

Government response - Operation Belcarra report: A blueprint for integrity and addressing corruption risk in local government

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10/10/17

The following acronyms are used:

LGA: Local Government Act 2009

LGEA: Local Government Electoral Act 2011

CBR: City of Brisbane Regulation 2012

LGR: Local Government Regulation 2012

LGER: Local Government Electoral Regulation 2012

EA: Electoral Act 1992

COBA: City of Brisbane Act 2010

ECQ: Electoral Commission of Queensland

No.	Recommendation	Response	Comment
1	<p>Recommendation 1</p> <p>That an appropriate Parliamentary Committee review the feasibility of introducing expenditure caps for Queensland local government elections. Without limiting the scope of the review, the review should consider:</p> <p>(a) expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities</p> <p>(b) the merit of having different expenditure caps for incumbent versus new candidates</p> <p>(c) practices in other jurisdictions.</p>	Support in principle	<p>The government will undertake a review of expenditure caps for Queensland local government elections.</p> <p>The government will consult with the Local Government Association of Queensland on these matters during the review.</p>
2	<p>Recommendation 2</p> <p>That the Local Government Electoral Act be amended to require real-time disclosure of electoral expenditure by candidates, groups of candidates, political parties and associated entities at local government elections. The disclosure scheme should ensure that:</p> <p>(a) all expenditure, including that currently required to be disclosed by third parties, is disclosed within seven business days of the date the expenditure is incurred, or immediately if the expenditure is incurred within the seven business days before polling day</p> <p>(b) all expenditure disclosures are made publicly available by the ECQ as soon as practicable, or immediately if the disclosure is provided within the seven business days before polling day.</p>	Support in principle	<p>Currently there are no electoral expenditure disclosure requirements for candidates or groups of candidates.</p> <p>The government will consider these matters as part of the review of expenditure caps for Queensland local government elections to be conducted in response to Recommendation 1.</p> <p>The government will consult with the Local Government Association of Queensland on these matters during the review.</p>
Distortion of the concept of independence			
3	<p>Recommendation 3</p> <p>That the Local Government Electoral Act be amended to:</p> <p>(a) require all candidates, as part of their nomination, to provide to the ECQ a declaration of interests containing the same financial and non-financial particulars mentioned in Schedule 5 of the Local Government Regulation 2012 and Schedule 3 of the City of Brisbane Regulation 2012, and also:</p> <ul style="list-style-type: none"> – for candidates who are currently members of a political party, body or association, and/or trade or professional organisation — the date from which the candidate has been a member – for candidates who were previously members of a political party, body or association, and/or trade or professional organisation — the name and address of the entity and the dates between which the candidate was a member. <p>Failure to do so would mean that a person is not properly nominated as a candidate. For the purposes of this requirement, Schedule 5, section 17 of the Local Government Regulation and Schedule 3, section 17 of the City of Brisbane Regulation should apply to the candidate as if they are an elected councillor.</p> <p>(b) require candidates to advise the ECQ of any new interest or change to an existing interest within seven business days, or immediately of the new interest or change to an existing interest occurs within the seven business days before polling day.</p> <p>(c) make it an offence for a candidate to fail to declare an interest or to fail to notify the ECQ of a change to an interest within the required timeframe, with prosecutions able to be started at any time within four years after the offence was committed, consistent with the current limitation period for</p>	Support in principle	<p>The government supports in principle extending the requirements to publish and maintain a Register of Interests to all candidates, which will establish a level playing field.</p> <p>The Register of Interest requirements for all candidates should be aligned with the current Register of Interest requirements applying to existing councillors. Under the current arrangements for Registers of Interest, the timeframe for updating a councillor's Register of interests is 30 days.</p> <p>Consideration will be given as to whether the updating requirement should be shortened. Further consideration will also be given to whether it is appropriate to include a time frame on former memberships of political parties, bodies or associations.</p> <p>The LGA and COBA already establish as an offence for failure to correct/update a Register of Interest.</p>

