



Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019

Report No. 26, 56th Parliament
Economics and Governance Committee
June 2019

Economics and Governance Committee

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Abbreviations

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|------------------------------|---|
| ATM | automated teller machine |
| BCC | Brisbane City Council |
| Belcarra Report | Crime and Corruption Commission, <i>Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government</i> , October 2017 |
| Belcarra Stage 1 Act | <i>Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018</i> |
| Bill | Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 |
| BRU | Brisbane Residents United Inc |
| CCC | Crime and Corruption Commission |
| CEO | chief executive officer |
| COBA | <i>City of Brisbane Act 2010</i> |
| Commissioner | Electoral Commissioner |
| committee | Economics and Governance Committee |
| Conduct Tribunal | Councillor Conduct Tribunal |
| Councillor Complaints Report | Independent Councillor Complaints Review Panel (Dr David Solomon, Noel Playford and Gary Kellar), <i>Councillor Complaints Review: A fair, effective and efficient framework</i> , January 2017 |
| Criminal Code | <i>Criminal Code Act 1899</i> |
| department | Department of Local Government, Racing and Multicultural Affairs |
| ECQ | Electoral Commission of Queensland |
| EDO Qld | Environmental Defenders Office (Qld) Inc |
| EDS | Electronic Disclosure System |
| FLPs | fundamental legislative principles |
| FNQROC | Far North Queensland Regional Organisation of Councils |
| ICCRP | Independent Councillor Complaints Review Panel |
| JR Act | <i>Judicial Review Act 1991</i> |
| LGA | <i>Local Government Act 2009</i> |
| LGAQ | Local Government Association of Queensland |
| LGEA | <i>Local Government Electoral Act 2011</i> |
| LGER | Local Government Electoral Regulation 2012 |
| LSA | <i>Legislative Standards Act 1992</i> |
| Minister | Hon Stirling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs |

| | |
|---------------------|---|
| NQROC | North Queensland Regional Organisation of Councils |
| NWQROC | North West Queensland Regional Organisation of Councils |
| OIA | Office of the Independent Assessor |
| OQPC | Office of the Queensland Parliamentary Counsel |
| OSCAR | Organisation Sunshine Coast Association of Residents Inc |
| Planning Act | <i>Planning Act 2016</i> |
| POQA | <i>Parliament of Queensland Act 2001</i> |
| Property Council | Property Council of Australia |
| QLGRA | Queensland Local Government Reform Alliance Inc |
| QLS | Queensland Law Society |
| RTI Act | <i>Right to Information Act 2009</i> |
| Soorley Report | Independent Panel (James Soorley, Wayne Kratzmann and Pam Parker), <i>A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election</i> , March 2017 |
| Standing Orders | Standing Rules and Orders of the Legislative Assembly |
| UK | United Kingdom |
| Wildlife Queensland | Wildlife Queensland Gold Coast and Hinterland Branch |

All Acts are Queensland Acts unless otherwise specified.

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019.

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

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

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Recommendation 1

3

The committee recommends the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

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

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

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

1.2 Inquiry process

The Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee for examination on 1 May 2019. The committee was required to report to the Legislative Assembly on the Bill by 21 June 2019.

During its examination of the Bill, the committee:

- invited written submissions from the public, identified stakeholders and email subscribers⁴ and received 33 submissions (a list of submitters is provided at **Appendix A**)
- received a written briefing on the Bill from the Department of Local Government, Racing and Multicultural Affairs (department), prior to a public briefing from departmental officials on 13 May 2019 (a list of officers who appeared at the briefing is provided at **Appendix B**)
- held a public hearing in Brisbane on 27 May 2019, which included the use of videoconference facilities to engage with key regional stakeholders in Townsville (a list of witnesses who appeared at the hearing is at **Appendix B**), and
- requested and received written advice from the department on issues raised in submissions on the Bill.

Copies of the material published in relation to the committee's inquiry, including the submissions, transcripts and written advice, are available on the committee's inquiry webpage.⁵

1.3 Policy objectives of the Bill

The Bill is the second of three Bills designed to implement the Government's response to the recommendations of the Crime and Corruption Commission's (CCC) report *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Belcarra Report),⁶ as well as seeking to continue a broader, rolling local government reform agenda 'guided by four key principles

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

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

³ POQA, s 93(1).

⁴ The committee contacted over 160 identified stakeholder groups and individuals and over 900 email subscribers to invite submissions on the Bill.

⁵ <https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/LGElectoralStg2ofBel2019>. All web references in this report were accurate as at 17 June 2019.

⁶ Crime and Corruption Commission (CCC), *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, October 2017, <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1861.pdf>

of integrity, transparency, diversity (reflecting electoral diversity) and consistency, as appropriate, with State and Commonwealth electoral and governance frameworks'.⁷

The objectives of the Bill, as outlined in the explanatory notes, are to implement:

- the government's policy in relation to a number of remaining recommendations of the Belcarra Report, following the enactment of the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*⁸
- the government's response to a number of recommendations of the inquiry report of the Independent Panel: *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election* (Soorley Report),⁹ and
- other significant reforms to improve diversity, transparency, integrity and consistency in the local government system, decision making, and local government elections.¹⁰

1.4 Government consultation on the Bill

In his explanatory speech, the Minister stated that the Bill represents the results of '12 months of significant consultation with the community and stakeholders':¹¹

*Personally, I have spoken to the majority of Queensland's mayors and many of the 564 councillors across our state about the local government reform process. Since April last year, officers of the Department of Local Government, Racing and Multicultural Affairs have conducted in excess of 60 stakeholder engagements to discuss proposed reforms. These stakeholders have included the Local Government Association of Queensland, the Local Government Managers association, the Electoral Commission of Queensland, mayors, councillors, chief executive officers [CEOs] and various community and ratepayer groups.*¹²

The explanatory notes state that the resulting reform proposals were outlined in an information paper published on the department's website in March 2019, and distributed to mayors, CEOs, elected representatives, community organisations and industry stakeholders.¹³ The department also reported having held live webinars on the proposed reforms¹⁴ and publishing webinar materials on its website, as well as establishing a local government reform hotline and dedicated email address for stakeholder questions and feedback.¹⁵

The Minister reported that the department had 'listened closely' to stakeholder feedback and that this feedback had 'strongly shaped' the final provisions of the Bill.¹⁶ The explanatory notes acknowledge,

⁷ Explanatory notes, p 1; Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division, Department of Local Government, Racing and Multicultural Affairs, public briefing transcript, Brisbane, 13 May 2019, p 1.

⁸ The *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* implemented the government's response to recommendation 20 and recommendations 23 to 26, to respectively ban political donations from property developers and strengthen the processes associated with the management of councillor conflicts of interest (including penalties for non-compliance).

⁹ Independent Panel (James Soorley, Wayne Kratzmann and Pam Parker), *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election*, March 2017 (Soorley Report), <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T984.pdf>

¹⁰ Explanatory notes, p 1.

¹¹ Hon Stirling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs (Minister), explanatory speech, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1325.

¹² Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1325.

¹³ Explanatory notes, p 58.

¹⁴ The explanatory notes advise that more than 200 users logged in to the live webinars on the proposed reforms; explanatory notes, p 58.

¹⁵ Explanatory notes, pp 58-59.

¹⁶ Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1328.

however, that there are conflicting views on certain provisions or aspects of the reforms.¹⁷ Specifically, the explanatory notes report that:

- the Local Government Association of Queensland (LGAQ) does not support the Bill, having raised concerns about a number of particular amendments, including the Bill's provision for full preferential voting for mayors and single councillor divisions, and changes to mayoral powers relating to the issuing of directions to senior executives and the appointment of senior executive employees¹⁸
- the Brisbane City Council (BCC) supports the Bill's extension of the LGA's councillor complaints framework to the BCC, but would prefer that an independent panel consider allegations of inappropriate conduct, rather than the local government itself, and
- the Local Government Managers Australia (Queensland) 'broadly supports' the Bill but has raised concerns about the proposed introduction of an offence for CEOs failing to provide requested advice to councillors within 10 days (or 20 days in special circumstances).¹⁹

The explanatory notes state that the Electoral Commission of Queensland (ECQ) and the CCC support the Bill.²⁰

1.5 Should the Bill be passed?

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

After examination of the Bill and its policy objectives, and consideration of the information provided by the department, submitters, and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 be passed.

¹⁷ Explanatory notes, p 59.

¹⁸ Explanatory notes, p 59.

¹⁹ Explanatory notes, p 59.

²⁰ Explanatory notes, p 59.

2 Background to the Bill

2.1 Legislative framework

The *Electoral Act 1992* (Electoral Act) and the *Local Government Electoral Act 2011* (LGEA) govern the conduct of state and local government elections in Queensland, providing for a range of matters such as the distribution of electorates, enrolment and voting, the registration of political parties, election funding and disclosure requirements, and the establishment of the ECQ to impartially administer these electoral processes and matters.²¹

Local government administration is governed primarily by the *Local Government Act 2009* (LGA), with the *City of Brisbane Act 2010* (COBA) providing specifically for the constitution of the BCC and ‘the unique nature and extent of its responsibilities and powers’.²²

This legislative framework is designed to ensure transparent elections and provide a system of local government that is ‘accountable, effective, efficient and sustainable’.²³

2.2 Belcarra Report

The CCC commenced Operation Belcarra in September 2016 after receiving complaints about the conduct of candidates for several councils during the 2016 Queensland local government elections.²⁴ The objectives of Operation Belcarra were to:

- determine whether candidates had committed offences under the LGEA that could constitute corrupt conduct, and
- examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government, with a view to identifying strategies or reforms to help prevent or decrease corruption risks and increase public confidence.²⁵

In conducting Operation Belcarra, the CCC found ‘widespread non-compliance with legislative obligations relating to local government elections and political donations ... largely caused by a deficient legislative and regulatory framework’.²⁶

The CCC’s resulting Belcarra Report, which was tabled in the Legislative Assembly in October 2017, made 31 recommendations ‘to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making’ (see **Appendix C**).²⁷

The Government’s response to the Belcarra Report supported, or supported in principle, all 31 of the report recommendations.²⁸

The *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Belcarra Stage 1 Act), which received assent on 21 May 2018, represented the first stage of implementation of the actions identified in the government response. The Belcarra Stage 1 Act implemented the government’s response to five of the 31 recommendations by:

- banning donations from property developers for candidates, groups of candidates, third parties, political parties and councillors (recommendation 20), and

²¹ Electoral Act, pts 3, 4, 6, 7.

²² COBA, s 3(1).

²³ LGEA, s 3; LGA, s 3; COBA, s 3.

²⁴ Belcarra Report, p 2.

²⁵ Belcarra Report, pp 3-4; explanatory notes, p 2.

²⁶ Belcarra Report, p viii.

²⁷ Belcarra Report, p viii.

²⁸ Queensland Government, *Government response – Operation Belcarra report: A blueprint for integrity and addressing corruption risk in local government*, October 2017, <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1960.pdf>; Explanatory notes, p 2.

- strengthening the processes associated with the management of councillor conflicts of interest and penalties for non-compliance (recommendations 23 to 26).²⁹

This Bill represents the second stage of reform, proposing to implement the government's policy in relation to a further 16 Belcarra Report recommendations:

- recommendation 2 (real-time disclosure of electoral expenditure)
- recommendations 3 and 4 (disclosure of candidate interests as a condition of nomination)
- recommendation 5 (record of membership and behaviour of groups of candidates)
- recommendations 6, 18 and 19 (additional details for disclosures about gifts, loans and third-party expenditure for political activities)
- recommendations 7 and 21 (deeming election participants and councillors to have knowledge of the original source of electoral gifts or loans)
- recommendation 8 (all gift recipients to notify donors of the donor's disclosure obligations)
- recommendation 10 (prospective notification to proposed donors of recipients' disclosure obligations)
- recommendation 12 (mandatory attendance at training session prior to nomination as a candidate)
- recommendations 14 and 15 (restrictions on the use of dedicated accounts for candidates and groups of candidates and providing details of dedicated accounts upon nomination), and
- recommendations 29 and 30 (increasing penalties, including by prescribing additional integrity offences and amending limitation periods for particular offences).³⁰

2.3 Soorley Report

In October 2016, an Independent Panel was established to undertake an inquiry into the performance of the ECQ's conduct of:

- the 2016 local government elections,
- the referendum on fixed four-year terms, and
- the by-election for the state seat of Toowoomba South.³¹

The Independent Panel, which was chaired by former Brisbane Lord Mayor Jim Soorley, handed down its final report in March 2017 (Soorley Report).

The Soorley Report outlined a range of issues with the administration of the three polls, including problems with postal voting and the organisation of the ballot process on the ground, leading to reduced voter participation and delays in vote counting and the finalisation of the election results.³² To address these issues, the Independent Panel made 74 recommendations, including recommendations relating to operational matters for the ECQ, and recommendations of a policy and legislative nature for the government's consideration.³³

The Bill proposes to implement the government's response to four of the Soorley Report recommendations:

- recommendation 41 (earlier timeframes for receipt of an application for a postal vote)

²⁹ Explanatory notes, p 2; department, correspondence dated 9 May 2019, p 1.

³⁰ Explanatory notes, p 2; department, correspondence dated 9 May 2019, p 2.

³¹ Soorley Report, p 11.

³² See, for example: Soorley Report, pp 14-15, 25-27, 30, 37.

