

Our Ref:

30 January 2020

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: egc@parliament.qld.gov.au

Dear Sir/Madam

Re: Call for Further Submission – Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

The Balonne Shire Council refers to the Economic and Governance Committee's [the EGC] call for further submissions on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 [the Bill].

On behalf of the Balonne Shire Council I submit the following with regard to the Crime and Corruption Commission reform proposals calling for the proof of dishonest intent to be removed from the offences and other accompanying amendments relating to conflicts of interest and registers of interest.

Council is against any changes to the legislation that removes the 'intent' from a conflict of interest matter that could result in criminal prosecution (leading to jail). This is contrary to fundamentals of criminal law and burden of proof. The laws as currently drafted strike the right balance between punishing wrongdoing and providing for natural justice. An honest mistake has never been a criminal offence.

Council has reviewed other jurisdictions including New South Wales, Victoria and South Australia. These are referred to below to demonstrate the inconsistency this proposal would have compared to other local government legislation:

The Victoria Local Government Bill 2019 does include provision for a penalty for *intentional or reckless* lodging of an inaccurate or incomplete register of interests.

Further the Victorian Bill proposes two types of conflicts of interest:

Material conflicts cover situations where councillors, staff or someone they have a relationship with stand to gain or lose from a decision. *Failure to disclose a material conflict and step aside from a decision is a criminal offence.*

General conflicts cover situations where the private interests of a councillor or staff member could lead to them acting against their public duty. *Failure to disclose a general conflict isn't a criminal offence but can be subject to disciplinary action.*

The NSW Local Government Act 1993 has the standard of proof in a Pecuniary Interest and Disciplinary Tribunal made on the balance of probabilities.

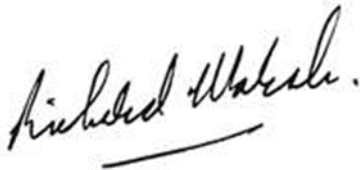
The SA Local Government Act 1999 includes penalties for the provision of *false information* where the member has provided *false or misleading* material is guilty of an offence (maximum penalty of \$10,000).

Council therefore strongly requests that the ECG reject the CCC's submission of a strict liability offence for failure to disclose relevant interests and retain the Bill as currently drafted.

Council do agree with the with CCCs own submission that suggests the scheme proposed under the Bill is more complicated of whether or not something constitutes a conflict of interest. Changing the terminology to prescribed and declared conflicts of interest will add an additional layer of uncertainty to definitions that have been in place for some time. In this respect Council asks the ECG to support the CCCs submission that the current legislation contained in the Local Government Act 2009 with respect to conflicts of interest and material personal interests not be amended. With the proviso that any change that is made does not include the removal of intent as outlined above.

Council also have concerns with regard to the new informal meetings definition and the requirement to obtain prior council approval before a councillor with a conflict of interest may participate in an informal meeting. This may be impractical where council meetings are held monthly and the informal meeting agenda may not be known to obtain approval at that prior council meeting.

Yours sincerely,



Councillor Richard Marsh
Mayor