



Queensland

# **Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017**





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**2017**

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**A Bill**

for

***An Act to amend the *City of Brisbane Act 2010*, the *Electoral Act 1992*, the *Local Government Act 2009* and the *Local Government Electoral Act 2011* for particular purposes***

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**The Parliament of Queensland enacts—** 1

**Part 1 Preliminary** 2

**Clause 1 Short title** 3

This Act may be cited as the *Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Act 2017*. 4  
5  
6

**Clause 2 Commencement** 7

Parts 3 and 5 commence on a day to be fixed by proclamation. 8

**Part 2 Amendment of City of Brisbane Act 2010** 9  
10

**Clause 3 Act amended** 11

This part amends the *City of Brisbane Act 2010*. 12

**Clause 4 Amendment of s 153 (Disqualification for certain offences)** 13  
14

Section 153(5)(a), ‘174(5)’— 15

*omit, insert—* 16

177C(2), 177E(2) or (5), 177H, 177I(1) or (2) 17

**Clause 5 Omission of ss 174 and 175** 18

Sections 174 and 175— 19

*omit.* 20



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<b>Clause 6</b>	<b>Insertion of new ch 6, pt 2, div 5A</b>	1
	Chapter 6, part 2—	2
	<i>insert—</i>	3
	<b>Division 5A</b>	4
	<b>Dealing with councillors’ personal interests in council matters</b>	5 6
	<b>177A Purpose of division</b>	7
	The purpose of this division is to ensure the personal interests of councillors are dealt with in an accountable and transparent way that meets community expectations, if the interests relate to matters to be considered—	8 9 10 11 12
	(a) at a meeting of the council or any of its committees; or	13 14
	(b) by a council employee or contractor of the council authorised to deal with the matter.	15 16
	<b>177B Meaning of <i>material personal interest</i></b>	17
	(1) A councillor has a <i>material personal interest</i> in a matter if any of the following stand to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of consideration of the matter—	18 19 20 21 22
	(a) the councillor;	23
	(b) a spouse of the councillor;	24
	(c) a parent, child or sibling of the councillor;	25
	(d) a person who is in a partnership with the councillor;	26 27
	(e) an employer, other than a government entity, of the councillor;	28 29

(f) an entity, other than a government entity, of which the councillor is a member;	1 2
(g) another entity prescribed by regulation.	3
(2) However, a councillor does not have a material personal interest in the matter if the councillor has no greater personal interest in the matter than that of other persons in Brisbane.	4 5 6 7
(3) Subsection (1)(c) only applies to a councillor if the councillor knows, or ought reasonably to know, that the councillor's parent, child or sibling stands to gain a benefit or suffer a loss.	8 9 10 11
<b>177C Councillor's material personal interest at a meeting</b>	12 13
(1) This section applies if—	14
(a) a matter is to be discussed at a meeting of the council or any of its committees; and	15 16
(b) the matter is not an ordinary business matter; and	17 18
(c) a councillor has a material personal interest in the matter.	19 20
(2) The councillor must—	21
(a) inform the meeting of the councillor's material personal interest in the matter, including the following particulars about the interest—	22 23 24 25
(i) the name of the person or other entity who stands to gain a benefit, or suffer a loss, depending on the outcome of the consideration of the matter at the meeting;	26 27 28 29 30
(ii) how the person or other entity stands to gain the benefit or suffer the loss;	31 32

- (iii) if the person or other 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; and
    - (b) leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is being discussed and voted on.
  - Maximum penalty—
    - (a) 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 entity—200 penalty units or 2 years imprisonment; or
    - (b) otherwise—85 penalty units.
  - (3) If a majority of the councillors at a meeting of the council inform the meeting about a material personal interest in a matter under subsection (2)(a), the council must delegate deciding the matter under section 238, unless deciding the matter can not be delegated under that section.
  - (4) A councillor does not contravene subsection (2) by participating in the meeting, or being present while the matter is being discussed and voted on, if the councillor’s participation or presence—
    - (a) is for the purpose of delegating deciding the matter under subsection (3); or
    - (b) is approved under section 177F and the councillor complies with the conditions of the approval.
- 177D Meaning of *conflict of interest***
- (1) A *conflict of interest* is a conflict that—

- (a) is between—
    - (i) a councillor’s personal interests; and
    - (ii) the public interest; and
  - (b) might lead to a decision that is contrary to the public interest.
- (2) However, a councillor does not have a conflict of interest in a matter—
- (a) merely because of—
    - (i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in the councillor’s capacity as a councillor; or
    - (ii) membership of a political party; or
    - (iii) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or
    - (iv) the councillor’s religious beliefs; or
    - (v) the councillor having been a student of a particular school or the councillor’s involvement with a school as parent of a student at the school; or
  - (b) if the councillor has no greater personal interest in the matter than that of other persons in Brisbane.
- (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.

<b>177E Councillor’s conflict of interest at a meeting</b>	1
(1) This section applies if—	2
(a) a matter is to be discussed at a meeting of the council or any of its committees; and	3 4
(b) the matter is not an ordinary business matter; and	5 6
(c) a councillor at the meeting—	7
(i) has a conflict of interest in the matter (a <i>real conflict of interest</i> ); or	8 9
(ii) could reasonably be taken to have a conflict of interest in the matter (a <i>perceived conflict of interest</i> ).	10 11 12
(2) The councillor must inform the meeting about the councillor’s personal interests in the matter, including the following particulars about the interests—	13 14 15 16
(a) the nature of the interests;	17
(b) if the councillor’s personal interests arise because of the councillor’s relationship with, or receipt of a gift from, another person—	18 19 20 21
(i) the name of the other person; and	22
(ii) the nature of the relationship or value and date of receipt of the gift; and	23 24
(iii) the nature of the other person’s interests in the matter.	25 26
Maximum penalty—100 penalty units or 1 year’s imprisonment.	27 28
(3) Subsection (4) applies if—	29
(a) the other councillors who are entitled to vote at the meeting are informed about a councillor’s personal interests in a matter by the councillor or another person; and	30 31 32 33

- (b) the councillor has not voluntarily left, and stayed away from, the place where the meeting is being held while the matter is discussed and voted on. 1  
2  
3  
4
- (4) Subject to subsection (6), the other councillors must decide— 5  
6
- (a) whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and 7  
8  
9
- (b) if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor— 10  
11  
12  
13
- (i) must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or 14  
15  
16  
17  
18
- (ii) may participate in the meeting in relation to the matter, including by voting on the matter. 19  
20  
21
- (5) The councillor must comply with a decision under subsection (4) that the councillor must leave and stay away from the place. 22  
23  
24
- Maximum penalty—100 penalty units or 1 year’s imprisonment. 25  
26
- (6) If a majority of the councillors at a meeting of the council inform the meeting about personal interests in the matter under subsection (2), the council must delegate deciding the matter under section 238, unless deciding the matter can not be delegated under that section. 27  
28  
29  
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31  
32
- (7) A councillor does not contravene subsection (5) by participating in the meeting, or being present while the matter is being discussed and voted on, if the councillor’s participation or presence— 33  
34  
35  
36

- (a) is for the purpose of delegating deciding the matter under subsection (6); or
  - (b) is approved under section 177F and the councillor complies with the conditions of the approval.
- (8) In this section—  
*gift* means a gift that is required, under a regulation, to be recorded in a register of interests.

