Parliamentary Committees

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

Report No. 7, 56th Parliament
Economics and Governance Committee
April 2018

Economics and Governance Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Local Government, Racing and Multicultural Affairs.

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Abbreviations

Belcarra Report	*Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*
Bill	Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018
CCC	Crime and Corruption Commission
COB Act	*City of Brisbane Act 2010*
committee	Economics and Governance Committee
department	Department of Local Government, Racing and Multicultural Affairs
Electoral Act	*Electoral Act 1992*
ECQ	Electoral Commission Queensland
FLP	fundamental legislative principle
HIA	Housing Industry Association
LACSC	former Legal Affairs and Community Safety Committee
LG Act	*Local Government Act 2010*
LGE Act	*Local Government Electoral Act 2011*
LS Act	*Legislative Standards Act 1992*
local government meeting	a meeting of the local government or its committees
Ombudsman	Queensland Ombudsman
PCA	Property Council of Australia
QLS	Queensland Law Society
UDIAQ	Urban Development Institute of Australia Queensland

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018.

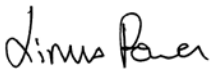
The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee heard from stakeholders who had significant concerns that some donations benefited, or at minimum there was the perception that some donations benefited, one group over another. As one of the contributors to the inquiry noted, perceptions of our democratic system are vitally important.

Although this Bill is the first step in implementing the recommendations of the Belcarra Report regarding local government, it rightly looks at what parts should also apply to the state level. With New South Wales acting to ban donations from property developers at the local and state government levels because of the real risks of corruption, it is important that Queensland do the same. I think all submitters and witnesses to the inquiry would agree that there will be a point in the future where Queensland could face the same challenges as New South Wales.

On behalf of the committee, I thank those individuals and organisations who made written submissions and appeared at the committee's hearings. I also thank our Parliamentary Service staff and the Department of Local Government, Racing and Multicultural Affairs for their assistance.

I commend this report to the House.



Linus Power MP
Chair

Recommendations

The committee recommends the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 be passed.

The committee recommends that the Department of Local Government, Racing and Multicultural Affairs and the Department of Justice and Attorney-General work with the Electoral Commission Queensland to develop examples of what is a property developer and a close associate, and what constitutes 'regularly' in the context of making relevant planning applications, to assist affected parties and the Electoral Commission Queensland and the courts in determining the application of the proposed legislation.

The committee recommends the Bill be amended to insert a purpose statement in the *Electoral Act 1992,* similar to the proposed purpose statement in the *Local Government Electoral Act 2011*.

Points of clarification

Point of clarification 1 **18**

The committee seeks advice from the Minister during his second reading speech regarding an indicative timeframe for the commencement of the provisions relating to prohibiting donations from property developers, should the Bill be passed.

Point of clarification 2 **24**

The committee seeks clarification from the Minister during his second reading speech regarding the operation of the provisions regarding conflicts of interest and material personal interests (proposed new sections 177C and 177E of the *City of Brisbane Act 2010* and 175C and 175E of the *Local Government Act 2009*) as they relate to ordinary business matters and events such as workshops and briefings, and the advice from the Department of Local Government, Racing and Multicultural Affairs regarding the application of the new offences for a councillor influencing or attempting to influence another councillor outside of a local government meeting.

Point of clarification 3 **30**

The committee seeks clarification from the Minister during his second reading speech regarding the process for determining if a councillor does in fact have a material personal interest following another councillor raising a belief or suspicion that the councillor has an undeclared material personal interest.

Point of clarification 4 **35**

The committee seeks clarification from the Minister in his second reading speech regarding the rationale for different penalties for failing to properly disclose a conflict of interest and failing to properly disclose a material personal interest (in the absence of aggravating circumstances).

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (the committee) is a portfolio committee of the Legislative Assembly.[1] The committee's areas of portfolio responsibility are:

- Premier and Cabinet, and Trade
- Treasury, and Aboriginal and Torres Strait Islander Partnerships, and
- Local Government, Racing and Multicultural Affairs.[2]

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles.[3]

1.2 Inquiry process

The Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 6 March 2018. The committee was required to report to the Legislative Assembly by 23 April 2018.

A previous version of the Bill was introduced into the 55th Parliament on 12 October 2017, and referred to the former Legal Affairs and Community Safety Committee (LACSC). The former LACSC had not completed its inquiry into the 2017 version of the Bill when the Parliament was dissolved on 29 October 2017. The 2017 Bill lapsed when the 55th Parliament was dissolved.

During its examination of the Bill, the committee:

- invited written submissions from the public, identified stakeholders and subscribers; a list of the 43 submissions received and accepted by the committee is at **Appendix A**
- received a public briefing from the Department of Local Government, Racing and Multicultural Affairs (the department) on 19 March 2018; a list of witnesses who appeared is at **Appendix B**
- held a public hearing on 28 March 2018; a list of witnesses who appeared is at **Appendix B**
- held a private hearing with the Electoral Commission Queensland on 4 April 2018, and
- requested and received written advice from the department on the Bill and issues raised in submissions.

Copies of the material published in relation to the committee's inquiry, including submissions, correspondence from the department and transcripts are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objective of the Bill, as outlined in the explanatory notes, is to implement certain recommendations of the Crime and Corruption Commission's (CCC) report *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (the Belcarra Report) to:

- reinforce integrity and minimise corruption risk in relation to political donations from property developers
- improve transparency and accountability in state and local government, and
- strengthen the legislative requirements regulating how councillors must deal with material personal interests and real or perceived conflicts of interest.[4]

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1 The committee was established on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) section 88 and the Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

2 POQA, s 88; Standing Orders, SO 194, sch 6.

3 POQA, s 93(1).

4 Explanatory notes, p 1.

1.4 Government consultation on the Bill

The explanatory notes state that the Local Government Association of Queensland and the Brisbane City Council were consulted on parts 2, 4 and 5 of the Bill (theses parts amend the *City of Brisbane Act 2010* and the *Local Government Act 2009* and the *Local Government Electoral Act 2011*).[5]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by the department, submitters and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 be passed.

[5] Explanatory notes, p 15.

2 Background to the Bill

2.1 Legislative framework

The *Electoral Act 1992* (Electoral Act) and the *Local Government Electoral Act 2011* (LGE Act) govern the conduct of state and local government elections in Queensland, providing for a range of matters such as the distribution of electorates, enrolment and voting, registration of political parties, and election funding and disclosure requirements.[6]

Local governments are also governed by the *Local Government Act 2009* (LG Act), with the *City of Brisbane Act 2010* (COB Act) providing specifically for the constitution of the Brisbane City Council and 'the unique nature and extent of its responsibilities and powers'.[7]

This legislative framework is designed to ensure transparent elections and provide a system of local government that is 'accountable, effective, efficient and sustainable'.[8]

2.2 Operation Belcarra

The CCC commenced Operation Belcarra in September 2016 following complaints regarding the conduct of candidates for several local governments in the 2016 elections. The objectives of Operation Belcarra were to determine whether candidates had committed offences under the LGE Act that could constitute corrupt conduct, to examine practices that may give rise to actual or perceived corruption, or otherwise undermine public confidence in the integrity of local government, and to identify strategies to prevent or minimise corruption risks and increase public confidence.[9]

In conducting Operation Belcarra, the CCC found 'widespread non-compliance with legislative obligations relating to local government elections and political donations… largely caused by a deficient legislative and regulatory framework'.[10]

The Belcarra Report made 31 recommendations 'to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making' (see **Appendix C**).[11] The Government response supports, or supports in principle, all 31 recommendations.[12]

The Bill gives effect to the recommendations from the Belcarra Report in relation to:

- banning donations from property developers for candidates, third parties,[13] political parties and councillors, and
- strengthening the process associated with the declaration of councillor conflicts of interest and the management of conflicts of interest and material personal conflicts, and penalties for non-compliance.

Additionally, the Bill extends the recommendation regarding banning donations from property developers in relation to local government elections, to also apply to Members of State Parliament.[14]

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6 Electoral Act, pts 3, 4, 6, 7.

7 COB Act, s 3(1).

8 LGE Act, s 3; LG Act, s 3; COB Act, s 3.

9 CCC, *Belcarra Report*, October 2017, pp 2-4; Explanatory notes, p 1.

10 CCC, *Operation Belcarra: Reforming local government in Queensland*, www.ccc.qld.gov.au/corruption/operation-belcarra-public-hearing (last accessed 5 April 2018).

11 CCC, *Belcarra Report*, October 2017, p xii.

12 Queensland Government, *Government response – Operation Belcarra report: A blueprint for integrity and addressing corruption risk in local government*, October 2017; Explanatory notes, p 2.

13 Under the Electoral Act, a third party is an entity other than a political party, associated entity or candidate. Under the LGE Act, a third party is an entity other than - a political party, associated entity or candidate; persons appointed to form a committee to help an election campaign if the committee is recognised as part of a political party; a person who is a member of a committee for the election of a candidate.

14 Explanatory notes, p 2.

2.3 Queensland Ombudsman

In March 2017, the Queensland Ombudsman (the Ombudsman) commenced an investigation into the Cairns Regional Council 'to determine whether council and councillors comply with relevant legislative and policy requirements and act reasonably in relation to the disclosure and management of councillors' conflicts of interest'.[15]

The Ombudsman report, *The Cairns Regional Council councillor conflicts of interest report: An investigation into the way in which councillors at Cairns Regional Council deal with conflicts of interest* (the Ombudsman's Report), was released in October 2017. The Ombudsman's Report contained five opinions and made five recommendations (see **Appendix D**), which were 'considered as part of the analysis feeding into the preparation of the Bill'.[16]

[15] Ombudsman, *Ombudsman Report*, October 2017, p 1.

[16] Explanatory notes, p 5.

3 Examination of the Bill

3.1 Prohibition on donations from property developers

The governance regime for gifts and loans under the Electoral Act and the LGE Act 'relies on disclosure of gifts and loans to promote transparency and accountability'.[17] The regime requires political parties, candidates, and some third parties to disclose gifts or loans.[18] There are restrictions under both the Electoral Act and the LGE Act on certain gifts or loans, such as anonymous donations and loans from non-financial institutions, without prescribed records.[19] The only current prohibition on gifts or loans relates to donations of foreign property.[20]

The Belcarra Report noted that a key concern regarding political donations is 'that they increase the risk of corruption' and 'are seen as being motivated by a desire to purchase influence in government decision making'.[21] While the CCC noted that 'there is generally little research evidence to suggest that donations do result in donors receiving preferential treatment by politicians',[22] it also stated:

> *…concerns about local government corruption in Queensland continue to arise from political donations despite increased transparency of donations and council decision-making over time. In the CCC's view, this is evidence that relying solely on transparency has some limitations. Specifically, the inevitably close connections between property development interests and local government decision-making mean that transparency is insufficient to manage the risks of actual and perceived corruption associated with donations from property developers.*[23]

Accordingly recommendation 20 of the Belcarra Report states:

> *That the Local Government Electoral Act, the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers… Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors.*[24]

The CCC acknowledged that while the recommendation 20 'may not be a perfect solution, continued public concern about the influence of property developer donations on council decision-making demands a stronger response than transparency alone'.[25] The Belcarra report also noted that it would be necessary to legislate 'anti-circumvention measures' such as banning donations from property developers 'to political parties or candidates at other levels of government from being used for local government purposes'.[26]

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17 Department, correspondence dated 16 March 2018, *Briefing for the Economics and Governance Committee*, p 3.
18 Electoral Act, pt 11; LGE Act, pt 6.
19 Department, correspondence dated 16 March 2018, *Briefing for the Economics and Governance Committee*, p 3.
20 Electoral Act, s 270.
21 CCC, *Belcarra Report*, October 2017, p 76.
22 CCC, *Belcarra Report*, October 2017, p 77.
23 CCC, *Belcarra Report*, October 2017, p 78.
24 CCC, *Belcarra Report*, October 2017, p 78.
25 CCC, *Belcarra Report*, October 2017, p 78.
26 CCC, *Belcarra Report*, October 2017, p 78.

The CCC also acknowledged that 'there are other types of donors who, like property developers, have interests that may be influenced by local government decision-making'.[27] However, the CCC was of the view:

> *…until such time as unions and other types of donors demonstrate the same risk of actual or perceived corruption in Queensland local government as property developers, a more encompassing ban is not appropriate … at this time, the risks associated with these donors are sufficiently addressed by existing transparency mechanisms with the improvements recommended throughout this report.*[28]

The CCC Chairperson further elaborated at the public hearing:

> *In an ideal world, and my personal view would be, you would ban all donations, but the High Court has said, and the law is, that there needs to be an evidence based response which is proportional to the threat identified. That is why we singled out in our case in Belcarra property developers and not others because the evidence simply did not meet the expectation.*[29]
>
> *…we were constrained to recommend reform where the evidence justified it so there was really no realistic prospect of a successful challenge to the legislation. That is the last thing that we wanted—to recommend something that was going to be knocked over in the High Court... if there is evidence of improper donations for a corrupt purpose, they should be banned—if that evidence is there.*[30]

3.1.1 Overview of proposed change

The Bill proposes to implement recommendation 20 by providing that it is unlawful for a prohibited donor to make a political donation, or solicit another person to make a political donation, to candidates, groups of candidates, third parties, political parties and councillors. The Bill also proposes to make it unlawful for a person to make a political donation on behalf of a prohibited donor, or solicit on behalf of a prohibited donor another person to make a political donation, and for a person to accept a political donation made by or on behalf of a prohibited donor.[31]

Additionally, the Bill extends the prohibition on political donations to members of state parliament.[32] In introducing the Bill the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, Hon Stirling Hinchliffe MP, stated:

> *The extension of the ban to the state level is an important step given the state's significant role in Queensland's planning framework. That role includes mandating the powers that can be exercised by the planning minister, such as approving planning schemes and other local planning instruments, and assessing and advising on applications that trigger a state planning matter.*[33]

The explanatory notes state that proposed amendments are 'modelled on New South Wales legislation that prohibits political donations from property developers for state and local governments'[34] in accordance with the recommendation from the Belcarra Report. The CCC also noted that:

> *With New South Wales already having strengthened its legislation based on its early experiences, the current New South Wales provisions are an example of good practice on which to model the Queensland provisions.*[35]

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27 CCC, *Belcarra Report*, October 2017, p 78.
28 CCC, *Belcarra Report*, October 2017, pp 78-79.
29 Public hearing transcript, Brisbane, 28 March 2018, p 26.
30 Public hearing transcript, Brisbane, 28 March 2018, p 35.
31 Bill, pts 3, 5; Explanatory notes, p 4.
32 Bill, pts 3, 5; Explanatory notes, pp 3-4.
33 Record of Proceedings, 6 March 2018, p 190.
34 Explanatory notes, p 16.
35 CCC, *Belcarra Report*, October 2017, p 78.