³³ Explanatory notes, p 3; department, correspondence dated 9 May 2019, p 2.

- recommendation 44 (amended process for local governments to apply to the Minister for a local government election to be held by postal ballot)
- recommendation 61 (pre-election processing of postal votes), and
- recommendation 74 (amendments relating to operational electoral matters).³⁴

2.4 Government reform agenda

In addition to implementing certain recommendations of the Belcarra Report and the Soorley Report, the Bill contains a range of ‘other strategies identified by the government to strengthen integrity in the system of local government’.³⁵ In this respect the Minister stated that Bill ‘is more than just a response’ to the two reports, serving also as ‘a continuation of the government’s rolling local reform agenda to further improve accountability, transparency, integrity and consistency in the local government system, decision-making and local government’.³⁶

Many of the additional reforms were described by the department as having emerged through stakeholder consultation and related review processes. In terms of input from local governments, the department advised that since the implementation of a number of amendments to the local government framework in 2012 and again more recently, it has received ‘feedback from councillors and stakeholders about how they have worked on the ground’.³⁷ This has included the identification of certain provisions that have been a source of ‘significant confusion’ or that do ‘not reflect’ the way processes are carried out in practice, pointing to the need for further refinements to the system.³⁸

When we looked at the Crime and Corruption Commission recommendations, we could see things that needed some extra provisions to help them, to make it a whole package around transparency and accountability in local government. ...

We have a regional network of officers who go out and talk to councils every day and they bring something back, and we keep that list... in terms of Belcarra and Soorley, once you start on some very specific recommendations, there were all of these matters over here that we did not feel that we could ignore as they tied into the integrity reforms...³⁹

Other cited drivers of the Bill’s additional reform proposals include:

- the findings of the CCC’s Operation Windage,⁴⁰ which identified various local government culture and corruption risks when investigating allegations of corrupt conduct within Ipswich City Council⁴¹
- a review of the councillor complaints framework which commenced operation in December 2018, as part of the government’s response to the legislative recommendations of the Independent Councillor Complaints Review Panel (ICCRP),⁴² including input from the Independent Assessor charged with investigating and assessing complaints about councillor conduct under the new framework⁴³

³⁴ Explanatory notes, p 3; department, correspondence dated 9 May 2019, p 2.

³⁵ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 1.

³⁶ Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, pp 1326-1327.

³⁷ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 5.

³⁸ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, pp 2, 5.

³⁹ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 7.

⁴⁰ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 5.

⁴¹ CCC, *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)*, August 2018.

⁴² Independent Councillor Complaints Review Panel (Dr David Solomon, Noel Playford, and Gary Kellar) (ICCRP), *Councillor Complaints Review: A fair, effective and efficient framework*, Report by the Independent Councillor Complaints Review Panel, January 2017.

⁴³ Department, correspondence dated 20 May 2019, pp 7-11.

- community complaints,⁴⁴ and
- government policy.⁴⁵

In relation to the local government system and decision-making, the explanatory notes state that the Bill's additional amendments include provisions to:

- clarify and further strengthen how councillors' conflicts of interest are managed
- introduce new requirements relating to councillors' registers of interests, to align with the requirements applying to state members of Parliament for statements of interests
- apply the LGA councillor complaints framework to the BCC and make amendments to framework, including to streamline investigations where alleged corrupt conduct of a local government employee is linked to alleged corrupt conduct of a councillor, or where alleged inappropriate conduct and misconduct of a councillor are linked
- strengthen the existing state intervention powers in chapter 5, part 1 of the LGA and apply the full suite of LGA state intervention provisions to the BCC
- amend the powers of mayors (other than for the BCC) in relation to budgets, the appointment of senior executive employees, and directions to the CEO and senior executive employees, as well as providing for a record of directions from the mayor to the CEO
- improve access to information for all councillors and provide for greater transparency regarding BCC decision-making
- prescribe additional decisions that councils are prohibited from making during a caretaker period, and extend the prohibition on publishing or distributing election material during a caretaker period to local government-controlled entities
- clarify the status of suspended councillors in relation to their absence from local government meetings, and
- clarify that a proposed 'local government change' could request multi-member divisions.⁴⁶

In relation to local government elections, the Bill also proposes to amend the LGEA to:

- mandate full-preferential voting for mayoral and single councillor elections
- strengthen the election gift disclosure requirements for sitting councillors and the election expenditure disclosure requirements for third parties, and
- achieve better alignment between state and local government elections and make operational improvements and support efficiencies in the local government electoral system, including by:
 - allowing prisoners who are serving a sentence of less than three years imprisonment to vote, consistent with the Commonwealth position following the High Court decision in *Roach v Electoral Commission [2007] HCA 43*
 - requiring the ECQ to publish certain election information on its website
 - making elector information available to political parties and councillors on request
 - allowing the returning officer or the presiding officer for a polling booth to adjourn or temporarily suspend polling at a polling booth in case of an emergency that will temporarily interrupt or obstruct the taking of the poll, including a serious threat of a riot or open violence, a serious risk to the health and safety of persons at the polling booth, or another emergency, and
 - various other changes to support more flexible administration of voting.⁴⁷

⁴⁴ Department, correspondence dated 20 May 2019, p 12.

⁴⁵ Department, correspondence dated 20 May 2019, pp 3, 4, 7, 12, 13, 14.

⁴⁶ Explanatory notes, p 4; department, correspondence dated 9 May 2019, p 3.

⁴⁷ Explanatory notes, pp 4, 20; department, correspondence dated 9 May 2019, pp 2-3.

3 Belcarra Report reforms

3.1 Electoral funding and financial disclosure requirements

The Bill proposes a range of amendments to electoral funding and financial disclosure requirements to implement the government's response to Belcarra Report recommendations 2, 6, 7, 8, 10, 14, 15, 18, 19 and 21.

3.1.1 Real-time disclosure of electoral expenditure and summary expenditure returns

The Bill implements the government's response to Belcarra Report recommendation 2 by proposing to amend the LGEA to require 'real-time' disclosure of electoral expenditure of \$500 or more incurred by candidates, groups of candidates, registered political parties and associated entities during the disclosure period for the election.⁴⁸

The disclosure period is defined under the LGEA as:

- for candidates who were candidates in an election held within five years before the polling day for the current election: the period commencing 30 days after polling day for the most recently held election for which the candidate was also a candidate, and ending 30 days after the polling day for the current election⁴⁹
- for groups of candidates: the period commencing 30 days after polling day for the last quadrennial election, and ending 30 days after the polling day for the current election,⁵⁰ and
- for other candidates: the period commencing on the earlier of the day on which the person announces their candidacy or the day on which they nominate as a candidate, and ending 30 days after the polling day for the election.⁵¹

Amendments contained in the Bill would mean that the commencement of the disclosure period for other candidates may also be triggered on 'the day the person otherwise indicates the person's intention to be a candidate in the election, including, for example, by accepting a gift made for the purpose of the election'.⁵²

The Bill does not provide a timeframe for 'real-time disclosure', leaving the 'disclosure date' by which the expenditure return must be given to the ECQ to be specified in regulation. However, the department has advised that the accompanying regulation would set the disclosure timeframe as being within seven days after the electoral expenditure was incurred, or within 24 hours during the seven business days prior to polling day.⁵³

The Bill defines electoral expenditure as expenditure incurred on, or a gift in kind given, that consists of:

- broadcasting, publishing or displaying a political advertisement, or
- producing and distributing a political advertisement, or
- carrying out an opinion poll or other election research during the election for the purposes of promoting or opposing electoral participants, or otherwise influencing voting.⁵⁴

⁴⁸ Bill, cl 238, s 124.

⁴⁹ LGEA, s 114.

⁵⁰ LGEA, s 115.

⁵¹ LGEA, s 116.

⁵² Bill, cl 221, s 106A.

⁵³ Department, *Local Government Reforms: Key amendments currently under consideration*, March 2019, p 10; department, *Local government reform: frequently asked questions*, webpage, <https://www.dlgrma.qld.gov.au/local-government-reform/frequently-asked-questions.html#reform>.

⁵⁴ Bill, cl 227, s 113(A)(6); cl 238, s 123.

The Bill also clarifies that expenditure is ‘incurred’ when the goods or services for which the expenditure is incurred are delivered or provided – for example, for advertising expenditure, when the advertisement is broadcast or published.⁵⁵ The proposed amendments also leave scope for the prescription of further examples of when expenditure is ‘incurred’ in a regulation.⁵⁶

Noting that the lodgement of returns through the ECQ’s electronic disclosure system (EDS) allows for details to be immediately published on the ECQ website, the department stated that the amendments would mean ‘that members of the public will know how much each candidate has spent and how they have spent their campaign funds before they go to the polls’.⁵⁷ Election participants and third parties would also be required to give the ECQ a summary return outlining all expenditure for the disclosure period, within 15 weeks after the polling day (the ‘required period’).⁵⁸

The amendments, including the \$500 disclosure threshold, the requirement to submit a return by the ‘disclosure date’, and the requirement to submit a summary return within 15 weeks after the polling day, mirror the real-time disclosure requirements already in place for donations (gifts and loans).⁵⁹ While the ‘disclosure date’ for donation returns is currently prescribed in the Local Government Electoral Regulation 2012 (LGER) as ‘the seventh business day after the gift or loan is received’,⁶⁰ on the introduction of regulatory changes to support the operation of the Bill’s amendments, the proposed 24-hour disclosure timeframe for the last seven days before polling day would also apply to donations. This would establish consistent real-time disclosure requirements for all donations and expenditure.⁶¹

Should the Bill be passed, the captured expenditure for real-time reporting will relate to all expenditure from the Bill’s introduction on 1 May 2019.⁶² Candidates would accordingly be required to keep appropriate records of all donations and expenditure of \$500 or greater from this date.

Stakeholder views

There was broad support among stakeholders for the implementation of the proposed real-time electoral disclosure requirements.⁶³ The Wildlife Queensland Gold Coast and Hinterland Branch (Wildlife Queensland) described the introduction of real-time disclosure and other strengthened disclosure requirements as ‘essential’ to enable the community as a whole to ‘benefit via knowledge of the correct information’, including through media scrutiny of disclosed details.⁶⁴ Cr Wendy Boglary of the Redland City Council submitted that she supports ‘as much transparency as possible in the area’.⁶⁵ Mr Pat Coleman noted that the ECQ has established ‘an effective online real-time disclosure website’ to facilitate access to real-time information about the nature of donations to election participants.⁶⁶

⁵⁵ Bill, cl 226, s 112A.

⁵⁶ Bill, cl 226, s 112A(3).

⁵⁷ Ms Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 1.

⁵⁸ Explanatory notes, p 5.

⁵⁹ LGEA, s117, 118.

⁶⁰ Local Government Electoral Regulation 2012 (LGER), ss 5-9.

⁶¹ Department of Local Government, Racing and Multicultural Affairs, *Local Government Reforms: Key amendments currently under consideration*, March 2019, p 10.

⁶² Bill, cl 251, s 218.

⁶³ Organisation Sunshine Coast Association of Residents Inc (OSCAR), submission 7, p 2; Cr Paul Bishop, submission 8, p 1; Environmental Defenders Office (Qld) Inc (EDO Qld), submission 22, p 2; Greg Smith, Committee Member, Queensland Local Government Reform Alliance Inc (QLGRA), public hearing transcript, Brisbane, 27 May 2019, p 18; Pat Vidgen, Electoral Commissioner, Electoral Commission of Queensland (ECQ), public hearing transcript, Brisbane, 27 May 2019, p 26.

⁶⁴ Submission 20, p 1.

⁶⁵ Submission 27, p 2.

⁶⁶ Submission 12, p 17.

The Organisation Sunshine Coast Association of Residents (OSCAR) also commended the proposed \$500 real-time disclosure threshold ‘and its application to cumulative donations’, acknowledging departmental advice confirming that the obligation for a single donor to disclose in real-time is triggered when the total of donations from that donor reaches the threshold, including where a series of separate donations amount to \$500 collectively.⁶⁷

Some stakeholders, while supporting real-time disclosure ‘in principle’, commented on the proposed timeframes or other aspects of the amendments.⁶⁸ Cr Paul Golle of the Redland City Council called for a shorter real-time disclosure timeframe of ‘within 12 hours of receipt of services or structure’.⁶⁹ Others, in contrast, raised concerns that the proposed 24-hour period for disclosure in the final seven business days before a poll may pose an unreasonable administrative burden, citing challenges for candidates⁷⁰ and third party community groups⁷¹ respectively.

For example, the Burdekin Shire Council and other members of the North Queensland Regional Organisation of Councils (NQROC) submitted that it would be ‘unrealistic’ and ‘extremely challenging’ for candidates to meet this requirement during the final days leading up to the election,⁷² with NQROC calling for more ‘achievable’ reporting timeframes.⁷³ Brisbane Residents United Inc (BRU), while supportive of requirements for summary returns, expressed concerns that the real-time disclosure requirements may be overly burdensome for smaller community groups seeking to engage with the political process who may be captured by the third party disclosure rules.⁷⁴ BRU submitted in this regard:

It is quite common in council elections for local community groups (who may or may not be formally incorporated) to pay for flyers, yard signs or online content expressing a view about a particular council issue, or to release a candidate report card which does not specifically advocate that residents vote for any particular candidate/party, but which provides neutral comparative information about the policy platforms of different candidates. It’s also common for community groups to invite a council candidate to speak at a meeting of residents, which could potentially be defined as election expenditure...