**177F Minister’s approval for councillor to participate or be present to decide matter**

- (1) The Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting, or being present while a matter is being discussed and voted on, if—
- (a) the matter could not otherwise be decided at the meeting because of—
    - (i) the number of councillors subject to the obligation under section 177C(2)(b); or
    - (ii) section 177E(6); and
  - (b) deciding the matter can not be delegated under section 238.
- (2) The Minister may give the approval subject to conditions stated in the notice.

**177G Duty to report another councillor’s material personal interest or conflict of interest at a meeting**

- (1) This section applies if—
- (a) a matter is to be discussed at a meeting of the council or any of its committees; and
  - (b) the matter is not an ordinary business matter; and

- (c) a councillor at the meeting believes, or suspects, on reasonable grounds that another councillor at the meeting has a material personal interest, real conflict of interest or perceived conflict of interest in the matter; and
  - (d) the other councillor has not informed the meeting about the interest under section 177C(2) or 177E(2).
- (2) The councillor mentioned in subsection (1)(c) must, as soon as practicable, inform the person who is presiding at the meeting about—
- (a) the councillor’s belief or suspicion; and
  - (b) the facts and circumstances that form the basis of the belief or suspicion.
- Note—*
- Contravention of subsection (2) is misconduct that could result in disciplinary action being taken against a councillor. See sections 178(3)(c) and 183.

### **177H Offence to take retaliatory action**

- A person must not, because a councillor complied with section 177G(2)—
- (a) prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or
  - (b) intimidate or harass, or threaten to intimidate or harass, the councillor or another person; or
  - (c) take any action that is, or is likely to be, detrimental to the councillor or another person.
- Maximum penalty—167 penalty units or 2 years imprisonment.



<b>177I Offence for councillor with personal interest to influence others</b>	1 2
(1) A councillor who has 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 meeting of the council or any of its committees.	3 4 5 6 7 8
Maximum penalty—200 penalty units or 2 years imprisonment.	9 10
(2) A councillor who has a material personal interest or conflict of interest in a matter must not influence, or attempt to influence, a council employee or a contractor of the council who is authorised to decide or otherwise deal with the matter to do so in a particular way.	11 12 13 14 15 16
Maximum penalty—200 penalty units or 2 years imprisonment.	17 18
(3) A councillor does not commit an offence against subsection (1) or (2) merely by participating in a meeting of the council or any of its committees about the matter, including by voting on the matter, if the participation is authorised under—	19 20 21 22 23
(a) an approval under section 177F; or	24
(b) a decision mentioned in section 177E(4)(b).	25
(4) In this section—	26
<i>matter</i> does not include an ordinary business matter.	27 28
<b>177J Records about material personal interests and conflicts of interests at meetings</b>	29 30
(1) If section 177C applies to a matter to be discussed at a meeting of the council or any of its committees, the following information must be recorded in the minutes of the meeting and on the	31 32 33 34

	council’s website—	1
	(a) the name of the councillor who has a material personal interest in the matter;	2 3
	(b) the material personal interest, including the particulars mentioned in section 177C(2)(a), as described by the councillor;	4 5 6
	(c) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F.	7 8 9
(2)	If section 177E applies to a matter to be discussed at a meeting of the council or any of its committees, the following must be recorded in the minutes of the meeting and on the council’s website—	10 11 12 13 14
	(a) the name of the councillor who has a conflict of interest in the matter;	15 16
	(b) the councillor’s personal interests in the matter, including the particulars mentioned in section 177E(2), as described by the councillor;	17 18 19 20
	(c) the decisions made under section 177E(4) and the reasons for the decisions;	21 22
	(d) if the councillor voted on the matter—how the councillor voted on the matter;	23 24
	(e) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F;	25 26 27
	(f) how the majority of councillors who were entitled to vote at the meeting voted on the matter.	28 29 30
<b>Clause 7</b>	<b>Amendment of s 178 (What this division is about)</b>	31
	Section 178(3)(c), ‘175(4)’—	32

*omit, insert—* 1  
 177G(2) 2

**Clause 8 Amendment of sch 1 (Dictionary) 3**

(1) Schedule 1— 4

*insert—* 5

*perceived conflict of interest* see section 6  
 177E(1)(c)(ii). 7

*real conflict of interest* see section 177E(1)(c)(i). 8

(2) Schedule 1, definition *conflict of interest*, ‘section 175(2)’— 9

*omit, insert—* 10

section 177D 11

(3) Schedule 1, definition *material personal interest*, ‘section 12  
 174(2)’— 13

*omit, insert—* 14

section 177B 15

**Part 3 Amendment of Electoral Act 16  
 1992 17**

**Clause 9 Act amended 18**

This part amends the *Electoral Act 1992*. 19

**Clause 10 Amendment of s 2 (Definitions) 20**

Section 2— 21

*insert—* 22

*political donation*, for part 11, division 8,  
 subdivision 4, see section 274. 23  
 24

*prohibited donor*, for part 11, division 8, 25

	subdivision 4, see section 273.	1
<b>Clause 11</b>	<b>Amendment of s 197 (Definitions)</b>	2
	(1) Section 197, definition <i>electoral expenditure</i> —	3
	<i>omit.</i>	4
	(2) Section 197—	5
	<i>insert</i> —	6
	<i>electoral expenditure</i> —	7
	(a) for division 4—see section 222; or	8
	(b) for division 8, subdivision 4—means expenditure incurred for the purposes of a campaign for an election, whether or not the expenditure is incurred during the election period for the election; or	9 10 11 12 13
	(c) for division 10—see section 282A.	14
	<i>political donation</i> , for division 8, subdivision 4, see section 274.	15 16
	<i>prohibited donor</i> , for division 8, subdivision 4, see section 273.	17 18
<b>Clause 12</b>	<b>Replacement of pt 11, div 8, sdiv 3, hdg (Other gifts and loans)</b>	19 20
	Part 11, division 8, subdivision 3, heading—	21
	<i>omit, insert</i> —	22
	<b>Subdivision 3 Loans from entities other than financial institutions</b>	23 24
<b>Clause 13</b>	<b>Insertion of new pt 11, div 8, sdiv 4</b>	25
	Part 11, division 8—	26
	<i>insert</i> —	27

---

**Subdivision 4 Political donations from property developers** 1  
2

**273 Meaning of *prohibited donor*** 3

(1) For this subdivision, *prohibited donor*— 4

(a) means— 5

(i) a property developer; or 6

(ii) an industry representative organisation, 7  
a majority of whose members are 8  
property developers; but 9

(b) does not include an entity for whom a 10  
determination is in effect under section 277. 11

*Note*— 12

See section 307C(4) in relation to the non-effect 13  
of a determination in particular circumstances. 14

(2) For subsection (1)(a), each of the following 15  
persons is a *property developer*— 16

(a) a corporation engaged in a business that 17  
regularly involves the making of relevant 18  
planning applications by or on behalf of the 19  
corporation— 20

