ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Ms NA Boyd MP
Mr ST O'Connor MP
Mr DC Janetzki MP
Ms KE Richards MP
Mr RA Stevens MP

Staff present:

Ms T Struber (Acting Committee Secretary)
Ms M Salisbury (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE LOCAL GOVERNMENT ELECTORAL (IMPLEMENTING STAGE 1 OF BELCARRA) AND OTHER LEGISLATION AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

MONDAY, 19 MARCH 2018

Brisbane

MONDAY, 19 MARCH 2018

_____

The committee met at 11.56 am.

CHAIR: Good morning. I declare open the Economic and Governance Committee's public briefing for the committee's inquiry into the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018. I would like to acknowledge the traditional owners of the land on which we meet.

My name is Linus Power, the member for Logan and chair of the committee. With me here today are Ray Stevens MP, the member for Mermaid Beach and deputy chair; Nikki Boyd MP, the member for Pine Rivers; Sam O'Connor MP, the member for Bonney; Kim Richards MP, the member for Redlands; and David Janetzki MP, the member for Toowoomba South, who is attending in place of Dan Purdie MP, the member for Ninderry, who is unable to attend the briefing this afternoon.

On 6 March 2018 the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, the Hon. Stirling Hinchliffe MP, introduced into parliament the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018. The parliament referred the bill to the Economics and Governance Committee for examination with a reporting date of 23 April 2018. The purpose of the briefing today is to assist the committee with its examination of the bill.

The briefing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. It is being recorded and broadcast live on the parliament's website. Media may be present and will be subject to my direction. The media rules are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. I ask everyone present to turn mobile phones off or switch them to silent.

Only committee members and invited officials may participate in the proceedings. Any person may be excluded from the briefing at my discretion or by order of the committee. I remind committee members that officers from the department are here to provide factual or technical information. Any questions about government or opposition policy should be directed to the responsible minister or shadow minister or left to debate on the floor of the House. We will now hear from representatives from the Department of Local Government, Racing and Multicultural Affairs and the Department of Justice and Attorney-General who have been invited to brief the committee on the bill.

BLAGOEV, Mrs Bronwyn, Executive Director, Strategy and Governance, Department of Local Government, Racing and Multicultural Affairs

BRADLEY, Ms Imelda, Director, Department of Justice and Attorney-General

DUNNE, Mr Tim, Manager, Governance, Department of Local Government, Racing and Multicultural Affairs

HAWTHORNE, Ms Josie, Acting Director, Legislation, Department of Local Government, Racing and Multicultural Affairs

KAY, Ms Sarah, Acting Director, Department of Justice and Attorney-General

ROBERTSON, Mrs Leanne, Acting Assistant Director-General, Department of Justice and Attorney-General

CHAIR: I invite you to make an opening statement briefing the committee after which committee members will have some questions for you.

Ms Blagoev: I thank the committee for the opportunity to brief the committee on the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill. I propose to take the committee through the background to the bill and the key amendments. I am happy to take any questions as we go or at the end, as you please.

The bill amends the City of Brisbane Act, the Local Government Act, the Local Government Electoral Act and the Electoral Act to implement the government's response to certain recommendations of the Crime and Corruption Commission's report entitled *Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government*. As you may be aware, Operation Belcarra was initiated by the Queensland Crime and Corruption Commission following receipt of a number of allegations about the conduct of candidates in the Queensland local government elections on 19 March 2016.

The aims of Operation Belcarra were: firstly, to determine whether any candidates committed offences under the Local Government Electoral Act which may have amounted to corrupt conduct; or, secondly, to examine practices that may give rise to actual or perceived perceptions of corruption or that may otherwise undermine public confidence in the integrity of a local government with a view to identifying strategies or reforms to help prevent or decrease corruption risks moving forward. The Belcarra report makes 31 recommendations that the CCC believes will help reduce corruption risks and promote integrity and public confidence in future local government elections.

