Committee Secretary

Economics and Governance Committee
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SUBMISSION: Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 Inquiry

http://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/LGElectoralStg1ofBel2018

To the committee:

I refer the committee to my previous submission to the same bill that lapsed before the election. I refer the committee to the hard copy of that submission which has most of the publicly available donor information as linked to decision making for the benefit of those donors. The public cant see those because the LACSC censored lots of it out with big black redaction marks like a young liberal running a student newspaper.

SUBMISSION : Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017

http://www.parliament.qld.gov.au/documents/committees/LACSC/2017/LocalGovtBelcarra2017/submissions/021.pdf
http://www.parliament.qld.gov.au/documents/committees/LACSC/2017/LocalGovtBelcarra2017/submissions/021a.pdf

I also refer the committee to my submission to The Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018

http://www.parliament.qld.gov.au/documents/committees/EGC/2018/LGCouncillorComplaints2018/submissions/011.pdf

Because I wasn't sure you would actually have another inquiry at the time, many of the matters covered in that submission are relevant to this inquiry and I now incorporate those matters and suggestions into this submission.

As I stated in the councillor complaints inquiry -asking for the bill to be amended in any fashion, I suggest, falls within your inquiries remit.

To suggest otherwise or to redact this paragraph or any other part of this submission would be silly. I have seen in other inquiries that such silliness abounds.

Amending your bill to bring back OPTIONAL PREFERENTIAL VOTING AT STATE ELECTIONS

There is nothing stopping me from seeking further amendments to the electoral acts and this bill, to reintroduce **OPTIONAL PREFENTIAL VOTING (OPV),** as this is an omnibus bill. The reintroduction of **COMPULSORY PREFERENTIAL VOTING (CPV)** was deemed to be **corrupt by corruption buster Justice Tony Fitzgerald.**

In fact , its reintroduction seemed to be contemporaneous with consistent falling primary votes of the major parties and the introduction of full, and real time disclosure of donations in QLD over $1000 . That is, to thwart a citizens ability to vote against people they deem to be corrupt.

It would be rather stupid to claim on the one hand to be adopting the spirit of the CCC's Operation Belcarra Report , yet on the other deny voters who have come into knowledge about it –to apply that knowledge at the ballot box by excluding candidates and exhausting votes. That is, unless the whole intent was or is to move the goal posts for electors. One must keep in mind that it has been proposed in "some quarters" to bring in **CPV** for council elections too. Those that support compulsory preferential voting at any level are deemed by me to be supporters of corruption , good ole' Australian fascism and all other nefarious types that shouldn't get votes let alone preferences.

Amending your bill to ban certain types of other donations

In addition to what I said in my submission to the previous lapsed LACSC inquiry (link above) and councillor complaints inquiry, I incorporate these additions.

There are self evident reasons **(especially in Townsville and NTH QLD)** why such donations from property developers and others- such as those involved in the construction, ring roads/bridges or airport 2nd runway builders, fossil fuel. real estate , mining, arms, defence contracting, liquor or gambling industry business entities, pharmaceutical, waste/recycling , water infrastructure , pipe builders, layers or consulting engineers , tobacco industry business entity;- or from any other industry that would normally have contractual dealings with government at any level- should be banned.

So much was said by The High Court in McCloy v NSW [2015] HCA 34 (7 October 2015) where it upheld the NSW ban on developer donations. They were against the Americanisation of donations. It was said at par [93]

"...the public interest in removing the risk and perception of corruption is evident. These are provisions which support and enhance equality of access to government, and the system of representative government which the freedom protects. The restriction on the freedom is more than balanced by the benefits sought to be achieved."

Its clear that the bill is drafted to give the appearance of banning donations from property developers, however it would also seem that real estate agents are not covered (s273(3)) .

But the fact remains that the money may be used and be covered up for the period of the time which it was crucial to an election and “THE PRICE OF DOING BUSINESS” is a slap on the wrist. But the prize is always the most important. Currently, to small lawful donors and rank and file members of parties, tax deductibility means a lot. For the business community shelling out thousands in donations, the deductions mean it doesn’t hurt them when they make those very large “Altruistic” donations to candidates from both sides. Its an ‘each way bet’.

And currently, the losing ticket who may have run as independents despite party associations or membership could hardly send their left over money to a party they said they don’t represent could they?? They just walk off into the sunset after the election is declared, most likely with a windfall they can use to try for a seat maybe. Or maybe a seat on a plane to vegas.

The fines under s307 of the Electoral Act for donor corruption should be changed to mandatory minimum gaol sentences AND a fine that may lead to imprisonment like any other citizen by way of an arrest warrant for non payment and court costs should have gaol in lieu aswell.