... Simply going through the process of accounting for and disclosing all expenses which might constitute ‘election expenditure’ could be difficult for smaller community groups, let alone doing so in ‘real time’.

The \$500 minimum threshold addresses this to some extent, however \$500 is only the cost of printing 50 yard signs, or of promoting and hosting a candidate forum at a local town hall, which is something that many local community groups or resident associations might do in the lead-up to a council election.⁷⁵

While appreciative of the possibility that political parties may try to ‘funnel money through fake community organisations’, the BRU suggested that an alternative, \$1,000 threshold for third parties be considered, or that ‘the hosting of candidate forums or Q&A sessions with individual council

⁶⁷ Submission 7, p 2.

⁶⁸ Cr Paul Golle, submission 6, p 9; Burdekin Shire Council, submission 3, p 1; Whitsunday Regional Council, submission 14, p 1; Brisbane Residents United (BRU), submission 9, pp 3-4; NQROC, submission 15, pp 1-2.

⁶⁹ Submission 6, p 9.

⁷⁰ Burdekin Shire Council, submission 3, p 1; NQROC, submission 15, p 2.

⁷¹ Brisbane Residents United, submission 9, pp 3-4.

⁷² Burdekin Shire Council, submission 3, p 1; NQROC, submission 15, p 2.

⁷³ Submission 15, p 2.

⁷⁴ Submission 9, p 3.

⁷⁵ Submission 9, pp 3-4.

candidates' not be treated as election expenditure, citing concerns this may 'limit opportunities for under-resourced community groups to engage with council candidates'.⁷⁶

Electoral Commissioner Mr Pat Vidgen, who confirmed the ECQ's support for the proposed amendments, acknowledged the important role of his organisation in implementing real-time electronic disclosure through its online system (the EDS), and promoting compliance with the LGEA's funding and disclosure provisions.⁷⁷ The ECQ advised that it would 'seek to continue its current practice of increasing awareness by electoral participants of the new obligations, particularly in relation to real-time disclosure, to promote compliance'.⁷⁸

Department's response

Whilst acknowledging that the last seven days of the election campaign is a busy period for election participants, the department has stated:

*It is also acknowledged that this is a time when candidates are making a last-minute push to influence the votes of undecided voters. Therefore, it is just as important for the public to be informed of any expenditure in this final period as it is for expenditure that occurs in the months leading up to an election. This will allow voters to make an informed choice on election day.*⁷⁹

With respect to the BRU submission, the department noted that the Bill inserts a definition of electoral expenditure which includes gifts in kind, and that the definition of 'gift' includes the disposition of property or provision of a service (eg potentially including those provided for a candidate forum), consistent with the existing definition of gift in the LGEA.⁸⁰ The department also stated that the proposed disclosure threshold of \$500 for third parties 'is consistent with the current disclosure requirements under the LGEA'.⁸¹

Further, the department emphasised that the proposed amendments are consistent with Belcarra Report recommendation 2, which called for 'all expenditure, including that currently required to be disclosed by third parties', to be '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', and for the publication of all expenditure disclosures by the ECQ.⁸²

3.1.2 Additional details for disclosures about gifts, loans and third party expenditure

Recommendations 6, 18 and 19 of the Belcarra Report called for amendments to the details required to be disclosed for gifts, loans and third party expenditure under the LGEA, to provide greater clarity and transparency regarding the nature of relationships with donors, including the true source of gifts and loans and the influence of third party expenditure.⁸³

The government provided its support for the recommendations and/or their intent, but emphasised that further consideration would need to be given to the scope of the details to be disclosed, their privacy implications, and how to monitor and enforce the additional requirements.⁸⁴

⁷⁶ Submission 9, p 4.

⁷⁷ Public hearing transcript, Brisbane, 27 May 2019, p 26.

⁷⁸ Submission 11, p 5.

⁷⁹ Department, *Local Government reforms – Electoral Finance reforms webinar questions*, webpage, <https://www.dlgrma.qld.gov.au/local-government-reform/frequently-asked-questions.html#electoral-finance-reform>.

⁸⁰ Department, correspondence dated 3 June 2019, pp 19-20. See also: LGEA, s 107.

⁸¹ Department, correspondence dated 3 June 2019, p 19.

⁸² Department, correspondence dated 3 June 2019, p 20.

⁸³ Belcarra Report, pp 65, 75.

⁸⁴ Queensland Government, *Government response – Operation Belcarra report: A blueprint for integrity and addressing corruption risk in local government*, October 2017, pp 2, 4.

With respect to recommendations 6 and 18, the Bill would implement the government's response by expanding the relevant details to be disclosed in returns for gifts and loans under the LGEA, to include:

- if a gift or loan is made by an entity that is not the source of the gift or loan, that fact, and particular details about the source of the gift or loan (recommendation 6)⁸⁵
- if the person making the gift or loan has an interest in a local government matter that is greater than that of other persons in the local government area, that fact, and the nature of the person's interest⁸⁶
- for gifts or loans made by an individual, the name and residential or business address of the individual, the individual's occupation and, if appropriate, the industry in which the individual is employed, carries on a business or is otherwise engaged,⁸⁷ and
- if the gift or loan is made by a corporation, the name and residential or business addresses of directors or members of the executive committee (however described) of the corporation or holding company and a description of the type of business the corporation carries on (recommendation 18).⁸⁸

The Bill also provides greater detail regarding the meaning of a 'gift', clarifying that a gift:

- includes uncharged interest on a loan and any part of a fundraising contribution that exceeds \$200, with a fundraising contribution defined as an amount paid by a person as a contribution, entry fee or other payment to entitle the person or another person to participate in, or otherwise obtain a benefit from, a fundraising venture or function',⁸⁹ and
- does not include an amount paid to a political party as a subscription for a person's membership or affiliation with the party, the incidental or ancillary use of a volunteer's vehicle or equipment, or a gift made in a private capacity to an individual for personal use, where the person does not use or intend to use the gift solely or substantially for a purpose related to an election.⁹⁰

To implement the government's policy on recommendation 19, the Bill provides that if a third party incurs expenditure of \$500 or more during the disclosure period for the election, the third party must give a return to the ECQ about the expenditure that includes, in addition to the value and purpose for incurring the expenditure:

- a description of the goods or service and the name and business address of the person who supplied the goods or service to which the expenditure relates
- if the expenditure was incurred to benefit, support or oppose a particular candidate, group of candidates or political party, that fact and the name of the candidate, group of candidates or political party, and
- if the expenditure was incurred to support or oppose a particular issue in the election, that fact and a description of the issue.⁹¹

⁸⁵ Bill, cl 235, ss 121A, 121B, 118A(1)(b).

⁸⁶ Bill, cl 225, s 109(1)(d).

⁸⁷ Bill, cl 225, s 109(1)(e).

⁸⁸ Bill, cl 225, s 109(1)(f).

⁸⁹ Bill, cl 222, ss 107; cl 223, s 107A.

⁹⁰ Bill, cl 222, s 107.

⁹¹ Bill, cl 238, s 125A; explanatory notes, pp 9-10.

The proposed maximum penalty for failing to meet these additional disclosure requirements is 20 penalty units⁹² (\$2,611).⁹³

The explanatory notes acknowledge the potential impact of the proposed amendments on an individual's privacy, noting that although making a gift or loan is voluntary, it may require an individual to disclose information they may wish to keep private.⁹⁴ The explanatory notes state that the provisions are necessary to 'allow for increased transparency of the electoral system and support electors to make informed decisions':⁹⁵

*Without this information, which supplements that already required under the LGEA by those who give disclosable gifts or loans, the information [that is disclosed] would not be meaningful enough to provide the degree of transparency to support this objective. In addition, a safeguard applies so that the silent electors will not have their addresses published by ECQ. Individuals can apply to be silent electors on the grounds that having their address on the electoral roll would place at risk their, or another person's, safety. This ensures that the disclosure required for transparency is appropriately balanced with measures to ensure that the privacy of the address information of vulnerable individuals is protected.*⁹⁶

Stakeholder views

The Far North Queensland Regional Organisation of Councils (FNQROC), North West Queensland Regional Organisation of Councils (NWQROC), NQROC, Environmental Defenders Office (Qld) Inc (EDO Qld), OSCAR, and Cr Paul Bishop of the Redland City Council, all expressed their support for the additional disclosure requirements for gifts and loans,⁹⁷ while the Whitsunday Regional Council submitted that it 'supports this proposed reform in principle'.⁹⁸ Cr Paul Golle of the Redland City Council also saw scope for a 'full audit' of all council suppliers to accompany the amendments, 'in order to secure integrity and divulge those entities who hold council contracts and have provided either direct or indirect support to councillors, mayors and or candidates during an election and still hold council contracts'.⁹⁹

Other stakeholders were less convinced about particular additions to the 'relevant details' to be disclosed. For example, the LGAQ and the Balonne Shire Council queried the reference to the industry or occupation of the donor in the proposed amendments, suggesting donors may be able to 'mask their identity by providing misleading information' in this respect.¹⁰⁰ The Torres Shire Council, while noting its support for the relevant Belcarra recommendation, was mindful of the privacy implications of the proposed additional details for individuals, and questioned 'who makes the determination (for an individual) as to whether their occupation and employer is disclosable, and whether failure to disclose should be an offence'.¹⁰¹ Without further information in respect of these details, the Torres Shire Council submitted that it 'cannot support or otherwise this aspect of the Bill'.¹⁰²

⁹² Bill, cl 235, s 121B.

⁹³ Regulation 3 of the Penalties and Sentences Regulation 2015 set the value of a penalty unit at \$130.55, as at 1 July 2018. From 1 July 2019, the value of a penalty unit will rise to \$133.45 (see Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2019). All expressions of the monetary values of penalties in this report reflect the value of a penalty unit at the time of publication (eg as at 1 July 2018).

⁹⁴ Explanatory notes, p 39.

⁹⁵ Explanatory notes, p 39.

⁹⁶ Explanatory notes, p 39.

⁹⁷ FNQROC, NWQROC and NQROC, submission 1, p 2; NWQROC, submission 31, p 2; OSCAR, submission 7, p 3; EDO Qld, submission 22, p 2; Cr Paul Bishop, submission 8, p 1.

⁹⁸ Submission 14, p 2.

⁹⁹ Submission 6, p 9.

¹⁰⁰ LGAQ, submission 5, p 6; Balonne Shire Council, submission 2, p 3.

¹⁰¹ Submission 25, p 3.

¹⁰² Submission 25, p 3.

In relation to the additional details for third party expenditure, BRU also expressed a concern about possible administrative challenges for small community groups, submitting that 'it may be necessary for the state government to provide additional resources and support to smaller community groups so they can easily comply with gift disclosure requirements'.¹⁰³

The ECQ, which supports the amendments, advised that the additional reporting details and real-time disclosure requirements would require an upgrade of the current real-time EDS, to 'ensure it has the capacity to deliver the enhanced public reporting of political donations and expenditure' that is envisaged.¹⁰⁴

Department's response

In response to stakeholder comments regarding the additional details the Bill would require to be disclosed, the department emphasised that the proposed changes give effect to the government's response to recommendation 18 of the Belcarra Report, which called for the 'relevant details' for gifts and loans in s 109 of the LGEA to be amended.¹⁰⁵

In respect of the Torres Shire Council's concerns about possible privacy implications for employers, the department confirmed that the relevant clause 'requires the individual's industry, rather than the employer, to be disclosed'.¹⁰⁶

3.1.3 Presumed knowledge of the original source of gifts or loans

Recommendations 7 and 21 of the Belcarra Report called for amendments to the LGEA, LGA and COBA to deem that a gift and the source of the gift is at all times within the knowledge of:

- the person or entity required to lodge a return under the LGEA, for the purpose of proving any offence in this respect (recommendation 7), and
- a councillor under the LGA and COBA, for the purpose of proving any offence relating to provisions governing the disclosure of conflicts of interest (recommendation 21).¹⁰⁷

The CCC considered that these amendments would address concerns that a conflict of interest may be masked or 'washed away' by virtue of a donation being made via a third party, citing its identification of 'questionable' practices in this respect during Operation Belcarra investigations.¹⁰⁸

To implement the government's response to recommendation 7, the Bill inserts a new provision in the LGEA which states that in a proceeding for an offence against the LGEA relating to a gift or loan made to an election participant, the participant is presumed to know, unless the contrary is proven:

- that the relevant gift or loan was given to them, and
- the source of the relevant gift or loan.¹⁰⁹

Consistent with recommendation 21, the Bill also inserts provisions in the LGA and COBA which provide that in a proceeding for an offence against a conflict of interest provision relating to a gift or loan given or made to a councillor, the councillor is presumed to know that the gift or loan was given to them and the source of the gift or loan, unless the contrary is proven.¹¹⁰

¹⁰³ Submission 9, p 4.

¹⁰⁴ Submission 11, p 5.

¹⁰⁵ Department, correspondence dated 3 June 2019, p 19.

¹⁰⁶ Department, correspondence dated 3 June 2019, p 19.

¹⁰⁷ Belcarra Report, pp 65, 80.

¹⁰⁸ Belcarra Report, p 80.

¹⁰⁹ Bill, cl 246, s 162A.

¹¹⁰ Bill, cl 144, 150FB; cl 51, s 177Y.