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	offences about disclosure returns. A suitable penalty should apply, including possible removal from office.		
4	<p>Recommendation 4 That the ECQ:</p> <p>(a) publish all declarations of interests on the ECQ website as soon as practicable after the close of nominations for an election</p> <p>(b) ensure that any changes to a candidate's declaration of interests are published as soon as practicable after being notified, or immediately if advised within the seven business days before polling day.</p>	Support	<p>The government supports this recommendation, which is consistent with the intent of the real-time disclosure of electoral gifts and donations that has already been established.</p> <p>ECQ will give consideration to how best to implement this recommendation.</p>
Ambiguity about the nature of relationships between candidates			
5	<p>Recommendation 5 That:</p> <p>(a) the definition of a group of candidates in the Schedule of the Local Government Electoral Act be amended so that a group of candidates is defined by the behaviours of the group and/or its members rather than the purposes for which the group was formed. For example:</p> <p><i>A group of candidates means a group of individuals, each of whom is a candidate for the election, where the candidates:</i></p> <ul style="list-style-type: none"> - receive the majority of their campaign funding from a common or shared source; or - have a common or shared campaign strategy (e.g. shared policies, common slogans and branding); or - use common or shared campaign resources (e.g. campaign workers, signs); or - engage in co-operative campaigning activities, including using shared how-to-vote cards, engaging in joint advertising (e.g. on billboards) or formally endorsing another candidate. <p>(b) consequential amendments be made to the Local Government Electoral Act, including with respect to the recording of membership and agents for groups of candidates (ss. 41–3), to account for the possibility that a group of candidates may be formed at any time before an election, including after the cut-off for candidate nominations.</p>	Support	This recommendation will provide greater transparency on the intention by candidates to campaign and (if elected) operate as a collective. It will be important to ensure that a behavioural based approach does not unintentionally capture localised and unplanned cooperation that occurs frequently during campaigns, particularly in regional and remote areas.
Obscuring of relationships between donors and candidates			
6	<p>Recommendation 6 That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to state that, for a gift derived wholly or in part from a source [other than a person identified by s. 109(b)(iii)] intended to be used for a political purpose related to the local government election, the relevant details required also include the relevant details of each person or entity who was a source of the gift. Section 120(6) regarding loans should be similarly amended to reflect this requirement.</p>	Support in principle	<p>The government supports this recommendation in principle, however further analysis on the breadth and scope of the proposed amendment is required.</p> <p>Further consideration will also be given to how the recommendation can be practically monitored and enforced.</p>
7	<p>Recommendation 7 That the Local Government Electoral Act be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the person or entity required to lodge a return under Part 6 and for the purpose of proving any offence against Part 9, Divisions 5–7.</p>	Support	The government supports this recommendation as it is a reasonable requirement and it enhances transparency.
8	<p>Recommendation 8 That the Local Government Electoral Act be amended to require all gift recipients, within seven business days of receiving a gift requiring a third party return under section 124 of the LGE Act, to notify the donor of their disclosure obligations. A suitable penalty should apply.</p>	Support	The government supports this recommendation as it is a reasonable requirement and it enhances transparency. The amendment will place the onus on the candidate to ensure notification occurs.
9	<p>Recommendation 9</p>	Support	The government supports this recommendation along with an emphasis on ECQ information to candidates (or for the use by candidates) to be easily understandable.