The definition of prohibited donors and political donations should extend to paying for legal assistance or payment of fines for a defendant facing such accusations.

It should be mandatory that all convicted for corruption offences should be removed from office. They should lose any of their super that would have accrued to them aswell.

I would venture to suggest that, as it has been the case in other states in land court cases a court may rule that if it has led to destruction of the environment or protected environment that environment must be remediated back to its previous state or close to it . If it involves already degraded lands that have been destroyed by such corruption and subsequently attempted to be developed by new corruption, they should be made to remediate it aswell.

It should be mandatory that during appeals from any conviction that they be remanded in custody . This is because it could take years for a matter to be resolved by the high court. And like a SLAPP or other proceeding against an activist or whistleblower , it should be dragged out and be made to hurt.

If I may borrow a modified strategy from the Israelis, it should be law that a court order may be made demolishing the family homes of those convicted of electoral corruption and political corruption offences. That those convicted should be made to pay the cost of the demolition and cleanup and the land be confiscated. That a spectacle be made of it and that people have to pay to get in to watch, with the proceeds going to state corruption fighting revenue. Or, if that property can be sold by the state at a massive profit, then this should be done.

It should be an offence for any insurance company to cover the costs of any such convicted person or their families in such instances. And, if that person or family divests itself of such property, it can again be forfeited and funds received from any such sale also be forfeited. As above it should be an offence for any insurance company to pay out in such instances to the buyer .

Given that the corrupt are normally those that are against a positive bill of rights, and those who don't like whistleblowers and anti corruption and environmental activists, and that history has shown the long term damage that can be done to people fighting corruption and the gaol time they may have accrued as a result, what's good for the goose should be good for the gander !

Those against a positive bill of rights are normally found in the ranks of those against optional preferential and optional preferential proportional voting, as CPV makes people vote in favour of corruption. As such, those people are usually the ones who have delayed even getting a developer donation ban let alone other bans. Delay's which have led to much environmental destruction. Its only fair that because they would have spoken in lip service to human rights and environmental protection whilst doing it, that they be deprived of such rights . **Especially the protections against collective punishment.**

Therefore I suggest , that legislation also be enacted so that like a drink driving conviction , those convicted should be sentenced also to never be allowed to hold a position in the public service , apply for a government tender or have any contractual dealings with government , and be so disqualified in every state and territory . That for a period of 50 years this prohibition apply to their immediate family and descendents in the same manner.

Such bans would further enliven ss[13] and [14] of The Criminal Code Act 1899 Qld - for people who would attempt to get around such a QLD ban by attempting to launder money interstate . Money laundering seems to be an offence everywhere and its a simple case of defining what dirty money is for it to be a crime in this context.

Criminal Code Act 1899 Qld
https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009

The planning laws must be amended to state that a court may strike down any decision made by a government, or a government appointed person or entity (and be made retrospective) where it can be shown that a person, group, corporation, business has made a donation to a political party, person or group , to which they belong , previously , whether or not that donation was made in Qld , and a decision has been made in favour approving such matters.

A transitional provision should be enacted to the effect, that the ability of a council to delegate a planning decision to a council CEO or corporation is deemed not to have been validly made and is of no effect. That this is because a decision in favour of a donor or donors is deemed to have been made by the councillors who have appointed those people. As such- the decision/s are deemed to have been a foregone conclusion and as a result of a conspiracy,

disobedience of statute law and abuse of office (existing s92,204 and CH 56 Code Offences) between donors , councillors and that CEO and political party whomsoever they may be . That such decisions may be justiciable on such further grounds.

All provisions of the Local Government Act or of any other act or regulation that would prevent a person from disclosing in- camera proceedings or commercial in-confidence matters relating to government must be amended to state that there can be no offence committed by disclosing matters if such matters would amount to unconscionable or otherwise criminal conduct. This should be made retrospective so that all current and former council CEO's , staff and donors are on notice.

THE LACK OF A VERBATIM COUNCIL HANSARD AND FILMING OF PUBLIC AND IN -CAMERA PROCEEDINGS

Councils do not have the same powers and privileges as the parliaments of the States, Territories and the CTH relation to "Parliamentary Privilege". They make up for that by hiding everything that is done to avoid criminal or other prosecution.

Recently the QLD Auditor General made damming findings about access to information about the awarding of government contracts generally. Such matters are always at the forefront of council business and argument.