These ‘deeming’ provisions would effectively serve to implement a reversal of the onus of proof with respect to the relevant offences. This would mean that in a relevant proceeding, an election participant or councillor would need to prove that they did not know:

- that the gift or loan was given to them, and
- that they did not know the entity that was the source of the gift or loan.¹¹¹

The amendments are supported by new disclosure requirements for the donors of gifts or loans (including gifts made to enable third party expenditure), where another entity is the source of the gift or loan. Specifically, in addition to disclosing the source of the gift or loan and relevant details to the ECQ (eg see section 3.1.2 of this report), the Bill provides that a donor is also required to provide the recipient of the gift or loan with a notice that states the original source of the gift or loan and the relevant details of the gift or loan in relation to the source entity.¹¹²

The explanatory notes state that these disclosure provisions will help ensure recipients are aware of the source of gifts or loans.¹¹³

Stakeholder views

Wildlife Queensland and the EDO Qld submitted that they support the amendments, with the former acknowledging the provisions as contributing to improved responsibility for donations.¹¹⁴

However, other stakeholders identified significant concerns about the reversal of the onus of proof that the amendments would affect, noting a councillor would be required to prove both that they did not know the gift or loan was given to them, and also the source of the gift or loan.¹¹⁵ The Torres Shire Council and the Queensland Law Society (QLS) submitted that the reversal of the onus of proof contravenes the fundamental and well-recognised legal tenet that an individual is presumed innocent until proven guilty, and that such a contravention should not be taken lightly.¹¹⁶ The Torres Shire Council noted that the UK House of Lords recently concluded that shifting the burden of proof on to a defendant was ‘repugnant to ordinary notions of fairness’, and also highlighted scholarly conclusions that the presumption of innocence:

*... is inherent in a proper relationship between State and citizen, because there is a considerable imbalance of resources between the State and (because) ... respect for individual dignity and autonomy requires that proper measures are taken to ensure that such censure does not fall on the innocent.*¹¹⁷

The Torres Shire Council submitted that the public interest would be served by allowing a defence of mistake of fact or honest belief to be retained, arguing that ‘it is entirely possible, especially where donors wish to remain anonymous, that this proposed anti-corruption measure may flounder on the altar of donor privacy and candidate ignorance’.¹¹⁸

¹¹¹ Explanatory notes, p 56.

¹¹² Bill, cl 235, s 121B.

¹¹³ Explanatory notes, p 57.

¹¹⁴ Wildlife Queensland Gold Coast and Hinterland Branch (Wildlife Queensland), submission 20, p 1; EDO Qld, submission 22, p 2.

¹¹⁵ Torres Shire Council, submission 25, p 3; QLS, submission 28, pp 3; Cr Jenny Hill, Mayor, Townsville City Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 5; Greg Hallam, CEO, Local Government Association of Queensland (LGAQ), public hearing transcript, Brisbane, 27 May 2019, p 10.

¹¹⁶ Torres Shire Council, submission 25, p 3; QLS, submission 28, p 3. Mr Hallam, LGAQ, also stated that it is an ‘extraordinary thing ... to have to prove your innocence’. See: public hearing transcript, Brisbane, 27 May 2019, p 10.

¹¹⁷ Submission 25, p 3.

¹¹⁸ Submission 25, p 3.

The QLS also submitted:

*... a councillor could believe honestly that the donation or the gift had been reasonably donated from an appropriate person but for whatever reason it was not. That onus should rest with the Office of the Independent Assessor, the OIA, the regulatory body, rather than the councillor having to step forward and explain each and every one of their decisions or non-decisions, in what is really in effect a non-decision if they do not disclose it.*¹¹⁹

These arguments are considered further in section 7.1.1 of this report, regarding FLP issues.

Department's response

In its response to submissions, the department recognised that 'legislation should not reverse the onus of proof in criminal proceedings without adequate justification'.¹²⁰ By way of justification, the department stated that the amendments reflect CCC recommendations developed to address issues identified during Operation Belcarra:

The Belcarra Report recommendation 7 recommended the inclusion of a provision to deem a gift and the source of a gift to be within the knowledge of persons required to lodge a return under the LGEA for the purposes of proving particular offences under that Act to increase transparency of donations for the benefit of voters and to ensure that candidates inquire about, and have full knowledge of, the true sources of their campaign funds.

*Recommendation 21 of the Belcarra Report recommended amendments to deem a gift and source of the gift referred to in recommendation 6 be deemed to be at all times within the knowledge of the Councillor for the purposes of chapter 6 part 2 divisions 5 and 6 of the LGA and COBA to address concerns that a conflict of interest may be 'washed away' by virtue of a donation being made via a third party.*¹²¹

The department also considered that the accompanying requirement for donors to directly notify a recipient when a gift or loan they provide has an alternate origin, would ensure recipients are informed of the true source of the gifts and loans they receive:

*... the Bill (clause 235) inserts new section 121B into the LGEA which provides that if an entity makes a gift or loan of a value of \$500 or more to a candidate, group of candidates or registered political party, or a gift of a value of \$500 to a third party to enable political expenditure, the entity must, when making the gift or loan, give the recipient notice of the relevant details of the gift or loan and, if the entity is not the source of the gift or loan, the entity must also give the recipient notice of that fact along with relevant details of the entity that is the source of the gift or loan. The maximum penalty is 20 penalty units.*¹²²

In response to the suggestion from Torres Shire Council that the disclosure requirements may not assist where donors may wish to remain anonymous, the department highlighted that the 'LGEA section 119, as amended by clause 231 of the Bill, prohibits receiving anonymous gifts'.¹²³

3.1.4 Notifying donors of disclosure obligations

The CCC noted in its Belcarra Report that in state elections, candidates are required to notify donors of their disclosure obligations as soon as practicable after receiving a donation, with a failure to do so attracting a maximum penalty of 20 penalty units (a \$2,611 fine). The CCC recommended (recommendation 8) that the same requirement be introduced for donation recipients in local

¹¹⁹ Calvin Gnech, Chair, Occupational Discipline Law Committee, Queensland Law Society (QLS), public hearing transcript, Brisbane, 27 May 2019, p 30.

¹²⁰ Department, correspondence dated 3 June 2019, p 15.

¹²¹ Department, correspondence dated 3 June 2019, p 15.

¹²² Department, correspondence dated 3 June 2018, pp 15-16.

¹²³ Department, correspondence, 3 June 2018, p 15.

government elections, with a suitable penalty applying, 'to help minimise the administrative burden on donation recipients and ensure the advice they provide to donors is accurate'.¹²⁴

The CCC also recommended that, to 'avoid donors being caused any embarrassment by their donations being disclosed by the candidate (or other recipient)', all donation recipients should also be required to prospectively notify any proposed donor of the recipient's own disclosure obligations (recommendation 10).¹²⁵

Consistent with recommendation 8 of the Belcarra Report, the Bill proposes to amend the LGEA to require candidates, groups of candidates and third parties for an election to notify a donor, within seven business days after receiving a gift for which a third party return may be required, that the donor may be required to give the ECQ a return.¹²⁶

The Bill would also implement recommendation 10, by establishing a requirement for a candidate, the agent for a group of candidates, and a third party for an election, to 'prospectively notify' donors of the fact their donation will be publicly disclosed, as was recommended by the CCC. However, the explanatory notes acknowledge that the Bill goes further than the CCC's recommendation, by extending this 'prospective notification' requirement to also apply to loan providers. The explanatory notes state:

*Although the CCC's recommendation, in relation to notification requirements, did not apply to loan providers, it is considered that loan recipients should also prospectively notify loan providers of the recipient's disclosure obligations so that loan providers are sufficiently informed when making a decision about providing a loan.*¹²⁷

In terms of meeting these requirements, the Bill specifies that the candidate, agent or third party 'must take reasonable steps to notify the public' about the details they are required to disclose for a gift or loan.¹²⁸ The Bill provides, as examples of reasonable steps:

- publishing a notice on a website, and
- including a notice on a brochure distributed in the local government area or division of a local government area for which a candidate has been nominated for election.¹²⁹

Maximum penalties of 20 penalty units (\$2,611) and one penalty unit (\$130.55) respectively would apply in relation to the requirements to notify donors of their disclosure obligations and the requirement to prospectively notify the public of the disclosure obligations for recipients of gifts and loans.¹³⁰

Stakeholder views

Wildlife Queensland and OSCAR submitted that they support the Bill's implementation of recommendations 8 and 10 of the Belcarra Report,¹³¹ while the Whitsunday Regional Council indicated that it supported 'in principle' the notification requirements to clarify and support compliance with the expanded disclosure obligations under the Bill.¹³²

¹²⁴ Belcarra Report, p 67.

¹²⁵ Belcarra Report, pp 67-68.

¹²⁶ Bill, cl 237, s 122A; explanatory notes, p 11.

¹²⁷ Explanatory notes, p 11.

¹²⁸ Bill, cl 237, s 122.

¹²⁹ Bill, cl 237, s 122.

¹³⁰ Bill, cl 237, ss 122, 122A.

¹³¹ Submission 20, p 1; submission 7, p 3.

¹³² Submission 14, p 2.

3.1.5 Prohibiting the use of credit cards and requiring details of dedicated accounts

Under the LGEA, candidates and groups of candidates are required to operate a dedicated bank account to receive all income and pay all expenses for their campaign.¹³³ This provision is intended to help ensure that these election participants keep discrete and detailed information about the money received and spent on their election.¹³⁴ The CCC identified in the Belcarra Report that issues of non-compliance with this requirement particularly arose in the form of candidates paying for expenses out of another account. Often this involved use of a credit card that was not attached to the dedicated campaign account, including usage of a personal card for certain campaign purchases.¹³⁵ The explanatory notes suggest that the CCC's 'underlying concern' in this respect appears to relate to the reconciliation of individual purchases made by credit card against expenditure from the campaign account.¹³⁶ The CCC also identified that this form of non-compliance with the dedicated bank account requirements may give rise to 'a corruption risk and lack of transparency... where candidates incur expenses that they do not have sufficient funds to cover and may not pay until after the election'.¹³⁷

To increase compliance with the dedicated account requirements, the CCC recommended that the LGEA be amended to expressly prohibit the payment of campaign expenses with a credit card, rather than out of the dedicated account (recommendation 14).¹³⁸ To help ensure 'candidates turn their minds to this requirement early on in their campaigns' and have their account set up as required, the CCC also recommended that the LGEA be amended to require all candidates to provide details of their dedicated account at the time of their nomination, or for a group of candidates, at the time the record for the group of candidates is submitted (recommendation 15).

The Bill proposes to insert new provisions in the LGEA which reflect these recommendations. In keeping with recommendation 14, the Bill prohibits the payment of campaign expenses by credit card¹³⁹ and clarifies that the permitted ways to pay amounts from a dedicated account include any one or a combination of the following:

- an electronic funds transfer transaction
- use of a debit that withdraws the payment directly from the account, and
- in cash withdrawn from the account.¹⁴⁰

The Bill establishes requirements that candidates or groups of candidates provide, in their candidate's nomination form and group record of membership respectively, 'information about the account with a financial institution' that they intend to use as their dedicated campaign account.¹⁴¹

Stakeholder views

The FNQROC, NQROC, NWQROC and OSCAR all expressed their support for the proposed requirements for candidates to nominate and operate a dedicated bank account to receive and pay for campaign expenses.¹⁴² The Whitsunday Regional Council also commended the provisions, asserting that

¹³³ LGEA, ss 126, 127.

¹³⁴ LGEA, s 126. See also: Explanatory notes, Local Government Electoral Bill 2011, p. 42.

¹³⁵ Belcarra Report, pp 70-71.

¹³⁶ Explanatory notes, p 13.

¹³⁷ Belcarra Report, p 71.

¹³⁸ Belcarra Report, p 71.

¹³⁹ Bill, cl 188, s 127B.

¹⁴⁰ Bill, cl 188, s 127A(1). For cash withdrawn from the account to pay for campaign expenses, the amount withdrawn must not exceed the amount to be paid. If the cash is withdrawn from an ATM, the amount withdrawn must not exceed the amount to be paid rounded up to the nearest amount the ATM can dispense. See: cl 188, s 127A(2).

¹⁴¹ Bill, cl 202, s 27; cl 205, s 41.

¹⁴² FNQROC, NWQROC and NQROC, submission 1, p 2; NWQROC, submission 31, p 2; OSCAR, submission 7, p 2.