The government's response to the Belcarra report supports or supports in principle all 31 recommendations. This bill implements the government's response to recommendation 20 and recommendations 23 to 26. The policy objectives of the bill are to: firstly, reinforce integrity and minimise corruption risks arising from donations from property developers at both a state and a local government level; secondly, improve transparency and accountability in state and local government; and, lastly, strengthen the legislative requirements that regulate how a councillor must deal with conflicts of interest and material personal interests.

I turn to the amendments in the bill. Firstly, the bill implements the government's response to recommendation 20 of the report which is to impose a ban on political donations from property developers. The CCC identified that a particular concern raised during Operation Belcarra was that the integrity council processes and decision-making was being compromised as a result of donations received by councillors. At a local government level, the risk of corruption relating to donations was particularly associated with property developers.

The bill amends the Electoral Act and Local Government Electoral Act to make it unlawful for a political donation from a prohibited donor to be directly or indirectly made or accepted. The bill defines the term 'prohibited donor' to include a property developer and any industry representative organisation whose members are mainly property developers. A property developer is defined to include a corporation engaged in a business that regularly involves the making of relevant planning applications and their close associates such as related corporations, directors and their spouses. For the purposes of the ban, a political donation includes direct and indirect gifts or loans to a political party, an elected member, a councillor or a candidate in a state or local government election or group of candidates for a local government election.

The bill includes a range of new indictable offences with strong penalties, including an offence for participating directly or indirectly in a scheme to circumvent that ban. This offence has a maximum penalty of 1,500 penalty units or 10 years imprisonment. It also includes specific provisions for prohibited donations to be recovered by the state. Under these provisions, if a person accepts a prohibited donation an amount up to twice the value of that donation may be recovered as a debt due to the state.

The bill's transitional provisions provide that this prohibition applies from 12 October 2017—the date of the introduction of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017. Any payments made on or after 12 October that would be unlawful under the bill will on commencement have to be repaid to the donor within 30 days.

As recommended in Belcarra report, the amendments are modelled on the New South Wales Election Funding, Expenditure and Disclosures Act 1981. As the Electoral Act is administered by the Department of Justice and Attorney-General, I would like to thank my colleagues Leanne Robertson, Imelda Bradley and Sarah Kay, who are here today to assist and respond to any questions.

I turn now to recommendations 23 to 26, which deal with how a councillor must deal with a conflict of interest or a material personal interest. The CCC commented in the Belcarra report that the perception problems arising from donations are often compounded by councillors failing to adequately manage their conflicts of interest. The Belcarra report therefore made a number of recommendations to improve the management of councillors' conflicts of interest and the government's response supports those recommendations. The current provisions in the Local Government Act and the City of Brisbane Act relating to conflict of interest give discretion to councillors in terms of how they manage those conflicts of interest. They may decide to stay at the meeting or they may decide to leave.

The bill makes some key changes in how conflicts of interest are managed. Importantly, under the bill if a councillor declares a conflict of interest they may still stay in the meeting and participate or they may leave the meeting. If they do not leave the meeting, however, the other councillors may decide that the councillor has a conflict of interest that necessitates them leaving the meeting and the councillors may decide that that councillor should have left the meeting. If that occurs, that councillor must comply with that finding.

There are also additional requirements placed on councillors in terms of the information they provide to council in terms of a material personal interest or a conflict of interest. For example, if the councillor's personal interest matter arises because of the councillor's relationship with or receipt of a gift from another person, the bill requires the councillor to provide the following information: the name of the other person, the nature of that relationship, the value and date of receipt of any gift and the nature of the other person's interest in the matter.

Recommendation 24 of the Belcarra report relates to a situation where a councillor reasonably believes or suspects that another councillor has a material personal interest or a conflict of interest in a matter that they have not themselves declared. The bill implements recommendation 24 by providing that a councillor must report their belief or suspicion that another councillor has an undeclared material personal interest or conflict of interest, and the facts and the circumstances that have led them to that conclusion.

