

Hon Mathew Swinbourn MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Honourable Swinbourn MLC

Petition No: 101 State Government Integrity Oversight Bodies

I am writing in response to your letter dated 6 December requesting a submission in relation to the petition that was tabled on behalf of myself and my communities by the Honourable Charles Smith MLC in the Legislative Council on the 5 December 2018 entitled *State Government Integrity Oversight Bodies* and I thank you for the opportunity to do so

The performance of both state and local government departments in their selective arbitration and implementation of legislation and policies on an ad-hoc basis is becoming a major concern for us law abiding residents, taxpayers and ratepayers and believe that an audit is required similar to the Attorney General recent procurement audit for a selection of WA local government Councils to ascertain if the state government legislation and procedural fairness is applied and followed

Our major concerns are centred around the fact that the power and the authority granted to the various Local Government Council officers and staff is a result of delegation by Council and its members of their power and authority. Often this is as a result of a report prepared by the CEO to Councillors, whereby it is difficult under the present regime for Councillors not to support and often are observed to be intimidated if they do not support the CEO requests for delegation powers.

The various members of Local Councils are bound by the Local Government Act 1995, Code of Conduct regulations 2007 and the penalty for breeches of those rules are administrated by the Local Government Standards Panel (LGSP) and further the State Administrative Tribunal (SAT)

Quite simply, since the powers and authority has been granted to Local Government officers and staff which arises from the delegation of powers otherwise reserved to the Local Council, the administration of justice of breeches and violations should be administrated by the same authority as LGSP as if the breach or violation has been committed by a Councillor and any other agency should not be involved, such as Public Sector Management (PSM)

Since decisions of the LGSP and SAT are made public when it involves Councillors so to should the decisions by the LGSP and PSM if it involves a member of Local and State Government employees.

This issue and legislation of treating Councillors differently from Local Government officers and staff has been raised many times in different reports however has not been implemented and over the last five years there has been a significant increase in complaints to LGSP by CEO and Councillors and often fuelled by political tactics, with no recourse by the innocent Councillors which also leaves the gates open for vexatious CEO's to use ratepayer's monies for their own intentions.

The following are two examples from WA State Government agencies confirming the need to legislate that local government officers and staff are subjected to the same legislation, penalties and Codes of Conduct as Councillors and yet these tax payers funded expensive and time consuming reports have been ignored and innocent Councillors and the public are left bullied and intimidated.

In the Crime and Corruption Commission (CCC) 2006 report on “misconduct handling procedures in Western Australia public sector: Department of Local Government and Regional Development”: *Recommendation 3: The Department consider changes to existing legislation or an amendment to the Local Government (Official Conduct) Amendment Bill 2005, that will provide a disciplinary framework for CEO’s and local government employees that complements the proposed framework for elected members It also goes on further to say ... Although the Bill provides a disciplinary framework for elected members, it does not provide an equivalent framework for CEO’s and local government employees. The Local Government Act is also silent on the minimum standards of behaviour required of CEO’s and employees....*

In the SAT annual report in 2012.... *Previous suggestions for legislative reform in previous annual reports, the President has noted possible legislative reforms connected with the Tribunal’s jurisdiction which might be considered. The Tribunal maintains the following suggestions for law reform referred to in previous annual reports: A review of the Local Government Act 1995 dealing with complaints, breaches, rules of conduct by local government councillors to consider whether the process of dealing with minor breaches of conduct should incorporate some facility, such as mediation, earlier in the complaint process by the Standards Panel (see 2008-2009 Annual Report at pp 24-25). The Tribunal understands that this legislation is currently under review by Government....*

The various State Government departments such as SAT, PSM, CCC and Ombudsman have all been contacted on numerous occasions by Councillors and the public to assist them in exposing the truth as to what is really going on in the management side of Local Government and to provide information and evidence to support some of the inappropriate practices and it appears that in most cases if the Councillors are aligned with the CEO then the information is difficult to source, the process and procedures appear to be varied, especially gaining FOI information and not uniformly applied and therefore accountability, transparency and good governance has to be questioned.

As stated in my petition, we respectfully request the Legislative Council inquire into the performance of the Office of the Information Commissioner; Public Sector Commission and the Ombudsman in relation to how these State Government agencies process complaints and applications and their subsequent actions, resolutions, recommendations in respect to Local Government officers and staff, to ensure that their conduct is fair and equitable, and that their decision making is not selectively applied. Further, consideration should be given to make Local Government officers and staff subjected to the same Code of Conduct under Regulation 7 in the Local Government Act as Councillors to resolve the disparity in the application of the Law.

Thank you for the opportunity to raise these issues and I am happy to be contacted or be given the opportunity to discuss the matter further at any time

Yours Sincerely

Jack Garber

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5 January 2019