(i) in connection with the residential or 21  
commercial development of land; and 22

(ii) with the ultimate purpose of the sale or 23  
lease of the land for profit; 24

(b) a close associate of a corporation mentioned 25  
in paragraph (a). 26

(3) For deciding whether a corporation is a 27  
corporation mentioned in subsection (2)(a), any 28  
activity engaged in by the corporation for the 29  
dominant purpose of providing commercial 30  
premises at which the corporation, or a related 31  
body corporate of the corporation, will carry on 32

business is to be disregarded, unless the business involves the sale or leasing of a substantial part of the premises.	1 2 3
(4) Section 205 does not apply for this section.	4
(5) In this section—	5
<i>close associate</i> , of a corporation, means any of the following persons—	6 7
(a) a related body corporate of the corporation;	8
(b) a director or other officer of the corporation;	9
(c) a person with more than 20% of the voting power in the corporation or a related body corporate of the corporation;	10 11 12
(d) a spouse of an individual mentioned in paragraph (b) or (c);	13 14
(e) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security;	15 16 17 18 19
(f) if the corporation is a trustee, manager or responsible entity in relation to a unit trust—a person who holds more than 20% of the units in the trust;	20 21 22 23
(g) if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust—a beneficiary of the trust.	24 25 26 27
<i>officer</i> , of a corporation, see the Corporations Act, section 9.	28 29
<i>related body corporate</i> , of a corporation, see the Corporations Act, section 9.	30 31
<i>relevant planning application</i> means—	32

- 
- (a) an application for, or to change, a development approval under the *Planning Act 2016* or repealed *Sustainable Planning Act 2009*; or
- (b) a request to the Minister administering the *Planning Act 2016* or repealed *Sustainable Planning Act 2009* or a local government about the making or amendment of a planning instrument or designation under either Act; or
- (c) an application for, or to change, an SDA approval under the *State Development and Public Works Organisation Act 1971*; or
- (d) a request or application to the Minister who administers the *State Development and Public Works Organisation Act 1971* or the Coordinator-General about the following under that Act—
- (i) the declaration or variation of a coordinated project, prescribed development, prescribed project or State development area;
- (ii) the imposition of, or change to, conditions on a coordinated project;
- (iii) the preparation or variation of a development scheme; or
- (e) an application for, or to change, a PDA development approval under the *Economic Development Act 2012*; or
- (f) a request to the Minister who administers the *Economic Development Act 2012* or the MEDQ about the making, declaration or amendment of—
- (i) a priority development area or provisional priority development area; or

- (ii) a development scheme, interim land use plan, or PDA-associated development for a priority development area; or
  - (iii) a provisional land use plan or PDA-associated development for a provisional priority development area; or
  - (g) an application or request of a type prescribed by regulation to be a relevant planning application.
- stapled entity***—
- (a) means an entity the interests in which are traded along with the interests in another entity as stapled securities; and
  - (b) for an entity mentioned in paragraph (a) that is a trust, includes any trustee, manager or responsible entity in relation to the trust.
- voting power*** see the Corporations Act, section 9.

## **274 Meaning of *political donation***

- (1) For this subdivision, each of the following is a ***political donation***—
  - (a) a gift made to or for the benefit of—
    - (i) a political party; or
    - (ii) an elected member; or
    - (iii) a candidate in an election;
  - (b) a gift made to or for the benefit of another entity—
    - (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or



- 
- (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure; 1  
2  
3  
4
- (c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b). 5  
6  
7
- (2) If a gift is made by a person in a private capacity to an individual (the *recipient*) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose— 8  
9  
10  
11
- (a) the gift is not a political donation when it is made; but 12  
13
- (b) if any part of the gift is used for an electoral purpose, then, for the purposes of section 275(3)— 14  
15  
16
- (i) that part of the gift is a political donation; and 17  
18
- (ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose. 19  
20  
21
- (3) A reference in subsection (2) to using a gift for an *electoral purpose* is a reference to using the gift to incur electoral expenditure or for the recipient's duties as an elected member. 22  
23  
24  
25
- (4) Despite section 201(4)(a) and (b), a reference in this section to a gift includes a fundraising contribution, to the extent the amount of the contribution forms part of the proceeds of the fundraising venture or function to which the contribution relates. 26  
27  
28  
29  
30  
31
- (5) Despite section 201(4)(d), a reference in this section to a gift includes any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000— 32  
33  
34  
35  
36

- (a) amounts paid as subscriptions for persons' membership of the party; 1  
2
- (b) amounts paid for the affiliation of persons with the party. 3  
4

**275 Political donations by prohibited donors** 5

- (1) It is unlawful for a prohibited donor to make a political donation. 6  
7
- (2) It is unlawful for a person to make a political donation on behalf of a prohibited donor. 8  
9
- (3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor. 10  
11  
12
- (4) It is unlawful for a prohibited donor to solicit a person to make a political donation. 13  
14
- (5) It is unlawful for a person to solicit, on behalf of a prohibited donor, another person to make a political donation. 15  
16  
17

**276 Recovery of prohibited donations** 18

- (1) If a person accepts a prohibited donation, the following amount is payable by the person to the State— 19  
20  
21
  - (a) if the person knew it was unlawful to accept the prohibited donation—an amount equal to twice the amount or value of the prohibited donation; 22  
23  
24  
25
  - (b) otherwise—an amount equal to the amount or value of the prohibited donation. 26  
27
- (2) The amount may be recovered by the State as a debt due to the State from— 28  
29

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(a)	if the recipient is a registered political party that is not a corporation—the party’s agent; or	1 2 3
(b)	if the recipient is a candidate—the candidate or the candidate’s agent; or	4 5
(c)	otherwise—the recipient.	6
(3)	The imposition of liability to pay an amount to the State under this section—	7 8
(a)	is not a punishment or sentence for an offence against section 307A or any other offence; and	9 10 11
(b)	is not a matter to which a court may have regard in sentencing an offender for an offence against section 307A or any other offence.	12 13 14 15
(4)	In this section—	16
	<i>prohibited donation</i> means a political donation that was unlawfully made or accepted under section 275.	17 18 19
	<i>recipient</i> means the entity to whom, or for the benefit of whom, the prohibited donation was made.	20 21 22
<b>277</b>	<b>Making of determination that entity is not a prohibited donor</b>	23 24
(1)	A person may apply to the commissioner for a determination that the person, or another entity, is not an entity mentioned in section 273(1)(a)(i) or (ii).	25 26 27 28
(2)	The application must be written and supported by enough information to enable the commissioner to decide the application.	29 30 31
(3)	If the commissioner is satisfied the entity to whom the application relates is not an entity	32 33

---

mentioned in section 273(1)(a)(i) or (ii), the commissioner must make the determination sought by the applicant. 1  
2  
3

(4) Otherwise, the commissioner must— 4

(a) decide not to make the determination; and 5

(b) give the applicant an information notice about the decision. 6  
7

(5) A determination has effect for 1 year unless it is earlier revoked. 8  
9

### **278 Revocation of determination** 10

(1) If, at any time, the commissioner ceases to be satisfied the entity to whom a determination relates is not an entity mentioned in section 273(1)(a)(i) or (ii), the commissioner may revoke the determination by giving a written notice of revocation to the entity and, if the entity was not the applicant for the determination, the applicant. 11  
12  
13  
14  
15  
16  
17

