Committee Secretary

Economics and Governance Committee
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SUBMISSION: Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018

http://www.parliament.qld.gov.au/work-of committees/committees/EGC/inquiries/current-inquiries/LGCouncillorComplaints2018

To the committee:

Asking for the bill to be amended in any fashion, I suggest, falls within your inquiries remit.

To suggest otherwise or to redact this paragraph or any other part of this submission would be silly. I have seen in other inquiries that such silliness abounds.

Amending your bill to bring back OPTIONAL PREFERENTIAL VOTING AT STATE ELECTIONS

There is nothing stopping me from seeking further amendments to the electoral acts and this bill, to reintroduce **OPTIONAL PREFENTIAL VOTING (OPV),** as this is an omnibus bill. The reintroduction of **COMPULSORY PREFERENTIAL VOTING (CPV)** was deemed to be **corrupt by corruption buster Justice Tony Fitzgerald.**

In fact , its reintroduction seemed to be contemporaneous with consistent falling primary votes of the major parties and the introduction of full, and real time disclosure of donations in QLD over $1000 . That is, to thwart a citizens ability to vote against people they deem to be corrupt.

It would be rather stupid to claim on the one hand to be adopting the spirit of the CCC's Operation Belcarra Report , yet on the other deny voters who have come into knowledge about it –to apply that knowledge at the ballot box by excluding candidates and exhausting votes. That is, unless the whole intent was or is to move the goal posts for electors. One must keep in mind that it has been proposed in "some quarters" to bring in **CPV** for council elections too.

Amending your bill to ban certain types of donations

Because at this time there is no legislation in place banning developer donations and other donations it is appropriate to bring that up and demand the relevant changes to bring that about as this is an omnibus bill.

There are self evident reasons why such donations such as from developers and others such as those involved in the mining, arms, defence contracting, gambling, pharmaceutical or from any other industry that would normally have contractual dealings with government at any level should be banned.

So much was said by The High Court in McCloy v NSW [2015] HCA 34 (7 October 2015) where it upheld the NSW ban on developer donations . They were against the Americanisation of donations. It was said at par [93]

"...the public interest in removing the risk and perception of corruption is evident. These are provisions which support and enhance equality of access to government, and the system of representative government which the freedom protects. The restriction on the freedom is more than balanced by the benefits sought to be achieved."

For instance, such bans would further enliven ss[13] and [14] of The Criminal Code Act 1899 Qld - for people who would attempt to get around such a QLD ban by attempting to launder money interstate . Money laundering seems to be an offence everywhere and its a simple case of defining what dirty money is for it to be a crime in this context.

Criminal Code Act 1899 Qld
https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009

The language in the NSW provisions relating attempts to thwart their bans should also be implemented here .

COUNCILOR CONDUCT

I would like to give my support to the submission of the Gecko Environment Centre in relation to the anomalies created in relation to the potential for a councillor or councillors being ganged up upon by a majority to capriciously and improperly exclude that person/s from the functions of an elected official.

The capricious nature of the provisions can already be constitutionally challenged if enacted (need only to go to the Supreme Court on that one) as it would prevent a councillor/s from speaking about unlawful conduct aswell as on any other matter.

You cannot legislate for political respect and to do so is unconstitutional. You can only legislate for process when people hold diametrically apposing views. Subject to normal criminal provisions, defamation laws and anti discrimination laws.

And as for the suspension of a councillor under the proposed s150(K) in regards to contravening an order of the local government or the assessor whether or not such orders are in fact lawful, - there are so many grounds that such a law could be challenged .

Could you seriously suggest a suspended councillor could have less rights than any other citizen to protest near the meeting with threat of arrest which, if unlawful is trespass and an act of violence?

That would also be a federal offence.

It would be interference with political liberty under **s 28 of the CTH Crimes Act 1914 where it states : Interfering with political liberty**

Any person who, by violence or by threats or intimidation of any kind, hinders or interferes with the free exercise or performance, by any other person, of any political right or duty, commits an offence.

Penalty: Imprisonment for 3 years.
http://www.austlii.edu.au/.../consol_act/ca191482/s28.html

Similarly, if that councillor/s were trying to air a grievance that would relate to some illegality with the use or appropriation of CTH funding or services under s3AA(1A)(3)(a)(i)-(iii) of that same act **http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/ca191482/ and did not speak up** , that would amount to covering up. And because its a matter that may get investigated and may end up in court, that may amount to perverting the course of justice of the part of that person accused themselves ?? Catch 22!!