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	That the ECQ develop a proforma letter or information sheet that gift recipients can give to donors that explains third parties' disclosure obligations and how these can be fulfilled.		
10	Recommendation 10 That the Local Government Electoral Act be amended to require candidates, groups of candidates and third parties to prospectively notify any proposed donor of the candidate's, group's or third party's disclosure obligations under section 117, 118 or 125 of the LGE Act.	Support	The government supports this recommendation. Given that it requires proactive steps to notify prospective donors of the fact their donation will be publicly disclosed by candidates, groups of candidates or third parties, consideration will be given to the practical steps required to implement this recommendation.
11	Recommendation 11 That the ECQ revises the handbooks and any other written information it gives candidates, third parties or others about their obligations in local government elections to ensure that these obligations are clearly communicated in plain English.	Support	The government supports this recommendation, noting that resource implications for the ECQ will be considered as part of implementation.
12	Recommendation 12 That the Local Government Electoral Act be amended to make attendance at a DILGP information session a mandatory requirement of nomination.	Support	The government supports this recommendation. Further consideration will be given to: <ul style="list-style-type: none"> • The content and timing of information sessions; • Whether it would be more appropriate for the ECQ to conduct these sessions; • Measures to ensure attendance and engagement by candidates is monitored.
13	Recommendation 13 That the ECQ amends a) its paper disclosure return forms and b) the Electronic Disclosure System submission form (as relevant to local government) to ensure they: (a) adequately and accurately reflect all relevant requirements in Part 6 of the Local Government Electoral Act (b) contain clear and sufficiently detailed instructions to users to facilitate their compliance with these requirements	Support	This government supports this recommendation in the interests of ensuring all candidates have access to accurate, contemporary information on disclosure requirements. Material should be available online, in a format that is easily accessible and in plain English.
14	Recommendation 14 That sections 126 and 127 of the Local Government Electoral Act be amended to expressly prohibit candidates and groups of candidates from using a credit card to pay for campaign expenses. Candidates would be permitted to use debit cards attached to their dedicated account.	Support in principle	The government supports in principle this recommendation, as allowing the use of the debit card linked to the campaign account should overcome the difficulties that could arise from prohibiting the use of credit cards. It appears the CCC's underlying concerns relate to the reconciliation of individual purchases made by a credit card against expenditure from the campaign account. Further consideration will be given to how the recommendation can be practically implemented.
15	Recommendation 15 That: (a) section 27(2) of the Local Government Electoral Act be amended to require candidates' nominations to also contain the details of the candidate's dedicated account under section 126 of the LGE Act (b) section 41(3) of the Local Government Electoral Act be amended to require the record for a group of candidates to also state the details of the group's dedicated account under section 127 of the LGE Act.	Support	The government supports this recommendation as it is a reasonable requirement and improves transparency and accountability with the election monitoring process. This is not an onerous requirement on candidates or groups of candidates, and it will necessitate that they have a dedicated campaign account in place at the time of nomination.
16	Recommendation 16 That the Local Government Electoral Act be amended to: (a) prohibit candidates, groups of candidates, third parties, political parties and associated entities from receiving gifts or loans in respect of an election within the seven business days before polling day for that election and at any time thereafter (b) state that, if a candidate, group of candidates, third party, political party or associated entity receives a gift or loan in contravention of the above, an amount equal to the value of the gift or loan is payable to the State and may be recovered by the State as a debt owing to the local government, consistent with the provisions relating to accepting anonymous donations [s. 119(4), LGE Act] and loans without prescribed records [s. 121(4), LGE Act].	Support	The government supports that the prohibition on receiving gifts or loans should apply from seven business days before polling day to 30 days after polling day (this aligns with the end of the disclosure period which is 30 days after polling day). Further consideration will be given to ensure this does not unintentionally impede a candidate from receiving gifts and donations in the lead up to a subsequent by-election or next quadrennial election.