Recommendation 25 of the Belcarra report is that the bill provide for a suitable penalty for councillors who fail to comply with their obligations regarding conflicts of interest. The bill implements the government's response to this recommendation by providing for a number of strengthened penalties relating to conflicts of interest and material personal interest. For example, failing to inform a council meeting of one's own conflict of interest in a matter will carry a maximum penalty of 100 penalty units or one year's imprisonment. Currently, this is actually dealt with as misconduct rather than as an offence. Taking retaliatory action against a councillor who has complied with their duty to report another councillor's conflict of interest is also an offence carrying a maximum penalty of 167 penalty units or two years imprisonment. In addition, the bill provides that the new offences are integrity offences. That means a councillor found guilty of an integrity offence cannot then run as a councillor for a four-year period.

Further new offences are introduced to implement the government's response to recommendation 26 by providing that if a councillor has a material personal interest or a conflict of interest and attempts to influence another councillor or a council employee or contractor in relation to that matter, the councillor commits an offence and will face a maximum penalty of 200 penalty units or two years imprisonment. Again, these offences are integrity offences, which means that a councillor will therefore become disqualified to act as a councillor for a four-year period. I am happy to take any questions from the committee.

Mr STEVENS: Bronwyn, thank you for that clear oversight of the department's view on the bill. I note in the explanatory notes that there is no funding identified for either the policing or the enforcement of breaches. I take it that the Department of Justice and Attorney-General would look at this in terms of the funding issues. I am not sure where the department would be looking to fund this from. Given that the CCC has a budget of around $80 million and 300 staff members, how does the department propose to fund this? What is cost of this new legislation? There is no point putting in legislation if it does not have policing and enforcement. What is the cost? I see that there is an open-ended statement that the cost will be met within the budget. I think there should be some indicative costing going forward to the parliament. What would that be?

Ms Blagoev: I can comment in relation to the conflicts of interest and MPI side, but in terms of the donation ban I will defer to my colleagues from DJAG. In relation to conflicts of interest and MPIs, the department does already monitor these particular matters from an existing budget. We decide whether or not a particular situation warrants further legal advice or prosecution in terms of those councillors who have not complied with the legislative responsibilities in relation to conflict of interest and MPI. I am not expecting that situation to change. I do also appreciate that what you are probably getting at is more around the enforcement of the political donations. I might refer that to my colleagues for response.

Mrs Robertson: We do not have any costings that we are in a position to give the committee. The funding and the resourcing of the ECQ is really just a matter for the normal budget process. I cannot give you any other information because I do not have that.

CHAIR: In terms of the New South Wales act on which this bill is based, did they deal with that in a different way? How did they deal with that?

Mrs Robertson: We will have to take that on notice because I am not aware of how they managed that.

Mr JANETZKI: The banning of property developer donations in the state context was not a recommendation contained in the Belcarra report. What policy considerations fed into that particular decision?

CHAIR: Is this question regarding the policy consideration made at the executive level? That may not be appropriate for the departmental officers to answer. As I said in my opening, it may not be appropriate for them to answer those sorts of questions. You can answer as you see fit.

Mrs Robertson: My response to that would be that that would be a policy decision by government. The state does, however, have some roles in the planning process—I would note that—including that the minister has various discretions under the planning legislation. I would just make that comment.

Mr JANETZKI: Did the department consider any particular industries or any other segments in their policy considerations in their advice contained in this bill?

Mrs Robertson: When the Belcarra report was handed down the Premier indicated that it was her intention for the government to introduce legislation based on the Belcarra recommendations. The government made a policy decision in relation to the parameters of the legislation. There is really nothing further I can comment on as a departmental officer.

Mr JANETZKI: In terms of funding for the enforcement of this piece of legislation, has the department contemplated any particular guidelines to assist potential donors in the political process as to their ability to donate or not to donate? Have any guidelines been considered at this stage?