Definitions of prohibited donors and political donations

A prohibited donor is defined as a property developer or industry representative organisation where a majority of members are property developers. Property developers include corporations engaged in a business that *regularly* involves making planning applications in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, or close associates of such corporations. A close associate is defined as:

- a related body corporate of the corporation
- a director or other officer of the corporation, or the director or other officer's spouse
- a person with more than 20 percent of the voting power in the corporation or a related body corporate, or the person's spouse
- if the corporation or a related body corporate is a stapled entity in relation to a stapled security - the other stapled entity in relation to the stapled security
- if the corporation is a trustee, manager or responsible entity in relation to a unit trust - a person who holds more than 20 percent of the units in the trust, and
- if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust - a beneficiary of the trust.[36]

A political donation is defined as a gift made to or for the benefit of:

- a candidate, political party, elected member, or
- another entity - to enable the entity to make a gift to or for the benefit of a candidate, political party, elected member, or to reimburse the entity for making a gift or incurring electoral expenditure.

A gift includes amounts paid to a political party for membership or affiliation with the party if the total amount paid in a calendar year exceeds $1,000, and fundraising contributions, such as the amount paid for a raffle ticket or an item at a fundraising auction.

If a gift is made in a private capacity for the recipient's personal use, and the recipient does not intend to use the gift for an electoral purpose, then the gift is not a political donation. However if any part of the gift is subsequently used for an electoral purpose, then that part of the gift is a political donation, and the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.

A loan from an entity other than a financial institution made to or for the benefit of a candidate, political party, elected member, or made to or for the benefit of another entity to enable the entity to make a gift, or reimburse them for making a gift, to or for the benefit of a candidate, political party, elected member is also defined as a political donation.[37]

Determinations

A person may apply to the Electoral Commission Queensland (ECQ) for a determination that they, or another entity, are not a prohibited donor. The application must be in writing and supported by sufficient information to enable the Electoral Commissioner to decide the application. If the Electoral Commissioner is satisfied the person or entity is not a prohibited donor they must make the determination; a determination is valid for one year. If the Electoral Commissioner decides not to make the determination sought by the person, they must give the person an information notice stating the reasons for the decision and that the person may apply for a review of the decision.[38]

If after a determination is made the Electoral Commissioner is no longer satisfied that the person or entity is not a prohibited donor, they may revoke the determination by written notice.[39]

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36 Bill, cls 13 (s 273) and 30 (s 113).

37 Bill, cls 13 (s 274) and 30 (s 113A); Explanatory notes, p 38.

38 Bill, cls 13 (s 277) and 30 (s 113D); Explanatory notes, pp 25, 39-40.

39 Bill, cls 13 (s 278) and 30 (s 113E); Explanatory notes, pp 25, 39-40.

The Electoral Commissioner must keep a register of determinations and revocations, and must make the register available for inspection by members of the public.[40]

Penalties and recovery of prohibited political donations

A person who unlawfully makes or solicits a prohibited donation or who accepts a prohibited donation would commit an offence punishable by up to $50,460 (400 penalty units) or two years imprisonment. Making or accepting a prohibited political donation is unlawful if the person 'knows or ought reasonably to know of the facts that result in the act or omission being unlawful'.[41]

The Bill also proposes to require a person who accepts a prohibited donation knowing it was unlawful to accept the donation to pay the State twice the amount of the prohibited donation, or if the person did not know it was unlawful to accept the donation to pay the State the amount of the donation.[42]

Additionally, the Bill proposes transitional arrangements that would require any donation, that would be a prohibited donation under the Bill, received on or after 12 October 2017 (the date the 2017 version of the Bill was introduced into the Legislative Assembly) to be paid back to the person who made it within 30 days of the commencement of the new provisions. Failing to pay back the donation within 30 days would be an offence punishable by up to to $50,460 (400 penalty units) or two years imprisonment.[43]

Freedom of communication on governmental and political matters

As noted by the CCC in the Belcarra Report and at the public hearing, the proposed ban on political donations from prohibited donors raises the issue of whether political donations are protected as a form of freedom of communication on governmental and political matters.

While the Australian Constitution does not explicitly protect a right to freedom of speech, the High Court has held that an implied right to freedom of political communication exists as a necessary part of Australia's system of representative and responsible government. This freedom operates as a right to freedom from government restraint about political matters.[44]

However, the freedom of political communication is not absolute, and may be subject to legislative restrictions, providing any such restrictions do not impinge on the system of representative government. Whether legislation imposing restrictions on freedom of political communication is constitutionally valid will be established by examining whether it burdens political communication, has a legitimate purpose compatible with the maintenance of representative and responsible government, and is reasonably appropriate and adapted.[45]

The question as to whether a ban on political donations from property developers 'impermissibly burdens the implied freedom on communication on governmental and political matters contrary to the Commonwealth Constitution' was considered by the High Court in *McCloy v New South Wales.*[46] In this case, the constitutional validity of New South Wales legislation banning political donations from property developers, among other things, was considered by the High Court.

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40 Bill, cls 13 (s 279) and 30 (s 113F); Explanatory notes, pp 25, 39-40.

41 Bill, cls 15 (s 307A) and 32 (s 194A). A penalty unit has a value of $126.15: Penalties and Sentences Regulation 2015 (PS Regulation), s 3; Explanatory notes, p 4.

42 Bill, cls 13 (s 276) and 30 (s 113C); Explanatory notes, pp 25, 39.

43 Bill, cls 20 (s 427) and 34 (s 212); Explanatory notes, p 15. A penalty unit has a value of $126.15: PS Regulation, s 3.

44 *Lang v Australian Broadcasting Corporation* (1997) 189 CLR 520, p 560.

45 *Coleman v Power* [2004] HCA 39.

46 *McCloy v New South Wales* (2015) 325 ALR 15, para 21.

The joint judgment in the case held:

> *…while the impugned provisions effectively burden the freedom, they have been enacted for legitimate purposes. They advance those purposes by rational means which not only do not impede the system of representative government provided for by the Constitution, but enhance it. There are no obvious and compelling alternative, reasonably practicable means of achieving the same purpose. The provisions are adequate in their balance. The burden imposed on the freedom is therefore justified as a proportionate means of achieving their purpose.*[47]

Justice Nettle noted there is:

> *…an apparently strong factual basis for the perception of a risk of corruption and undue influence as the result of political donations from property developers. A series of seven reports and a position paper of the New South Wales Independent Commission Against Corruption ("ICAC") has identified corruption and other misconduct in the handling of property development applications since 1990, and the existence of a large measure of public concern over the influence which property developers have hitherto exercised over State and local government members and officials. Admittedly, those concerns are more based upon inference than on direct evidence of widespread corruption by property developers. But it is not illogical or unprecedented for the Parliament to enact legislation in response to inferred legislative imperatives. More often than not, that is the only way in which the Parliament can deal prophylactically with matters of public concern.*[48]

3.1.2 Issues raised during the inquiry

Definitions of property developer and close associate

A number of submitters and witnesses raised various concerns about the definition of a property developer, suggesting that the definition was too broad, too narrow or unclear.

Some submitters stated that the definition was too broad and would potentially capture people that the CCC was not targeting in their recommendation.[49] For example, the Housing Industry Association (HIA) submitted the Bill 'has the potential to capture tens of thousands of Queenslanders as prohibited donors, most of whom HIA would consider to be well beyond the Government's intentions for this legislation'.[50] The HIA questioned whether builders, building certifiers, planning consultants, who would all make planning applications on behalf of their clients, would be caught in the definition[51].

Other submitters suggested the definition of property developer was too narrow, and should be widened to capture all entities associated with the developments.[52] For example, Robyn Deane submitted the 'definition does not include many individuals or entities which may have vested interests in decisions especially at local government level'.[53]

Similarly, Noosa Council submitted that the definition, which currently only refers to the development of 'land', 'should be broader as there is the capacity to subdivide and develop buildings as well (via strata)'. Noosa Council also suggested the definition should be broadened to include other types of developers, in addition to corporations, such as trusts and major individual developers who do not operate under a corporate structure.[54]

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47 *McCloy v New South Wales* (2015) 325 ALR 15, para 5.

48 *McCloy v New South Wales* (2015) 325 ALR 15, para 233.

49 See for example submissions 5, 14, 16, 24.

50 Submission 5, p 2.

51 Submission 5, p 1.

52 See for example submissions 1, 8, 14, 42.

53 Submission 1, p 1.

54 Submission 8, p 2.

The Property Council of Australia (PCA) submitted that the definition of a 'property developer' was 'simultaneously … too broad and too narrow' because it 'captures many individuals who stand to receive no benefit from a political donation, yet excludes many that the community would consider to be engaged in property development'.[55]

The PCA also raised a concern regarding the consistent application of the definition given that local governments may require 'planning applications' in different circumstances:

> *…in Queensland we have this funny situation where we sort of blur the lines between what we call a planning application and a building application. Quite often local governments will put in their planning scheme matters that we would say require a building application to be made but because they are in the planning scheme they require a planning application to be made.*
>
> *I am talking about things like carports, patios and sheds. You could have one local government where there is a planning application required to put a carport on a house and then in the next local government over it is a building application that is required to put that carport on.*[56]

Some submitters and witnesses suggested that the definition of a 'prohibited donor' was vague and unclear.[57] This was particularly raised in relation to the meaning of 'regular', as a property developer is a corporation engaged in a business that regularly involves the making of relevant planning applications.[58] For example, Bill Potts representing the Queensland Law Society (QLS) stated:

> *…we are concerned that there be some certainty around definitions with respect to the legislation. By that I mean what indeed is a property developer? For example, if I have a block of land, which I break into three pieces—subdivide effectively—and start building houses, which I then sell, I am told that I may be, under the bill, a regular applicant, with 'regular' holding its ordinary meaning of effectively more than once.*[59]

The PCA suggested that regularity may not be a suitable measure as a 'corporation may stand to receive significant benefit from a government decision made in relation to a solitary planning application'.[60]

A number of submitters also raised concerns regarding the definition of 'close associate'.[61] For example, the QLS questioned:

> *Does the definition of 'close associate' include a lawyer? A financial adviser? An accountant? An employee? Or a series of employees?*[62]

In relation to concerns around the definition of a property developer, the CCC Chairperson advised:

> *We thought long and hard about the definition of 'property developer' because of the obvious means by which it might be circumvented. For that reason, it is a very broad definition.*[63]

The Chairperson also stated:

> *Much has been said about the difficulties and whether the definition of property developer is practically workable. Can I just say in respect of that generally that it is not a good reason not to have such a definition if there are circumstances that can be conjured that fall outside the definition. It may be an argument for widening or broadening the scope of the definition, but it would not be a good argument for doing away with the ban altogether.*[64]

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55 Submission 16, p 8.
56 Public hearing transcript, Brisbane, 28 March 2018, p 21.
57 See for example submissions 16, 31.
58 See for example submissions 5, 16, 39.
59 Public hearing transcript, Brisbane, 28 March 2018, p 10.
60 Submission 16, p 8.
61 See for example submissions 5, 14, 16, 20.
62 Public hearing transcript, Brisbane, 28 March 2018, p 10.
63 Public hearing transcript, Brisbane, 28 March 2018, p 30.
64 Public hearing transcript, Brisbane, 28 March 2018, p 26.

In relation to the particular issue about the meaning of 'regularly', the department advised:

> *The bill uses the terminology 'regularly', and it is not precisely defined. It is really given its regular, common parlance. With the one-off transaction, you would hardly think that it would come under that. As to what would make it regular, it really depends on the whole scenario and the facts that are before, in particular in this case, the commission, which would be giving advice.*[65]

In response to the broader concerns regarding the definition of property developer, the department advised:

> *It is difficult to speculate as to what types of businesses fall within the definition of a property developer as any assessment would be based on type, and frequency, of their activities, their corporate structures and governance and shareholding arrangements.*
>
> *Where a person or business is unsure about whether they are captured by the definition of prohibited donor, they should seek independent legal advice and it is open to them to make an application to the Electoral Commissioner for a determination under proposed sections 277 of the Electoral Act and 113D of the LGEA.*[66]

A number of submitters and witnesses raised concerns regarding relying on the ECQ to develop guidelines to provide clarity in the application of the legislation. For example the Urban Development Institute of Australia Queensland (UDIAQ) submitted:

> *Leaving the Electoral Commission of Queensland to prepare guidelines for clarification of the law is inadequate and a task for which they do not have experience.*[67]

In response to questions at the public hearing about potential issues regarding definitions and determinations by the ECQ, Bill Potts stated:

> *With no disrespect, why do you put someone in charge of policing something but give them no help around the definitions of it. I think it is unsatisfactory for an organisation such as the ECQ to be making those kinds of decisions without some form of guidance from parliament...*
>
> *…*
>
> *For example, we see in some pieces of legislation very specific definitions and we sometimes see legislation which takes a slightly different view. What it does is it says this is what we are trying to prevent, here are examples of what we are trying to prevent so that the court or the ECQ or whoever is policing it is able to look at that and say well what parliament intended, however well the legislation was drafted or not, is incorporated in these examples.*[68]

And responding to the suggestion that regulatory guidelines would be developed to guide the implementation of the legislation, Bill Potts also stated:

> *My concern with that is that we do not let the regulators regulate by those sorts of things [guidelines]. The primacy of parliament is to enact legislation that could be followed by organisations where there are clear definitions or clear guidance on what parliament, which is the ultimate expression of the people's democracy, meant.*[69]

The LGAQ supported the QLS position, stating:

> *…certainly it is up to the legislature to define this correctly. Leaving it in the hands of the ECQ or any other department is not appropriate…I think examples around numbers need to go into the legislation. It cannot be left anywhere else.*[70]

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65 Public briefing transcript, Brisbane, 19 March 2018, p 6.