'candidates should be held to the same standard of conduct and accountability as current councillors seeking re-election'.¹⁴³

Representatives from the Redland City Council, however, expressed some concern regarding the prohibition on the use of credit cards for campaign expenses.¹⁴⁴ Whilst supporting the requirements for candidates to nominate a dedicated bank account for election expenses 'to ensure ease of transparency', Cr Wendy Boglary submitted that the prohibition on the use of credit cards 'could be detrimental to candidates who are independent and self-funded'. Cr Boglary submitted:

*For those candidates who are self-funded to save for example \$15,000 for a local divisional election every four years is difficult and the use of a debit card for self-funded candidates is definitely needed. I believe not having the use of a credit card as a backup is a disadvantage to self-funded candidates who have those candidates who are party or group aligned, receive donations and have direct access to funds also campaigning for their area.*¹⁴⁵

The Redland City Council also considered that permitting credit card use could 'aid and assist candidates who are motivated to stand for election but are unable to fully fund the campaign at a particular point in time, submitting that 'the use of a credit card in today's society allows for immediate and urgent purchases'.¹⁴⁶ The Redland City Council also questioned the rationale for the changes, citing conclusions that the 'CCC's underlying concerns' with the use of credit cards appear to relate to the reconciliation of individual credit card purchases against expenditure from the campaign bank account. The Redland City Council submitted:

*Redland City Council believes that individual purchases from a credit card can be very easily reconciled and the reconciliation of expenditure can be easily managed if the correct processes are enacted.*¹⁴⁷

The QLS also considered there to be a lack of a 'demonstrated link between councillors' recidivous activity and an increase in their use of credit cards for campaign expenses'.¹⁴⁸

Cr Paul Bishop submitted that 'a way to manage permitted credit card use' may be 'more practical' than the Bill's express prohibition on their use.¹⁴⁹

Department's response

In response to the suggestion that credit card use for campaign expenses be permitted under certain, restricted circumstances, the department noted that the use of a credit card is contrary to existing provisions regarding the requirement for candidates and groups of candidates to operate a dedicated financial account for receipt and payment of all expenses.¹⁵⁰ The department also emphasised that explicit prohibition on credit card use is necessary 'to implement the Government's response to recommendation 14 of the Belcarra Report', and that the amendments make clear that candidates and groups of candidates can pay expenses using any, or a combination of, electronic transfer, direct debit, or cash withdrawn from their account.¹⁵¹

¹⁴³ Submission 14, p 2.

¹⁴⁴ Redland City Council, submission 21, p 2; Cr Wendy Boglary, submission 27, p 1.

¹⁴⁵ Submission 27, p 1.

¹⁴⁶ Submission 21, p 2.

¹⁴⁷ Submission 21, p 2.

¹⁴⁸ Submission 28, p 10.

¹⁴⁹ Submission 8, p 1.

¹⁵⁰ Department, correspondence dated 3 June 2019, p 20.

¹⁵¹ Department, correspondence dated 3 June 2019, p 21.

3.2 Requirements for candidates and groups of candidates

The Bill proposes amendments to the requirements for candidates and groups of candidates for local government elections to implement the government's response to Belcarra Report recommendations 3, 4, 5, and 12.

3.2.1 Disclosure of candidate interests as a condition of nomination

The Belcarra Report identified that during the 2016 local government elections, a form of uneven competition arose as a result of some candidates receiving support or assistance from political parties and their members, or from other candidates, despite promoting themselves as independents. This included candidates who used political party members as volunteers on polling days and candidates who worked with other candidates to produce shared how-to-vote cards and other materials.¹⁵² The CCC stated:

*The fact that candidates' political and other affiliations can remain unknown before polling day prevents voters from drawing their own conclusions about a candidate's claims of independence and casting an informed vote. If voters feel misled by some candidates' claims of independence, their perceptions of the integrity and transparency of local government elections may be adversely affected. This can in turn undermine their confidence in the integrity of the resulting council.*¹⁵³

To 'promote transparency and accountability', the CCC recommended:

- all candidates be required to provide, as part of their nomination, details of the same financial and non-financial interests a local government councillor is required to record in their register of interests, and details of any membership of a political party, body or association and/or trade/professional organisation (recommendation 3), and
- the ECQ be required to publish this information on its website, making it available to voters (recommendation 4).¹⁵⁴

The Bill implements the government's policy on recommendations 3 and 4 by proposing to amend the LGEA to require candidates to declare additional matters on their nomination form and require the ECQ to publish a copy of the nomination form on its website as soon as is practicable after receiving the nomination.¹⁵⁵ The additional matters a candidate would be required to declare include:

- whether the candidate is, or was within the last year, a member of a registered political party or trade or professional organisation¹⁵⁶
- whether the candidate or a close associate¹⁵⁷ of the candidate is, or has been within the past year, a party to a contractual arrangement with the local government¹⁵⁸
- whether the candidate or a close associate of the candidate is engaged in a contractual process with the local government (for example, a tender process or expression of interest process for a list of appropriately qualified suppliers),¹⁵⁹ and

¹⁵² Belcarra Report, p 49.

¹⁵³ Belcarra Report, p 54.

¹⁵⁴ Belcarra Report, pp 55-56.

¹⁵⁵ Bill, cl 163, s 32. The amendment specifies that the ECQ must publish the prescribed information for the nomination, being information or a statement contained in the nomination prescribed by regulation.

¹⁵⁶ Bill, cl 252, Schedule 1(3).

¹⁵⁷ The Bill defines a 'close associate' as person who is, in relation to the candidate, a spouse, a partner in a partnership, or a non-government entity for which the candidate is an executive officer or board member. See: Bill, cl 252, Schedule 1(2).

¹⁵⁸ Bill, cl 252, Schedule 1(4).

¹⁵⁹ Bill, cl 252, Schedule 1(5); explanatory notes, p 6.

- whether the candidate or a close associate of the candidate has made particular applications and representations to the local government under the *Planning Act 2016* (Planning Act) and *Sustainable Planning Act 2009*.¹⁶⁰

In respect of each of these additional matters, the amendments would require a candidate to provide details about the nature of the interest and, if a close associate is involved, the name, address and nature of the close associate's relationship with the candidate. If no interest exists, the candidate would be still be required to state as much in their declaration for each of these additional matters.¹⁶¹

Stakeholder views

OSCAR, the EDO Qld and Cr Paul Golle and Cr Paul Bishop of the Redland City Council submitted that they support the proposed amendments.¹⁶² The Whitsunday Regional Council and the Moreton Bay Regional Council also expressed their 'in principle support', but questioned whether the amendments would ensure that candidates are required to provide the same level of detail regarding their interests as are current councillors seeking re-election, asserting the importance of consistent requirements in this respect.¹⁶³ The Moreton Bay Regional Council submitted that it is not clear from the Bill whether this is the case, and that:

*Any disparity between candidates that are sitting councillors and those that are 'non-sitting' councillors will not provide electors with equal information on candidates or deliver upon the intent of the recommendation made by the Crime and Corruption Commission (CCC) and the Government's subsequent response to the Belcarra Report.*¹⁶⁴

The Burdekin Shire Council and BRU were also generally supportive of the amendments,¹⁶⁵ 'as long as there is a clear definition of the term 'close associate''.¹⁶⁶ The Burdekin Shire Council submitted:

*The Council supports these requirements but notes the proposed definition of a 'close associate' in clause 252 of the Bill in the Local Government Electoral Act (LGEA) is different to the proposed definition in the Local Government Act (LGA), which may lead to confusion. The restricted definition in the LGEA is supported but perhaps a different term could be used to address any confusion between the two Acts.*¹⁶⁷

The Queensland Local Government Reform Alliance (QLGRA) saw scope for requirements for disclosures of interest to be extended to require candidates who are members of, affiliated with, or financed by a political party to also disclose this fact on all advertising, promotional material and how-to-vote cards; or for a prohibition on candidates declaring themselves 'independent' if they are a member of a political party.¹⁶⁸

Department's response

In relation to stakeholder comments about possible confusion over the different definition for 'close associate' in the LGEA and LGA, the department acknowledged that the definition of 'close associate' in the LGEA 'is more limited than the definition in the conflict of interest provisions in the LGA and

¹⁶⁰ Bill, cl 202, s 27; cl 252, Schedule 1(6).

¹⁶¹ Explanatory notes, p 7.

¹⁶² OSCAR, submission 7, p 2; EDO Qld, submission 22, p 2; Cr Paul Golle, submission 6, p 9; Cr Paul Bishop, submission 8, p 1.

¹⁶³ Whitsunday Regional Council, submission 14, p 2; Moreton Bay Regional Council, submission 18, p 1.

¹⁶⁴ Submission 18, p 1.

¹⁶⁵ Burdekin Shire Council, submission 3, p 2; BRU, submission 9, p 3.

¹⁶⁶ BRU, submission 9, p 3.

¹⁶⁷ Submission 3, p 2.

¹⁶⁸ QLGRA, submission 24, p 2.

COBA', advising that the 'more limited definition is considered appropriate in relation to disclosure of interests of candidates'.¹⁶⁹ The department further stated:

*DLGRMA's [The Department's] view is that the drafting of the provisions achieves the Government's policy intent in relation to recommendation 3 of the Belcarra Report. The amendments will ensure that voters have access to information about a candidate's affiliations and interests.*¹⁷⁰

3.2.2 Groups of candidates and group campaign activities

In addition to seeking to provide greater transparency regarding candidate interests and affiliations (report section 3.2.1), the Bill contains amendments intended to provide voters with access to more timely and comprehensive information about relationships between candidates, including any collective or cooperative campaigning activity between a group of candidates.¹⁷¹

Under the LGEA, a group of candidates is defined as a group of individuals, each of whom is a candidate for the election, if the group was formed for the purpose of promoting the election of the candidates or to share in the benefits of fundraising to promote the election of the candidates. A group of candidates does not include a political party or associated entity.¹⁷²

To help ensure that political and financial relationships between candidates are transparent, groups of candidates have several specific obligations under the LGEA. Each group must provide a record of the group's name and members to the returning officer before the cut-off for nominations, and appoint an agent for the group who is responsible for the group's compliance.¹⁷³

The Belcarra Report highlighted that a number of candidates in the 2016 local government elections engaged in conduct that could be considered as falling within the definition of a group, despite not formally registering as part of a group of candidates, raising concerns about a lack of transparency around candidate relationships.¹⁷⁴ To address these issues and provide greater clarity to candidates and others regarding what constitutes a group, the CCC recommended (Belcarra Report recommendation 5):

- a) that the definition of a group of candidates in the LGEA 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, including, for example, being one of a group of individuals who:
 - receive the majority of their campaign funding from a common or shared source, or
 - have a common or shared campaign strategy (eg shared policies, common slogans and branding), or
 - use common or shared campaign resources (eg campaign workers, signs), or
 - engage in cooperative campaigning activities, including using shared how-to-vote cards, engaging in joint advertising (eg on billboards) or formally endorsing another candidate, and
- b) that consequential amendments be made to the LGEA, including with respect to the recording of membership and agents for groups of candidates, 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.¹⁷⁵

¹⁶⁹ Department, correspondence dated 3 June 2019, p 22.

¹⁷⁰ Department, correspondence dated 3 June 2019, p 22.

¹⁷¹ Explanatory notes, p 7.

¹⁷² LGEA, Schedule (Dictionary).

¹⁷³ LGEA, s 178(3)(b).

¹⁷⁴ Belcarra Report, pp 57-58.

¹⁷⁵ Belcarra Report, p 61.

The government's response to the Belcarra Report supported recommendation 5, acknowledging that it would be 'important to ensure a behavioural based approach does not unintentionally capture localised and unplanned cooperation that occurs frequently during campaigns, particularly in regional and remote areas'.¹⁷⁶

The Bill proposes to implement the government's policy in relation to Belcarra Report recommendation 5(a), which is to amend the LGEA to prohibit the use of particular campaign techniques by candidates other than members of groups or political parties.¹⁷⁷ Specifically, the proposed amendments provide that a person must not engage in a group campaign activity by, or for, two or more candidates for an election unless the activity relates to:

- candidates who are members of a group of candidates stated in the record for the group (which is required to be published by the ECQ), or
- candidates who are endorsed by the same political party for the election.¹⁷⁸

Group campaign activities are defined as any of the following, if carried out in an intentionally coordinated way by two or more candidates:

- the use of a common platform to promote the election of the candidates (eg the same policies)
- the use of the same campaign slogans, brands or images, how-to-vote cards and other election materials
- participating in the same fundraising activities or events
- sharing the same resources for election campaigns, including human resources (other than volunteers), and gifts or loans, and
- another activity prescribed by regulation.¹⁷⁹

Failure to comply with this provision attracts a maximum penalty of 100 penalty units (\$13,055) and the offence is prescribed as an integrity offence.¹⁸⁰ If convicted of an integrity offence, a person automatically stops being a councillor and is disqualified from being a councillor for four years.¹⁸¹ Further, relevant provisions of the LGA and COBA also provide that a person is automatically suspended as a councillor if the person is charged with an integrity offence¹⁸² (see further discussion of new offence provisions and penalties in section 3.3 of this report).

To implement the government's response to Belcarra Report recommendation 5(b), the Bill provides that the group must give a record of membership to the ECQ during the period starting 30 days after the polling day for the last quadrennial election or the day after polling day for another type of election, and ending at noon on the last day for the receipt of nominations for candidates in the election.¹⁸³ Currently, the LGEA provides for records of membership to be given during the period after the candidates in the group are nominated for the election but before noon on the last day for the receipt of candidate nominations, with the returning officer responsible for receiving these records and also keeping a register listing the individuals appointed as agents of a group.¹⁸⁴ As the proposed amendments could allow for a record of membership to be given before the returning officer is

¹⁷⁶ Queensland Government, *Government response – Operation Belcarra report: A blueprint for integrity and addressing corruption risk in local government*, October 2017, p 2.

¹⁷⁷ Explanatory notes, p 7.

¹⁷⁸ Bill, cl 248, s 183.

¹⁷⁹ Bill, cl 248, s 183(2).

¹⁸⁰ Bill, cl 183(1), cl 53; explanatory notes, p 8.

¹⁸¹ LGA, s 153; COBA, s 153.

