SUBMISSION

to the

Legal Affairs and Safety Committee of the Queensland Parliament

in relation to the

Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017.

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Background Data:

The author has -

1. in excess of 31 years in Local Government, serving as Deputy Town and Deputy Shire Clerk and Town and Shire Clerk in four different Local Authorities. Some 17 years of this service involved active participation in various Court jurisdictions, including those which determined Town Planning Appeals;
2. served as a Local Government Boundaries Commissioner;
3. established a Local Government Major within the Bachelor of Business Degree at the University of Southern Queensland: the first in Australia;
4. successfully organised two, one week live-in intensive Workshops for Members and senior management whilst full-time on campus;
5. practised as a Local Government Consultant – five years;
6. been one of three persons selected by EARC's staff to review questionnaires prior to their being forwarded to all local councils for response;
7. been a Project Manager of a Brisbane Town House development company.

Introduction:

In general terms, I concur with the thrust of most of the recommendations made by the Crime and Corruption Commission. Due to the time constraints placed on the receipt of Submissions, I have not studied the provisions of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 to ascertain:

1. the practicalities of implementation should this Bill, without amendment, become law; or

2. what, if any, unintended consequences lay dormant in this proposed legislation.

Based on my experience, I would be most surprised should there NOT be any unintended consequences in this Bill.

Because of the above, my comments, must, of necessity, be broadly based.

Recommendation 1:

It is beyond question that the more affluent the candidate, the more influence that candidate has. In other words, the current situation reflects a decidedly uneven playing field. It also restricts the entry of 'new blood' into Council Chambers. But so too does a voting system combined with the number of candidates vying for a limited number of vacancies.

An example of the latter is as follows: A local government with no electoral divisions had 34 candidates standing for eight councillor positions with all the sitting members being candidates. It was clear from counting the votes that the electors wanted a change in the composition but did not want **all** of the eight sitting members ousted: merely a 50% change. The result was that ALL the sitting members were returned! The mathematics triumphed over the will of the electors. This would not have occurred had electoral divisions been established in that unit of local government.

I commend this Recommendation. I trust that appropriate limits will be recommended to the Parliament, with such limits achieving a level playing field for all candidates.

Recommendation 12:

Whilst most people wishing to serve their community are well meaning, most do not appreciate the complexity or the legal requirements involved. Since retiring it has also been my unfortunate experience to find some local government senior staff were not cognisant with the legislative provisions they were responsible for administrating and were incompetent in the area of legal interpretation. They didn't know what 'they didn't know'! The mere fact that there was an in-house solicitor failed to ameliorate the dire consequences stemming from these defects! This is definitely not in the best interests of either the council or the community. It breeds contempt. It also creates apprehension in so far as community trust is concerned.

I commend this Recommendation subject to:

1. all prospective candidates who have not served on a local government for the term immediately prior to the forthcoming election be required to attend a workshop for a minimum of 40 hours within the three months before the date of an election, failing which they are debarred from nominating as a candidate;

2. all serving councillors who intend to renominate being required to attend a two day revision course, failing which they are debarred from nominating as a candidate;

3. these Information Sessions being conducted under the auspices of the DILGP, but **must include** Speakers from the Office Holders and staff of the Local Government Association **and reputable people of the calibre** of retired Judge Michael Forde, Cairns Mayor, Cr Bob Manning OAM, serving CEOs Daryl Hitzman and Terry Brennan, retired CEOs Gary Kellar, Jamie Quinn, Brian Hunter, Town Planner A.J.Robbins, Dr Rae Wear and a leading Ethicist.

This Recommended should be extended to include Induction Courses for all successful candidates to be conducted under the auspices of the CEO as under:

1. a minimum four day Induction Course for larger local government units;

2. a minimum two day Induction Course for smaller units of local government.

Such courses will prove most beneficial for the effective and efficient management of all units of local government. I have proven this to be the case.

Recommendation 20:

While I do not generally accept that prohibition is always the best solution, in this case **I am in entire agreement with the CCC, provided** that the legislation has covered all foreseeable contingencies. The test of any new legislation is: *Will the remedy be worse than the problem it is designed to alleviate.* In my opinion, I believe, on the balance of probabilities, the remedy, while not absolute, will go a long way in reducing this evil practice. To ensure the legislation is working as intended, I submit that the CCC be required to conduct regular reviews, making recommendations as deemed necessary.

I am totally opposed to the arguments adduced by the Chief Executive Office of the LGAQ, Mr Greg Hallam PSM. Without in any way detracting from Mr Hallam's professional ability, which indeed, I admire, suffice it to say he has **not** practised as a CEO at the coal face of local government for many years. My reason is that his proposals do ***not work in practice.*** I have witnessed first hand on several occasions the blatant disregard by certain Members to declare a Conflict of Interest as well as a Pecuniary Interest **and** the failure of the Chair to rule appropriately, with all other Members remaining silent! Justice must be seen to be done as well as being done or public trust suffers.

Recommendation 22:

I concur with this Recommendation provided that appropriate penalties apply for any breach. Because of the entrenchment of untoward practices between Developers and

certain Members and/or Staff of some local government units, **I urge** severe penalties including a *two strike and you're out* policy being written into the legislation.