Given the nature of capriciousness of many councils activities in the past and what is proposed in relation to councillor conduct , it is now time to legislate for it to be compulsory for there to be a verbatim **HANSARD AND FILMING** of council , committee and in camera proceedings because :

(a) Technology allows for inexpensive filming and internet streaming of proceedings and placement of transcripts on the local government website;
(b) It would enable people who would not otherwise be able to see what has been happening or what is proposed to be happening to witness it as it may affect them personally or may result in changes to laws -for which the law will say ignorance of it is no excuse;
(c) It is in the public interest that people hold councillors accountable for their actions;
(d) To identify offences or otherwise dishonest or immoral conduct by local government or councillors;
(e) It is in the public interest that accountability units be able to see what occurred even in –in camera proceedings;
(f) For procedural fairness a councillor or person must be able to mount a defence to an accusation with every means at their disposal and take civil action for defamation if necessary ;
(g) To identify inconsistency between the actions of council , the operation of the council , or state and higher laws;
(h) So that voters may adequately asses conduct of councillors for determining whether they are fit for continued office or fit to be re-elected . Or, given the state of the federal electoral act ; hold concurrent or run for concurrent federal office. (This triggers the constitutional freedom of communication again and the CTH Crimes Act 1914) ;

(i) Its necessary for law enforcement at every level ;and
(j) Quite simply, it can be easily done, so what other nefarious reason could be given in this day and age why it shouldn't be??

OPERATION BELCARRA (WWW.CCC.QLD.GOV.AU)

All of the matters and legislation relating to The **CCC's OPERATION BELCARRA** must be seen in light of the fact that corruption is widespread in this state and it can have federal implications . That is because the corrupt fund those political actors that organise locally to take part in local, state and federal elections.

A party for instance, that claims to be disciplined and unified -can have imputed to it (save for those who take measures to remove themselves from immoral, dishonest, or otherwise criminal conduct or conspiracies) that they are therefore, a unitary actor.

This can also be evidenced in the annual returns of state and federal parties on the www.aec.gov.au site. It is seen there that state parties get "donations" and "loans" from federal executives and others states branches all the time. Also where party front companies receive donations and pass them to parties just under the $10k AUSTRACC reporting trigger from, foreign donors or parties in states where certain kinds of donations are banned.

A cynical person could impute sinister or otherwise underhanded connotations to such transactions particularly where money comes in and then goes back. But not without good reasons considering the recent shenanigans in NSW, where electoral funding was withheld by that states commission until disclosure is made from a certain party front company. I am such a cynical person referred to above.

Such front companies should be made to disclose all money going in and out , and who paid in that money . Though they would probably set up another front. Again , recommendation 7 from the Belcarra report must be legislated for -that candidates must be taken to know where their donations have come from (especially in regards to the recent Federal Court money laundering decisions concerning political donors [redacted] and charges relating to donors [redacted]). I believe it is already an offence to take an anonymous donation or gift. This should include money from a front company otherwise known as an associated entity if the people donating to that entity have not been disclosed. Donations received from corporations and subsidiaries of [redacted] and [redacted] received during the periods of their wrong doing described in court must be deemed proceeds of crime and be forfeited .

INITIATION OF POLICE INVESTIGATIONS

In the councillor complaints inquiry, which is inescapably related to this and should not have been split – I wrote the following, with additions below:

The suggested new s150P of the LGAct sets out in part :

150P Complaints about councillor conduct must be referred to assessor
(1) This section applies if a government entity, other than the assessor, receives a complaint about the conduct of a councillor.
(2) The government entity must—
(a) refer the complaint to the assessor; and
(b) give the assessor all information held by the entity that relates to the complaint.
(3) However, subsection (2) does not apply if—
(a) the government entity has a duty to notify the Crime and Corruption Commission of the complaint under section 38 of the *Crime and Corruption Act 2001*; or
Note—
Sections 38 to 40 of the *Crime and Corruption Act 2001* state the duties of a public official to notify the Crime and Corruption Commission about corrupt conduct, subject to a direction by the Crime and Corruption Commission.
(b) the government entity has the power to investigate the complaint or the councillor's conduct under another law and decides to carry out the investigation under that law.
Example—
The police service receives and investigates a complaint alleging a councillor engaged in fraud.

I suggest a new sub par be inserted to the effect s 150P(3)(b)(ii) :

(b)(ii) If , but for the operation of the Electoral Act 1992 (QLD) or The Local Government Electoral Act the Qld Police Service could have proceeded by way of a criminal prosecution for an offence against The Criminal Code of Qld provisions relating to corrupt practices relating to public officials or election conduct then in force in Qld , then , such a criminal proceeding may be begun by the Qld Police Service under the code.