Mrs Robertson: No, the department has not. We have suggested that, given that the ECQ has the power under the bill to give advice to entities as to whether or not they are a property developer or other persons—for example, as to whether they are a close associate—as the legislation is implemented the ECQ may give consideration to that. I do not want to speak for the ECQ in this space.

Mr JANETZKI: There was no departmental policy consideration of any potential guidelines?

Mrs Robertson: No, that is right.

CHAIR: There are definitions under the act that help define these things. The New South Wales government went through a similar process with similar definitions.

Mrs Robertson: That is correct. There is precedent there. We do not have proposals at this stage to develop any guidelines.

Mr JANETZKI: Are you aware of any prosecutions ongoing in Queensland that relate to candidates for political office or actual office holders being implicated in any unlawful or potentially unlawful donation matters?

CHAIR: I remind you that if anything is before the courts that—

Mr JANETZKI: Sub judice applies, I am aware, Mr Chairman.

Mrs Robertson: The short answer is that I am not aware of any.

Mr JANETZKI: It was just my understanding that there was only one related to a Gold Coast candidate for office and trade union involvement in their campaign.

Ms BOYD: Point of order, Mr Chair. I fail to see how this is relevant to the long title of the bill and ask for your guidance.

CHAIR: The member for Toowoomba South should ask questions that are relevant to the bill.

Mr JANETZKI: Perhaps my question should be more related to policy considerations. I am very interested to understand how the department could provide guidelines for the ECQ as to potential categories of donors that may be caught by this legislation.

Mrs Robertson: Again, I reinforce, as the chair has indicated, that the legislation is based on New South Wales legislation. The tools that have been used by counterparts in New South Wales, including the commission's counterparts, would be of assistance to the commission here.

Mr JANETZKI: Okay.

Mr STEVENS: Under this legislation, if a person accepts a prohibited donation when they know it is prohibited under this legislation they are required to pay the state twice the amount. What is the test for knowledge of a donation?

CHAIR: Is that a general legal principles question?

Mr STEVENS: It is in the bill that a person knows that the donation was prohibited. From the point of view of the Department of Justice and Attorney-General, there will have to be some test or guideline as to whether it was a known prohibited donation.

Ms Kay: The offence provision is the same in both the Local Government Act and the Electoral Act. The test is 'know or ought reasonably to know'. You will note that that is a bit different from the way they have it in New South Wales. The New South Wales provision is a common law jurisdiction. We do not have a concept of mens rea; they do in New South Wales. That is whether you have the knowledge. In New South Wales, to commit the offence you have to have knowledge. In Queensland, in a code jurisdiction, we have to say whether you have knowledge.

The standard test that we put in is 'know or ought reasonably to know'. That is, either you knew definitely for sure that that was unlawful or, taking into account all of the facts, you ought reasonably to have known. It is an objective test. I think the word they use in the New South Wales provision is 'aware'—that you were aware of the facts. In the offence that we have, we use a phrase called 'know or ought reasonably to know'. That phrase is used throughout the Criminal Code and across the statute book in Queensland.

Mr STEVENS: I notice that the terminology for a property developer is a person or entity or associated person who makes a regular property development application. How does that sit with people such as architects, surveyors, engineers or town-planners? Are they property developers or are they consultants?

Mrs Robertson: Basically, to use the example of a lawyer and an accountant who acts for a property developer or someone similar to the scenario that you have mooted—

Mr STEVENS: If I can be more specific? I am referring to the people who are involved in development applications, because lawyers and accountants are not necessarily involved but most of those other people are. That is why I specifically said 'consultants', because these days every property development going through a council needs consultants. That is why I particularly highlighted those people who are involved in those applications.

Mrs Robertson: I need to qualify firstly that we cannot really give legal advice in a specific sense.

Mr STEVENS: No.