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17	<p>Recommendation 17 That the ECQ: (a) makes the maximum amount of donation disclosure data available on its website (b) provides comprehensive search functions and analytical tools to help users identify and examine patterns and trends in donations (c) provides information to enhance users' understanding of donation disclosure data and facilitate its interpretation</p>	Support	The government supports this recommendation given the inherent value in having the maximum amount of information on disclosure arrangements published in an easily accessible format.
18	<p>Recommendation 18 That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to include: (a) for a gift made by an individual, the individual's occupation and employer (if applicable) (b) for a gift purportedly made by a company, the names and residential or business addresses of the company's directors (or the directors of the controlling entity), and a description of the nature of the company's business (c) for all gifts, a statement as to whether or not the person or other entity making the gift, or a related entity, currently has any business with, or matter or application under consideration by, the relevant council. Section 120(6) regarding loans should be similarly amended to reflect these requirements.</p>	Support	<p>The government supports this recommendation as it will lead to greater transparency on the relationship between a donor and a council.</p> <p>Further analysis will be undertaken to clarify:</p> <ul style="list-style-type: none"> • scope of details to be disclosed; • privacy implications for individuals; • who makes the determination (for an individual) as to whether their occupation and employer is applicable and whether failure to disclose should be an offence.
19	<p>Recommendation 19 That section 124(3)(b)(iii) of the Local Government Electoral Act be amended to require the following details to be stated in a third party's return about expenditure, in lieu of the purpose of the expenditure as currently required: (a) whether the expenditure was used to benefit/support a particular candidate, group of candidates, political party or issue agenda, or to oppose a particular candidate, group of candidates, political party or issue agenda (b) the name of the candidate, group of candidates, political party or issue agenda that the expenditure benefitted/supported or opposed (c) the name and residential or business address of the service provider or product supplier to whom the expenditure was paid (if applicable).</p>	Support in principle	<p>The government supports the overall intent of this recommendation as it provides greater clarity on the intent and influence of third party donations.</p> <p>Further consideration will be given to item (c) naming service providers or product suppliers, given this would potentially result in the identification of small, local businesses who may be unaware they are selling goods and services for a political purpose (for example, a butcher who sells meat to a person hosting a fundraising event for a candidate).</p>
Perceptions of compromised council processes and decision-making			
20	<p>Recommendation 20 That the Local Government Electoral Act the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers. This prohibition should reflect the New South Wales provisions as far as possible, including in defining a property developer (s. 96GB, <i>Election Funding, Expenditure and Disclosures Act 1981</i>), making a range of donations unlawful, including a person making a donation on behalf of a prohibited donor and a prohibited donor soliciting another person to make a donation (s. 96GA), and making it an offence for a person to circumvent or attempt to circumvent the legislation (s. 96HB). Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors.</p>	Support	<p>The government supports this recommendation.</p> <p>The recommended prohibition on property developer donations will be modelled on section 96GA and 96GB of the <i>Election Funding, Expenditure and Disclosures Act 1981</i> (NSW).</p>
21	<p>Recommendation 21 That the Local Government Act and the City of Brisbane Act be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the councillor for the purposes of Chapter 6, Part 2, Divisions 5 and 6.</p>	Support	The government supports this recommendation as it imposes a reasonable requirement on a councillor who had accepted electoral gifts and donations.