In addition to what I said under this section to the councillor complaints inquiry, a further amendment should be made to my proposed new provision above to include the Local Government Act itself. As the schedules of the Police Powers and Responsibilities Act do not exclude bringing charges for abuse of office, disobedience of statute law and conspiracies provisions of the code, it must be made clear that the police may apply these provisions to the actions of councillors and council CEO's , members of parliament and public servants. In particular, how a decision may be made approving developments in which political donors are involved .

This would necessitate further amendments to the Criminal Code of Qld to enliven powers of the QPS and The CCC (which over see's police investigations) to prosecute corruption offences then in force but which either , would have been subject to a time limitation for prosecution , or did not apply to that election or that council

Because of the capricious nature of the proposed ability of an assessor to refuse to further proceed , you would need to start at the very bottom, ***with the QPS*** to gradually work your

way up gathering info and watching people pervert the course of justice ***("asymmetric lawfare")*** as you go in the following fashion:

(1) Identify the initial conduct;

(2) Seek right to information from the relevant body;

(3) Make inquiries to the council ;

(4) Make a right to info application about the conduct of the councillor/s which may identify further matters relating to your inquiries/complaint which are matters concerning your personal affairs (made in accordance with the ROI Act);

(5) Prepare a brief for the cops and lodge it with legals;

(6) Whether or not that criminal complaint is proceeded with is a matter in which the CCC has oversight via the ESC and refusals to investigate can be justiciable by way of mandamus (this is also personal affairs) ;

(7) History has many times recorded that matters can be concealed right up to the highest levels . So a persons ability to amass info gained through this process can be relevant to the institution of civil proceedings such as misfeasance or malfeasance by public officials or to enlivening the abuse of power and anti corruption type provisions of the code.

This is addressed in the next section of my submission.

TIME LIMITS FOR PROSECUTIONS – REINSTATEMENT OF OFFENCES

As stated for other matters above and in my councillor complaints inquiry submission;

I refer the committee to what the CCC spoke of at p87-89 of that Belcarra Report and in relation to removal of councillors.

Because at this time there is no legislation in place to rid legislation of time limits for prosecutions for corruption and other electoral offences, and increase the penalties for such offences, and who should be allowed to prosecute them - it is appropriate to bring that up and demand the relevant changes to bring that about as this is an omnibus bill.

I would go further than refer to what the CCC said in its report. I would ask that those time limits that thwarted them, be repealed. And, I suggest -

Criminal Code Act 1899 Qld
https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009

That s [98A] of The Criminal Code Act QLD 1899 where its states :

98A Reference to election or referendum
In this chapter division—
(a) a reference to an election is a reference to—
(i) an election of a member or members of the Legislative Assembly; and
(b) a reference to a referendum is a reference to a referendum under the *Referendums Act 1997*.

-be amended to insert a new sub par (b) (i) to read " *(i) any other election, including an election of the mayor or of a councillor or councillors of a local government including the Brisbane City Council* .

That s [98H] of The Criminal Code Act QLD 1899 where its states :

98H Application of ch div 3
This chapter division applies to an election other than—
(a) an election of a member or members of the Legislative Assembly; or
(b) an election for a local government.

-be amended by deleting the words *"other than" and inserting "including" in its place*

I refer to the Justices Act 1886

https://www.legislation.qld.gov.au/view/html/inforce/current/act-1886-017#sec.52

52Limitation of proceedings

(1)In any case of a simple offence or breach of duty, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made within 1 year from the time when the matter of complaint arose.

(2)However, if in relation to the matter of complaint—

(a)a proceeding was previously commenced for an indictable offence against the Criminal Code or the *Drugs Misuse Act 1986* ; and

(b)the proceeding has been discontinued, or is to be discontinued by a Crown Law Officer as defined in the Criminal Code ;

complaint must be made within 2 years from the time when the matter of the complaint arose.

(3)Also, subsection (1) does not apply to an offence if, under the Act providing for the offence, the Magistrates Court has jurisdiction for the offence regardless of when the matter of complaint arose.

Example for subsection (3)—

The Criminal Code , section 552F gives jurisdiction to a Magistrates Court that hears and decides a charge summarily under section 552A, 552B or 552BA of that Code despite the time that has elapsed from the time when the matter of complaint of the charge arose.

—

This , and any other act that creates a time limit for prosecution for corruption or prohibited donor , electoral disclosure offences or that relates to a breach of duty that could be picked up by s 204 (Disobedience of Statute Law) and s92 (Abuse of Power) must be amended to make sure there is no such time limit . The intent should be to create fear and uncertainty amongst the people to whom you could state "if you aint done nothin' wrong – yah got nothin' to worry about"!! This should be done to pick up those not convicted as a result of the previous CJC and CMC inquiries into electoral and donations matters. This is discussed further below.