Mrs Robertson: If we take you to the bill, a close associate of a corporation under the bill includes a director or another officer of the corporation. An officer of a corporation is then defined with reference back to the Corporations Law of the Commonwealth. Section 9 of the Corporations Law of the Commonwealth defines an officer of a corporation as including a person—

In accordance with whose instructions or wishes the directors of the corporation are accustomed to act—

and this is the critical point—

(excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation).

The fact that somebody provides advice—and depending on the nature of that advice itself—in the proper performance of their functions in a professional capacity or business relationship is not of itself necessarily sufficient. However, again, I caveat that with we cannot give specific advice. There is a provision in the bill quite specifically for people to apply to the commission for advice about whether they fall under the definition of 'property developer' or 'close associate'.

Mr STEVENS: I understand that there is that opportunity. Thank you very much.

CHAIR: Is that test similarly applied in the New South Wales legislation, or is it different in Queensland because of the nature of our law?

Ms Bradley: The definitions are similar to New South Wales in that regard.

CHAIR: It does not have to be framed differently under the Queensland law?

Ms Bradley: It just goes to the definition of 'close associate' and the connection with 'officer' under the corporations legislation.

CHAIR: In this way it is matching the New South Wales legislation. Thank you for that clarification.

Mr JANETZKI: On that same topic, in terms of the broadness of the definitions of 'close associate' and 'prohibited donors', has New South Wales developed departmental guidelines to assist its equivalent of the ECQ in the interpretation of these definitions?

Ms Bradley: We would need to take that on notice.

CHAIR: Just to clarify, the question is: has the department in New South Wales helped develop guidelines for the Electoral Commission of New South Wales in applying this test? Is that the question?

Mr JANETZKI: Yes.

CHAIR: Sorry to paraphrase it.

Mr JANETZKI: The New South Wales case was quite different in that there were findings of corrupt conduct in New South Wales. I expect that there will be more guidelines that will apply there.

Mr O'CONNOR: What was the evidence base for extending the recommendation from local government level to the state level?

CHAIR: I think this might be venturing into a policy question. It also might be repetitive in that we have had the question asked and answered that, upon announcement of the legislation, the Premier announced that what applied to local government for their perceptions would also be applied to the state government. In that way, it might be both repetitive and policy. I do not know whether you want to rephrase that.

Mr O'CONNOR: I was sticking to the evidence in terms of whether there was anything that factored into that or whether it was completely a decision—

CHAIR: Unless there is something that can be added, it seems like it is addressing a policy decision of the executive.

Mr STEVENS: We mentioned earlier that a person is defined as a property developer if they make regular applications. We have mum and dad who are building a block of six flats on their property. Are they a property developer under the legislation?

Mrs Robertson: We will take that scenario that you have mooted on its face, because there could be other factors at play in particular scenarios.

Mr STEVENS: It is not a legal opinion I am looking for; it is the general—

Mrs Robertson: A mum-and-dad owner-builder will not be caught by the definition of 'property developer' unless they constitute a close associate of a property developer corporation—for example, they or their spouse is a director or officer of a property developer corporation or is a person with more than 20 per cent of voting power in a property developer corporation. Again, for the mum-and-dad scenario and people who are worried about it, the best thing is to use that provision that is in the bill around seeking the advice of the ECQ.

Mr STEVENS: Further on that, mum and dad might have a family company and be directors of that company. Is that family company a property developer?

CHAIR: We are not defining what the family company does here.

Mr STEVENS: It does not matter what a company does. For the purpose of this property that mum and dad own, for taxation reasons—and it is probably to do with family trusts and, although 'company' is the word that we are using there, through your legislative definition it may well be a family trust—they are officers of a family trust. Are people who do one-off types of things, even though they are through a company or a family trust, for definition purposes, as per the legislation, regular property developers?

Mrs Robertson: Again, the critical thing is whether the particular corporation is itself a property developer corporation. You have to go back and look at that definition of 'property developer corporation' itself as well.

Mr STEVENS: I understand, but is there a quantum of how many you have to do? If you are doing a one-off are you a property developer, or do you have to do six or 10 or 12 or 15 or 20? That is what I was trying to draw out.