(2) The notice of revocation given to the entity must include, or be accompanied by, an information notice about the decision to revoke the determination. 18  
19  
20  
21

### **279 Register of determinations** 22

(1) The commissioner must keep a register of determinations made under section 277. 23  
24

(2) The register must include any revocations made under section 278. 25  
26

(3) The commissioner must make the register available for public inspection without fee. 27  
28

## **Clause 14 Amendment of s 282A (Meaning of *electoral expenditure*)** 29

Section 282A, ‘this part’— 30

---

*omit, insert—* 1  
this division 2

**Clause 15 Insertion of new ss 307A–307C** 3

After section 307— 4

*insert—* 5

**307A Offence about prohibited donations** 6

(1) A person must not do an act or make an omission 7  
that is unlawful under section 275 if the person 8  
knows or ought reasonably to know of the facts 9  
that result in the act or omission being unlawful 10  
under that section. 11

Maximum penalty—400 penalty units or 2 years 12  
imprisonment. 13

(2) An offence against subsection (1) is a 14  
misdemeanour. 15

**307B Schemes to circumvent prohibition on 16  
particular political donations** 17

(1) A person must not knowingly participate, directly 18  
or indirectly, in a scheme to circumvent a 19  
prohibition under division 8, subdivision 4 about 20  
political donations. 21

Maximum penalty—1,500 penalty units or 10 22  
years imprisonment. 23

(2) For subsection (1), it does not matter whether the 24  
person also participates in the scheme for other 25  
purposes. 26

(3) An offence against subsection (1) is a crime. 27

(4) In this section— 28

*participate in*, a scheme, includes— 29

- |  |             |
|--|-------------|
| (a) enable, aid or facilitate entry into, or the carrying out of, a scheme; and  | 1<br>2      |
| (b) organise or control a scheme.  | 3           |
| <i>scheme</i> includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied. | 4<br>5<br>6 |

**307C False or misleading information relating to determinations** 7  
8

- |   |  |
|---|--|
| (1) A person must not give the commissioner information under section 277 that the person knows is false or misleading in a material particular.  | 9<br>10<br>11<br>12                          |
| Maximum penalty—400 penalty units or 2 years imprisonment.  | 13<br>14                                     |
| (2) Subsection (1) does not apply to a person if the person, when giving information in a document—   | 15<br>16                                     |
| (a) tells the commissioner, to the best of the person’s ability, how the document is false or misleading; and   | 17<br>18<br>19                               |
| (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.   | 20<br>21<br>22                               |
| (3) An offence against subsection (1) is a misdemeanour.  | 23<br>24                                     |
| (4) In a proceeding against a person for an offence under section 307A, a determination made under section 277 is taken to be of no effect if the person knew, or ought reasonably to have known, at the time of the relevant act or omission that information given to, or used by, the commissioner under section 277 was false or misleading in a material particular. | 25<br>26<br>27<br>28<br>29<br>30<br>31<br>32 |

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<b>Clause 16</b>	<b>Amendment of s 308 (Recovery of payments)</b>	1
	Section 308(1), ‘section 236(3) or 271(7)’—	2
	<i>omit, insert—</i>	3
	section 236(3), 271(6) or 276	4
<b>Clause 17</b>	<b>Amendment of s 374 (Right of appeal)</b>	5
	Section 374, note, after ‘sections’—	6
	<i>insert—</i>	7
	277(4)(b), 278(2),	8
<b>Clause 18</b>	<b>Amendment of s 385 (Offences under this part are summary)</b>	9
	(1) Section 385, heading, ‘Offences’—	10
	<i>omit, insert—</i>	11
	<b>Particular offences</b>	12
	(2) Section 385(1), after ‘part’—	13
	<i>insert—</i>	14
	, other than sections 307A to 307C,	15
	(3) Section 385(2), ‘an offence’—	16
	<i>omit, insert—</i>	17
	a summary offence	18
<b>Clause 19</b>	<b>Insertion of new s 385A</b>	19
	After section 385—	20
	<i>insert—</i>	21
	<b>385A Proceedings for indictable offence</b>	22
	(1) A proceeding for an indictable offence against	23
	this Act may be taken, at the election of the	24
	prosecution—	25
		26

- (a) by way of summary proceeding under the *Justices Act 1886*; or 1  
2
- (b) on indictment. 3
- (2) A magistrate must not hear an indictable offence 4  
against section 307B summarily if— 5
- (a) the defendant asks at the start of the hearing 6  
that the charge be prosecuted on indictment; 7  
or 8
- (b) the magistrate is satisfied, at any stage of the 9  
hearing and after hearing any submissions 10  
by the prosecution and defence, that because 11  
of the nature or seriousness of the offence or 12  
any other relevant consideration the 13  
defendant, if convicted, may not be 14  
adequately punished on summary 15  
conviction. 16
- (3) If subsection (2) applies— 17
- (a) the magistrate must proceed by way of an 18  
examination of witnesses for an indictable 19  
offence; and 20
- (b) a plea of the person charged at the start of 21  
the proceeding must be disregarded; and 22
- (c) evidence brought in the proceeding before 23  
the magistrate decided to act under 24  
subsection (2) is taken to be evidence in the 25  
proceeding for the committal of the person 26  
for trial or sentence; and 27
- (d) before committing the person for trial or 28  
sentence, the magistrate must make a 29  
statement to the person as required by the 30  
*Justices Act 1886*, section 104(2)(b). 31
- (4) The maximum penalty of imprisonment that may 32  
be summarily imposed for an indictable offence is 33  
100 penalty units or 3 years imprisonment. 34



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<b>Clause 20</b>	<b>Insertion of new pt 13, div 9</b>	1
	Part 13—	2
	<i>insert—</i>	3
	<b>Division 9</b>	4
	<b>Transitional provision for</b>	4
	<b>Local Government</b>	5
	<b>Electoral (Implementing</b>	6
	<b>Belcarra) and Other</b>	7
	<b>Legislation Amendment</b>	8
	<b>Act 2017</b>	9
	<b>427 Obligation to repay particular political</b>	10
	<b>donations</b>	11
	(1) This section applies if—	12
	(a) a donation was made to a person (the	13
	<i>recipient</i> ) on or after the day on which the	14
	amending Bill was introduced into the	15
	Legislative Assembly and before the	16
	commencement; and	17
	(b) under section 275(3), it would have been	18
	unlawful for the recipient to accept the	19
	donation if it had been made immediately	20
	after the commencement.	21
	(2) The recipient must pay an amount equal to the	22
	amount or value of the donation to the person who	23
	made the donation within 30 days after the	24
	commencement.	25
	Maximum penalty—400 penalty units or 2 years	26
	imprisonment.	27
	(3) An offence against subsection (2) is a	28
	misdemeanour.	29
	(4) Section 276 applies in relation to a contravention	30
	of subsection (2) as if—	31

- (a) a reference in section 276 to accepting a prohibited donation were a reference to contravening subsection (2); and
- (b) a reference in section 276 to the amount or value of a prohibited donation were a reference to the amount that was not paid under subsection (2).
- (5) In this section—  
*amending Bill* means the Bill for the *Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Act 2017*.