Recommendations 23/24/25:

The successful operation of any local government unit depends on team work along with robust debate and an acceptance of a majority decision. **Recommendation 23 will create bitter divisions within the council and council management and will adversely affect the efficient and effective operation of the local government unit.**

For this reason, I totally oppose this Recommendation.

The legislation must be crystal clear that a member be required to declare a *Conflict of Interest* or a *Pecuniary Interest* at the earliest possible time. In the event that Parliament resolves NOT to ban developer's contributions, then *real time* disclosure of all donations, from whatever source and however received, should be written into the legislation. There must be **heavy penalties** for non compliance as non compliance severely and adversely impacts on the public trust.

Many persons are unaware that *quantum* is not an issue when dealing with Pecuniary Interest as a *negative interest* is still a Pecuniary Interest.

Recommendations 24: There are three options available to ensure practical compliance other than directly involving other Members of Council or the CEO whose position in the local government unit **is by way of appointment**. These options are:

> Option 1:
> Where a Member is in doubt as to whether he/she has a Conflict, and that situation should arise only rarely, that Member be required to advise the Mayor. The Mayor, by written communication, requires the said Member to take immediate action to clarify the situation through either the Parliamentary Integrity Commissioner or a solicitor nominated by the Local Government Association of Queensland. All Rulings should be tabled by the Mayor and recorded in the Minutes. This action should be finalised ***prior*** to the matter on which there is an apparent Conflict being debated…even if that means deferring consideration of that matter until a latter meeting. Deferring decisions would also be a de facto penalty on the Developer which might act as a deterrent.
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> Option 2:
> Where a Member suspects that another Member has a Conflict, the Mayor (and NOT the Chief Executive Officer) should be notified in writing and upon receiving such notification, the Mayor is obligated to instruct the Member with the alleged Conflict to act as per Option 1 above.
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> Options 3:
> Where a Member fails to declare any such alleged Conflict and this Conflict is subsequently discovered, all Members and the CEO should be obligated to refer

the matter to the CCC for investigation. Where such investigation finds there is a prima facie case, the matter should be referred to the Crown Prosecutor for necessary Court action. The Court must have the power to impose heavy penalties, including disqualification and jail terms, as well as ruling on the legality of the resolution/s, the subject of the Conflict on which that Member has voted.

It must be remembered that the Mayor is the first of equals. It is vital that the public views the occupant of this important position as a leader and respecter of the law. I acknowledge that the CEO holds a crucial position, but of sheer inevitability, it is the Mayor who is the public figure. *The Mayoralty is an **elected** position.*

In all cases, the legislation should require the Member with the Conflict to leave the Chamber until the matter has been resolved: standard procedure from which there is no exception.

Within units of Public Administration, it is well known that the adage of *I'll scratch your back if you scratch mine* forms an integral part of human action. This practice needs to be eradicated. Therefore the legislation must contain provisions which clearly state that any Member with a Conflict must NOT lobby or otherwise endeavour to influence another Member on how to cast their vote **at any time**. Again, heavy penalties need to attach to this offence.

It should be mandatory for all such declared Conflicts to be entered in the Minutes of that Meeting as well as recording that the Member with the Conflict was NOT been present whilst that matter in which he/she has a Conflict has been under discussion and has been resolved.

Recommendation 26:

Where a Member has a real or perceived Conflict, **that** Conflict **and** the matter to be resolved is **well known** to **that** Member ***prior*** to the subject matter being listed on the Meeting Agenda. ***The Member with the Conflict is well aware that the subject in which he has an interest will eventually appear on the Meeting Agenda.*** This is a self evident truth.

This CCC Recommendation is clearly counter productive as the Member with such real or perceived Conflict has ample time to lobby his/her colleagues prior to the matter being listed on the Meeting Agenda with other Members **being unaware** of that Conflict. **Therefore this Recommendation is in direct conflict** with what the CCC desires to achieve!

I disagree with this Recommendation.

Conclusions:

All of my comments have been based on my experience within local government as well as my understanding of the human psyche. Local government is a most important unit of

public administration. Any act by any person within this Unit which diminishes public trust in that Unit will eventually spell the death knell of local government. This cannot and must not be allowed to happen.

Edmund Burke, the political theorist and philosopher of the Eighteen Century has said:

Those who have been once intoxicated with power, and have derived any kind of emolument from it, even though but for one year, can never willingly abandon it.

It was true then. It is a truism today. For this reason, all penalties for any breach of these proposed provisions must be meaningful: they must act as a clear deterrent. Importantly, for each and every breach, action **must be taken** by the appropriate authority**. Such breaches cannot be allowed to escape retribution!**

Another truism is: *Ego is the anaesthetic that dulls the pain of stupidity.* I believe that the public has seen adequate evidence of this truism. There is only one cure for this stupidity: severe penalties!

It is vital that continued surveillance covering malfeasance, deception and dishonesty, nonfeasance, maladministration, misconduct and misuse of statutory powers, is maintained. Appropriate action must be initiated on each and every event and, hopefully, such activities will be substantially reduced, if not entirely eradicated, thus restoring public trust in local government. *To achieve this trust, public disclosure is essential.*

Members of the Legal Affairs and Safety Committee of the Queensland Parliament are urged to earnestly consider my representations, all of which have been made in a spirit of cooperation and for the betterment of all the Communities represented by local government units.

I am prepared to answer any query which any member of this Committee may have.

Yours sincerely,

Eric J Thorne.
22 October 2017.