66 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, pp 16-17.

67 Submission 24, p 4.

68 Public briefing transcript, Brisbane, 19 March 2018, p 14.

69 Public hearing transcript, Brisbane, 28 March 2018, p 13.

70 Public hearing transcript, Brisbane, 28 March 2018, p 18.

Committee consideration and comment

The committee notes the department's advice that whether a person or business will be covered by the definition of property developer will depend on the type and frequency of their activities, their corporate structures, and their governance and shareholding arrangements. The committee also notes that a person or business who is unsure of their status under the proposed legislation can make application to ECQ for a determination.

However, the committee considers that in the interests of assisting persons and businesses in determining whether they fall into the category of a prohibited donor or close associate, it would be beneficial if examples were provided in legislation, or in another format, to provide guidance as to the entities the legislation is intended to cover.

Recommendation 2

The committee recommends that the Department of Local Government, Racing and Multicultural Affairs and the Department of Justice and Attorney-General work with the Electoral Commission Queensland to develop examples of what is a property developer and a close associate, and what constitutes 'regularly' in the context of making relevant planning applications, to assist affected parties and the Electoral Commission Queensland and the courts in determining the application of the proposed legislation.

Definition of political donation

The ECQ submitted that the definition of political donation may be problematic due to variances between the NSW regime and the proposed legislation:

> *…NSW … has a monetary cap on 'political donations' which necessitates this concept being separately defined from other types of gifts. That construct then operates in concert with the prohibited donor scheme, which also links back to the definition of 'political donations'. However, the Bill does not propose Queensland put in place similar monetary caps on political donations.*
>
> *Instead, the Bill seeks to apply the NSW definition of 'political donation' but only in a 'prohibited donors' context. This has the effect of creating a new class of gift that seems overly complicated in the Queensland context. A simpler construction that would be easier to monitor and enforce - including for the purposes of the offences - would be to link prohibited donors to gifts in general.*[71]

And due to disclosure requirements, as gifts:

> *…transition from being standard gifts to being political donations upon their use for 'electoral purposes'... From a practical perspective, such gifts would be lodged using the EDS [electronic disclosure system], but upon their use in whole or part for an electoral purpose there appears to be no separate reporting requirement, so how will the Commission or the public know when this transition has occurred? This goes to the practicality of instigating investigations and taking compliance and/or enforcement action against parties who may commit related offences, and providing advice to the general public.*[72]

[71] Submission 43, pp 2-3.

[72] Submission 43, p 3.

The UDIAQ also raised concerns about the definition of 'gift', and submitted the Bill:

> *…should be redrafted to ensure that industry organisations are able to carry out usual business which includes but is not limited to:*
>
> - *conducting events for members where a local or state government politician is a speaker*
> - *seeking sponsorship for events where a local or state government politician is a speaker*
> - *advocacy activities which include the industry organisation meeting with politicians to discuss industry issues and priorities*
> - *seeking and publishing articles from politicians for the purposes of industry organisation collateral, for distribution to industry organisation members*
> - *invitations to politicians to attend selected industry organisation events at no cost.*[73]

In response to the concerns regarding the definition of political donations, the department advised:

> *Recommendation 20 recommended that any prohibition on political donations from property developers should reflect the New South Wales provisions as far as possible…*
>
> *Differing terminology should not affect the reporting requirements of the ECQ. As the proposed amendments make it unlawful for a prohibited donor to make a political donation, and for a person to accept a political donation by or on behalf of a prohibited donor, donations of this type should not be made and accordingly would not be reported on the Electronic Disclosure System.*[74]

Application for a determination that entity is not a prohibited donor

Some submitters raised concerns about the process for applying for a determination that an entity is not a prohibited donor.[75] For example, the HIA submitted the Bill does not provide sufficient guidance:

> *What constitutes "enough information": there is not even a provision for regulations to be made to clarify the making of these determinations.*[76]

The ECQ also questioned whether it will be the ECQ's responsibility to seek additional information if sufficient information has not been provided in the application, or whether the ECQ will be required to make the determination based on the information provided.[77]

Concerns were also raised about the need for entities to re-apply for a determination every 12 months. The HIA submitted that the 'administrative and other costs associated with this for applicants and the Commissioner will be substantial'.[78]

In response to these concerns the department advised:

> *The Bill does not prevent the ECQ from asking the applicant for additional details to support the information provided.*
>
> *Proposed new section 277(5) in the Electoral Act and section 113D(5) of the LGEA state that the Electoral Commissioner's determination has effect for 1 year unless it is earlier revoked.*[79]

Banning property developer donations

Submitters and witnesses presented diverging views on the proposal to ban political donations from property developers at both a local government and State level.

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73 Submission 24, p 3.

74 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, pp 13-14.

75 For example see submissions 5, 31, 38.

76 Submission 5, p 2.

77 Submission 43, p 3.

78 Submission 5, p 2.

79 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 22.

Many submitters and witnesses supported banning political donations from property developers.[80] For example, Noosa Council submitted:

> *…we support the proposal to introduce a ban on developers making electoral donations in local government elections.*[81]

Similarly, Mark Stuart-Jones submitted that the changes regarding political donations:

> *…are essential to implement fair and balanced local and State Government elections and preventing corruption of the political process.*[82]

Some submitters argued that other industries and organisations had similar potential to use political donations inappropriately,[83] and suggested that consideration should be given to banning donations from other industries and organisations such as unions, members and former members of political parties, federal and state political parties for local government candidates, aged care businesses, the mining, tobacco and gambling industries, lobbyists, professional entities associated with local governments and companies that regularly tender for large contracts.[84]

A number of submitters proposed banning all corporate donations.[85] For example, Redland City Council submitted the Bill should:

> *…extend the prohibition of political donations from developers to include all corporate donations and potential lobby groups and to adopt a public funding model of candidates, similar to that regulated under the Electoral Act 1992 so as to remove the perception of third party funded political decisions.*[86]

Some submitters raised concerns that the property development industry being 'singled out',[87] suggesting the approach was discriminatory[88], and a restriction on the democratic rights of Queenslanders.[89] For example, the PCA questioned whether there is sufficient evidence to justify the restriction:

> *While the McCloy decision upheld the validity of the NSW Electoral Funding, Expenditure and Disclosures Act 1981, the decision rested on a body of evidence from eight adverse NSW Independent Commission Against Corruption reports in relation to development decisions. The High Court held that this evidence was sufficient to legitimise burdening the constitutional freedom.*
>
> *No such body of evidence exists in Queensland to justify the provisions in this Bill.*[90]

Similarly, the UDIAQ submitted:

> *…should it be necessary to ban industry donations to political entities as an independent means of preventing corruption, then a ban on donations from all industries should be considered*[91]

Conversely, the CCC Chairperson argued at the public hearing:

> *Whether you single out the property developers as unfairly being targeted by this, well, if the evidence is there it is there and justifies the measure. If evidence emerges of other groups which are equally a corruption risk in reality or in fact, well, they should be dealt with as well.*

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80 See for example submissions 7, 8, 9, 23, 25, 31, 32, 34, 35, 36, 39, 42.
81 Submission 8, p 2.
82 Submission 9, p 1.
83 See for example submissions 5, 15.
84 See for example submissions 3, 14, 22, 23, 34, 35, 36.
85 See for example submissions 27, 32, 33, 35, 42.
86 Submission 43, p 1.
87 See for example submissions 5, 13, 24.
88 Submission 13, p 1.
89 Submission 16, p 5.
90 Submission 16, p 5.
91 Submission 24, p 2.

> *In an ideal world, and my personal view would be, you would ban all donations, but the High Court has said, and the law is, that there needs to be an evidence based response which is proportional to the threat identified. That is why we singled out in our case in Belcarra property developers and not others because the evidence simply did not meet the expectation.*[92]

In relation to the issue of perception being used as the reason for the ban on property developer donations, the CCC Chairperson stated:

> *…if there is a perception of corruption, whether it translates to a reality or not, and we would argue that on many occasions it does translate to reality, but even if it does not, if there is an ongoing perception, which these inquiries have clearly evidenced, that fundamentally undermines public confidence in the system.*[93]

A number of submitters also suggested that banning donations from property developers would potentially lead to property developers attempting to circumvent the legislation by finding alternative methods to achieve the same outcome.[94] For example, the LGAQ submitted:

> *Developer donation bans in NSW, the only state in Australia with such bans, including for local government elections, have been proven not to work. A 2016 ICAC investigation (Operation Spicer), for example, exposed fund channelling in the NSW Liberal Party's 2011 state election campaign with the intention of evading the ban on donations from property developers.*[95]

In relation to issue of potentially circumventing the prohibition, the CCC Chairperson stated:

> *The fact that someone is going to go underground to beat the legislation does not mean you should not enact the legislation. It is no reason at all. At least if you deter some, you are ahead.*[96]

Submitters and witnesses presented differing views on the proposal to extend the ban on political donations from property developers to candidates and Members of State Parliament.

Some submitters expressly supported applying the ban to the state government level.[97] For example, the Environmental Defenders Office submitted:

> *We note that the Bill extends the proposed prohibition on property donations to state government, as well as local government. This is commendable as the risks associated with election donations are clearly relevant for both local and state parliamentarians.*[98]

Other submitters and witnesses noted that extending the ban on donations from property developers to the state level was a departure from the recommendations of the Belcarra report.[99] The CCC submitted that it:

> *…does not disagree with the general proposition contained in the Explanatory Notes to the Bill that given the State's significant role in Queensland's planning framework, the risk of corruption and undue influence similarly apply in respect of donations by property developers at the state level. However, the Committee would be mindful that the Belcarra Report recommendations arise out of a detailed consideration of facts and matters relevant to the specific local government context and purpose of the Inquiry.*
>
> *…*

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92 Public hearing transcript, Brisbane, 28 March 2018, p 26.

93 Public hearing transcript, Brisbane, 28 March 2018, p 26.

94 See for example submissions 13, 25, 32, 39.

95 Submission 40, p 2.

96 Public hearing transcript, Brisbane, 28 March 2018, p 30.

97 See for example submissions 31, 42.

98 Submission 42, p 2.

99 See for example submissions 16, 18, 24.

> *The Belcarra Report observed that the Queensland Government may consider it appropriate to also adopt these recommendations at the state government level. However, in saying this, the CCC did not contemplate that the proposed reforms would be introduced without preliminary review to identify and mitigate corruption risks in state elections and decision-making. A proper public consultation process is highly desirable.*[100]

Submitters and witnesses also raised the need for an evidence basis to support extending the ban. At the public hearing, the CCC Chairperson explained:

> *Because the High Court has said that it is impermissible to interfere with that [the implied freedom of political communication] unless there is evidence justifying that response as being a proportionate response to the threat identified...*
>
> *…*
>
> *As I said, it may well be the case that there is sufficient evidence to justify the transition from local government to state, but absent reviewing it and assessing it you run the risk…that you are simply saying because it exists in New South Wales that it must exist here which might or might not be sufficient.*[101]

The CCC Chairperson also noted:

> *…unlike the amendments proposed by clause 28 to the s. 3 purpose statement of the LGE Act, the Bill does not include a similar amendment to the Electoral Act 1992. Legislative statements of the relevant statutory purpose are important to help identify the extent of any burden upon the implied freedom of communication proposed by the legislation and to determine whether any burden is proportionate to the legitimate purpose of any provision of the Act in terms of the relevant tests stated in Lange and Coleman v Power.*[102]

In response to the issues raised regarding the banning property developer donations at the state level, the department advised:

> *Following the release of the Belcarra Report, the Premier stated "I will not make rules for local Councils that I am not prepared to follow myself, so any changes we make will apply to state, as well as local Government". The Bill gives effect to this commitment.*
>
> *…*
>
> *Further, the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, the Honourable Stirling Hinchliffe stated in his explanatory speech "corruption in relation to donations from property developers, at both local government and state government levels, has been investigated and reported on by the New South Wales Independent Commission Against Corruption (ICAC)…consistent with the approach adopted in New South Wales following a number of ICAC investigations and to address the risk of corruption and undue influence that political donations from property developers has the potential to cause at a local government and state government level, the Bill applies at both a local and state government level".*[103]

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[100] Submission 18, pp 2-3.

[101] Public hearing transcript, Brisbane, 28 March 2018, p 28.

[102] Submission 18, p 3.

[103] Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 21.

Committee consideration and comment

The committee notes that legislation imposing limitations on the implied freedom of political communication must be an 'evidence based response which is proportional to the threat identified',[104] and that purpose statements in an Act can be important in:

- identifying the extent of any limitations on the implied freedom of political communication
- determining whether any limitation is proportionate to the legitimate purpose of the Act.[105]

The committee understands that the Bill proposes to amend the purpose statement in the LGE Act, but that the Electoral Act does not contain a purpose statement. The committee notes that a purpose statement in the Electoral Act may strengthen the basis for the Act limiting the implied freedom of political communication in relation to donations to candidates and Members of State Parliament.

The committee recommends the Bill be amended to insert a purpose statement in the *Electoral Act* with similar provisions to the proposed purpose statement of the LGE Act, such as:

> *The purposes of this Act are to ensure the transparent conduct of elections of members of the Legislative Assembly, and to ensure and reinforce integrity in Queensland's Legislative Assembly, including, for example by minimising the risk of corruption in relation to the election of members of the Legislative Assembly and the good governance of Queensland.*

Recommendation 3

The committee recommends the Bill be amended to insert a purpose statement in the *Electoral Act 1992,* similar to the proposed purpose statement in the *Local Government Electoral Act 2011*.