## **Part 4** **Amendment of Local Government Act 2009**

**Clause 21 Act amended**  
This part amends the *Local Government Act 2009*.

**Clause 22 Amendment of s 153 (Disqualification for certain offences)**  
Section 153(5)(a), ‘172(5)’—  
*omit, insert—*  
175C(2), 175E(2) or (5), 175H, 175I(1) or (2)

**Clause 23 Omission of ss 172 and 173**  
Sections 172 and 173—  
*omit.*

**Clause 24 Insertion of new ch 6, pt 2, div 5A**  
Chapter 6, part 2—  
*insert—*

<b>Division 5A</b>	<b>Dealing with councillors’ personal interests in local government matters</b>	1 2 3
<b>175A Purpose of division</b>		4
	The purpose of this division is to ensure the personal interests of councillors are dealt with in an accountable and transparent way that meets community expectations, if the interests relate to matters to be considered—	5 6 7 8 9
	(a) at a meeting of the local government or any of its committees; or	10 11
	(b) by a local government employee or contractor of the local government authorised to deal with the matter.	12 13 14
<b>175B Meaning of <i>material personal interest</i></b>		15
	(1) A councillor has a <i>material personal interest</i> in a matter if any of the following stand to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of consideration of the matter—	16 17 18 19 20
	(a) the councillor;	21
	(b) a spouse of the councillor;	22
	(c) a parent, child or sibling of the councillor;	23
	(d) a person who is in a partnership with the councillor;	24 25
	(e) an employer, other than a government entity, of the councillor;	26 27
	(f) an entity, other than a government entity, of which the councillor is a member;	28 29
	(g) another entity prescribed by regulation.	30

- (2) However, a councillor does not have a material personal interest in the matter if the councillor has no greater personal interest in the matter than that of other persons in the local government area. 1  
2  
3  
4
- (3) Subsection (1)(c) only applies to a councillor if the councillor knows, or ought reasonably to know, that the councillor's parent, child or sibling stands to gain a benefit or suffer a loss. 5  
6  
7  
8

**175C Councillor's material personal interest at a meeting** 9  
10

- (1) This section applies if— 11
- (a) a matter is to be discussed at a meeting of the local government or any of its committees; and 12  
13  
14
- (b) the matter is not an ordinary business matter; and 15  
16
- (c) a councillor has a material personal interest in the matter. 17  
18
- (2) The councillor must— 19
- (a) inform the meeting of the councillor's material personal interest in the matter, including the following particulars about the interest— 20  
21  
22  
23
- (i) the name of the person or other entity who stands to gain a benefit, or suffer a loss, depending on the outcome of the consideration of the matter at the meeting; 24  
25  
26  
27  
28
- (ii) how the person or other entity stands to gain the benefit or suffer the loss; 29  
30
- (iii) if the person or other entity who stands to gain the benefit or suffer the loss is not the councillor—the nature of the 31  
32  
33

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councillor’s relationship to the person or entity; and	1 2
(b) leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is being discussed and voted on.	3 4 5 6
Maximum penalty—	7
(a) 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 entity—200 penalty units or 2 years imprisonment; or	8 9 10 11 12
(b) otherwise—85 penalty units.	13
(3) If a majority of the councillors at a meeting of the local government inform the meeting about a material personal interest in a matter under subsection (2)(a), the local government must delegate deciding the matter under section 257, unless deciding the matter can not be delegated under that section.	14 15 16 17 18 19 20
(4) A councillor does not contravene subsection (2) by participating in the meeting, or being present while the matter is being discussed and voted on, if the councillor’s participation or presence—	21 22 23 24
(a) is for the purpose of delegating deciding the matter under subsection (3); or	25 26
(b) is approved under section 175F and the councillor complies with the conditions of the approval.	27 28 29
<b>175D Meaning of <i>conflict of interest</i></b>	30
(1) A <i>conflict of interest</i> is a conflict that—	31
(a) is between—	32
(i) a councillor’s personal interests; and	33

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- |       |  |                                  |
|-------|--|----------------------------------|
| (ii)  | the public interest; and   | 1                                |
| (b)   | might lead to a decision that is contrary to the public interest.  | 2<br>3                           |
| (2)   | However, a councillor does not have a conflict of interest in a matter—  | 4<br>5                           |
| (a)   | merely because of—   | 6                                |
| (i)   | an engagement with a community group, sporting club or similar organisation undertaken by the councillor in the councillor's capacity as a councillor; or  | 7<br>8<br>9<br>10<br>11          |
| (ii)  | membership of a political party; or  | 12                               |
| (iii) | membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or   | 13<br>14<br>15<br>16             |
| (iv)  | the councillor's religious beliefs; or   | 17                               |
| (v)   | the councillor having been a student of a particular school or the councillor's involvement with a school as parent of a student at the school; or   | 18<br>19<br>20<br>21             |
| (b)   | if the councillor has no greater personal interest in the matter than that of other persons in the local government area.  | 22<br>23<br>24                   |
| (3)   | Also, a councillor who is nominated by the local government 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. | 25<br>26<br>27<br>28<br>29<br>30 |

**175E Councillor's conflict of interest at a meeting** 31

- |     |                          |    |
|-----|--------------------------|----|
| (1) | This section applies if— | 32 |
|-----|--------------------------|----|

- (a) a matter is to be discussed at a meeting of the local government or any of its committees; and
  - (b) the matter is not an ordinary business matter; and
  - (c) a councillor at the meeting—
    - (i) has a conflict of interest in the matter (a *real conflict of interest*); or
    - (ii) could reasonably be taken to have a conflict of interest in the matter (a *perceived conflict of interest*).
- (2) The councillor must inform the meeting about the councillor’s personal interests in the matter, including the following particulars about the interests—
- (a) the nature of the interests;
  - (b) if the councillor’s personal interests arise because of the councillor’s relationship with, or receipt of a gift from, another person—
    - (i) the name of the other person; and
    - (ii) the nature of the relationship or value and date of receipt of the gift; and
    - (iii) the nature of the other person’s interests in the matter.
- Maximum penalty—100 penalty units or 1 year’s imprisonment.
- (3) Subsection (4) applies if—
- (a) the other councillors who are entitled to vote at the meeting are informed about a councillor’s personal interests in a matter by the councillor or another person; and