THE LACK OF A VERBATIM COUNCIL HANSARD AND FILMING OF PUBLIC AND IN -CAMERA PROCEEDINGS

Councils do not have the same powers and privileges as the parliaments of the States, Territories and the CTH relation to “Parliamentary Privilege” . They make up for that by hiding everything that is done to avoid criminal or other prosecution.

Recently the QLD Auditor General made damming findings about access to information about the awarding of government contracts generally. Such matters are always at the forefront of council business and argument.

Given the nature of capriciousness of many councils activities in the past and what is proposed in relation to councillor conduct , it is now time to legislate for it to be compulsory for there to be a verbatim **HANSARD AND FILMING** of council , committee and in camera proceedings because :

(a) Technology allows for inexpensive filming and internet streaming of proceedings and placement of transcripts on the local government website;
(b) It would enable people who would not otherwise be able to see what has been happening or what is proposed to be happening to witness it as it may affect them

personally or may result in changes to laws -for which the law will say ignorance of it is no excuse;

(c) It is in the public interest that people hold councillors accountable for their actions;
(d) To identify offences or otherwise dishonest or immoral conduct by local government or councillors;
(e) It is in the public interest that accountability units be able to see what occurred even in –in camera proceedings;
(f) For procedural fairness a councillor or person must be able to mount a defence to an accusation with every means at their disposal and take civil action for defamation if necessary ;
(g) To identify inconsistency between the actions of council , the operation of the council , or state and higher laws;
(h) So that voters may adequately asses conduct of councillors for determining whether they are fit for continued office or fit to be re-elected . Or, given the state of the federal electoral act ; hold concurrent or run for concurrent federal office. (This triggers the constitutional freedom of communication again and the CTH Crimes Act 1914) ;
(i) Its necessary for law enforcement at every level ;and
(j) Quite simply, it can be easily done, so what other nefarious reason could be given in this day and age why it shouldn't be??

OPERATION BELCARRA (WWW.CCC.QLD.GOV.AU)

All of the matters and legislation relating to The **CCC's OPERATION BELCARRA** must be seen in light of the fact that corruption is widespread in this state and it can have federal implications . That is because the corrupt fund those political actors that organise locally to take part in local, state and federal elections.

A party for instance, that claims to be disciplined and unified -can have imputed to it (save for those who take measures to remove themselves from immoral, dishonest, or otherwise criminal conduct or conspiracies) that they are therefore, a unitary actor.

This can also be evidenced in the annual returns of state and federal parties on the www.aec.gov.au site. It is seen there that state parties get "donations" and "loans" from federal executives and others states branches all the time. Also where party front companies receive donations and pass them to parties just under the $10k AUSTRACC reporting trigger from, foreign donors or parties in states where certain kinds of donations are banned.

A cynical person could impute sinister or otherwise underhanded connotations to such transactions particularly where money comes in and then goes back. But not without good reasons considering the recent shenanigans in NSW, where electoral funding was withheld by that states commission until disclosure is made from a certain party front company. I am such a cynical person referred to above.

Such front companies should be made to disclose all money going in and out , accumulatively over $1000 in a financial year and who paid in that money . Though they would probably set up another front. Recommendation 7 from the Belcarra report must be legislated for -that

candidates must be taken to know where their donations have come from (especially in regards to the recent Federal Court money laundering decisions concerning political donors TABCORP and charges relating to donors The Commonwealth Bank).

COMPLAINTS AND THE REMOVAL OF THE ABILITY OF THE CCC TO RECCOMEND PROCEEDINGS BE COMMECED BY THE DPP

Though the government means to keep it that a person can still make a complaint to the CCC as well as the assessor, it is foreshadowed by the government that the government seeks to remove the ability of the CCC to recommend proceedings be commenced by the DPP.

Blind Freddy can see that no prosecutions relating to Belcarra would have been commenced but for the CCC , given the initial refusal of the previous government to countenance even the banning of developer donations .

It could be seen in some circumstances that the CCC's ability to properly investigate and recommend prosecutions could have, in the past, been curtailed by some "notorious" "political considerations"- hence the flurry of recent legal activity.

I note that the LGAQ was invited twice by the CCC to make a submission to its inquiry (at p99 of its report). I note that the LGAQ has complained about the CCC to the PCCC. I note that the LGAQ and LGMA are parties consulted in the drafting of this legislation.

Anyone who witnessed what had occurred in relation to QLD police being allowed to investigate themselves and who have witnessed the reasons why Belcarra was initiated knows that internal investigations without oversight are fraught with danger. Especially in the local government area.

I note that its proposed that matters relating to councillor or council conduct to be referred to a tribunal .