¹⁸² LGA, s 182A (renumbered as 175K by the Bill); COBA, s 186B. See also: explanatory notes, pp 14-15.

¹⁸³ Explanatory notes, p 8.

¹⁸⁴ LGEA, s 41.

appointed, the explanatory notes advise that it is appropriate that the Bill provides for the ECQ to receive all records of membership and also keep the register of group agents.¹⁸⁵

Stakeholder views

Stakeholders generally supported the Bill's prohibition on the use of group campaigning techniques for candidates who are not members of groups or endorsed candidates for a political party, and accompanying amendments to the requirements for a record of membership for a group.¹⁸⁶ Redlands2030 submitted, for example, that its organisation supports the introduction of measures to 'help voters understand when councillors are aligned as a group pursuing a shared policy platform'.¹⁸⁷

However, the Moreton Bay Regional Council expressed a concern that the amendments may unintentionally capture localised and unplanned cooperation that can occur during election campaigns:

For example, councillors that have during the term of their office in Council been jointly advocating for a future service or facility, would most likely continue to individually advocate for that service or facility during their respective election campaigns. Such an arrangement could give rise to concern that even though those councillors are not running on a joint election platform, they may fall within the new 'group candidate' provisions of the Bill because of their advocating for the same facility or service.

By way of further example, it is not uncommon to share a resource with another candidate. The most obvious example would be shared resources on polling booths or intermittent periods of handing out how to vote cards (as is common practice at elections of all levels of government) particularly at joint (overlapping) booths. The provisions are overly burdensome on candidates with what could be described as casual associations.¹⁸⁸

Noting that engaging in group campaign activities without meeting the specified record keeping requirements or other group conditions is prescribed as an integrity offence, the Moreton Bay Regional Council submitted that 'any reasonable level of uncertainty around whether an action may constitute an integrity offence is undesirable'.¹⁸⁹

Department's response

In response to the Moreton Bay Regional Council's comments about the proposed amendments capturing 'localised and unplanned cooperation', the department noted that in order to meet the definition of a group campaign activity contained in the Bill, the relevant activity must be carried out 'in an intentionally coordinated way by, or for, 2 or more candidates for the election'.¹⁹⁰ Further, the offence will not apply where the activity relates to candidates who are recorded as members of the same group of candidates or to candidates endorsed by the same political party.¹⁹¹

In addition, the department stated:

The amendment implements the Government's policy in relation to recommendation 5(a) of the Belcarra Report. The Belcarra Report found that a number of candidates in the 2016 election engaged in practices that either breached the group provisions of the LGEA or led to strong perceptions of such breaches that can in turn have adverse effects on public confidence. These

¹⁸⁵ Explanatory notes, p 8.

¹⁸⁶ FNQROC, NWQROC and NQROC, submission 1, p 2; Cr Paul Golle, submission 6, p 9; OSCAR, submission 7, p 2; Cr Paul Bishop, submission 8, p 1; Brisbane Residents United, submission 9, p 2; EDO Qld, submission 22, p 2; NWQROC, submission 31, p 2.

¹⁸⁷ Submission 16, p 1.

¹⁸⁸ Submission 18, p 2.

¹⁸⁹ Submission 18, p 2.

¹⁹⁰ Department, correspondence dated 3 June 2019, p 21.

¹⁹¹ Department, correspondence dated 3 June 2019, p 21.

circumstances make it difficult for voters to understand the true nature of relationship between candidates and may, at worst, reflect deliberate attempts to deceive voters (page 57).

Given the importance associated with improving transparency around the intention of candidates to operate as a collective as identified in the Belcarra Report, prescribing this offence as an integrity offence is considered proportionate and reasonable and will provide for an adequate deterrent for candidates engaging in group campaign activities who fail to comply with their legislative obligations to register as a group of candidates.¹⁹²

3.2.3 Mandatory attendance at training as a condition of nomination

The Belcarra Report highlighted a lack of awareness among candidates of their obligations, including electoral funding and financial disclosure obligations, which ‘seemed to play a role in candidates’ non-compliance’.¹⁹³ The report commended information sessions run by the department in the lead up to local government elections, which the CCC described as helping to address some of these concerns and ensure that prospective candidates understand their obligations during the election campaign, and if elected as councillors.¹⁹⁴

The Bill implements Belcarra Report recommendation 12, which called for attendance at a departmental information session to be made a ‘mandatory requirement’ of nomination, by amending the LGEA to provide that a person may be nominated as a candidate only if the person has, within six months before the nomination day for the election, successfully completed a training course approved by the department’s chief executive about:

- the person’s obligations as a candidate, including their electoral funding and financial disclosure obligations, and
- the person’s obligations as a councillor, if the person is elected or appointed.¹⁹⁵

As the mandatory training requirement would apply to all local government candidates, sitting councillors seeking re-election would also be required to complete the approved training course.

The department advised that it is currently examining options for the delivery of the mandatory training course, including considering the ‘length of the course, the content, how it is accessed’ (eg face to face and web-based options) and ‘also how it looks’, so that ‘the training strikes the right balance between providing the information we need to provide in the session and making sure that it does not deter councillors from nominating’.¹⁹⁶ The department further stated:

We need to make sure that candidates go into this with their eyes wide open. They cannot get nominated and then suddenly in late March or April say, ‘Oh, gosh. I didn’t know that that is what it meant. I didn’t know that I was getting myself into that.’¹⁹⁷

Stakeholder views

The introduction of mandatory training for local government candidates, including sitting councillors, was widely supported by stakeholders.¹⁹⁸ One submitter, Mr Pat Coleman, expressed an outright objection to the provisions, which he considered to be ‘disproportionate’, an ‘interference on political

¹⁹² Department, correspondence dated 3 June 2019, pp 21-22.

¹⁹³ Belcarra Report, p 68.

¹⁹⁴ Belcarra Report, p 69.

¹⁹⁵ Bill, cl 162, s 26.

¹⁹⁶ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, pp 4-5.

¹⁹⁷ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 9.

¹⁹⁸ FNQROC, NWQROC and NQROC, submission 1, p 2; Burdekin Shire Council, submission 3, p 2; Paul Golle, submission 6, pp 1, 8; OSCAR, submission 7, p 5; Cr Paul Bishop, submission 8, p 1; Brisbane Residents United, submission 9, p 2; Whitsunday Regional Council, submission 13, p 1; NQROC, submission 15, p 4; Wildlife Queensland, submission 20, p 1; NWQROC, submission 31, p 2.

liberty', and as potentially helping to serve parties in maintaining the status quo.¹⁹⁹ In this respect, Mr Coleman sought to highlight provisions in the *Commonwealth Electoral Act 1918* (Cth) and Queensland's *Criminal Code Act 1899* (Criminal Code), which specify that it is an offence to hinder or interfere with a person's free exercise or performance of a political right or a duty related to an election.²⁰⁰ However, in large part stakeholder feedback was positive, with any expressed reservations or suggestions relating primarily to the delivery and content of the training, rather than the requirement to complete training itself.

In commending the proposed amendments, some stakeholders affirmed the CCC's findings that candidates and sitting councillors often may not fully comprehend the role they have 'signed up' for.²⁰¹ For example, Cr Wendy Boglary submitted that after each election 'I hear from new councillors that they weren't aware of exactly what the job included and they are extremely stressed',²⁰² while OSCAR submitted that it sees 'ongoing evidence, in the two councils we monitor, that sitting Councillors are often not aware of the legislative requirements of their role'.²⁰³ The Independent Assessor, Ms Kathleen Florian further stated:

*I think it is very important that candidates running for a local government election really understand what it is they are putting their toe in the water for, because the understandings, particularly around things like conflicts of interest and how their existing interests—business or otherwise—may impact on their ability to be effective councillors, are important considerations to have up-front and before you commit yourself to that process.*²⁰⁴

Cr Paul Golle of the Redland City Council also sought to emphasise that under the current legislation a candidate 'only has to be 18 years, Australian and registered to vote', and that 'a decision made by an untrained councillor not only impacts a community, it impacts organisational departments, staff, organisation financial projections and projects'.²⁰⁵

However, many stakeholders indicated that they could not provide unqualified support for the mandatory training requirement due to the lack of detail provided by the department regarding the nature of the training course.²⁰⁶ The NQROC submitted that while it considers compulsory training will help ensure councillors and candidates understand their obligations 'both during an election campaign and when elected ... How this training will be made available to candidates and councillors will impact the ability for meaningful participation, particularly in regional and remote locations'.²⁰⁷ BRU questioned who would bear the costs of the training particularly in remote and rural areas, and how issues of access in remote areas would be accommodated.²⁰⁸ In addition, BRU submitted:

Many minor party and independent candidates do not have a lot of time and resources to dedicate towards being a candidate. To make attendance at a training session (either in-person

¹⁹⁹ Submission 12, p 5.

²⁰⁰ Submission 12, p 5.

²⁰¹ Cr Wendy Boglary, submission 27, p 1; OSCAR, submission 7, p 2; Cr Paul Golle, submission 6, pp 1-3.

²⁰² Cr Wendy Boglary, submission 27, p 1.

²⁰³ Submission 7, p 2.

²⁰⁴ Public hearing transcript, Brisbane, 27 May 2019, p 25.

²⁰⁵ Submission 6, p 3.

²⁰⁶ FNQROC, NWQROC and NQROC, submission 1, p 2; Burdekin Shire Council, submission 3, p 2; Brisbane Residents United, submission 9, p 2; Whitsunday Regional Council, submission 13, p 1; NQROC, submission 15, p 4; Isaac Regional Council, submission 23, p 1; NWQROC, submission 31, p 2.

²⁰⁷ Submission 15, p 4. Burdekin Shire Council also submitted that it supports the mandatory training requirement, 'but wishes to ensure that the options available to undertake the training provide a range of alternatives, particularly for candidates in regional and remote areas, see: Burdekin Shire Council, submission 3, p 2.

²⁰⁸ Submission 9, p 2. Isaac Regional Council also noted that 'it is still unclear ... who is responsible for the cost associated with this training'. See: submission 23, p 1.

*or via video) a mandatory precondition of having a candidate's nomination accepted could create a significant barrier for time-poor candidates.*²⁰⁹

Further, OSCAR and the Isaac Regional Council pointed to the need for the timely finalisation and delivery of the training course, with both submitters calling for the training to be available by October 2019, at least six months prior to the 2020 council elections.²¹⁰

In terms of the content of the course, Cr Wendy Boglary submitted that in addition to setting out councillor responsibilities, training should convey 'the variance of the work' a councillor may be required to undertake.²¹¹ Cr Paul Golle also recommended a range of further professional development requirements be imposed on councillors once elected, noting the significant legal, corporate governance, management, diplomatic and media liaison aspects of the role of a modern councillor.²¹²

Department's response

The department acknowledged stakeholder comments regarding the proposed training, including suggestions for additional training requirements considered to be 'outside the scope of the Bill'.²¹³

The department noted that in its response to recommendation 12 of the Belcarra report, the government committed to 'giving further consideration to the content and timing of information sessions, whether it would be more appropriate for the ECQ to conduct the sessions and measures to ensure attendance and engagement by candidates is monitored'. The department advised that it is currently considering various options for training, including exploring web-based delivery modes.²¹⁴

The department also acknowledged:

I think the reality is that it will be a combination of face to face and web based. In that particular circumstance, someone would be able to log on to the internet for an hour or two—however long it would take—before the nominations close and do that. However, we appreciate that in some communities there are issues still with the network. For that reason, the department is currently considering how to strike a balance between web based and face to face, particularly for our Indigenous communities.

*... We need to make sure that candidates whose background may not be typically English language speaking are catered for as well. We are working with Multicultural Affairs Queensland and the department to make sure that is reflected. Certainly it does need to strike a balance. We cannot have a program that takes candidates two days to complete over the internet.*²¹⁵

3.3 Increased penalties, additional integrity offences, and extensions to limitation periods

In terms of enforcing the requirements of the LGEA, the CCC concluded that two of the key problems with the current legislative framework are the inadequacy of current penalties for non-compliance and the limitations of existing offence provisions.²¹⁶

The Belcarra Report highlighted that penalties for offences relating to disclosure returns, for example, are 'generally the lowest of all Australian jurisdictions', and are 'significantly lower than the highest penalties in New South Wales and Western Australia, which both provide for terms of

²⁰⁹ Submission 9, p 2.

²¹⁰ OSCAR, submission 7, p 2; Isaac Regional Council, submission 23, p 1.

²¹¹ Submission 27, p 1.

²¹² Submission 6, pp 1-4, 6, 8.

²¹³ Department, correspondence dated 3 June 2019, p 5.

²¹⁴ Department, correspondence dated 3 June 2019, p 5.

²¹⁵ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, pp 4-5, 9.