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

Mr STEVENS: The commission would be giving advice. Thank you.

CHAIR: Is that test similar in the way that the New South Wales legislation framed it? Do you have some experience in its execution in New South Wales?

Mrs Robertson: Again, because it is not the offence provision—it is the definitions underpinning it—those are mirrored virtually on the New South Wales regime.

Mr STEVENS: Does that make it good?

Ms BOYD: You are asking for an opinion, Ray. That is a point of order.

CHAIR: We will move on from that.

Mr JANETZKI: Building on the New South Wales commentary, my understanding is that those laws are currently undergoing review to ascertain their efficacy or otherwise. Given that this bill has been based entirely on the New South Wales legislation, is the department concerned that there may be any changes to the New South Wales legislation that may adversely impact this bill?

Mrs Robertson: That would be a matter for the government when any review of the New South Wales legislation is made public to consider what changes, if any, should be made. That is a policy decision for the government.

Mr JANETZKI: The department is aware of those policy considerations going on in New South Wales?

Mrs Robertson: As I understand it, there is no public document in relation to the New South Wales review of its legislation. We are not aware of anything on the public record.

Ms RICHARDS: My question is about managing conflicts of interest and material personal interests. The obligations on councillors regarding conflicts of interest and material personal interests do not apply to ordinary business matters, which include establishing and amending planning schemes, which we know underpins how conflicts arise and why we are even talking about this matter. Could you explain why ordinary business has been excluded?

Ms Blagoev: Ordinary business has been excluded to ensure that councils still function. It is recognised that there are certain things, such as a council planning scheme or even just the passing of rates and the budget, that have to get done. The councillors, to be qualified, have to live in that area. It is really a recognition that there is some business as usual that absolutely has to be done in which all parties have a similar interest.

Ms RICHARDS: At the end of the day, planning schemes underpin where those decisions are made, where conflicts potentially arise. By excluding them from that process, there is a loop.

Ms Blagoev: Planning schemes themselves are excluded but, obviously, particular development applications as they come before a council are not excluded. A councillor who had a conflict of interest or an MPI in a DA would need to declare that on a case-by-case basis.

Mr STEVENS: We understand that this legislation has been born out of the Belcarra report. Does the department have a record of the number of complaints to the department in relation to property developer donations?

Ms Blagoev: We do not have that information, but we can take it on notice.

Mr STEVENS: And provide it to the committee? Thank you very much.

CHAIR: Can you restate the question?

Mr STEVENS: This legislation has been born out of the Belcarra report. My question was in relation to the number of issues, problems or complaints about property developer donations that have been made to the department of local government. They would obviously have a record of that. The department has promised to provide those to the committee.

Ms Blagoev: Just to clarify, the department will have records of complaints that have come into the department in terms of misconduct in particular. We keep records of anything that has come into the department's complaints area.

Mr STEVENS: My question is in relation to the political donations from property developers that have been banned—that is, the number of complaints in relation to that particular area that I would be looking for.

CHAIR: The point being made is that there may not be complaints about something that is not a breach. There may not be useful data on that point but, instead, the measure would be of other things.

Mr STEVENS: With respect, there will be a record in the department of complaints about property developer donations, as there will be a record of other complaints. That is what I am looking for in relation to the matters concerning this bill, not other matters.

Ms Blagoev: We will have data regarding the complaints that have come into the department under the councillor complaints framework under the Local Government Act.

Mr STEVENS: The political donations will be a part of that?

CHAIR: We will put that question on notice. As there are no further questions, I thank you very much for your appearance and for the information that you have provided today. I thank our Hansard reporters. A transcript of the proceedings will be available on the committee's parliamentary web page in due course. In regard to the questions that have been taken on notice, your responses will be required by 5 pm tomorrow, Thursday, 22 March, so that we can include them in all of our deliberations. I declare this briefing closed.

The committee adjourned at 12.32 pm.