Commencement and implementation of the prohibited donation framework

The ECQ submission noted that a range of implementation activities are necessary to facilitate the commencement of the new prohibited donation framework including the development of operational policies and procedures to guide the ECQ's business processes, advice-giving and decision-making, modifications to the Electronic Disclosure System, mechanisms to identify and address vexatious complaints and the development of staffing capabilities and expertise 'to administer and regulate this scheme and engage with the stakeholders regulated by it'.[106]

The ECQ also noted that:

> *…to provide regulatory certainty, the Commission anticipates immediately receiving a large number of request for advice and/or application from potentially regulated parties for the making of determinations that they are not prohibited donors… because such determinations are one of the key mechanisms underpinning the scheme, and an extensive advice-giving role has already been foreshadowed by the Department of Justice and Attorney-General…*[107]

Based on the above, the ECQ submitted:

> *…a suitable period of time would be appreciated between the Bill's assent and the commencement of the prohibited donor scheme provisions for the Commission to design and deploy the administrative and compliance/enforcement policies, procedures, and processes required to support the scheme's implementation.*

[104] CCC, public hearing transcript, Brisbane, 28 March 2018, p 26.
[105] Submission 18, p 3.
[106] Submission 38, p 2.
[107] Submission 38, pp 1-2.

The Commission estimates that 3-6 months would be suitable in this regard, with a preference for 6 months. This timeframe would also depend on new resourcing available to the Commission related to the scheme, which is currently subject to Government consideration through the usual budget process.[108]

In response to the ECQ submission, the department advised:

Amendments to the Electoral Act and LGEA are proposed to commence on proclamation.[109]

Committee consideration and comment

The committee notes that the provisions relating to the prohibition on donations from property developers will commence on proclamation.

The committee also notes the ECQ's request for sufficient time to allow it to prepare for its role in implementing and enforcing the prohibition regime, and that some knowledge of the timing of the provisions' commencement may assist stakeholders to ensure they are prepared for the changes.

Point of clarification 1

The committee seeks advice from the Minister during his second reading speech regarding an indicative timeframe for the commencement of the provisions relating to prohibiting donations from property developers, should the Bill be passed.

Retrospective application

A number of submitters and witnesses expressed concern regarding the proposed retrospective nature of the provisions requiring any donation that would be a prohibited donation under the Bill received after 12 October 2017 to be paid within 30 days of the commencement of the new provisions.[110]

For example, the CCC submitted that the 'obligation [for donations] to be repaid shortly after the commencement...and the criminalisation of failure to repay the loan/debt on time raises several issues'.

The recent introduction of the Bill, some five months after the lapsed Bill, may raise additional complexity concerning property developer donations from 12 October 2017 until commencement (historical developer donations). Such donations, if any, may lawfully have been used (or may be used) for political communication occurring both before and after commencement. However, the proposed laws will adversely affect the recipients of historical developer donations lawfully used for political communication.

…

The effective conversion of historical developer donations into loans or debts upon commencement does not necessarily meet the Explanatory Note's statement about the policy objective of minimising corruption risk that political donations from developers have potential to cause at both state and local government level….

These considerations perhaps raise questions whether the clauses advance their anti-corruption purposes in a manner compatible with the maintenance of the constitutionally prescribed systems of representative and responsible government.[111]

The QLS submitted:

Retrospective legislation makes laws less certain and reliable and can cause damaging practical difficulties to the individuals and organisations involved.

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108 Submission 38, p 4.

109 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 29.

110 See for example submissions 16, 18, 24, 37, 40.

111 Submission 18, pp 3-5.

> *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 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.*
>
> *…*
>
> *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.*
>
> *…*
>
> *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.*[112]

The QLS also submitted that if the Bill proceeds with the retrospective provisions, the Government should '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.'[113]

In response to the concerns regarding retrospectivity, the department advised 'This is a matter of policy for government. In relation to the suggestion from QLS that Government should 'ensure that potentially affected people are made aware of their duty to repay donations', the department advised that 'The communication of obligations to repay donations will be a matter for the ECQ.'[114]

3.2 Managing councillor conflicts of interest and material personal interests

3.2.1 Declaring a conflict of interest or a material personal interest at a meeting

Under the LG Act and COB Act a councillor who has a conflict of interest[115] or a material personal interest[116] in a matter to be discussed at a local government meeting, must inform the meeting of that interest.[117] However, there are no express requirements regarding the information the councillor must disclose.

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112 Submission 37, p 2.

113 Submission 37, p 2.

114 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 29.

115 A conflict of interest is defined as a conflict between the councillor's personal interests and the public interest that might lead to a decision that is contrary to the public interest: LG Act, s 173(2); COB Act, s 175(2).

116 A material personal interest is defined as a matter where the councillor or the councillor's spouse parent, child or sibling, the councillor's partner or employer (other than a government entity), an entity (other than a government entity) of which the councillor is a member, or another person prescribed by regulation stands to gain a benefit or suffer a loss depending on the outcome matter: LG Act, s 172(2); COB Act, s 174(2).

117 LG Act, ss 172, 173; COB Act, ss 174, 175.

The penalties for failing to declare a conflict of interest or a material personal interest also differ under the current legislation. Failing to declare a conflict of interest amounts to misconduct, and may result in disciplinary action being taken, such as counselling or an order to make an admission of error or an apology.[118] However, a councillor failing to declare a material personal interest commits an offence and is liable to a penalty of up to $10,722 (85 penalty units). If the councillor votes on a matter related to a material personal interest 'with an intention to gain a benefit, or avoid a loss, for the councillor or someone else' they are liable to a penalty of up to $25,230 (200 penalty units) or 2 years imprisonment.[119] Failing to declare a material personal interest is also an integrity offence; a councillor convicted of an integrity offence 'automatically stops being a councillor' and is prohibited from being a councillor for four years after their conviction.[120]

The Belcarra Report noted that when the LG Act was first introduced, failing to declare a conflict of interest was an offence punishable by a penalty of up to $12,615 (100 penalty units), and was an 'integrity offence that would see any councillor removed from office upon conviction'.[121]

The CCC noted in the Belcarra Report that 'it will often be sufficient to treat a councillor's failure to deal with a conflict of interest in a transparent and accountable way as misconduct'.[122] However, the CCC expressed the view that the legislation should 'specifically provide for severe penalties for councillors who engage in the most serious breaches of … conflict of interest provisions'.[123]

Accordingly recommendation 25 of the Belcarra Report states:

> *That the Local Government Act and the City of Brisbane Act be amended to provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office.*[124]

The Belcarra Report does not recommend changes to specify the information that should be included when a councillor informs a meeting about a conflict of interest, or a material personal interest. However, the report states that 'where government officials have poorly guided discretional powers, the resulting lack of certainty can lead to perceived corruption and reduced public confidence'. Further, the explanatory notes advise that there are community concerns regarding 'rudimentary declarations' that do not 'provide sufficient information to determine the conflict of interest nor the precise nature of the conflict of interest'.[125]

The Ombudsman's investigation into the Cairns Regional Council considered whether the declarations made by councillors were sufficient to achieve transparency and accountability, particularly as they relate to electoral donations. The Ombudsman subsequently reported the opinion that there is 'uncertainty in terms of what is expected of councillors when making conflict of interest declarations during meetings',[126] and recommended that the LG Act should:

> *…clearly set out what is required to be disclosed by councillors to achieve transparency and accountability in relation to the declaration of conflicts of interest, including consideration of the amount and timing of an electoral donation.*[127]

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118 Bill, cls 6 and 24; Explanatory notes, p 12; LG Act, s 180; COB Act, s 183.

119 LG Act, s 172(5). A penalty unit has a value of $126.15: PS Regulation, s 3.

120 LG Act, s 153; COB Act, s 153.

121 CCC, *Belcarra Report*, October 2017, p 83.

122 CCC, *Belcarra Report*, October 2017, p 84.

123 CCC, *Belcarra Report*, October 2017, p 84.

124 CCC, *Belcarra Report*, October 2017, p 85.

125 Explanatory notes, p 8.

126 Ombudsman, *Ombudsman's Report*, p 21.

127 Ombudsman, *Ombudsman's Report*, p 22.

Overview of proposed change

The Bill provides that a councillor must declare a material personal interest or a conflict of interest in a matter if the matter is to be discussed at a local government meeting and the matter is not an ordinary business matter.[128] An ordinary business matter includes the remuneration of councillors, the terms on which goods and services are to be offered by the local government, the making or levying of rates and charges and a planning scheme, or amendment of a planning scheme.[129]

The Bill also proposes to prescribe the information that must be disclosed by councillors regarding a conflict of interest or material personal interest, to ensure comprehensive declarations that 'provide additional specific information' to determine the precise nature of the conflict of interest or material personal interest.[130]

For a conflict of interest, the councillor would be required to inform the meeting of:

- the nature of the interest, and
- if the interest arises because of a relationship with, or receipt of a gift from, another person - the person's name and the nature of their interest in the matter, and the nature of the relationship or value and date of receipt of the gift.

For a material personal interest, the councillor would be required to inform the meeting of:

- the name of the person or entity who stands to gain a benefit, or suffer a loss
- how the person or entity stands to gain a benefit or suffer a loss, and
- if the person or entity who stands to gain the benefit or suffer the loss is not the councillor - the nature of the councillor's relationship to the person or entity.

Failing to properly declare a conflict of interest would be an offence punishable by up to $12,615 (100 penalty units) or one year imprisonment, while failing to properly declare a material personal interest would be an offence punishable by up to $10,722 (85 penalty units).[131] The Bill also prescribes failing to declare a conflict of interest as an integrity offence resulting in the councillor being disqualified from being a councillor for four years (if convicted).[132]

The Bill provides that if a majority of councillors at a local government meeting declare a conflict of interest or a material personal interest, the council must delegate deciding the matter unless deciding the matter is not permitted to be delegated (powers that must be exercised by resolution cannot be delegated).[133]

To manage matters that cannot be delegated, the Bill provides that the Minister may approve a councillor participating in a meeting or being present while a matter is discussed and voted on, if the matter could not otherwise be decided because of the number of councillors who have a conflict of interest or a material personal interest.[134]

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128 Bill, cls 6 (s 177C, s 177E) and 24 (s 175C, s175E); Explanatory notes, p 4.

129 LG Act, sch 4.

130 Explanatory notes, p 8.

131 Bill, cls 6 (ss 177C, 177E) and 24 (ss 175C, 175E); Explanatory notes, pp 8-9. A penalty unit has a value of $126.15: PS Regulation, s 3.

132 Bill, cls 4 and 22; LG Act, s 153(1)(d); COB Act, s 153(1)(d); Explanatory notes, p 10.
Failing to declare a material personal interest is currently an integrity offence.

133 Bill, cls 6 (ss 177C, 177E) and 24 (ss 175C, 175E); LG Act s 257; COB Act, s 238; Explanatory notes, p 8.

134 Bill, cls 6 (s 177) and 24 (s 175); Explanatory notes, p 8.

Issues raised during the inquiry

Supporting information

Noosa Council suggested that detailed scenarios providing guidance on what the definition of a conflict of interest covers, including issues such as electoral donations, membership of community organisations, and council appointment to a board, would provide greater legislative certainty.[135]

In response to this suggestion, the department advised:

> *DLGRMA will be undertaking training and developing materials to provide additional guidance to councillors on what constitutes a material personal interest and a conflict of interest.*[136]

Exclusion of ordinary business matters

Some submitters raised concerns that councillors would not be required to declare a conflict of interest or material personal interest in relation to ordinary business matters particularly planning scheme decisions. For example, the UDIAQ submitted that:

> *Politician decision making on planning scheme policy has not been caught in the Bill's conflict of interest provisions as they are an "ordinary business matter"; such decisions are a critical decision point arguably equally or more an area of concern as development assessment decisions. This warrants further consideration by the committee of alternative mechanisms to remove politics from planning.*[137]

Similarly, Kenneth Park submitted:

> *Planning schemes are the instruments by which zonings are changed and other requirements are altered, usually to the benefit of particular owners and developers. These would be among the most productive areas of corruption... It is incomprehensible to omit this potential avenue of corruption. Likewise, the budget is a means by which corrupted councillors can ensure that works and infrastructure are approved which will most benefit their corrupting benefactors. The blanket omission of the ordinary business of council opens up very significant opportunities for developers and others to corruptly influence major decisions of councils.*[138]

Conversely, at the public hearing the LGAQ stated the definition of ordinary business matters:

> *…has been fiddled with a number of times since before the current act. It was changed to include planning schemes or parts of planning schemes because of problems which occurred because of the way it was written prior to that… All I can say is that what there is now, I would suggest, is not the perfect solution but the best way to deal with it without it being perfect.*[139]

In response to concerns about not declaring conflicts of interest or material personal interests in relation to ordinary business matters, the department advised:

> *The recommendations of the Belcarra Report did not propose to extend the scope of the conflict of interest or material personal interest requirements to apply to ordinary business matters.*[140]

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135 Submission 8, p 5.

136 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 41.

137 Submission 24, p 4.

138 Submission 15, p 2.

139 Public hearing transcript, Brisbane, 28 March 2018, p 16.

140 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 44.