One has to remember that a pervious tribunal handed out many thousands of dollars in fines to many Townsville City Councillors in 2014 for failure to declare a conflict of interest relating to donors . **(Appended as other submitters have appended their stuff: Article "Day of Sweet Sorrow at Townsville City Council Meeting" Author , Anthony Templeton , Townsville Bulletin 26/11/2014)** . Even with the internet, apart from the press report its impossible to find out what happened or the reasoning for its decision to impose the fine.

Yet, although fines are matters that can ultimately result in gaol time for non payment after all other avenues of repayment are exhausted, there was no appeal from that and it was a non judicial decision and was thus unconstitutional by virtue of CH3 of The Australian Constitution.

All proceedings must be held in an open court for people to witness, and from which an accused or complainant can appeal.

The Assessor being proposed is to be given capricious powers to dismiss a complaint and have a person fined more than any corrupt councillor would be fined given the amount of penalty units. That would ultimately amount to gaol for someone repeatedly complaining about corruption to an assessor who may be doing the bidding of government and apparently there is no appeal from that decision.

The simple answer to that is that a refusal to investigate by the assessor be justiciable as would any fine. And that the normal procedural rules about abuse of process in the courts apply.

Its ***TRITE LAW*** that no person may be ultimately gaoled without a judicial decision appealable to the High Court of Australia. The decisions of any such body must be reviewable and appealable on matters of merit and of law.

So, given all this , every avenue must be given to the CCC to recommend prosecutions to the DPP, and *to the people* to enforce anti corruption laws –despite government and the assessor .

So much is said by **s42 of The Acts Interpretation Act 1954 QLD** where it states:

42 Any person may prosecute etc.
Any person may take a proceeding for the imposition or enforcement of a penalty, or the making of a forfeiture order, under an Act.

That set up that that citizens may seek to intervene in any proceedings to enforce the law as ***amicus curie*** as they could in any other proceeding aswell. This right must not be affected.

INITIATION OF POLICE INVESTIGATIONS

The suggested new s150P of the LGAct sets out in part :

150P Complaints about councillor conduct must be referred to assessor
(1) This section applies if a government entity, other than the assessor, receives a complaint about the conduct of a councillor.
(2) The government entity must—
(a) refer the complaint to the assessor; and
(b) give the assessor all information held by the entity that relates to the complaint.
(3) However, subsection (2) does not apply if—
(a) the government entity has a duty to notify the Crime and Corruption Commission of the complaint under section 38 of the *Crime and Corruption Act 2001*; or
Note—
Sections 38 to 40 of the *Crime and Corruption Act 2001* state the duties of a public official to notify the Crime and Corruption Commission about corrupt conduct, subject to a direction by the Crime and Corruption Commission.
(b) the government entity has the power to investigate the complaint or the councillor's conduct under another law and decides to carry out the investigation under that law.
Example—

The police service receives and investigates a complaint alleging a councillor engaged in fraud.

I suggest a new sub par be inserted to the effect s 150P(3)(b)(ii) :

(b)(ii) If , but for the operation of the Electoral Act 1992 (QLD) or The Local Government Electoral Act the Qld Police Service could have proceeded by way of a criminal prosecution for an offence against The Criminal Code of Qld provisions relating to corrupt practices relating to public officials or election conduct then in force in Qld , then , such a criminal proceeding may be begun by the Qld Police Service under the code.

This would necessitate further amendments to the Criminal Code of Qld to enliven powers of the QPS and The CCC (which over see's police investigations) to prosecute corruption offences then in force but which either , would have been subject to a time limitation for prosecution , or did not apply to that election or that council.

Because of the capricious nature of the proposed ability of an assessor to refuse to further proceed , you would need to start at the very bottom, ***with the QPS*** to gradually work your way up gathering info and watching people pervert the course of justice ***("asymmetric lawfare")*** as you go in the following fashion:

(1) Identify the initial conduct;

(2) Seek right to information from the relevant body;

(3) Make inquiries to the council ;

(4) Make a right to info application about the conduct of the councillor/s which may identify further matters relating to your inquiries/complaint which are matters concerning your personal affairs (made in accordance with the ROI Act);

(5) Prepare a brief for the cops and lodge it with legals;

(6) Whether or not that criminal complaint is proceeded with is a matter in which the CCC has oversight via the ESC and refusals to investigate can be justiciable by way of mandamus (this is also personal affairs) ;

(7) History has many times recorded that matters can be concealed right up to the highest levels . So a persons ability to amass info gained through this process can be relevant to the institution of civil proceedings such as misfeasance or malfeasance by public officials or to enlivening the abuse of power and anti corruption type provisions of the code.

