I am writing to draw attention to an issue relating to the *Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002* (the Bill) which is currently before the House of Representatives.

The Federal Government has introduced the Bill in response to an attempt by the Queensland Government to impose a legislative ban on Queensland councillors contesting Federal elections. In November 2001 the Queensland Court of Appeal decided that the relevant legislative provision was unconstitutional.

The Bill provides for an amendment to the *Commonwealth Electoral Act 1918* which seeks to ensure that councillors do not suffer any penalty arising from a decision to stand as a candidate for election to either the House of Representatives or the Senate.

The amendment inserts new subsections in section 327 of the *Commonwealth Electoral Act* to provide that a law of a State or Territory has no effect to the extent to which that law discriminates against a member of a local government body who has been, is, or is to be, nominated or declared as a candidate in an election for the House of Representatives or the Senate.

Although I fully support the intention of the Bill to protect the right of councillors to contest Federal elections without having to give up their job as a councillor, I am concerned that the *Commonwealth Electoral Act* does not have any provision to prevent serving councillors from simultaneously being a member of the House of Representatives or the Senate.

In a number of jurisdictions, State laws have prevented councillors from simultaneously being a member of any Australian Parliament. However, as demonstrated by the following extract from the judgment of the President of the Queensland Court of Appeal in the abovementioned decision (*Local Government Assoc of Qld (Inc) v State of Qld* [2001] QCA 517), there is some uncertainty as to whether such laws are valid to the extent to which they apply to the Federal Parliament:

> "I note that it is not contended in this case that s 221(f) of the *Local Government Act 1993* (Qld), which disqualifies a person who is a member of an Australian Parliament from being qualified to be or become a councillor, is invalid. Regardless of the merits of these considerations, it remains exclusively for the Commonwealth Parliament to decide whether it wishes to add to s 164 of the *Commonwealth Electoral Act 1918* a fourth category of persons not entitled to be nominated as a Senator or Member of the House of Representatives, namely local government councillors."

In any event, in my view it is unacceptable that issues of this nature concerning the qualifications or disqualifications for membership of the Federal Parliament should be determined by State laws.

Moreover, although I am not familiar with the electoral laws of all of the States, recent debate on the Bill in the House of Representatives (Hansard, 13/02/03, page 11883) indicates there is no impediment in New South Wales law to a councillor in that State also being a member of the Federal Parliament.

In view of the obvious potential for conflicts of interest to arise from simultaneous membership of a local government council and the Federal Parliament, as well as the

need to avoid the perception of “double-dipping” by elected officials at public expense, I recommend that the Bill be amended to include a provision preventing councillors from also being a member of the Federal Parliament.

Yours sincerely

Jim South