The department also provided the following advice at the public briefing:

> *Ordinary business has been excluded to ensure that councils still function. It is recognised that there are certain things, such as a council planning scheme or even just the passing of rates and the budget, that have to get done. The councillors, to be qualified, have to live in that area. It is really a recognition that there is some business as usual that absolutely has to be done in which all parties have a similar interest.*
>
> *…*
>
> *Planning schemes themselves are excluded but, obviously, particular development applications as they come before a council are not excluded. A councillor who had a conflict of interest or an MPI in a DA would need to declare that on a case-by-case basis.*[141]

Application only to local government meetings

Some submitters and witnesses raised concerns that the requirements only applied to local government meetings and proposed that the provisions be extended to cover events such as workshops and briefings.[142] For example, Tony Wellington, the Mayor of Noosa Council, stated:

> *We have a great many meetings in council where conflict of interest can potentially come into play. Therefore, the issue is not just at statutory meetings. For example, we have committee meetings that deal with agenda items prior to each ordinary meeting. Those committee meetings do not have the full council involved, nevertheless they have potential conflicts of interests.*
>
> *…the legislation really does not address the practicalities of how councils work. You cannot make a decision other than in a council ordinary meeting, or a statutory meeting, but there is a process that leads up to how policies are developed, or workshops, or whatever it might be.* [143]

Similarly, Redland City Council submitted the Bill should:

> *…extend the personal interests and influence provisions beyond the statutory meeting regime under the Local Government Act 2009 to include any meeting, workshop or event which the subject councillor may have a personal interest and ability as a councillor to influence a government decision, activity or service.*[144]

In relation to such suggestions, the LGAQ stated at the public hearing:

> *…having regard to the local government principles of councillors acting ethically, legally and transparently, if they go to one of those informal briefing sessions or workshops knowing that the matter in question ends up at a council meeting, in our view they have an ethical obligation to make that known to the councillors in that workshop. It follows from that that if they do not that would arguably be an act of misconduct as presently defined in the Local Government Act...*
>
> *In section 176 there is a definition of 'misconduct'. You could add to that definition. A fairly simple solution is to add another paragraph to the effect that it includes participating in any form of communication with another councillor or a council officer about a matter in which you will subsequently be disclosing an MPI [material personal interest] or a COI [conflict of interest].*[145]

In response to the suggestion that the provisions be extended beyond local government meetings, the department advised:

> *The recommendations of the Belcarra Report did not propose to extend the scope of the conflict of interest or material personal interest requirements to apply outside meetings.*
>
> *…*

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141 Public briefing transcript, Brisbane, 19 March 2018, p 7.

142 See for example submissions 8, 15, 20, 23, 31, 39.

143 Public hearing transcript, Brisbane, 28 March 2018, pp 8-9.

144 Submission 43, p 2.

145 Public hearing transcript, Brisbane, 28 March 2018, p 16.

Conduct of a councillor that adversely affects the honest or impartial performance of the councillor's responsibilities or the exercise of the councillor's powers, or that is or involves the performance of the councillor's responsibilities, or the exercise of the councillor's powers in a way that is not honest or impartial or that is or involves a breach of the trust placed in the councillor is misconduct...

…

Also, new offences inserted by the Bill provide that a councillor with a material personal interest or conflict of interest in a matter, must not influence, or attempt to influence another councillor to vote on the matter in a particular way at a council meeting or a council employee or contractor who is authorised to deal with the matter to do so in a particular way… The application of these offences is not limited to council meetings.[146]

Committee consideration and comment

The committee notes the proposed new provisions relating to conflicts of interest and material personal interests will not apply to ordinary business matters and events such as workshops and briefings. The committee also notes the department's advice that the application of the offences regarding a councillor with a material personal interest or conflict of interest influencing or attempting to influence another councillor is not limited to local government meetings.

Point of clarification 2

The committee seeks clarification from the Minister during his second reading speech regarding the operation of the provisions regarding conflicts of interest and material personal interests (proposed new sections 177C and 177E of the *City of Brisbane Act 2010* and 175C and 175E of the *Local Government Act 2009*) as they relate to ordinary business matters and events such as workshops and briefings, and the advice from the Department of Local Government, Racing and Multicultural Affairs regarding the application of the new offences for a councillor influencing or attempting to influence another councillor outside of a local government meeting.

3.2.2 Vote to determine conflict of interest

Under the LG Act and COB Act a councillor who has informed a local government meeting that they have a material personal interest, must leave and stay out of the meeting room while the matter is discussed and voted on.[147] A councillor who has informed the meeting that they have a conflict of interest may, providing they deal with the matter 'in a transparent and accountable way', either inform the attendees how they intend to deal with the conflict and stay and participate in the meeting, or exclude themselves from the meeting.[148]

The Belcarra Report notes that when the LG Act was first introduced, if a councillor informed the meeting they had a conflict of interest the other councillors present were 'required to decide whether the councillor had a conflict of interest' and if they decided that there was a conflict of interest were 'required to direct the councillor to leave the meeting room and stay out while the matter was discussed and voted on'.[149]

146 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 45.

147 LG Act, s 172; COB Act, s 174.

148 LG Act, s 173; COB Act, s 175.

149 CCC, *Belcarra Report*, October 2017, p 83.

These provisions, and equivalent provisions in the COB Act, were removed in in 2011,[150] and the CCC noted in the Belcarra Report:

> *… the rationale for removing the original requirement in 2011 was that it is sometimes possible and appropriate for a councillor to determine that they can make a decision in the public interest, and that other councillors are not necessarily in a better position than the councillor themselves to determine if there is a conflict.*[151]

However, the CCC expressed the view that 'other councillors can give voice to other perspectives, and may be better able to reflect on the perception of a conflict than the councillor in question'[152] and:

> *Requiring other councillors to decide whether a councillor has a conflict of interest and whether they should stay in the room to vote on a matter ensures that alternative and more independent perspectives are taken into consideration.*[153]

Accordingly recommendation 23 of the Belcarra Report states:

> *That section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest … other persons entitled to vote at the meeting are required to decide:*
>
> *(a) whether the councillor has a real or perceived conflict of interest in the matter*
>
> *(b) whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter...*
>
> *The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting.*[154]

Overview of proposed changes

The Bill proposes to implement recommendation 23 by requiring councillors at a meeting, who are informed of another councillor's conflict of interest by the councillor or another person, to decide whether there is a conflict of interest and if they decide there is a conflict to determine whether the councillor must leave and stay out of the meeting room while the matter is discussed and voted on, or whether they may participate in the discussion and vote on the matter.[155]

The amendment also supports the implementation of recommendation 25, to '…provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office.'[156] Failing to comply with a decision to leave and stay out of the meeting room while the matter is discussed and voted on would be an offence punishable by $12,615 (100 penalty units) or one year imprisonment.[157]

Issues raised during the inquiry

The majority of submitters and witnesses who made representations on this provision were opposed to councillors being required to vote on whether another councillor has a conflict of interest and whether they should leave the room while the matter the is discussed and voted on.[158]

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150 CCC, *Belcarra Report*, October 2017, p 83; LGE Act 2011 (as made Act No. 27 of 2011), ss 250, 278.

151 CCC, *Belcarra Report*, October 2017, p 84.

152 CCC, *Belcarra Report*, October 2017, p 84.

153 CCC, *Belcarra Report*, October 2017, p 84.

154 CCC, *Belcarra Report*, October 2017, p 85; Explanatory notes, p 5.

155 Bill, cls 6 (s 177E) and 24 (s 175E); Explanatory notes, p 7.

156 CCC, *Belcarra Report*, October 2017, p 85; Explanatory notes, p 7.

157 Bill, cls 6 (s 177E) and 24 (s 175E); Explanatory notes, p 7. A penalty unit has a value of $126.15: PS Regulation, s 3.

158 See for example submissions 7, 8, 11, 13, 32, 34, 35, 40, 41.

Some submitters suggested the community would not have faith in a process that requires a councillor's colleagues to decide such matters, as councillors may not be inclined to vote against a colleague who has indicated an intention to stay in the room or there may be a situation where councillors vote as a bloc or based on formal political party groupings.[159]

A number of councils also expressed concerns about the potential for abuse of such a provision, and the likelihood of bloc voting.[160] For example, Brett de Chastel, representing Noosa Council at the public hearing, stated:

> *The problem is that, when a conflict of interest has to be decided by other councillors, a voting bloc could use it to preclude a councillor from a vote. In other words, where there was a possible close vote expected on a decision, a group of councillors could gather together and make a determination that someone else's perceived conflict of interest was a real conflict of interest and thus they should leave the room.*[161]

Similarly, Livingstone Shire Council submitted:

> *This power used to be in the Local Government Act but was removed because it was proven not to work and has the potential for abuse for political purposes.*[162]

Concerns were also expressed that councillors may make a decision without having all of the relevant information, and a risk that local government meetings may become inquiries into fellow councillors.[163]

Some submitters suggested conflicts of interest should be treated in the same way as material personal interests; councillors who declare a conflict of interest must leave the room.[164] A number of submitters argued that 'there has been a historical failure by councillors to observe the spirit of existing legislation governing conflict of interest and their discretionary power in this area must be removed'.[165]

Similarly, the LGAQ proposed that a councillor with a conflict of interest arising from a gift or donation above $500 be required to remove themselves from the meeting:

> *This would remove any discretion for the councillor as to whether they may participate in deciding a matter…The LGAQ sees this as an alternative, and superior, proposal than that contained in the Belcarra recommendations surrounding conflict of interest provisions that were proven in the past not to work'.*[166]

Conversely, the Environmental Defenders Office (EDO) supported the provision, stating '…we are pleased to see that the Bill provides a mechanism by which the councillor must declare a conflict and then the matter is put to debate by the councillors as to how to address it'.[167]

On the issue of a councillor voting improperly on another councillor's conflict of interest, the department advised:

> *…conduct of a councillor that adversely affects the honest or impartial performance of the councillor's responsibilities, or the exercise of the councillor's powers or that is or involves the performance of the councillor's responsibilities, or the exercise of the councillor's powers in a way that is not honest or impartial or that is or involves a breach of the trust placed in the councillor is misconduct...*

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159 See for example submissions 7, 11, 32, 34, 35.

160 See for example submissions 8, 23, 40.

161 Public hearing transcript, Brisbane, 28 March 2018, pp 7-8.

162 Submission 13, p 1.

163 Submission 8, p 3.

164 See for example submissions 2, 3, 7, 11, 14, 17, 27, 28, 31, 35, 39.

165 See for example submissions 7, 34, 35, 36.

166 Submission 40, p 3.

167 Submission 42, p 3.

> *Voting improperly on other councillors' conflicts of interest may also amount to corrupt conduct if it involves performing or failing to perform a function of office with an intent to dishonestly gain a benefit for the councillor or another person or to dishonestly cause a detriment to another person under section 92A of the Criminal Code.*[168]

In relation to these concerns the CCC Chairperson stated:

> *If that happened, that would be an allegation that should come to us. That is corrupt ... It would not be hard to prove that it was a device to sideline a councillor whose vote was important to redress the numbers. If there were no basis, that is clearly corrupt conduct...*
>
> *I think the concerns about this suite of recommendations is not a real concern. I think that you will find that, if this goes through, once councillors start to operate with that mindset and using those principles, this is a very good reform that protects everyone on the council and, more importantly, protects the integrity of the council decision-making process... If you say that Joe Blow has a conflict, you have to document why, and on what basis. It is not easy to do if there is no legitimate basis. I can see the concerns, but I think that is really dancing at shadows.*[169]

In response to the proposal that councillors absent themselves from a meeting if they have a conflict of interest, the department advised:

> *…the CCC stated in the Belcarra Report (page 84) that it did not believe that all conflicts of interest should require councillors to leave the meeting room and abstain from voting...*[170]

In relation to this proposal, the CCC Chairperson stated:

> *I think the problem with that is that councillors are elected to represent their division. If, in fact, because of a donation to their campaign they are prevented from taking part in the democratic process, the voters are being let down, as it were. Ultimately, if you have a lot of councillors standing down because of that fact—they have a conflict through a donation being disclosed—who is going to vote?*[171]

3.2.3 Duty to report a councillor's conflict of interest or material personal interest

There is no requirement under the LG Act or COB Act for a councillor who knows, or has a reasonable suspicion, that another councillor has a conflict of interest or material personal interest that they have not disclosed, to report that interest.

The Belcarra Report notes that when the LG Act was first introduced, 'councillors had a specific obligation to report other councillors' conflicts of interest (and material personal interests and misconduct) if they knew or reasonably suspected they existed'.[172] To support this obligation the LG Act also previously provided safeguards for councillors who reported other councillors' conflicts of interest, making it an offence for anyone to engage or threaten to engage in certain behaviours detrimental to the councillor because they complied with their duty to report. These provisions, and equivalent provisions in the COB Act, were removed in 2012.[173]

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168 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 33.

169 Public hearing transcript, Brisbane, 28 March 2018, p 33.

170 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, pp 37-38.

171 Public hearing transcript, Brisbane, 28 March 2018, p 31.

172 CCC, *Belcarra Report*, October 2017, p 83.

173 CCC, *Belcarra Report*, October 2017, p 83; *Local Government and Other Legislation Amendment Act 2012*, ss 48, 129.

The CCC noted in the Belcarra Report:

> *…the previous requirement was removed on the basis that it was "an unnecessary duplication as all councillors are bound by the local government principles", and not disclosing another councillor's conflict of interest would breach these.*[174]

However, the CCC expressed the view that 'relying on the local government principles alone does not reflect the seriousness of undeclared conflicts of interest', and:

> *…a specific obligation on councillors to report another councillor's conflict of interest would increase councillors' accountability and reinforce the importance of dealing with conflicts of interest in transparent and accountable ways.*[175]

To address the CCC's concerns, recommendation 24 of the Belcarra Report states:

> *That the Local Government Act and the City of Brisbane Act be amended to:*
>
> *(a) require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the Chief Executive Officer of the council*
>
> *(b) require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting.*[176]

Overview of proposed changes

The Bill proposes to impose a duty on councillors who reasonably believe or suspect that another councillor at a local government meeting has a conflict of interest or a material personal interest that has not been declared to inform the person presiding at the meeting of their belief or suspicion. The councillor must also inform the person presiding at the meeting of the facts and circumstances forming the basis of their belief or suspicion.[177]

Failing to report a reasonable suspicion or belief about a conflict of interest or a material personal interest would amount to misconduct, and may result in disciplinary action such as counselling or an order to make an admission of error or an apology.[178]

This amendment implements, in part, recommendation 24 of the Belcarra Report. The proposed amendment does not implement the aspects of recommendation 24 that relate to councillors informing the chief executive officer, as an alternative to the person presiding at a meeting, of their suspicion or belief about a conflict of interest or a material personal interest.