This is addressed in the next section of my submission.

TIME LIMITS FOR PROSECUTIONS – REINSTATEMENT OF OFFENCES

I refer the committee to what the CCC spoke of at p87-89 of that Belcarra Report and in relation to removal of councillors.

Because at this time there is no legislation in place to rid legislation of time limits for prosecutions for corruption and other electoral offences, and increase the penalties for such offences, and who should be allowed to prosecute them - it is appropriate to bring that up and demand the relevant changes to bring that about as this is an omnibus bill.

I would go further than refer to what the CCC said in its report. I would ask that those time limits that thwarted them, be repealed. And, I suggest -

Criminal Code Act 1899 Qld
https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009

That s [98A] of The Criminal Code Act QLD 1899 where its states :

98A Reference to election or referendum
In this chapter division—
(a) a reference to an election is a reference to—
(i) an election of a member or members of the Legislative Assembly; and
(b) a reference to a referendum is a reference to a referendum under the *Referendums Act 1997*.

-be amended to insert a new sub par (b) (i) to read " *(i) any other election, including an election of the mayor or of a councillor or councillors of a local government including the Brisbane City Council* .

That s [98H] of The Criminal Code Act QLD 1899 where its states :

98H Application of ch div 3
This chapter division applies to an election other than—
(a) an election of a member or members of the Legislative Assembly; or
(b) an election for a local government.

-be amended by deleting the words *"other than" and inserting "including" in its place*

That s107 (1) of The Criminal Code Act 1899 where it states

107 Corrupt and illegal practices—time
(1) A prosecution for any of the offences defined in sections 99 to 104 must be begun within 1 year after the offence is committed.

- be amended to read *"may be begun at any time after the offence is committed."*

RIGHT TO INFORMATION –PERSONAL AFFAIRS- FEES

None of the amendments I propose would amount to much if a person could not on their own amass the information to provide as a brief to the QPS.

If one makes a complaint to a government , government body or council about corrupt or dishonest conduct, one is entitled to seek information and documents about how that complaint was handled and the existence of other relevant documents as it relates to the alleged conduct .

In my learned experience compulsory right to information fees for matters relating to the personal affairs of a person stifles the ability of someone up against it financially whilst up against the state apparatus –to obtain the information needed to **prosecute the cause** . Even if that fee must be refunded later. It matters when you want the info.

Under the previous freedom of information act no such personal affairs fees applied and all you had to do was ask for it and fight for the release of information withheld .

Personal affairs relates to all matters in relation to a persons complaints to an investigative body in this context. And the fees for personal affairs should be abolished as technology allows documents to, as the act itself states, be placed on a certified disk very cheaply.

You must return it to a fee free situation for personal affairs, as it relates to other contexts aswell . Withholding or obfuscating on matters that may relate to identifying criminal conduct on the part of elected officials is, at all times, at the very least perverting the course of justice under the code. As this is an omnibus bill I demand that you also amend the Right To Information Act to this effect as it affects the efficacy of the very thing you purport to do.

Signed

Pat Coleman

[redacted]

Appendix

Text of Article "Day of Sweet Sorrow at Townsville City Council Meeting" Author , Anthony Templeton , Front page , Townsville Bulletin 26/11/2014

TOWNSVILLE City Council posted a $6.1 million surplus for last financial year, but it was overshadowed by the seven councillors forced to make a public apology for failing to declare potential conflicts of interest.

It's only the second surplus budget the council has delivered in 14 years, and comes after years of horror deficits and rate rises after amalgamation in 2008.

However, the council received $7.8 million from National Disaster Relief and Recovery Arrangements, which are funded by the Commonwealth and Queensland governments.

A further $20 million was wiped from the council's debt, taking the city's liability to Queensland Treasury Corporation down to $333.8 million.

The audited figures were in the council's annual report, which was released yesterday.

But the council's financial achievements were overshadowed by consecutive apologies from seven Townsville First councillors after they failed to declare potential conflicts of interest regarding businesses that donated to their election campaign.

[redacted] said the failures were unintentional.

"I am not corrupt but I am human," he said.

"I neglected to read the detail in an attachment to a report."

[redacted] who was chair of the committee meeting when the group failed to disclose the conflicts of interest, said there was no deliberate deception from the councillors.

"This was an unintentional oversight … and I sincerely and unequivocally apologise"

All seven councillors were forced to make the public apology by the Local Government Department's Regional Conduct Review Panel.

They were also fined between $1138.50 and $2277 for the breaches.