

23 March 2018

Our ref: (KB-Gen)

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

By email: egc@parliament.qld.gov.au

Dear Committee Secretary

Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018

Thank you for the opportunity to provide comments on the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018. Queensland Law Society appreciates being consulted on this important legislation.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

The QLS makes the following comments on fundamental legislative principles, the rule of law and other technical issues. By omitting to comment on the full scope of the provisions in the Bill, the QLS does not express its endorsement of these.

As is stated within the Explanatory Notes, which accompany this Bill, clauses 20 and 34 will apply retrospectively from the date of introduction of the Local Government Electoral (Implementing Belcarra) and Other Legislation Bill 2017, introduced to Parliament on 12 October 2017. We note the Bill lapsed in 2017 and was reintroduced in February this year.

The rule of law requires that laws are certain and capable of being known in advance. Laws that create offences or change legal rights and obligations with retrospective application undermine the rule of law and significantly disadvantage those affected by the legislation. Retrospective legislation makes laws less certain and reliable and can cause damaging practical difficulties to the individuals and organisations involved.

It is noted that the amendments do not impose penalties on prior conduct, but impose these penalties on a future omission to rectify/reverse this conduct. The effect of these provisions is that people who are currently unaware of the proposed provisions in the Bill, continue to take

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and spend donations from prohibited donors in the regular course of business, unaware that they may soon be required, by law, to repay these donations or face a penalty. Imposing such obligations is contrary to the fundamental legal right to know the law in advance.

Furthermore, the ability of a person to practically determine whether past donors are now *prohibited donors* under proposed section 273 of the *Electoral Act 1992* (EA) or proposed section 113 of the *Local Government Electoral Act 2011* (LGEA) may be difficult or impossible. At the time of receipt of these donations, people were not required to have in place, appropriate systems in place to identify characteristics which would render a donor to be a *prohibited donor*. For example, the name of a donor might not identify that it is a business or the type of business it carries on. Further, the person will not have had the benefit of making an application to the commissioner for a determination under proposed section 277 of the EA or under proposed section of the 133D of the LGE or been able to review the registers created under this Bill.

Again, in our submission, stakeholders should not bear the repercussions of not having a system in place when at the time, there was no legal requirement to do so. If the Bill is passed and adequate notice is given, then such systems are capable of being developed.

Considering the severity of the penalties imposed on people for accepting donations from prohibited donors (maximum penalty of 400 penalty units or 2 years imprisonment), under both clauses 20 and 24, the QLS strongly recommends that the retrospectivity of the proposed amendments be reconsidered.

If the Government intends to proceed with the retrospective provisions outlined above, QLS urges the Government to take thorough and immediate steps to ensure that potentially affected people are made aware of their duty to repay donations received within this time period and that departmental officers are notified so that they can urgently inform their local communities.

Finally, we note that the Bill introduces new offence provisions across the acts it amends. Many of these impose custodial sentences which, in our view, are not proportionate to the subject act or omission and we urge the Committee to recommend that these custodial sentences be removed.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Acting Principal Policy Solicitor, Wendy Devine on (07) 3842 5896 or w.devine@qls.com.au or our Senior Policy Solicitor, Kate Brodnik on (07) 3842 5851 or k.brodnik@qls.com.au.

Yours faithfully



Ken Taylor
President