The amendment also supports the implementation of recommendation 25, to '…provide suitable penalties.' The Bill proposes to provide some protection for councillors who report their suspicion or belief about a conflict of interest or a material personal interest by prohibiting retaliatory action. New sections 175H of LG Act and 177H of COB Act prohibit a person from:

- prejudicing, or threatening to prejudice, the councillor or another person's safety or career
- intimidating or harassing, or threatening to intimidate or harass the councillor or another person, or
- taking any action that is, or likely to be, detrimental to the councillor or another person

because the councillor complied with their duty to report their suspicion or belief.[179]

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174 CCC, *Belcarra Report*, October 2017, p 84.

175 CCC, *Belcarra Report*, October 2017, p 84.

176 CCC, *Belcarra Report*, October 2017, p 85; Explanatory notes, p 6.

177 Bill, cls 6 (s 177G) and 24 (s 175G); Explanatory notes, p 7.

178 Bill, cls 6 (s 177G) and 24 (s 175G); Explanatory notes, p 9; LG Act, s 180; COB Act, s 183.

179 Bill, cls 6 (s 177H) and 24 (s 175H); Explanatory notes, p 7.

Retaliatory action would be an offence punishable by up to $21,067 (167 penalty units) or two years imprisonment.[180] This offence is similar to the taking reprisal offence in the Public Interest Disclosure Act 2010, and the proposed maximum penalty is equivalent to the taking reprisal offence.[181] The Bill also proposes to amend sections 153 of LG Act and 153 of COB Act to define this as an integrity offence. A councillor convicted of an integrity offence 'automatically stops being a councillor' and is prohibited from being a councillor for four years after their conviction.[182]

Issues raised during the inquiry

Submitters and witnesses expressed differing views on the proposal to require a councillor at a meeting to report a reasonable suspicion or belief about a conflict of interest or a material personal interest of another councillor.

Some submitters supported the proposal.[183] For example, Your Community First submitted:

> *…colleagues being obliged to disclose fellow councillor's conflicts of interest should go a significant way to reducing the impact of donor influence on council decisions in the property development field.*[184]

Others were strongly opposed to the requirement.[185] For example, Noosa Council submitted that the requirement would be divisive, open to abuse by bloc voting, place the chair of the meeting in a difficult position and potentially set back the development of cohesive and productive working relationships. As an alternative, Noosa Council suggested that it is up to the individual councillor to take personal responsibility for identifying their own potential conflicts of interest, and that the offence should be focused on the relevant councillor who has failed to declare.[186]

In response to the concerns about reintroducing the obligation on councillors to report another's conflict of interest, the department advised that the Belcarra Report stated:

> *…relying on the local government principles alone does not reflect the seriousness of undeclared conflicts of interest.*[187]

Committee consideration and comment

The committee notes that the Bill will impose a duty on councillors who reasonably believe or suspect that another councillor at a local government meeting has a conflict of interest or a material personal interest that has not been declared, to inform the person presiding at the meeting.

The committee understands that in relation to a conflict of interest the Bill requires that the councillors at the meeting subsequently vote to decide if the councillor does in fact have a conflict of interest and if so whether they must leave the meeting. However, the Bill appears to be silent on the process for a material personal interest.

The committee seeks clarification on the intended process following a councillor informing the meeting that they have a belief or suspicion that another councillor has an undeclared material personal interest; how will it be decided if the councillor does in fact have a material personal interest?

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180 Bill, cls 6 (s 177H) and 24 (s 175H); Explanatory notes, p 13. A penalty unit has a value of $126.15: PS Regulation, s 3.

181 Explanatory notes, p 10.

182 LG Act, s 153; COB Act, s 153.

183 See for example submissions 25, 33, 34.

184 Submission 25, p 3.

185 See for example submissions 8, 40.

186 Submission 8, p 4.

187 Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 54.

Point of clarification 3

The committee seeks clarification from the Minister during his second reading speech regarding the process for determining if a councillor does in fact have a material personal interest following another councillor raising a belief or suspicion that the councillor has an undeclared material personal interest.

3.2.4 Recording conflicts of interest and material personal interests

Under the LG Act and COB Act certain information regarding councillors' conflicts of interest and material personal interests must be recorded in the minutes of the meeting and on the local government's website.

For a material personal interest, the name of the councillor who has the interest, the nature of the material personal interest, and whether the councillor participated or was present during the meeting under an approval from the Minister must be recorded.[188]

For a conflict of interest the name of the councillor who has the conflict of interest, the nature of the interest, how the councillor dealt with the conflict of interest, how the councillor voted if they voted on the matter, and how the majority of councillors voted on the matter must be recorded.[189]

Overview of proposed changes

The Bill provides that information regarding councillors' conflicts of interest and material personal interests must be recorded in the minutes of the meeting and on the local government's website.

For a material personal interest, the name of the councillor who has the interest, details of the material personal interest, and whether the councillor participated or was present during the meeting under an approval from the Minister must be recorded.

For a conflict of interest, the name of the councillor who has the conflict of interest, details of the interest, any decisions by other councillors present at the meeting regarding the conflict of interest, whether the councillor participated or was present during the meeting under an approval from the Minister, how the councillor voted if they voted on the matter, and how the majority of councillors voted on the matter must be recorded.[190]

3.2.5 Prohibition on influencing another councillor or a council employee

There are no provisions in the LG Act or COB Act to specifically prohibit a councillor who has a conflict of interest, or a material personal interest, in a matter from influencing or attempting to influence decisions about the matter.

The Belcarra Report noted that the current 'legislative framework does not compel councillors to act in a particular way',[191] and specific and substantial penalties would help to ensure conflicts of interest (and material conflicts of interest) are dealt with in 'transparent and accountable ways' and councillors are 'held accountable for their actions'.[192]

188 LG Act, s 172(9); COB Act, s 174(9).

189 LG Act, s 173(8); COB Act, s 175(8).

190 Bill, cls 6 (s 177J) and 24 (s 175J); Explanatory notes, p 7.

191 CCC, *Belcarra Report*, October 2017, p 82.

192 CCC, *Belcarra Report*, October 2017, pp 84-85.

Accordingly, recommendation 26 of the Belcarra Report states:

> *That the Local Government Act and the City of Brisbane Act be amended so that where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting... A suitable penalty should apply, including possible removal from office.*[193]

Overview of proposed change

The Bill proposes to prohibit a councillor who has a conflict of interest or a material personal interest in a matter from influencing, or attempting to influence, another councillor to vote on the matter in a particular way, or a council employee or contractor authorised to decide or deal with the matter to do so in a particular way.[194]

A councillor improperly influencing or attempting to influence another councillor or a council employee or contractor would constitute an offence punishable by up to $25,230 (200 penalty units) or two years imprisonment.[195] The Bill also proposes to define this as an integrity offence. A councillor convicted of an integrity offence 'automatically stops being a councillor' and is prohibited from being a councillor for four years after their conviction.[196]

The severity of the penalty 'reflects that this offence protects against a situation where a councillor seeks to circumvent the requirements of the LG Act and COB Act relating to material personal interest and conflicts of interest',[197] and supports the implementation of recommendation 25 of the Belcarra Report to '…provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office'.[198]

193 CCC, *Belcarra Report*, October 2017, p 85; Explanatory notes, p 7.

194 Bill, cls 6 (s 177I) and 24 (s 175I); Explanatory notes, p 10.

195 Bill, cls 6 (s 177I) and 24 (s 175I); Explanatory notes, p 10.

196 LG Act, s 153; COB Act, s 153.

197 Explanatory notes, p 13.

198 CCC, *Belcarra Report*, October 2017, p 85; Explanatory notes, p 7.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that FLPs are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill, and brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Implied freedom of political communication

The Bill proposes to make it unlawful for a prohibited donor to make a political donation.

The prohibition on donations from a property developer or industry representative organisation where a majority of members are property developers, raises potential concerns about whether the provisions have sufficient regard to FLPs in relation to individual rights and liberties.

An implied right to freedom of political communication exists in Australia, that operates as a right to freedom from government restraint about political matters[199] (refer to section 3.1.2 of this report). The exercise of this right may be restricted by legislation. Restrictions are permissible if they do not do not impinge on the system of representative government considering any burden they place on political communication, and whether they have a legitimate purpose compatible with the maintenance of representative and responsible government and are reasonably appropriate and adapted.[200] Whether the restrictions on political donations that would be imposed by the Bill have constitutional legitimacy is ultimately a question for the High Court.

The explanatory notes acknowledge the potential FLP breach in relation to individual rights and liberties and provide the following justification:

> *The FLP breach is justified given the role of both local government and the State in planning decisions, and the very real potential for property developer donations to lead to corruption or perceptions of corruption which can damage public confidence in the integrity of both local and State government. As noted above, the High Court has found that the New South [Wales] provisions, upon which the Bill's provisions are based, to be constitutionally valid.*[201]

Reasonableness, fairness and privacy

Clauses 6 and 24 impose a duty on councillors to inform the person presiding at a meeting of a reasonable belief or suspicion that another councillor has an undeclared conflict of interest or material personal interest. The councillor must provide the facts and circumstances forming the basis of their belief or suspicion.[202]

This obligation to report raises potential concerns about whether the provisions have sufficient regard to FLPs in relation to individual rights and liberties. Legislation should have sufficient regard to the rights and liberties of individuals.[203] Reasonableness and fairness in the treatment of individuals, as well as the right to privacy, and privacy and confidentiality issues, are relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.[204]

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199 *Lang v Australian Broadcasting Corporation* (1997) 189 CLR 520, p 560.

200 *Coleman v Power* [2004] HCA 39.

201 Explanatory notes, p 11.

202 Bill, cls 6 (s 177G) and 24 (s 175G); Explanatory notes, p 7.

203 LS Act, s 4(3).

204 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p 113.

It is arguable that placing a duty on a councillor to report certain beliefs or suspicions about a third party may be unfair or unreasonable. Such a duty places a responsibility on the councillor to report on a matter relevant to a third party, which ought to properly be reported by the third party.

Further, such a duty may potentially fail to constitute the reasonable and fair treatment of an individual's personal information and regard for a person's right to privacy. There is also a risk that the reported information may not be correct or that a belief or suspicion might not reflect the reality.

The explanatory notes do not address the potential FLP breach in relation to the obligation for councillors to inform the person presiding at a meeting of a reasonable belief or suspicion that another councillor has an undeclared conflict of interest or material personal interest.

Committee consideration and comment

The committee notes that the obligation for councillors to report a reasonable belief or suspicion that another councillor has an undeclared conflict of interest or material personal interest may potentially breach the FLP in relation to individual rights and liberties

Given the important role councillors play in the functioning of government, the committee considers that it is appropriate to expect a high level of conduct and ethical behaviour of councillors. On balance, the committee considers the potential breaches of FLPs is justified and appropriate in the circumstances.

Penalties for offences

The Bill provides for the introduction and amendment of a range of offences (see **Appendix E**). The Bill also provides that a person who accepts a prohibited donation if the person knows the donation was prohibited is also liable to pay the State twice the amount of the prohibited donation (if the person did not know it was unlawful to accept the donation they must pay the State the amount of the donation).[205]

The introduction and amendment of offences, and the requirement to pay the State the amount or twice the amount of a prohibited donation, potentially breaches the FLP that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied. A penalty should be proportionate to the offence and legislation 'should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other'.[206]

The explanatory notes acknowledge the potential FLP breach and provide the following justifications.

- Prohibited donations offences:

  The potential breach of the FLP caused by the creation of these offences is justified because the offences address issues identified by the Belcarra Report.[207]

- Recover of prohibited donations:

  The recovery of the amount of prohibited donation is justified because it is necessary to address both the risk of corruption and perception of corruption that can occur when prohibited donations are made. By ensuring that the full amount of the prohibited donation (or double the amount) is paid to the State the public can feel more confident that decisions will not be in favour of a prohibited donor because of a prohibited donation.[208]

[205] Bill, cls 13 (s 276) and 30 (s 113C); Explanatory notes, pp 25, 39.

[206] LS Act, s 4(2)(a); OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, p 120.

[207] Explanatory notes, p 14.

[208] Explanatory notes, p 14.

- False and misleading information:

  The creation of this offence is justified in order to ensure the integrity of the process for the commissioner to determine whether an entity is a prohibited donor under new section 277 of the EA and section 113D of the LGEA (Making of determination that entity is not a prohibited donor) in the Bill. The maximum penalty for this offence is consistent with the penalty for the analogous offence under the Election Funding, Expenditure and Disclosure Act 1981 (NSW).[209]
- Conflicts of interest:

  The maximum penalty that applies for these offences is 100 penalty units or 1 year's imprisonment. This maximum penalty is less than the maximum that applies for failing to inform a meeting of a material personal interest which reflects the relative seriousness of these offences. The maximum penalty for failing to inform a meeting of a material personal interest is 200 penalty units or 2 years imprisonment if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or another person, or 85 penalty units otherwise.[210]
- Taking retaliatory action:

  This offence is similar to the offence in section 41 of the Public Interest Disclosure Act 2010 (PID Act) (Offence of taking reprisal) which protects a person making a public interest disclosure under that Act from reprisals. The maximum penalty for the new offences is 167 penalty units or 2 years imprisonment which is equivalent to the PID Act offence.[211]
- Influencing a decision:

  This is a significant penalty which reflects that this offence protects against a situation where a councillor seeks to circumvent the requirements of the LGA and COBA relating to material personal interest and conflicts of interest.[212]

In relation to the offences regarding managing conflicts of interest and material personal interests, the explanatory notes also state:

> *The creation of these offences and the penalties that apply are significant but are considered reasonable and proportionate to address the issues relating to the perceived integrity of local government operations raised in the Belcarra Report and to ensure that local governments fulfil public expectations.*[213]

The Queensland Law Society submitted that the imposition of custodial sentences (terms of imprisonment) is not proportionate to the act or omission and recommended the custodial sentences be removed.[214] In response to this, the department advised:

> *The monetary and custodial penalties provided for in the Bill are maximum penalties and the penalty imposed by the Court for a particular offence will be decided by the Court in light of the seriousness of the circumstances of the offence.*[215]

Committee consideration and comment

The committee notes that the proposed amendments introduce substantial penalties for offences relating to prohibited donations and managing conflicts of interest and material personal interests.