- (b) the councillor has not voluntarily left, and stayed away from, the place where the meeting is being held while the matter is discussed and voted on. 1  
2  
3  
4
- (4) Subject to subsection (6), the other councillors must decide— 5  
6
- (a) whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and 7  
8  
9
- (b) if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor— 10  
11  
12  
13
- (i) must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or 14  
15  
16  
17  
18
- (ii) may participate in the meeting in relation to the matter, including by voting on the matter. 19  
20  
21
- (5) The councillor must comply with a decision under subsection (4) that the councillor must leave and stay away from the place. 22  
23  
24
- Maximum penalty—100 penalty units or 1 year’s imprisonment. 25  
26
- (6) If a majority of the councillors at a meeting of the local government inform the meeting about personal interests in the matter under subsection (2), the local government must delegate deciding the matter under section 257, unless deciding the matter can not be delegated under that section. 27  
28  
29  
30  
31  
32
- (7) A councillor does not contravene subsection (5) by participating in the meeting, or being present while the matter is being discussed and voted on, if the councillor’s participation or presence— 33  
34  
35  
36



(a)	is for the purpose of delegating deciding the matter under subsection (6); or	1 2
(b)	is approved under section 175F and the councillor complies with the conditions of the approval.	3 4 5
(8)	In this section—	6
	<i>gift</i> means a gift that is required, under a regulation, to be recorded in a register of interests.	7 8
<b>175F Minister’s approval for councillor to participate or be present to decide matter</b>		9 10
(1)	The Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting, or being present while a matter is being discussed and voted on, if—	11 12 13 14
(a)	the matter could not otherwise be decided at the meeting because of—	15 16
(i)	the number of councillors subject to the obligation under section 175C(2)(b); or	17 18
(ii)	section 175E(6); and	19
(b)	deciding the matter can not be delegated under section 257.	20 21
(2)	The Minister may give the approval subject to conditions stated in the notice.	22 23
<b>175G Duty to report another councillor’s material personal interest or conflict of interest at a meeting</b>		24 25 26
(1)	This section applies if—	27
(a)	a matter is to be discussed at a meeting of the local government or any of its committees; and	28 29 30

- (b) the matter is not an ordinary business matter; and 1  
2
  - (c) a councillor at the meeting reasonably believes, or reasonably suspects, that another councillor at the meeting has a material personal interest, real conflict of interest or perceived conflict of interest in the matter; and 3  
4  
5  
6  
7  
8
  - (d) the other councillor has not informed the meeting about the interest under section 175C(2) or 175E(2). 9  
10  
11
- (2) The councillor mentioned in subsection (1)(c) must, as soon as practicable, inform the person who is presiding at the meeting about— 12  
13  
14
- (a) the councillor’s belief or suspicion; and 15
  - (b) the facts and circumstances that form the basis of the belief or suspicion. 16  
17
- Note—* 18
- Contravention of subsection (2) is misconduct that could result in disciplinary action being taken against a councillor. See sections 176(3)(d) and 180. 19  
20  
21

### **175H Offence to take retaliatory action** 22

- A person must not, because a councillor complied with section 175G(2)— 23  
24
- (a) prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or 25  
26  
27
  - (b) intimidate or harass, or threaten to intimidate or harass, the councillor or another person; or 28  
29  
30
  - (c) take any action that is, or is likely to be, detrimental to the councillor or another person. 31  
32  
33

Maximum penalty—167 penalty units or 2 years imprisonment.	1 2
<b>175I Offence for councillor with personal interest to influence others</b>	3 4
(1) A councillor who has 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 meeting of the local government or any of its committees.	5 6 7 8 9 10
Maximum penalty—200 penalty units or 2 years imprisonment.	11 12
(2) A councillor who has a material personal interest or conflict of interest in a matter must not influence, or attempt to influence, a local government employee or a contractor of the local government who is authorised to decide or otherwise deal with the matter to do so in a particular way.	13 14 15 16 17 18 19
Maximum penalty—200 penalty units or 2 years imprisonment.	20 21
(3) A councillor does not commit an offence against subsection (1) or (2) merely by participating in a meeting of the local government or any of its committees about the matter, including by voting on the matter, if the participation is authorised under—	22 23 24 25 26 27
(a) an approval under section 175F; or	28
(b) a decision mentioned in section 175E(4)(b).	29
(4) In this section—	30
<i>matter</i> does not include an ordinary business matter.	31 32

<b>175J Records about material personal interests and conflicts of interests at meetings</b>	1 2
(1) If section 175C applies to a matter to be discussed at a meeting of the local government or any of its committees, the following information must be recorded in the minutes of the meeting and on the local government’s website—	3 4 5 6 7
(a) the name of the councillor who has a material personal interest in the matter;	8 9
(b) the material personal interest, including the particulars mentioned in section 175C(2)(a), as described by the councillor;	10 11 12
(c) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 175F.	13 14 15
(2) If section 175E applies to a matter to be discussed at a meeting of the local government or any of its committees, the following must be recorded in the minutes of the meeting and on the local government’s website—	16 17 18 19 20
(a) the name of the councillor who has a conflict of interest in the matter;	21 22
(b) the councillor’s personal interests in the matter, including the particulars mentioned in section 175E(2), as described by the councillor;	23 24 25 26
(c) the decisions made under section 175E(4) and the reasons for the decisions;	27 28
(d) if the councillor voted on the matter—how the councillor voted on the matter;	29 30
(e) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 175F;	31 32 33

	(f) how the majority of councillors who were entitled to vote at the meeting voted on the matter.	1 2 3
<b>Clause 25</b>	<b>Amendment of s 176 (What this division is about)</b>	4
	Section 176(3)(d), ‘173(4)’—	5
	<i>omit, insert—</i>	6
	175G(2)	7
<b>Clause 26</b>	<b>Amendment of sch 4 (Dictionary)</b>	8
	(1) Schedule 4—	9
	<i>insert—</i>	10
	<i>perceived conflict of interest</i> see section 175E(1)(c)(ii).	11 12
	<i>real conflict of interest</i> see section 175E(1)(c)(i).	13
	(2) Schedule 4, definition <i>conflict of interest</i> , ‘section 173(2)’—	14
	<i>omit, insert—</i>	15
	section 175D	16
	(3) Schedule 4, definition <i>material personal interest</i> , ‘section 172(2)’—	17 18
	<i>omit, insert—</i>	19
	section 175B	20
<b>Part 5</b>	<b>Amendment of Local Government Electoral Act 2011</b>	21 22
<b>Clause 27</b>	<b>Act amended</b>	23
	This part amends the <i>Local Government Electoral Act 2011</i> .	24

<b>Clause 28</b>	<b>Replacement of s 3 (Purpose of this Act)</b>	1
	Section 3—	2
	<i>omit, insert—</i>	3
	<b>3 Purpose of Act</b>	4
	The purposes of this Act are to—	5
	(a) ensure the transparent conduct of elections of councillors of Queensland’s local governments; and	6 7 8
	(b) ensure and reinforce integrity in Queensland’s local governments, including, for example, by minimising the risk of corruption in relation to—	9 10 11 12
	(i) the election of councillors; and	13
	(ii) the good governance of, and by, local government.	14 15
<b>Clause 29</b>	<b>Amendment of s 106 (Definitions for part)</b>	16
	Section 106—	17
	<i>insert—</i>	18
	<i>electoral expenditure</i> means expenditure incurred for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.	19 20 21 22 23
	<i>information notice</i> , about a decision, means a notice that states—	24 25
	(a) the decision; and	26
	(b) the reasons for the decision; and	27
	(c) that the person to whom the notice is given may apply to the electoral commissioner for a review of the decision within 20 business days after the person receives the notice; and	28 29 30 31

