to mandate a similar approach for determining a declarable conflict of interest.

Expanded Concept of “Influence” – Section 150EZ

In May 2019, Section 175I was introduced into the Local Government Act 2009. This made it an offence for a Councillor with a conflict of interest to “... influence, or attempt to influence another Councillor to vote on the matter in a particular way...” or “... influence, or attempt to influence, a local government employee or a contractor of the local government who is authorised to decide or otherwise deal with a matter to do so in a particular way”.

The amending legislation at Section 150EZ(2) has broadened this to include “... must not direct, influence, attempt to influence, or discuss the matter with, another person who is participating in the decision...”.

The inclusion of the words “or discuss the matter with” is a significant impost on Councillors for the following reasons:

- A Councillor with a declarable conflict of interest may well be allowed by eligible Councillors to stay and vote on the matter when it reaches a meeting – the difficulty arises whereby under these rules it would be difficult for the Councillor to attend a briefing session or even ask a question of an officer prior to the meeting (as officers are involved in the decision making process);
- A Councillor with a declarable conflict of interest may well be allowed by eligible Councillors to stay and vote on the matter when it reaches a meeting – the difficulty arises whereby under these rules it would be impossible for the Councillor to ask the most basic questions of other Councillors or Council Officers ahead of the meeting (as officers are involved in the decision making process);
- It impinges on basic rights of a Councillor to ask the most simplest of questions of officers or the Mayor such as ‘where is this matter at and when will it come to Council?’

- It heightens the possibility of inadvertent error – it may be that an application is received, Councillors are aware of the basic information but not the details and have discussions they should not have had when the detail becomes known. These discussions need not even stray into influence for this section to be contravened as drafted.
- As drafted, a Councillor will be guilty of misconduct by asking the most basic of questions with a Council Officer in a matter where they have an interest, no matter how minor – there does not need to be an attempt to influence, just a discussion would trigger misconduct at a minimum.

We believe the inclusion of the words “or discuss the matter with” in Section 150EZ(2) need to be reconsidered.

Declarable conflict of interest exception and groups of candidates or a political party

Section 150EO(1)(e) places a financial threshold which is to be commended. However, there should be the same distinction for declarable conflicts of interest for groups of candidates or a political party as there is for prescribed conflicts of interest (i.e. as provided for in section 150EG(3) for gifts or loans). This compares to a ‘sponsored travel or accommodation benefit’ which is a flat figure.

Council considers that this is easily fixed by making section 150EG(3) a stand-alone section at the start of the chapter and applying on a chapter wide basis. It would be placed in Chapter 5B, part 1 immediately before the Part 2 heading and the section would have a heading like ‘Working out the total gifts or loans given to a group of candidates or a political party’ and the words ‘In this chapter,’ would be added at the start the new section.

Related Party

Council is unsure why the words ‘other than an entity mentioned in section 150EJ(1)(f)’ are included in section 150EP. The entity mentioned in section 150EJ(1)(f) is already excluded from the definition of ‘close associate’ (to the extent the interest in the entity is 5% or less for a listed corporation). As written the section is somewhat confusing and the qualifying words should be removed.

Operative Date

We refer to our ‘Overarching Comment’ outlined above. There is no mention of likely implementation date. We would urge the State to pass this legislation with immediate effect as soon as possible.

Yours sincerely



John Andrejic
Chief Executive Officer