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[209] Explanatory notes, p 15.

[210] Explanatory notes, p 13.

[211] Explanatory notes, p 13.

[212] Explanatory notes, p 13.

[213] Explanatory notes, p 13.

[214] Submission 37, p 2.

[215] Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, pp 56-57.

In relation to the penalties for offences regarding managing conflicts of interest and material personal interests, the committee notes that there are different penalties for failing to properly declare a conflict of interest (100 penalty units or one year imprisonment) and failing to properly declare a material personal interest (85 penalty units). The committee acknowledges that the Bill provides for a higher penalty for failing to declare a material personal interest if there is an aggravating factor of the councillor voting on the matter to gain a benefit or avoid a detriment. However, the committee is of the view that failing to properly declare a material personal interest, in the absence of aggravating circumstances, is a comparable offence to failing to properly declare a conflict of interest and the penalties for the offences should be consistent.

The committee suggests that the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs review the maximum penalties for offences regarding managing conflicts of interest and material personal interests to ensure the penalties are proportionate and consistent.

Point of clarification 4

The committee seeks clarification from the Minister in his second reading speech regarding the rationale for different penalties for failing to properly disclose a conflict of interest and failing to properly disclose a material personal interest (in the absence of aggravating circumstances).

Retrospectivity

Clauses 20 and 34 have the potential to raise the issue of whether the Bill has sufficient regard to the rights and liberties of individuals. These clauses propose transitional arrangements that would require any donation, that would be a prohibited donation under the Bill, received on or after 12 October 2017 to be paid back to the person who made it within 30 days of the commencement of the new provisions.[216]

Legislation should not adversely affect rights and liberties, or impose obligations retrospectively;[217] strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

As the proposed amendments apply to donations made before commencement, that would be unlawful for the recipient to accept if they were made after commencement of the proposed Act, these provisions operate retrospectively.

The explanatory notes acknowledge the potential FLP breach and provide the following justification:

> *There is no offence committed in respect of donations made or received between the date of introduction and commencement, with the only offence being the failure to repay (which will only become operational following commencement). In this way, the provisions operate prospectively rather than retrospectively.*[218]

More than one process from a single act

The Bill provides that a councillor who fails to properly declare a conflict of interest would commit an offence punishable by up to $12,615 (100 penalty units) or one year imprisonment.[219] However, the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018, if passed, will provide that failing to declare or deal with a conflict of interest in a local government meeting is misconduct[220] and is therefore subject to the councillor complaints framework and disciplinary action.

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216 Bill, cls 20 (s 427) and 34 (s 212); Explanatory notes, p 15.

217 LS Act, s 4(3)(g); OQPC, *Fundamental Legislative Principles Notebook: Retrospectivity*, 19 June 2013, p 5.

218 Explanatory notes, p 15.

219 Bill, cls 6 (s 177E) and 24 (s 175E); Explanatory notes, p 9. A penalty unit has a value of $126.15: PS Regulation, s 3.

220 Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018, cl 12 (s 150L).

Subjecting a councillor to more than one penalty or disciplinary process for the same conduct potentially breaches the FLP regarding the person's right not to be subject to more than one court or tribunal process for a single act or omission.

The explanatory notes do not address the potential FLP breach, however in response to the LGAQ's submission which raised the issue, the department advised:

> *DLGRMA is aware of the conflict between the proposed section 150L(1)(c)(iv) in the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018, which identifies the failure to declare a conflict of interest as an act of misconduct but thanks submitter 040 for raising the issue. Any necessary consequential amendments will be considered.*[221]

4.2 Explanatory notes

Part 4 of the LS Act requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are reasonably detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

[221] Department, correspondence dated 6 April 2018, *Department of Local Government, Racing and Multicultural Affairs' response to submissions*, p 50.

Appendix A - Submitters

Sub #	Submitter
001	Dereka Ogden
002	Robyn Deane
003	Patrick Corballis
004	Confidential
005	Housing Industry Association
006	John and Kathryn Edwards
007	Greg Smith
008	Noosa Council
009	Mark Stuart-Jones
010	Judy Andrews
011	Organisation of Sunshine Coast Association of Residents (OSCAR)
012	Georgina Claridge
013	Livingstone Shire Council
014	Terry Winston
015	Kenneth Park
016	Property Council of Australia
017	Denise Ravenscroft
018	Crime and Corruption Commission
019	Bill Sokolich
020	Ngaire Stirling
021	Save Our Broadwater
022	Pat Coleman
023	Redlands2030
024	Urban Development Institute of Australia Queensland
025	Your Community First Inc
026	Nicki Cassimatis
027	Carla Clynick
028	The Main Beach Association Inc
029	Queensland Audit Office
030	Coolum Residents Association
031	Development Watch Inc
032	Gecko Environment Council Association Inc
033	John Woodlock
034	Sunshine Coast Environment Council

035	Brisbane Residents United
036	Park It (Park In Toowong)
037	Queensland Law Society
038	Electoral Commission of Queensland
039	Queensland Local Government Reform Alliance Inc
040	Local Government Association of Queensland
041	Moreton Bay Regional Council
042	Environmental Defenders Office (Qld)
043	Redland City Council

Appendix B - Witnesses at public briefing and public hearing

Public briefing — 19 March 2018

Department of Local Government, Racing and Multicultural Affairs

- Bronwyn Blagoev, Executive Director, Strategy and Governance
- Josie Hawthorne, Acting Director, Legislation
- Tim Dunne, Manager, Governance

Department of Justice and Attorney-General

- Leanne Robertson, Acting Assistant Director-General
- Imelda Bradley, Director
- Sarah Kay, Acting Director

Public hearing — 28 March 2018

Brisbane Residents United and Environmental Defenders Office (Qld)

- Elizabeth Handley, President, Brisbane Residents United
- Ross Hanson, Committee Member, Brisbane Residents United
- Jo-Anne Bragg, CEO, Environmental Defenders Office

Noosa Council

- Tony Wellington, Mayor
- Brett de Chastel, Chief Executive Officer

Queensland Law Society

- Bill Potts, Deputy President
- Kate Brodnik, Senior Policy Solicitor

Local Government Association of Queensland

- Sarah Buckler, General Manager, Advocacy
- Joshua O'Keefe, Team Leader, Strategic Policy and Intergovernmental Relations
- Tim Fynes-Clinton, Partner, King and Company Solicitors

Property Council of Australia

- Chris Mountford, Executive Director

Crime and Corruption Commission

- Alan MacSporran QC, Chairperson
- Mark Docwra, Assistant Director

Appendix C - Recommendations from the Belcarra Report

Recommendation 1

That an appropriate Parliamentary Committee review the feasibility of introducing expenditure caps for Queensland local government elections. Without limiting the scope of the review, the review should consider:

(a) expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities

(b) the merit of having different expenditure caps for incumbent versus new candidates

(c) practices in other jurisdictions.

Recommendation 2

That the Local Government Electoral Act be amended to require real-time disclosure of electoral expenditure by candidates, groups of candidates, political parties and associated entities at local government elections. The disclosure scheme should ensure that:

(a) all expenditure, including that currently required to be disclosed by third parties, is disclosed within seven business days of the date the expenditure is incurred, or immediately if the expenditure is incurred within the seven business days before polling day

(b) all expenditure disclosures are made publicly available by the ECQ as soon as practicable, or immediately if the disclosure is provided within the seven business days before polling day.

Recommendation 3

That the Local Government Electoral Act be amended to:

(a) require all candidates, as part of their nomination, to provide to the ECQ a declaration of interests containing the same financial and non-financial particulars mentioned in Schedule 5 of the Local Government Regulation 2012 and Schedule 3 of the City of Brisbane Regulation 2012, and also:
   - for candidates who are currently members of a political party, body or association, and/or trade or professional organisation — the date from which the candidate has been a member
   - for candidates who were previously members of a political party, body or association, and/or trade or professional organisation — the name and address of the entity and the dates between which the candidate was a member.

Failure to do so would mean that a person is not properly nominated as a candidate. For the purposes of this requirement, Schedule 5, section 17 of the Local Government Regulation and Schedule 3, section 17 of the City of Brisbane Regulation should apply to the candidate as if they are an elected councillor.

(b) require candidates to advise the ECQ of any new interest or change to an existing interest within seven business days, or immediately if the new interest or change to an existing interest occurs within the seven business days before polling day.

(c) make it an offence for a candidate to fail to declare an interest or to fail to notify the ECQ of a change to an interest within the required time frame, with prosecutions able to be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns. A suitable penalty should apply, including possible removal from office.

Recommendation 4

That the ECQ:

(a) publish all declarations of interests on the ECQ website as soon as practicable after the close of nominations for an election

(b) ensure that any changes to a candidate's declaration of interests are published as soon as practicable after being notified, or immediately if advised within the seven business days before polling day.

Recommendation 5

That:

(a) the definition of a group of candidates in the Schedule of the Local Government Electoral Act be amended so that a group of candidates is defined by the behaviours of the group and/or its members rather than the purposes for which the group was formed. For example:

A group of candidates means a group of individuals, each of whom is a candidate for the election, where the candidates:

- *receive the majority of their campaign funding from a common or shared source; or*
- *have a common or shared campaign strategy (e.g. shared policies, common slogans and branding); or*
- *use common or shared campaign resources (e.g. campaign workers, signs); or*
- *engage in cooperative campaigning activities, including using shared how-to-vote cards, engaging in joint advertising (e.g. on billboards) or formally endorsing another candidate.*

(b) consequential amendments be made to the Local Government Electoral Act, including with respect to the recording of membership and agents for groups of candidates (ss. 41–3), to account for the possibility that a group of candidates may be formed at any time before an election, including after the cutoff for candidate nominations.

Recommendation 6

That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to state that, for a gift derived wholly or in part from a source [other than a person identified by s. 109(b)(iii)] intended to be used for a political purpose related to the local government election, the relevant details required also include the relevant details of each person or entity who was a source of the gift. Section 120(6) regarding loans should be similarly amended to reflect this requirement.

Recommendation 7

That the Local Government Electoral Act be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the person or entity required to lodge a return under Part 6 and for the purpose of proving any offence against Part 9, Divisions 5–7.

Recommendation 8

That the Local Government Electoral Act be amended to require all gift recipients, within seven business days of receiving a gift requiring a third party return under section 124 of the LGE Act, to notify the donor of their disclosure obligations. A suitable penalty should apply.

Recommendation 9

That the ECQ develop a pro-forma letter or information sheet that gift recipients can give to donors that explains third parties' disclosure obligations and how these can be fulfilled.

Recommendation 10

That the Local Government Electoral Act be amended to require candidates, groups of candidates and third parties to prospectively notify any proposed donor of the candidate's, group's or third party's disclosure obligations under section 117, 118 or 125 of the LGE Act.

Recommendation 11

That the ECQ revises the handbooks and any other written information it gives candidates, third parties or others about their obligations in local government elections to ensure that these obligations are clearly communicated in plain English.

Recommendation 12

That the Local Government Electoral Act be amended to make attendance at a DILGP information session a mandatory requirement of nomination.

Recommendation 13

That the ECQ amends a) its paper disclosure return forms and b) the Electronic Disclosure System submission form (as relevant to local government) to ensure they:

(a) adequately and accurately reflect all relevant requirements in Part 6 of the Local Government Electoral Act

(b) contain clear and sufficiently detailed instructions to users to facilitate their compliance with these requirements.

Recommendation 14

That sections 126 and 127 of the Local Government Electoral Act be amended to expressly prohibit candidates and groups of candidates from using a credit card to pay for campaign expenses. Candidates would be permitted to use debit cards attached to their dedicated account.

Recommendation 15

That:

(a) section 27(2) of the Local Government Electoral Act be amended to require candidates' nominations to also contain the details of the candidate's dedicated account under section 126 of the LGE Act

(b) section 41(3) of the Local Government Electoral Act be amended to require the record for a group of candidates to also state the details of the group's dedicated account under section 127 of the LGE Act.

Recommendation 16

That the Local Government Electoral Act be amended to:

(a) prohibit candidates, groups of candidates, third parties, political parties and associated entities from receiving gifts or loans in respect of an election within the seven business days before polling day for that election and at any time thereafter

(b) state that, if a candidate, group of candidates, third party, political party or associated entity receives a gift or loan in contravention of the above, an amount equal to the value of the gift or loan is payable to the State and may be recovered by the State as a debt owing to the local government, consistent with the provisions relating to accepting anonymous donations [s. 119(4), LGE Act] and loans without prescribed records [s. 121(4), LGE Act].

Recommendation 17

That the ECQ:

(a) makes the maximum amount of donation disclosure data available on its website

(b) provides comprehensive search functions and analytical tools to help users identify and examine patterns and trends in donations

(c) provides information to enhance users' understanding of donation disclosure data and facilitate its interpretation.

Recommendation 18

That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to include:

(a) for a gift made by an individual, the individual's occupation and employer (if applicable)

(b) for a gift purportedly made by a company, the names and residential or business addresses of the company's directors (or the directors of the controlling entity), and a description of the nature of the company's business

(c) for all gifts, a statement as to whether or not the person or other entity making the gift, or a related entity, currently has any business with, or matter or application under consideration by, the relevant council.

Section 120(6) regarding loans should be similarly amended to reflect these requirements.

Recommendation 19

That section 124(3)(b)(iii) of the Local Government Electoral Act be amended to require the following details to be stated in a third party's return about expenditure, in lieu of the purpose of the expenditure as currently required:

(a) whether the expenditure was used to benefit/support a particular candidate, group of candidates, political party or issue agenda, or to oppose a particular candidate, group of candidates, political party or issue agenda

(b) the name of the candidate, group of candidates, political party or issue agenda that the expenditure benefitted/supported or opposed

(c) the name and residential or business address of the service provider or product supplier to whom the expenditure was paid (if applicable).