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22	<p>Recommendation 22 That the <i>Planning Act 2016</i> be amended to require that any application under Chapters 2 to 5:</p> <p>(a) include a statement as to whether or not the applicant or any entity directly or indirectly related to the applicant has previously made a declarable gift or incurred other declarable electoral expenditure relevant to an election for the local government that has an interest in the application</p> <p>(b) any application made to council by a company include the names and residential or business addresses of the company's directors (or the directors of the controlling entity).</p> <p>A local government has an interest in the application if it or a local government councillor, employee, contractor or approved entity is: an affected owner; an affected entity; an affected party; an assessment manager; a building certifier; a chosen assessment manager; a prescribed assessment manager; a decision-maker; a referral agency; or a responsible entity.</p>	Support in principle	<p>The government supports in principle this recommendation as it strengthens the transparency of donations and raises awareness at the point where key planning decisions (and their attendant commercial outcomes) are considered.</p> <p>Further analysis and consideration will be undertaken on the implementation arrangements including the scope of the requirements, penalties for non-compliance and how these are managed and enforced.</p>
23	<p>Recommendation 23 That section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:</p> <p>(a) whether the councillor has a real or perceived conflict of interest in the matter</p> <p>(b) whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.</p> <p>The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting.</p>	Support	The government supports strengthening the processes associated with conflicts of interest.
24	<p>Recommendation 24 That the Local Government Act and the City of Brisbane Act be amended to:</p> <p>(a) require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the Chief Executive Officer of the council</p> <p>(b) require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting</p>	Support	<p>The government supports this recommendation and the requirement to report to the chairperson of a meeting.</p> <p>It should be noted that the requirement to report to the chief executive officer (CEO) is likely to be unnecessary as the CEO has no formal role in a council meeting.</p> <p>A legislative amendment is already scheduled to be progressed in a separate Bill to parliament about councillor conduct, that (if passed) will establish an obligation on councillors to report inappropriate conduct or misconduct.</p>
25	<p>Recommendation 25 That the Local Government Act and the City of Brisbane Act be amended to provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office.</p>	Support	<p>The government supports strengthening the processes associated with conflicts of interest.</p> <p>It is noted that Section 180 of the LGA currently contains penalties for failing to declare conflicts of interest, including possible removal from office.</p>
26	<p>Recommendation 26 That the Local Government Act and the City of Brisbane Act be amended so that, where a councillor with a real or perceived conflict of interest in a matter it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to the matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.</p>	Support	The government supports strengthening the processes associated with conflicts of interest.
27	<p>Recommendation 27 That the Local Government Liaison Group recommended by the Councillor Complaints Review Panel be established as soon as practicable</p>	Support	The Local Government Liaison Group has already been established.

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			The Department of Infrastructure, Local Government and Planning will extend an invitation to the Integrity Commissioner to join this group.
28	<p>Recommendation 28</p> <p>That:</p> <p>(a) the advisory and public awareness functions of the Queensland Integrity Commissioner under the <i>Integrity Act 2009</i> be extended to local government councillors</p> <p>(b) or alternatively, a separate statutory body be established for local government with advisory and public awareness functions equivalent to those of the Queensland integrity Commissioner under the <i>Integrity Act 2009</i></p>	Support option (a)	The government supports the extension of the Integrity Commissioner's role. Resource implications for the Office of the Integrity Commissioner and awareness of the local government operating environment will be considered.
Limited compliance monitoring and enforcement			
29	<p>Recommendation 29</p> <p>That the Local Government Electoral Act be amended so that prosecutions for offences related to dedicated accounts (ss. 126 and 127) and groups of candidates (s. 183) may be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns.</p>	Support in principle	<p>The government supports in principle this recommendation.</p> <p>Consideration will be given to the possibility of complaints being deliberately withheld and then made in the months leading up to the subsequent local government election.</p>
30	<p>Recommendation 30</p> <p>That the penalties in the Local Government Electoral Act for offences including funding and disclosure offences be increased to provide an adequate deterrent to non-compliance. For councillors, removal from office should be considered.</p>	Support in principle	<p>The government supports in principle this recommendation.</p> <p>A review will be undertaken of all relevant offences and penalties prior to finalisation and implementation.</p>
31	<p>Recommendation 31</p> <p>That the ECQ be given a specific legislative function to help ensure integrity and transparency in local government elections and that:</p> <p>(a) how the ECQ is to perform this function be specified in legislation; this should include engaging with participants in local government elections to promote their compliance with the requirements of the Local Government Electoral Act, investigating offences under the Local Government Electoral Act, and taking enforcement actions against candidates, third parties and others who commit offences</p> <p>(b) the ECQ be required to publicly report on the activities conducted under this function after each local government quadrennial election, including reporting on the outcomes of its compliance monitoring and enforcement activities</p> <p>(c) the ECQ be given adequate resources to perform this function.</p>	Support	The government supports this recommendation.