²¹⁶ Belcarra Report, p 87.

imprisonment'.²¹⁷ The CCC also noted that more significant penalties had applied under previous local government legislation in Queensland, such that offence provisions have 'been significantly watered down over time', with the effect of:

*... reducing the perceived seriousness of wrongdoing by councillors and others, undermining the effectiveness of the legislative framework in promoting integrity, transparency and accountability.*²¹⁸

The Belcarra Report also highlighted that many offences under the LGEA have a limitation period (the period of time in which prosecutions can be commenced) of only one year. The CCC reported:

*Short limitation periods can pose a barrier to effective enforcement by preventing those who fail to comply with their obligations from being prosecuted, particularly where possible breaches are not identified for some time or where investigations are complex and protracted.*²¹⁹

For disclosure returns offences under the LGEA, however, the CCC noted that a longer, four-year limitation period applies, meaning that in contrast, if a candidate is elected to council a prosecution could be commenced at any point during their four-year term.²²⁰

To address these issues, the CCC made the following recommendations:

- *Recommendation 29: That the Local Government Electoral Act be amended so that prosecutions for offences related to dedicated accounts (ss. 126 and 127) and groups of candidates (s. 183) may be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns.*²²¹
- *Recommendation 30: That the penalties in the Local Government Electoral Act for offences including funding and disclosure offences be increased to provide an adequate deterrent to non-compliance. For councillors, removal from office should be considered.*²²²

The government expressed in principle support for these recommendations, and committed to undertaking a review of all relevant offences and penalties prior to finalisation and implementation.²²³

To implement the government's response to recommendations 29 and 30, the Bill makes a series of amendments to penalties and limitation periods for existing offences in the LGEA, including prescribing certain offences as 'integrity offences'.²²⁴

As previously noted, the LGA and COBA provide that a person who is convicted of an integrity offence automatically stops being a councillor and is disqualified from being a councillor for four years.²²⁵ Further, relevant provisions of the LGA and COBA also provide that a person is automatically suspended as a councillor if the person is charged with an integrity offence.²²⁶

The Bill contains a transitional provision in relation to new integrity offences, such that a councillor who was previously charged with or convicted of an offence that would be an integrity offence on the commencement of the amendments must, unless the councillor has a reasonable excuse, immediately notify the Minister, the CEO and the mayor (unless the councillor is the mayor), if the charge remains pending or the disqualification period for the conviction has not expired.²²⁷

²¹⁷ Belcarra Report, p 88.

²¹⁸ Belcarra Report, p 89.

²¹⁹ Belcarra Report, p 87.

²²⁰ Belcarra Report, p 87.

²²¹ Belcarra Report, p 88.

²²² Belcarra Report, p 89.

²²³ Queensland Government, *Government response – Operation Belcarra report: A blueprint for integrity and addressing corruption risk in local government*, October 2017, p 6.

²²⁴ Explanatory notes, p 14.

²²⁵ LGA, s 153; COBA, s 153.

²²⁶ LGA, s 182A (renumbered as 175K by the Bill); COBA, s 186B; explanatory notes, pp 14-15.

²²⁷ Bill, cl 12, s 252.

The proposed amendments to penalties and limitation periods for LGEA offences are outlined in Table 1.

Table 1: Proposed amendments to penalties and limitation periods for offences in the LGEA²²⁸

| Offence provision | Change |
|---|---|
| Requirement to operate a dedicated account (for candidates and groups of candidates respectively) ²²⁹ <i>Sections 126(8) and 127(8)</i> | To be prescribed as integrity offences under the LGA and COBA; limitation period for bringing action to be four years |
| Obstructing electoral officers ²³⁰ <i>Section 174</i> | Maximum penalty to be increased from 10 penalty units (\$1,305.50) to 20 penalty units (\$2,611) or six months imprisonment |
| Confidentiality of information ²³¹ <i>Section 176A(2)</i> | Maximum penalty to be increased from 40 penalty units (\$5,222) or 18 months imprisonment, to 100 penalty units (\$13,055) |
| Engaging in group campaign activities ²³² <i>Section 183</i> | Limitation period for bringing an action to be four years |
| Secrecy of voting ²³³ <i>Section 192(3)</i> | Maximum penalty to be increased from 10 penalty units (\$1,305.50), to 20 penalty units (\$2,611) or six months imprisonment |
| Not providing a return under part 6 (electoral funding and financial disclosure) within the time required <i>Section 195(1)</i> | Maximum penalty to be amended from 20 penalty units (\$2,611), to: <ol style="list-style-type: none"> a) if the person took all reasonable steps to give the return within the time required—20 penalty units (\$2,611); b) otherwise—100 penalty units (\$13,055) For (b), the offence would also be prescribed as an integrity offence under the LGA and COBA |
| Giving a return under part 6 (electoral funding and financial disclosure) which is false or misleading <i>Section 195(2)</i> | Maximum penalty to be amended from 100 penalty units (\$13,055) if the person required to give the return is a candidate, or otherwise 50 penalty units (\$6,527.50), to 100 penalty units in all situations (\$13,055) To be prescribed as integrity offences under the LGA and COBA |
| Allowing an agent to give a return that, to the knowledge of the candidate, contains particulars that are false or misleading <i>Section 195 (3)</i> | To be prescribed as integrity offences under the LGA and COBA |

²²⁸ Explanatory notes, p 14.

²²⁹ These offences apply where the candidate (or candidates for a group of candidates) has not taken all reasonable steps to ensure compliance with requirements pertaining to the requirement to operate a dedicated account for an election.

²³⁰ This may include wilfully disturbing any proceeding at an election, preventing a scrutineer from entering or leaving a polling booth during voting or the counting of votes, or obstructing, intimidating or wilfully misleading an electoral officer in their performance of a function under the LGEA.

²³¹ This offence applies to the disclosure of information other than for the purposes of the LGEA, under the authority of another Act, or in a court proceeding in which the information is relevant to the issue before the court.

²³² The provision provides that it is an offence to engage in a group campaign activity for an election, unless the activity relates to candidates who are recorded as members of a group of candidates, or candidates who are endorsed by the same political party for the election.

²³³ Section 192(3) provides that an electoral officer or scrutineer may not make any mark or note on a voters roll or otherwise that indicates who a person has voted for or would enable the officer or scrutineer to know or remember for whom a person has cast a vote.

In addition to these proposed changes to existing penalties and limitation periods and the prescription of further offences as integrity offences, the Bill introduces a number of new offence provisions which apply to new or expanded requirements established by the Bill and are discussed in the relevant section of this report. The new, amended and expanded penalties proposed by the Bill are also considered further in section 7.1.1 of this report, regarding FLPs.

Stakeholder views

OSCAR, the EDO Qld and the QLGRA advised that they support the strengthened penalties and extended limitation periods in the Bill,²³⁴ with the QLGRA emphasising the importance of ‘penalties that are proportionate and material to any breach of legislation’.²³⁵ The Whitsunday Regional Council also expressed in principle support for the Bill’s prescription of further integrity offences,²³⁶ while Wildlife Queensland submitted that the proposed extension to limitation periods:

*... is essential to obviate the current difficulty of continued representation and empowerment of Councillors, who may, had the exposure and origins of their donations and donors been available, not have remained.*²³⁷

The ECQ also stated:

*The new penalties proposed through the bills will support the ECQ in performing this regulatory role while also heightening the expectation of the ECQ taking compliance and enforcement action against those who fail to uphold the law.*²³⁸

While some stakeholders saw scope for penalties to be further increased,²³⁹ a number of local government representatives expressed concerns that the Bill’s strengthened penalties, when considered in concert with some of the more onerous compliance requirements to which they apply, may discourage some community members from nominating or re-nominating as candidates for council.²⁴⁰

The QLS also considered that ‘without evidence of a sufficient nexus between the offence and likelihood of imminent risk of physical or significant harm to the public interest, the proposed increases in maximum penalties and the addition of integrity offences raises a question of proportionality’.²⁴¹ In this respect, the QLS suggested the offences proposed are ‘very broad in nature’ and capture ‘a great variety of different conduct’, such that there may be ‘some revision or some refinement’ required, to establish ‘an offence that deals with the more serious conduct and an offence that deals with the more basic’.²⁴² Further, the QLS stated that any ‘deterrent effect’ in terms of criminal law is ‘difficult to

²³⁴ OSCAR, submission 7, p 3, EDO Qld, submission 22, p 2; Greg Smith, QLGRA, public hearing transcript, Brisbane, 27 May 2019, p 18.

²³⁵ Public hearing transcript, Brisbane, 27 May 2019, p 18.

²³⁶ Submission 14, p 2.

²³⁷ Submission 20, p 2.

²³⁸ Pat Vidgen, ECQ, public hearing transcript, Brisbane, 27 May 2019, p 26.

²³⁹ For example, Cr Paul Golle considered that, unless it can be established as a fair and reasonable mistake, based upon evidence, a failure to comply with obligations under the LGA should attract serious consequences including up to five years of imprisonment, more significant financial penalties, disqualification from managing a company, and personal responsibility to pay off any associated debts. See: submission 6, pp 9-10.

²⁴⁰ Cr Jenny Hill, Mayor, Townsville City Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 5; Cr Lyn McLaughlin, Mayor, Burdekin Shire Council and Chair, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 5; Greg Hallam, LGAQ, public hearing transcript, Brisbane, 27 May 2019, p 10.

²⁴¹ Submission 28, p 10.

²⁴² Matt Dunn, General Manager, Policy, Public Affairs and Governance, QLS, public hearing transcript, Brisbane, 27 May 2019, p 38.

quantify’,²⁴³ and that there may be other ‘more effective, fair and just ways’ to discourage certain councillor behaviour ‘without the imposition of an integrity offence or additional penalties’.²⁴⁴

Department’s response

In response to stakeholder comments, the department stated that the proposed amendments to limitation periods, maximum penalties and integrity offences reflect the government’s response to a number of recommendations of the Belcarra Report.²⁴⁵ In this respect, the department highlighted that beyond the specific recommendations addressing limitation periods and penalties (recommendations 29 and 30), a number of other recommendations have also been material to the Bill’s proposed amendments to penalty provisions and their application, as intended ‘to improve equity, transparency, accountability in Council elections and decision-making’.²⁴⁶

The department has also highlighted that a number of the proposed changes would align the penalties in the LGEA with those applicable for equivalent offences under the Electoral Act, including those relating to obstructing electoral officers (LGEA s 174), the confidentiality of information (LGEA s 176A), and the secrecy of voting (LGEA s 192).²⁴⁷

²⁴³ Matt Dunn, QLS, public hearing transcript, Brisbane, 27 May 2019, p 38.

²⁴⁴ Submission 28, p 10.

²⁴⁵ Department, correspondence dated 3 June 2019, p 24.

²⁴⁶ Department, correspondence dated 3 June 2019, p 24.

²⁴⁷ Explanatory notes, pp 41-43.

4 Soorley Report reforms

The Bill proposes a number of amendments to electoral administration to implement the government's response to Soorley Report recommendations 41, 44, 61 and 74.

4.1 Amendments to postal voting and the preliminary processing of declaration envelopes

The Soorley Report noted that at the 2016 local council elections, 21 councils opted to use full postal voting, with two councils using both postal and attendance (in person) voting. By way of comparison, in the 2012 elections, 30 councils were approved to use full postal voting.²⁴⁸

The Independent Panel identified a number of problems with the postal voting system during the 2016 elections, including:

- delays in the delivery and return of ballots by post
- issues with the voter information letter distributed by the ECQ to postal-only voting councils, and
- high numbers of invalid votes and unreturned ballot papers.²⁴⁹

Of the 21 local governments offering postal-only voting, approximately 23 per cent of registered voters did not participate or cast invalid votes, which the Independent Panel noted 'does not compare favourably with the overall participation rate of the election' of 83 per cent.²⁵⁰

The Soorley Report found that the mass distribution of postal vote applications and ballot packages was, 'poorly managed', with many ballot papers not being received and being delayed in the postal system. Some ballot papers were delivered after election day, while others were lost or damaged in wet weather, meaning some voters could not complete their ballot within the allowable timeframe.²⁵¹

The Soorley Report also concluded that vote counting was too slow and not always accurate. The Independent Panel attributed this to some polling booths being understaffed and a lack of consistency between polling booths in how late they worked to count votes. Further, the Independent Panel also found that most returning officers in larger electorates needed more staff after 6pm to ensure votes were counted quickly.²⁵²

These findings informed recommendations including:

- that applications for postal votes be submitted to ECQ as soon as possible and no later than 10 working days prior to the election (recommendation 41)²⁵³
- that postal-only voting be restricted to councils in remote and regional areas where the total number of electors is fewer than 5,000. All other councils should only have pre-poll, absentee and election day polling booth voting (recommendation 44),²⁵⁴ and
- that legislation be amended to allow all pre-poll and postal vote counting to commence at 4pm on election day in a secure area. This will place an added demand on scrutineers but will allow staff to focus on the close of the count and report results in a more timely manner (recommendation 61).²⁵⁵

²⁴⁸ Soorley Report, p 30.

²⁴⁹ Soorley Report, p 25.

²⁵⁰ Soorley Report, p 25.

²⁵¹ Soorley Report, p 25.

²⁵² Soorley Report, p 30.

²⁵³ Soorley Report, p 26.

²⁵⁴ Soorley Report, p 26.

²⁵⁵ Soorley Report, p 30.