Recommendation 20

That the Local Government Electoral Act, the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers. This prohibition should reflect the New South Wales provisions as far as possible, including in defining a property developer (s. 96GB, *Election Funding, Expenditure and Disclosures Act 1981*), making a range of donations unlawful, including a person making a donation on behalf of a prohibited donor and a prohibited donor soliciting another person to make a donation (s. 96GA), and making it an offence for a person to circumvent or attempt to circumvent the legislation (s. 96HB). Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors.

Recommendation 21

That the Local Government Act and the City of Brisbane Act be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the councillor for the purposes of Chapter 6, Part 2, Divisions 5 and 6.

Recommendation 22

That the *Planning Act 2016* be amended to require that any application under Chapters 2 to 5:

(a) include a statement as to whether or not the applicant or any entity directly or indirectly related to the applicant has previously made a declarable gift or incurred other declarable electoral expenditure relevant to an election for the local government that has an interest in the application

(b) any application made to council by a company include the names and residential or business addresses of the company's directors (or the directors of the controlling entity).

A local government has an interest in the application if it or a local government councillor, employee, contractor or approved entity is: an affected owner; an affected entity; an affected party; an assessment manager; a building certifier; a chosen assessment manager; a prescribed assessment manager; a decision-maker; a referral agency; or a responsible entity.

Recommendation 23

That section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:

(a) whether the councillor has a real or perceived conflict of interest in the matter

(b) whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.

The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting.

Recommendation 24

That the Local Government Act and the City of Brisbane Act be amended to:

(a) require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the Chief Executive Officer of the council

(b) require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting.

Recommendation 25

That the Local Government Act and the City of Brisbane Act be amended to provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office.

Recommendation 26

That the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.

Recommendation 27

That the Local Government Liaison Group recommended by the Councillor Complaints Review Panel be established as soon as practicable.

Recommendation 28

That:

(a) the advisory and public awareness functions of the Queensland Integrity Commissioner under the *Integrity Act 2009* be extended to local government councillors

(b) or alternatively, a separate statutory body be established for local government with advisory and public awareness functions equivalent to those of the Queensland Integrity Commissioner under the *Integrity Act 2009*.

Recommendation 29

That the Local Government Electoral Act be amended so that prosecutions for offences related to dedicated accounts (ss. 126 and 127) and groups of candidates (s. 183) may be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns.

Recommendation 30

That the penalties in the Local Government Electoral Act for offences including funding and disclosure offences be increased to provide an adequate deterrent to non-compliance. For councillors, removal from office should be considered.

Recommendation 31

That the ECQ be given a specific legislative function to help ensure integrity and transparency in local government elections and that:

(a) how the ECQ is to perform this function be specified in legislation; this should include engaging with participants in local government elections to promote their compliance with the requirements of the Local Government Electoral Act, investigating offences under the Local Government Electoral Act, and taking enforcement actions against candidates, third parties and others who commit offences

(b) the ECQ be required to publicly report on the activities conducted under this function after each local government quadrennial election, including reporting on the outcomes of its compliance monitoring and enforcement activities

(c) the ECQ be given adequate resources to perform this function.

Appendix D - Ombudsman opinions and recommendations

Opinion 1

The current practice of councillors declaring conflicts of interest as a group does not comply with the requirements of s.173(5) of the LGA and is therefore administrative action which is contrary to law under s.49(2)(a) of the *Ombudsman Act 2001* (the Ombudsman Act).

Opinion 2

The practice of all Unity Team members using s.173(7) of the LGA to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum, does not comply with s.173(7) and is therefore administrative action which is contrary to law under s.49(2)(a) of the Ombudsman Act.

Opinion 3

Section 173(4) and s.173(8) of the LGA create uncertainty in terms of what is expected of councillors when making conflict of interest declarations during meetings.

Opinion 4

It is not always possible to determine from the minutes of a meeting how a councillor who has declared a conflict of interest voted and, in this respect, council does not always comply with s.173(8)(d) of the LGA and this is administrative action taken contrary to law under s.49(2)(a) of the Ombudsman Act.

Opinion 5

A number of councillors did not comply with s.171B of the LGA in that their Register of Interests did not contain all gifts required to be included and this is administrative action taken contrary to law under s.49(2)(a) of the Ombudsman Act.

Recommendation 1

Council's CEO advise councillors to:

- declare a real or perceived conflict of interest; and
- state how they will deal with it;
- as individuals, rather than as a group.

Recommendation 2

Council's CEO advise Unity Team members to cease using s.173(7) of the LGA as a group to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum.

Recommendation 3

The Director-General of the Department of Infrastructure, Local Government and Planning consider and advise the government on necessary amendment to s.173(4) and s.173(8) of the LGA to clearly set out what is required to be disclosed by councillors to achieve transparency and accountability in relation to the declaration of conflicts of interest, including consideration of the amount and timing of an electoral donation.

Recommendation 4

Council review its procedures in relation to the taking of minutes for council meetings to ensure the minutes make it clear how councillors with a conflict of interest vote on a matter.

Recommendation 5

Council take appropriate action to ensure that councillors understand the need to personally make sure that their Register of Interests is kept correct and complete.

Appendix E – Offences and penalties under the Bill

Offence description	Maximum penalty
Councillor failing to properly declare a conflict of interest	$12,615 (100 penalty units) or 1 year imprisonment
Councillor failing to properly declare a material personal interest	$10,723 (85 penalty units)
Councillor failing to properly declare a material personal interest where the councillor votes on the matter with an intention to gain a benefit or avoid a loss	$25,230 (200 penalty units) or 2 years imprisonment
Councillor failing to comply with a decision to leave and stay away from a meeting	$12,615 (100 penalty units) or 1 year imprisonment
Councillor taking retaliatory action against another councillor who reported a belief or suspicion of a material personal interest or conflict of interest	$21,067 (167 penalty units) or 2 years imprisonment
Councillor who has a conflict of interest or material personal interest influencing or attempting to influence another councillor or a local government employee or contractor	$25,230 (200 penalty units) or 2 years imprisonment
Making, soliciting or accepting a prohibited political donation if the person knows or ought reasonably to know the donation is prohibited	$50,460 (400 penalty units) or 2 years imprisonment
Knowingly participating in a scheme to circumvent a political donation prohibition	$189,225 (1,500 penalty units) or 10 years imprisonment
Giving false or misleading information in relation to an application for a determination that an entity is not a prohibited donor	$50,460 (400 penalty units) or 2 years imprisonment
Failing to repay a donation that would be a prohibited donation under the Bill, received on or after 12 October 2017, within 30 days of the commencement of the proclamation	$50,460 (400 penalty units) or 2 years imprisonment

Statement of reservation

Statement of Reservation

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

The Liberal National Party members of the Economics and Governance Committee wish to raise the following concerns with the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018.

There have been a number of significant concerns raised by stakeholders through the committee's consideration of the bill, largely relating to policy over-reach by the Palaszczuk Labor Government, lack of consultation and ambiguity in the drafting of the laws and concerns about the policy implementation if the bill is passed.

Over-reach by banning property developer donations at state elections
The Crime and Corruption Commission made it clear in their written submission that this bill goes beyond the CCC recommendations and if the government were to consider banning certain donations from state elections a proper review or inquiry would be ideal.

> *"The Inquiry terms of reference did not include state elections. Consequently the Belcarra Report recommendations did not involve any detailed specific consideration of corruption risks in state elections and decision-making. Accordingly, the reforms depart from the scope of the Belcarra Report recommendations.*
>
> *The Belcarra Report observed that the Queensland Government may consider it appropriate to also adopt these recommendations at the state government level. However, in saying this, the CCC did not contemplate that the proposed reforms would be introduced without preliminary review to identify and mitigate corruption risks in state elections and decision-making. A proper public consultation process is highly desirable. It appears that the current timelines provide little opportunity for the Committee to engage in a comprehensive consideration of these matters properly informed by experts and other stakeholders."*

The Chair of the CCC, Mr Alan MacSporran QC expanded on this issue in the committee's public hearing and raised concerns about the constitutionality of these laws at a state level.

> ***Mr MacSporran:*** *In an ideal world, and my personal view would be, you would ban all donations, but the High Court has said, and the law is, that there needs to be an evidence based response which is proportional to the threat identified.*
>
> *...*
>
> *...we said in one line in the early part of our report that the government may wish to consider translating or expanding it to the state sector. We did not mean by that that it is an automatic translation, what we meant is that it needs to be considered in that sector, which should be an evidence gathering exercise, public consultation, sufficient to get a sense of what is really happening in that area. There is no reason in principle why the measures should not translate to the state, but that needs to be considered because absent consideration of it there is a potential successful challenge to the constitutional validity of the measure. That is the concern we simply had, that you cannot simply automatically translate it without giving it due consideration.*

The Palaszczuk Labor Government have been silent on whether the recommendation of the independent CCC Chair will be accepted and the bill amended to reflect this position.

Retrospectivity
The bill retrospectively outlaws property developer donations. The prohibition on property developer donations applies to donations made from 12 October 2017. The law will only be offended if amounts paid before the bill's commencement are not repaid within 30 days.

The QLS discussed their concerns with this issue at the Public Hearing.

> ***Mr Potts:*** *Our view is broadly: do not go that path if you can avoid it. If you are going to do that, make sure that there is significant signposting and assistance to those people who may have fallen foul of that so that they can adjust their registers, adjust the records of their donations in a way that is meaningful. It is a matter of balancing a number of features, but the behaviours here, I would submit, are not so egregious as to require such retrospectivity.*

Given the concerns raised by the ECQ in how long it will take them to develop guidelines for the laws, it is reasonable to question how somebody will be treated if they fall foul of the retrospective elements of the bill because they could not access proper advice about being a prohibited developer.

Definitions of a property developer
In the Public Briefing, the Department of Justice and Attorney-General (JAG) and the Department of Local Government, Racing and Multicultural Affairs (LGRMA) were unable to outline guidelines by which a property developer would be defined, instead referring that to interpretation by the ECQ.

> ***Mr JANETZKI:*** *In terms of funding for the enforcement of this piece of legislation, has the department contemplated any particular guidelines to assist potential donors in the political process as to their ability to donate or not to donate? Have any guidelines been considered at this stage?*
>
> ***Mrs Robertson (JAG):*** *No, the department has not. We have suggested that, given that the ECQ has the power under the bill to give advice to entities as to whether or not they are a property developer or other persons—for example, as to whether they are a close associate—as the legislation is implemented the ECQ may give consideration to that. I do not want to speak for the ECQ in this space.*
>
> ***Mr JANETZKI:*** *There was no departmental policy consideration of any potential guidelines?*
>
> ***Mrs Robertson:*** *No, that is right.*

A corporation which is "engaged in a business **regularly** involved in the making of relevant planning applications" is considered a property developer under the bill but there has been no advice given as to how "regularly" will be judged. It may be a matter of frequently or periodically making planning applications.

Mr Potts from the QLS expanded on this issue in his appearance before the Public Hearing.

> ***Mr Potts:*** *...However, we are concerned that there be some certainty around definitions with respect to the legislation. By that I mean what indeed is a property developer? For example, if I have a block of land, which I break into three pieces—subdivide effectively—and start building houses, which I then sell, I am told that I may be, under the bill, a regular applicant, with 'regular' holding its ordinary meaning of effectively more than once.*
>
> ...
>
> *I am concerned that, in some ways, the definitions are not as clear as they perhaps ought to be, particularly dealing with the issue of what a 'regular' planning application person is and, more particularly, under new section 273(2) (b), the definition of a 'close associate'. What is a close associate? Does the definition of 'close associate' include a lawyer? A financial adviser? An accountant? An employee? Or a series of employees?*

Committee members raised concerns about the ability for the ECQ to make determinations about prohibited donors. Mr Potts was of the view that "it is unsatisfactory for an organisation such as the ECQ to be making those kinds of decisions without some form of guidance from parliament and it is simple to do."

In the ECQ's written submission to the committee the acting commissioner made the following statement:

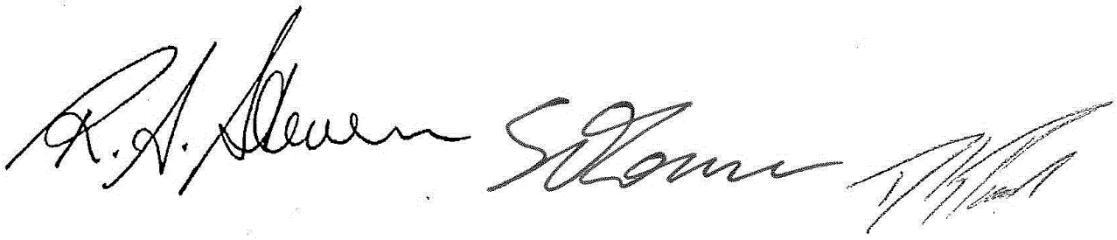
> *"a suitable period of time would be appreciated...for the commission to design and deploy the administrative and compliance/enforcement policies, procedures, and processes required to support the scheme's implementation. The Commission estimates that 3-6 months would be suitable in this regard, with a preference for 6 months."*

<u>*Other Concerns*</u>

It was concerning to hear during the public hearing that neither the CCC nor QLS were consulted on the drafting of the bill.

The Electoral Commission of Queensland received an invite to appear at the public hearing but chose not to attend. The ECQ then agreed to appear before the committee at a later date <u>in a private hearing</u>. This is concerning to the LNP members of the committee as the agency charged with delivering such a far-reaching change to Queensland's electoral system should be prepared to answer questions about the policy implementation in public.

The LNP will further outline concerns with the policy objectives of the bill during its Second Reading debate.



Ray Stevens Deputy Chair Member for Mermaid Beach	**Sam O'Connor** Member for Bonney	**Dan Purdie** Member for Ninderry