	(d) how to apply for a review.	1
	<i>loan</i> means any of the following made other than by use of a credit card—	2 3
	(a) an advance of money;	4
	(b) a provision of credit or another form of financial accommodation;	5 6
	(c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount;	7 8 9 10
	(d) a transaction (whatever its terms or form) that in substance effects a loan of money.	11 12
	<i>political donation</i> , for division 1A, see section 113A.	13 14
	<i>prohibited donor</i> , for division 1A, see section 113(1).	15 16
<b>Clause 30</b>	<b>Insertion of new pt 6, div 1A</b>	17
	Part 6—	18
	<i>insert</i> —	19
	<b>Division 1A Political donations from property developers</b>	20 21
	<b>113 Meaning of <i>prohibited donor</i></b>	22
	(1) For this division, <i>prohibited donor</i> —	23
	(a) means—	24
	(i) a property developer; or	25
	(ii) an industry representative organisation, a majority of whose members are property developers; but	26 27 28

- (b) does not include an entity for whom a determination is in effect under section 113D. 1  
2  
3
- Note—* 4  
See section 194C(4) in relation to the non-effect of a determination in particular circumstances. 5  
6
- (2) For subsection (1)(a), each of the following persons is a ***property developer***— 7  
8
- (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation— 9  
10  
11  
12
- (i) in connection with the residential or commercial development of land; and 13  
14
- (ii) with the ultimate purpose of the sale or lease of the land for profit; 15  
16
- (b) a close associate of a corporation mentioned in paragraph (a). 17  
18
- (3) For deciding whether a corporation is a corporation mentioned in subsection (2)(a), any activity engaged in by the corporation for the dominant purpose of providing commercial premises at which the corporation, or a related body corporate of the corporation, will carry on business is to be disregarded, unless the business involves the sale or leasing of a substantial part of the premises. 19  
20  
21  
22  
23  
24  
25  
26  
27
- (4) In this section— 28
- close associate***, of a corporation, means any of the following persons— 29  
30
- (a) a related body corporate of the corporation; 31
- (b) a director or other officer of the corporation; 32



- 
- (c) a person with more than 20% of the voting power in the corporation or a related body corporate of the corporation; 1  
2  
3
- (d) a spouse of an individual mentioned in paragraph (b) or (c); 4  
5
- (e) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security; 6  
7  
8  
9  
10
- (f) if the corporation is a trustee, manager or responsible entity in relation to a unit trust—a person who holds more than 20% of the units in the trust; 11  
12  
13  
14
- (g) if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust—a beneficiary of the trust. 15  
16  
17  
18
- officer***, of a corporation, see the Corporations Act, section 9. 19  
20
- related body corporate***, of a corporation, see the Corporations Act, section 9. 21  
22
- relevant planning application*** means— 23
- (a) an application for, or to change, a development approval under the *Planning Act 2016* or repealed *Sustainable Planning Act 2009*; or 24  
25  
26  
27
- (b) a request to the Minister administering the *Planning Act 2016* or repealed *Sustainable Planning Act 2009* or a local government about the making or amendment of a planning instrument or designation under either Act; or 28  
29  
30  
31  
32  
33

- (c) an application for, or to change, an SDA approval under the *State Development and Public Works Organisation Act 1971*; or
- (d) a request or application to the Minister who administers the *State Development and Public Works Organisation Act 1971* or the Coordinator-General about the following under that Act—
  - (i) the declaration or variation of a coordinated project, prescribed development, prescribed project or State development area;
  - (ii) the imposition of, or change to, conditions on a coordinated project;
  - (iii) the preparation or variation of a development scheme; or
- (e) an application for, or to change, a PDA development approval under the *Economic Development Act 2012*; or
- (f) a request to the Minister who administers the *Economic Development Act 2012* or the MEDQ about the making, declaration or amendment of—
  - (i) a priority development area or provisional priority development area; or
  - (ii) a development scheme, interim land use plan, or PDA-associated development for a priority development area; or
  - (iii) a provisional land use plan or PDA-associated development for a provisional priority development area; or

- (g) an application or request of a type prescribed by regulation to be a relevant planning application. 1  
2  
3
- stapled entity***— 4
- (a) means an entity the interests in which are traded along with the interests in another entity as stapled securities; and 5  
6  
7
- (b) for an entity mentioned in paragraph (a) that is a trust, includes any trustee, manager or responsible entity in relation to the trust. 8  
9  
10
- voting power*** see the Corporations Act, section 9. 11

**113A Meaning of *political donation*** 12

- (1) For this division, each of the following is a ***political donation***— 13  
14
- (a) a gift made to or for the benefit of— 15
- (i) a political party; or 16
- (ii) a councillor of a local government; or 17
- (iii) a candidate or group of candidates in an election; 18  
19
- (b) a gift made to or for the benefit of another entity— 20  
21
- (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or 22  
23  
24  
25
- (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure; 26  
27  
28  
29
- (c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b); 30  
31  
32

- (d) any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—
- (i) amounts paid as subscriptions for persons' membership of the party;
  - (ii) amounts paid for the affiliation of persons with the party.
- (2) If a gift is made by a person in a private capacity to an individual (the *recipient*) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose—
- (a) the gift is not a political donation when it is made; but
  - (b) if any part of the gift is used for an electoral purpose, then, for the purposes of section 113B(3)—
    - (i) that part of the gift is a political donation; and
    - (ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.
- (3) A reference in subsection (2) to using a gift for an *electoral purpose* is a reference to using the gift to incur electoral expenditure or for the recipient's duties as a councillor of a local government.
- (4) Despite section 107(1)(a), a reference in this section to a gift includes an amount paid for attendance at or participation in a fundraising activity, to the extent the amount forms part of the proceeds of the fundraising activity to which it relates.
- (5) Section 107(2) does not apply for the purposes of this section.
- (6) In this section—

<i>gift</i> includes an amount of interest that would have been payable on a loan if—	1 2
(a) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind; and	3 4 5 6
(b) any interest payable had not been waived; and	7 8
(c) any interest payments were not capitalised.	9
<b>113B Political donations by prohibited donors</b>	10
(1) It is unlawful for a prohibited donor to make a political donation.	11 12
(2) It is unlawful for a person to make a political donation on behalf of a prohibited donor.	13 14
(3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor.	15 16 17
(4) It is unlawful for a prohibited donor to solicit a person to make a political donation.	18 19
(5) It is unlawful for a person to solicit, on behalf of a prohibited donor, another person to make a political donation.	20 21 22
(6) In this section— <i>gift</i> see section 113A(6).	23 24
<b>113C Recovery of prohibited donations</b>	25
(1) If a person accepts a prohibited donation, the following amount is payable by the person to the State—	26 27 28
(a) if the person knew it was unlawful to accept the prohibited donation—an amount equal	29 30

- to twice the amount or value of the prohibited donation; 1  
2
- (b) otherwise—an amount equal to the amount or value of the prohibited donation. 3  
4
- (2) The amount may be recovered by the State as a debt due to the State from— 5  
6
- (a) if the recipient is a registered political party that is not a corporation—the party’s agent; or 7  
8  
9
- (b) if the recipient is a group of candidates—the members of the group or the group’s agent; or 10  
11  
12
- (c) if the recipient is a candidate—the candidate or the candidate’s agent; or 13  
14
- (d) otherwise—the recipient. 15
- (3) The imposition of liability to pay an amount to the State under this section— 16  
17
- (a) is not a punishment or sentence for an offence against section 194A or any other offence; and 18  
19  
20
- (b) is not a matter to which a court may have regard in sentencing an offender for an offence against section 194A or any other offence. 21  
22  
23  
24
- (4) An action in a court to recover an amount due to the State under this section may be brought in the name of the electoral commission. 25  
26  
27
- (5) Any process in the action required to be served on the State may be served on the electoral commission. 28  
29  
30
- (6) In this section— 31
- prohibited donation*** means a political donation that was unlawfully made or accepted under section 113B. 32  
33  
34

*recipient* means the entity to whom, or for the benefit of whom, the prohibited donation was made.