RIGHT TO INFORMATION –PERSONAL AFFAIRS- FEES

None of the amendments I propose would amount to much if a person could not on their own amass the information to provide as a brief to the QPS.

If one makes a complaint to a government, government body or council about corrupt or dishonest conduct, one is entitled to seek information and documents about how that complaint was handled and the existence of other relevant documents as it relates to the alleged conduct .

In my learned experience compulsory right to information fees for matters relating to the personal affairs of a person stifles the ability of someone up against it financially whilst up against the state apparatus –to obtain the information needed to **prosecute the cause** . Even if that fee must be refunded later. It matters when you want the info.

Under the previous freedom of information act no such personal affairs fees applied and all you had to do was ask for it and fight for the release of information withheld .

Personal affairs relates to all matters in relation to a persons complaints to an investigative body in this context. And the fees for personal affairs should be abolished as technology allows documents to, as the act itself states, be placed on a certified disk very cheaply.

You must return it to a fee free situation for personal affairs, as it relates to other contexts aswell . Withholding or obfuscating on matters that may relate to identifying criminal conduct on the part of elected officials is, at all times, at the very least perverting the course of justice under the code. As this is an omnibus bill I demand that you also amend the Right To Information Act to this effect as it affects the efficacy of the very thing you purport to do.

DEFINITION OF CORRUPT CONDUCT, MISCONDUCT AND OR OTHERWISE DISHONEST OR REPREHENSABLE CONDUCT

Lets not forget the other linked issue in the other committee inquiry into these definitions, which was not accepting submissions this time round. Its always been the case that the people who take the money are the ones writing the laws about how bad a court can say it looks, or even if they have a say at all. You can feel the cynicism oozing out cant you?

MY Amendments demanded for the Bill :

As the proposed amendments that relate to Brisbane are similar to those proposed for the local government act provisions, I submit that MY amendments to those amendments for Brisbane be adopted for the LGA provisions below:

Part 4 Amendment of Local Government Act 2009-
Division 5A Dealing with councillors' personal interests in local Government matters

Amendment of City of Brisbane Act 2010 – the proposed s177B "Meaning of material personal interest".

In ss1. After subpara (g) insert new subpara (h) as follows:

(h) a donor , a group of donors, or a donor or group of donors to a group or party that the councillor campaigned with or is a member of .

Insert new s 177B(4) as follows :

177B(4) . A candidate or councillor is deemed for the purposes of s277B(h) to know who their donors are or were.

Delete proposed s177C(4) and in s177D (2) delete (ii), (iii) and (iv) .

And in ss(3) where it states "(3) Also, a councillor who is nominated by the council to be a member of a board of a corporation or other association does not have a personal interest in matters relating to the corporation or association merely because of the nomination or appointment as a member."

Amend as follows : (3) Also, a councillor who is nominated by the council to be **an unremunerated** member of a board of a **not for profit** corporation or other **not for profit** association does not have a personal interest in matters relating to the corporation or association merely because of the nomination or appointment as a member.

In 177F Minister's approval for councillor to participate or be present to decide matter.

Delete and insert: 177F Minister or court or tribunal must disallow council decisions in favour of donors or prohibited donors under the electoral act

(1) 177F Minister or court or tribunal must disallow council decisions in favour of donors or prohibited donors under the electoral act.

(2) In addition to any offence provision of this act or the electoral act , a person , candidate , councillor or donor may also be prosecuted under the provisions of the Criminal Code Act 1899 (Qld) or Commonwealth Law at any time after the offence is committed.

In s 177I Offence for councillor with personal interest to influence others delete s(3)

in s177J Records about material personal interests and conflicts of interests at meetings renumber ss(1) to ss(2) an renumber the former s(2) to (3) and insert new ss(1)

(1) (a)All public Council or committee meetings must be fully filmed and recorded in a council hansard to be made available to the public on the council website.

(1)(b)In "in camera proceedings", Council or committee meetings must be fully filmed and recorded in a council hansard .

Everywhere else in that proposed section and elsewhere in the proposed amendments where it refers to "minutes" it should read "hansard"

In the renumbered s177J(2)(c) and (3)(e) "whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F;" delete the words "under an approval under section 177F;"

Signed

Pat Coleman Date : 23/3/2018

[redacted]

[redacted] PH: [redacted]

Email : [redacted]