

24 January 2020

Our ref: LP-MC

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

By email: [REDACTED]

Dear Committee Secretary

**Electoral and Other Legislation (Accountability, Integrity and Other Matters)  
Amendment Bill 2019 – Question on Notice**

Thank you for the opportunity to appear before the Economics and Governance Committee (the **Committee**) on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (the **Bill**) on Monday, 20 January 2020.

At the hearing, the Queensland Law Society (**QLS**) was asked to take a question on notice to the following effect:

If the QLS recommendation was adopted so that charities registered with the Australian Charities and Not for Profits Commission (**ACNC**) were exempted from the “third party” framework in the Bill, how many organisations would this apply to?

We have set out information below taken from two different sources, each with a slightly different focus, in order to provide as clear a response as possible.

The following information is taken from the paper “*The State of Queensland Charities: An examination of the first Annual Information Statements of charities operating in Queensland*”.<sup>1</sup> The data below is current as at 2014:

- 8,020 charities are resident in Queensland, which equates to 18.1% of total Australian charities (44,352).
- 2,558 non-Queensland resident charities operate in Queensland, to make up a total of 10,578 charities operating in Queensland which is 23.9% of total Australian charities.
- 6.3% of Queensland based charities operate in other states and territories.

<sup>1</sup> McGregor-Lowndes, M. and Crittall, M., 2014, *The State of Queensland Charities: An examination of the first Annual Information Statements of charities operating in Queensland* (ACPNS Working Paper No.65), Australian Centre for Philanthropy and Nonprofit Studies within Queensland University of Technology, <https://eprints.qut.edu.au/84654/1/WP65%20State%20of%20Queensland%20Charities.pdf>

## Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 – Question on Notice

- 28.3% of charities which operate in Queensland also operate in other states and territories.

The following statistics in the *State of Queensland Charities* report also relate to the issues discussed at the public hearing:

- Most (65.4%) of the Queensland operating charities are considered small charities with annual revenue less than \$250,000. The Australian average across all charities is 68.3%.
- Medium sized charities (annual revenue between \$250,000 and \$999,999) make up 15.9% of Queensland operating charities. The Australian average across all charities is 15.1%.
- The remaining 18.6% of charities are considered large charities with annual revenue of more than \$1,000,000. The Australian average across all charities is 16.6%.<sup>2</sup>

In May 2019, the ACNC published its *Australian Charities Report 2017*<sup>3</sup> based on annual information statements submitted in February 2019 by some 47,000 charities across the country.

The following data also responds to the question and relates to the discussion at the public hearing:

- The geographic distribution of charities aligns with Australia's population. The majority of charities are resident in New South Wales, Victoria and Queensland, in that order.<sup>4</sup>
- 12.5% of charities operate only in Queensland but 19% of charities operate in more than one state, territory or country.<sup>5</sup>
- 49% of charities are operated solely by volunteers.
- The majority of charities are small with annual revenue of less than \$250,000 (65%).<sup>6</sup>
- Almost 44% of charities nationwide reported that they were an incorporated association that reported to a state or territory regulator.<sup>7</sup>

When filtered to show only Queensland charities, the ACNC "Australian Charities Report 2017 Data – Overview" website page indicates that:

- 6,786 of the charities operating in the 2017 reporting period are Queensland based.

<sup>2</sup> See page 15 of the *State of Queensland Charities* report which outlined the ACNC categories of small, medium and large charities based on annual revenue, including a description of how revenue is calculated <https://eprints.qut.edu.au/84654/1/WP65%20State%20of%20Queensland%20Charities.pdf> (accessed 24 January 2020)

<sup>3</sup> Australian Charities Report 2017, published by ACNC, available at <https://www.acnc.gov.au/tools/reports/australian-charities-report-2017> (accessed 24 January 2020)

<sup>4</sup> Australian Charities Report 2017, page 1 (Foreword)

<sup>5</sup> Australian Charities Report 2017, page 8

<sup>6</sup> Australian Charities Report 2017, page 1 (Foreword)

<sup>7</sup> Australian Charities Report 2017, page 27



## Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 – Question on Notice

- Of those, 32.9% or 1,766 had less than \$50,000 in revenue and were considered “extra small”.<sup>8</sup>
- 26.9% had more than \$50,000 but less than \$250,000 in revenue and were considered “small”.<sup>9</sup>

### Concern about the inclusion of strict liability offences in the Bill

We take this opportunity to expand on comments made during our appearance at the public hearing in relation to some of the proposed offence provisions in this Bill, which followed the statements made by Mr Alan MacSporran QC of the Crime and Corruption Commission Queensland (CCC) in his appearance immediately prior. We advised the Committee of our concern about strict liability offences being introduced and applying to members of state and local governments for conduct which includes administrative tasks, such as updating of registers of interests.

The Bill, as currently drafted, does not impose strict liability on these offences. This was not a specific recommendation of the CCC in its published statement on 6 September 2019, which we note is the genesis of these amendments, nor does it appear that this was a recommendation made by the CCC during its consultation with government in the period leading up to the introduction of this Bill. However, we now note that the CCC is calling for the Bill to be amended to provide for strict liability or deeming provisions.

“Strict liability” for these offences will effectively mean that an individual is deemed to have committed the offence even if there was no dishonest intention to do so. For example, if a person made 50 entries onto a register of interests, when in fact there should have been 51 entries, their conduct would be treated the same, in terms of proving the offence, as a pattern of behaviour where, routinely, only a few entries were made, say 4, instead of for example, 30. QLS strongly objects to strict liability offences on this basis. The fact that something has happened does not necessarily mean there was dishonest intent or that the act or omission should be criminalised.

Any introduction of these types of offences needs to be supported by cogent evidence. We cannot identify any, or any appropriate justification for the offences in this Bill to be amended in this way. Our view is that sufficient criminal law offences already exist to capture serious behaviour where this includes dishonest and deliberate acts or omissions. Other offences and regulatory frameworks also exist and adequately deal with less severe conduct that does not warrant criminal or serious criminal law sanctions.

There is a demonstrated capacity for the law in Queensland to deal with corruption at all levels of government. The “Fitzgerald Inquiry” led to a number of public officials being successfully prosecuted under the law at the time. Throughout the subsequent decades, other ministers and government officials have been convicted of offences which have resulted in terms of imprisonment and other penalties.

---

<sup>8</sup> Australian Charities Report 2017 Data – Overview <https://www.acnc.gov.au/charitydata> (accessed January 24 2020)

<sup>9</sup> Australian Charities Report 2017 Data – Overview

**Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 –  
Question on Notice**


In addition, the *Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009* introduced, into the *Criminal Code*, the provision which we have referred to in our submissions to the Committee, section 92A. This is a broad offence specifically for public officials and added an additional means for the State to tackle corruption and misconduct. The CCC has also been given significant legislative powers and resources to investigate and to hold to account local government councils and officials across Queensland. These powers have been accompanied by a series of substantive amendments to local government legislation and have resulted in the dissolution of councils and criminal prosecutions against mayors and councillors.

These prosecutions and other actions taken by enforcement bodies over the years support the submission that Queensland already has the necessary laws and investigatory and prosecutorial bodies to deal with corrupt conduct and misconduct. There is no gap in the law. There is, in our view, no need for new criminal offences. In particular, there is no need for any proposed new offences that erode the fundamental rights afforded to individuals accused of committing an offence.

Finally, we express concern about any significant amendments being made to this Bill, especially those affecting the rights and liberties of individuals, outside of the committee process and without appropriate consultation. We urge the Committee to recommend to the government that the Bill not be altered in this way.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully

  
Luke Murphy  
President