#### **113D Making of determination that entity is not a prohibited donor**

- (1) A person may apply to the electoral commissioner for a determination that the person, or another entity, is not an entity mentioned in section 113(1)(a)(i) or (ii).
- (2) The application must be written and supported by enough information to enable the electoral commissioner to decide the application.
- (3) If the electoral commissioner is satisfied the entity to whom the application relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the electoral commissioner must make the determination sought by the applicant.
- (4) Otherwise, the electoral commissioner must—
  - (a) decide not to make the determination; and
  - (b) give the applicant an information notice about the decision.
- (5) A determination has effect for 1 year unless it is earlier revoked.

#### **113E Revocation of determination**

- (1) If, at any time, the electoral commissioner ceases to be satisfied the entity to whom a determination relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the electoral commissioner may revoke the determination by giving a written notice of revocation to the entity and, if the entity was not the applicant for the determination, the applicant.

- (2) The notice of revocation given to the entity must include, or be accompanied by, an information notice about the decision to revoke the determination.

### **113F Register of determinations**

- (1) The electoral commissioner must keep a register of determinations made under section 113D.
- (2) The register must include any revocations made under section 113E.
- (3) The electoral commissioner must make the register available for public inspection without fee.

### **113G Review of decisions**

A person who is given, or is entitled to be given, an information notice about a decision under this division has a right to appeal against the decision under the *Electoral Act 1992*, part 11, division 20, as if the decision were a decision to which section 277(4)(b) or 278(2) of that Act applied.

## **Clause 31 Amendment of s 169 (False or misleading information)**

Section 169(2)—

*insert—*

- (c) information given to the electoral commissioner under section 113D.

## **Clause 32 Insertion of new ss 194A–194C**

Part 9, division 5—

*insert—*



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<b>194A Offence about prohibited donations</b>	1
(1) A person must not do an act or make an omission that is unlawful under section 113B if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful under that section.	2 3 4 5 6
Maximum penalty—400 penalty units or 2 years imprisonment.	7 8
(2) An offence against subsection (1) is a misdemeanour.	9 10
<b>194B Schemes to circumvent prohibition on particular political donations</b>	11 12
(1) A person must not knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition under part 6, division 1A, about political donations.	13 14 15 16
Maximum penalty—1,500 penalty units or 10 years imprisonment.	17 18
(2) For subsection (1), it does not matter whether the person also participates in the scheme for other purposes.	19 20 21
(3) In this section—	22
<i>participate in</i> , a scheme, includes—	23
(a) enable, aid or facilitate entry into, or the carrying out of, a scheme; and	24 25
(b) organise or control a scheme.	26
<i>scheme</i> includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied.	27 28 29

<b>194C False or misleading information relating to determinations</b>	1 2
(1) A person must not give the electoral commissioner information under section 113D that the person knows is false or misleading in a material particular.	3 4 5 6
Maximum penalty—400 penalty units or 2 years imprisonment.	7 8
(2) Subsection (1) does not apply to a person if the person, when giving information in a document—	9 10
(a) tells the electoral commissioner, to the best of the person’s ability, how the document is false or misleading; and	11 12 13
(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.	14 15 16
(3) An offence against subsection (1) is a misdemeanour.	17 18
(4) In a proceeding against a person for an offence under section 194A, a determination made under section 113D is taken to be of no effect if the person knew, or ought reasonably to have known, at the time of the relevant act or omission that information given to, or used by, the electoral commissioner under section 113D was false or misleading in a material particular.	19 20 21 22 23 24 25 26

<b>Clause 33 Amendment of s 201 (Designated election offences and application of Criminal Code)</b>	27 28
Section 201(1)—	29
<i>insert—</i>	30
• section 194B.	31

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<b>Clause 34</b>	<b>Insertion of new pt 11, div 3</b>	1
	Part 11—	2
	<i>insert—</i>	3
	<b>Division 3</b>	4
	<b>Transitional provision for</b>	4
	<b>Local Government</b>	5
	<b>Electoral (Implementing</b>	6
	<b>Belcarra) and Other</b>	7
	<b>Legislation Amendment</b>	8
	<b>Act 2017</b>	9
	<b>212 Obligation to repay particular political</b>	10
	<b>donations</b>	11
	(1) This section applies if—	12
	(a) a donation was made to a person (the	13
	<i>recipient</i> ) on or after the day on which the	14
	amending Bill was introduced into the	15
	Legislative Assembly and before the	16
	commencement; and	17
	(b) under section 113B(3), it would have been	18
	unlawful for the recipient to accept the	19
	donation if it had been made immediately	20
	after the commencement.	21
	(2) The recipient must pay an amount equal to the	22
	amount or value of the donation to the person who	23
	made the donation within 30 days after the	24
	commencement.	25
	Maximum penalty—400 penalty units or 2 years	26
	imprisonment.	27
	(3) An offence against subsection (2) is a	28
	misdemeanour.	29
	(4) Section 113C applies in relation to a	30
	contravention of subsection (2) as if—	31

	(a) a reference in section 113C to accepting	1
	were a reference to contravening subsection	2
	(2); and	3
	(b) a reference in section 113C to the amount or	4
	value of a prohibited donation were a	5
	reference to the amount that was not paid	6
	under subsection (2).	7
	(5) In this section—	8
	<i>amending Bill</i> means the Bill for the <i>Local</i>	9
	<i>Government Electoral (Implementing Belcarra)</i>	10
	<i>and Other Legislation Amendment Act 2017.</i>	11
<b>Clause 35</b>	<b>Amendment of schedule (Dictionary)</b>	12
	Schedule—	13
	<i>insert—</i>	14
	<i>electoral expenditure</i> , for part 6, see section 106.	15
	<i>information notice</i> , for part 6, see section 106.	16
	<i>loan</i> , for part 6, see section 106.	17
	<i>political donation</i> , for part 6, division 1A, see	18
	section 113A.	19
	<i>prohibited donor</i> , for part 6, division 1A, see	20
	section 113(1).	21
	<i>property developer</i> , for part 6, division 1A, see	22
	section 113(2).	23