In response to these recommendations, the government undertook to conduct a comprehensive review of early voting processes for the next ordinary general state election and the next local government election, noting that postal-only voting is restricted to local government elections.²⁵⁶

4.1.1 Earlier timeframes for receipt of an application for a postal vote

To implement the government's response to recommendation 41 of the Soorley Report, the Bill proposes to require voters to lodge a request for a postal vote earlier than is currently required. Rather than lodging a request by no later than 7pm on the Wednesday before polling day,²⁵⁷ the Bill proposes to require that such requests must be made by no later than 7pm 12 days before polling day.²⁵⁸

This proposed change to timeframes applies to both:

- applications to cast a postal vote in an election that is not a postal ballot election,²⁵⁹ and
- applications made by a person who believes they are entitled to vote in a postal ballot election but did not receive a ballot paper and declaration envelope when they were distributed to electors by the returning officer.²⁶⁰

The Bill also provides that if the returning officer receives an application after 7pm 12 days before polling day, or is otherwise satisfied the elector is not entitled to cast a postal vote in the election, the returning officer must give the applicant a written notice that states the elector is not entitled to cast a postal vote in the election.²⁶¹

Stakeholder views

Local government stakeholders from North Queensland considered that the Bill's proposed deadline for requesting a postal vote should be extended further back from polling day, with the FNQROC, NWQROC and NQROC submitting that the cut-off date should be '10 – 14 days before election day',²⁶² and the Mareeba Shire Council calling for an extension to 15 days, being 'the Friday two weeks before the election'.²⁶³ The Mareeba Shire Council submitted:

*Given the dates of Local Government elections are fixed, the ability to call for postal vote applications can be brought forward without an issue. By making the closing date two weeks before the Election day gives all electors the opportunity to receive their ballot papers, complete them and return them before Polling day.*²⁶⁴

BRU, in contrast, expressed concern at the earlier cut-off period proposed, suggesting that voters who do not become aware of an election until close to its date may be prevented from submitting a postal vote as a result.²⁶⁵

The ECQ advised that it supports the proposed change.²⁶⁶

²⁵⁶ Soorley Report, p 9.

²⁵⁷ LGEA, s 79 (2).

²⁵⁸ Bill, cl 177, 178.

²⁵⁹ Bill, cl 177, s 79.

²⁶⁰ Bill, cl 178, s 81; explanatory notes, p 15.

²⁶¹ Bill, cl 177, s 79(8); cl 178, s 81(10).

²⁶² FNQROC, NWQROC and NQROC, submission 1, p 2; NWQROC, submission 31, p 2.

²⁶³ Submission 4, p 2.

²⁶⁴ Submission 4, p 3.

²⁶⁵ Submission 9, p 3.

²⁶⁶ Submission 11, p 3.

Department's response

In response to stakeholder comments, the department stated that the proposed 12-day cut-off date for postal vote applications would mean that 'those who request a postal vote have the reasonable prospect of the postal ballot being received before polling day'.²⁶⁷ While accepting that electors who are likely to require a postal vote will need to make their request earlier than they presently do, the department emphasised that that the earlier cut-off is 'intended to minimise electors being unexpectedly disenfranchised due to reliance on the postal network'.²⁶⁸

The department further advised:

*An elector whose address is more than 20 kilometres from a polling booth may apply to be included on the register of special postal voters in advance of an election and will automatically be sent a postal ballot once the election period commences.*²⁶⁹

The department also noted that in addition to postal voting, electors in many local government areas also have access to pre-poll voting, and that telephone voting is available for some cohorts.²⁷⁰

4.1.2 Applications for postal-only voting

As previously noted, given the identified issues with postal voting at the 2016 local government elections, the Independent Panel recommended the restriction of the use of postal-only voting for local government elections to councils in remote and regional areas with fewer than 5,000 electors (recommendation 44).²⁷¹

Currently, the LGEA provides that a local government may apply to the Minister for a poll to be conducted by postal ballot 'if the local government's area includes a large rural sector, large remote areas, or extensive island', with the Minister then required to decide to approve or not approve the application.²⁷²

To implement the government's response to recommendation 44, the Bill would amend the LGEA to change the process for the assessment of applications, and provide for certain matters that must be considered when deciding whether a local government election can be conducted by postal ballot only.²⁷³ The amendments provide that, if a local government applies to the Minister for a poll to be conducted by postal ballot, the Minister must refer the application to the ECQ for recommendation.²⁷⁴ In making a recommendation, the Electoral Commissioner (Commissioner) would be required to have regard to:

- the reasons stated in the application why the poll should be conducted by postal ballot
- the costs of conducting the poll by postal ballot compared to the costs of conducting the poll using polling booths
- the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the area to which the application relates
- the population density and distribution in the area to which the application relates, and
- whether a poll has previously been conducted by postal ballot in the area to which the application relates.²⁷⁵

²⁶⁷ Department, correspondence dated 3 June 2019, p 16.

²⁶⁸ Department, correspondence dated 3 June 2019, p 16.

²⁶⁹ Department, correspondence dated 3 June 2019, p 16.

²⁷⁰ Department, correspondence dated 3 June 2019, p 16.

²⁷¹ Soorley Report, pp 25-26.

²⁷² LGEA, s 45.

²⁷³ Explanatory notes, p 52; Bill, cl 166.

²⁷⁴ Bill, cl 166, s 45AB(1).

²⁷⁵ Bill, cl 166, s45AB(4).

The proposed amendments would also enable the Commissioner to ask the local government for 'further information the Commissioner reasonably requires to make the recommendation'.²⁷⁶

In deciding the application, the Bill provides that the Minister must have regard to the Commissioner's recommendation and the matters stated above.²⁷⁷ Further, in keeping with existing requirements:²⁷⁸

- an approval can be for all or part of a government's local area,²⁷⁹ and
- if approval is given for a part of a local government's area, the local government must publish a map showing the area when the postal-only ballot will be held at its public office, on its website, as well as publishing details in a newspaper that circulates in the area that will hold the postal-only ballot.²⁸⁰

The Bill would also retain an existing provision in the LGEA that states the Minister's decision is not subject to appeal,²⁸¹ and extend its application to a decision of the Commissioner in respect of a recommendation on an application.²⁸² Further, current s 158 of the LGEA (Decisions not subject to Appeal), would be replaced with a new section that includes a clarification that if a provision of the LGEA declares a decision to be not subject to appeal (eg as is the case for decisions on applications for postal ballots), the decision could only be appealed if the Supreme Court decides that the decision is affected by jurisdictional error.²⁸³ An equivalent amendment would also be made to the LGA²⁸⁴ and COBA.²⁸⁵

Stakeholder views

The FNQROC, NWQROC and NQROC submitted that they saw no issue with the current process and decision making for postal ballot elections, requesting that the 'status quo remain' for the provisions.²⁸⁶ The LGAQ and the Balonne Shire Council were also opposed to 'the introduction of new criteria for councils wanting to conduct elections by postal ballot', requesting instead that councils be provided with the discretion to conduct full postal ballot elections, in accordance with a resolution of the 2018 LGAQ annual conference.²⁸⁷ Both of these submitters argued that this option was necessary for councils with sparse populations or those impacted by flooding.²⁸⁸

In contrast, Redlands2030 expressed concern that councils may seek postal ballot elections for their local government area when it may not be in the public interest, submitting that 'postal vote only elections are likely to benefit incumbent councillors'.²⁸⁹ While acknowledging the government's position on the issue, Redlands2030 stated that it considers the legislation should ensure that elections

²⁷⁶ Explanatory notes, p 16; Bill, cl 166, s 45AB(3).

²⁷⁷ Bill, cl 166, s 45(2).

²⁷⁸ See LGEA, s 45 (6)

²⁷⁹ Bill, cl 166, s 45(3).

²⁸⁰ Bill, cl 166, s 45(4).

²⁸¹ LGEA, s 158.

²⁸² Bill, cl 166, s45A. Section 45(6) of the LGEA states that decisions of the Minister in respect of an application for a poll by postal ballot are not subject to appeal. The Bill omits this section and inserts new section 45A, which provides that 'A decision of the Minister or the electoral commissioner under this subdivision ['Polls by ballots'] is not subject to appeal'.

²⁸³ Bill, cl 189, s 158.

²⁸⁴ Bill, cl 118; amendment to LGA, s 244 (Decisions not subject to appeal).

²⁸⁵ Bill, cl 11; amendment to COBA, s226 (Decisions not subject to appeal).

²⁸⁶ FNQROC, NWQROC and NQROC, submission 1, p 3; NWQROC, submission 31, p 3.

²⁸⁷ LGAQ, submission 5, p 6; Balonne Shire Council, submission 2, p 3. See also Banana Shire Council, submission 26, p 1.

²⁸⁸ LGAQ, submission 5, p 6; Balonne Shire Council, submission 2, p 3. See also Banana Shire Council, submission 26, p 1.

²⁸⁹ Submission 16, p 2.

‘in major councils (like Redland City)’ should not be held on a postal vote only basis, ‘unless there is clear evidence that a majority of the community support the change’.²⁹⁰

The QLS made specific comment on the Bill’s retention of provisions declaring a decision to be not subject to appeal, including the decisions of the Minister and Commissioner in respect of an application for a postal ballot election. The QLS acknowledged that the proposed amendment includes a clarification that decisions affected by jurisdictional error are appropriately subject to the *Judicial Review Act 1991* (JR Act), which it considers to be ‘an improvement’ on the existing provisions:

*... unless the decision involves jurisdictional error, the effect of this section is that those persons whose interests are adversely affected by the decision will not be able to access the judicial review procedures in the JR Act.*²⁹¹

However, the QLS submitted that it considers that there should be no restriction on the availability of judicial review for decisions under the legislation.²⁹² The issue of judicial review is considered further in section 7.1.1 of this report.

Department’s response

The department acknowledged stakeholder suggestions that councils should have discretion to conduct postal ballots. In response, the department sought to highlight the benefit of the Bill’s proposed decision-making process, noting that the way an election is conducted has impacts on the ECQ, and that the Minister would be required to refer the application to the ECQ for recommendation about whether the application should be approved.²⁹³

In response to Redlands2030, the department emphasised that the Bill provides for a number of matters which the ECQ and the Minister must have regard in making their recommendation and decision respectively.²⁹⁴

Further, whilst acknowledging the QLS’s comments, the department reiterated that ‘the amendments do not expand on the current provisions relating to judicial review’, but only acknowledge the Supreme Court’s ‘supervisory jurisdiction in matters concerning jurisdictional error’.²⁹⁵

4.1.3 Preliminary processing of declaration envelopes

As previously noted, the Soorley Report highlighted delays in the counting of votes at the 2016 local government elections, and recommended that all pre-poll and postal vote counting should be allowed to commence at 4pm on election day (recommendation 61).²⁹⁶

The Bill implements the government’s response to recommendation 61, allowing for earlier preliminary processing of pre-poll and postal votes. The preliminary processing of these declaration votes involves examining the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.²⁹⁷

²⁹⁰ Submission 16, p 2.

²⁹¹ Submission 28, p 8.

²⁹² Submission 28, p 9.

²⁹³ Department, correspondence dated 3 June 2019, p 13.

²⁹⁴ Department, correspondence dated 3 June 2019, p 13.

²⁹⁵ Department, correspondence dated 3 June 2019, p 16.

²⁹⁶ Soorley Report, p 30.

²⁹⁷ LGEA, s 89.

The Bill would amend the relevant provisions of the LGEA to provide that:

- for a postal ballot election, the returning officer may, *before, on or after the polling day*, open all ballot boxes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting,²⁹⁸ and
- for an election other than a postal ballot election, the returning officer may, *before, on or after the polling day*, open all ballot boxes containing only sealed declaration envelopes and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.²⁹⁹

Stakeholder views

The ECQ submitted that it supported the proposed change.³⁰⁰

4.2 Amendments to operational electoral matters

During the Independent Panel's inquiry, the ECQ provided the panel with a list of 14 proposed amendments to the LGEA and Electoral Act.³⁰¹ Soorley Report recommendation 74 called for the ECQ's proposed legislative amendments to be 'investigated and implemented as appropriate' (see **Appendix D** of this report).³⁰²

In response to recommendation 74, the Bill proposes to implement the ECQ's items 2, 3, 6, 8 and 12 of recommendation 74, as they apply to the ECQ's proposals for amendment. The explanatory notes advise that the relevant amendments were 'identified by the ECQ to increase consistency between state and local government elections and assist the ECQ to streamline operations and overall conduct of elections'.³⁰³

The first of the proposed changes relates to the requirement for an elector to make a declaration when requesting a replacement ballot paper. Currently, if an elector's ballot paper is accidentally defaced or destroyed to the extent that it cannot be used to cast a vote, the LGEA requires the elector to declare this, in the approved form, as well as to confirm that they have not voted in the election in question, before an issuing officer can give the elector a replacement ballot paper.³⁰⁴ The Bill proposes to omit the requirement to make a declaration in this circumstance, so that the issuing officer can provide a replacement ballot paper if the issuing officer is satisfied of these facts and the elector gives the spoilt ballot paper to the issuing officer.³⁰⁵ This change is in line with the ECQ's proposal, noting that there is no such declaration requirement for state elections (under the Electoral Act).³⁰⁶

For postal voting, if a ballot paper is lost in transit or is accidentally destroyed, the elector would be able to make a declaration when casting their postal vote, rather than when applying for a replacement ballot paper and declaration envelope.³⁰⁷

The remaining proposed amendments are to:

- modernise the public notice requirements under the LGEA to reflect contemporary means of communication, by replacing requirements to publish notices in newspapers or display notices

²⁹⁸ Bill, cl 180, s 89(1).

²⁹⁹ Bill, cl 180, s 89(2).

³⁰⁰ Submission 11, p 3.

³⁰¹ Soorley Report, p 38.

³⁰² Soorley Report, p 38.

³⁰³ Explanatory notes, p 17.

³⁰⁴ LGEA, s 85.

³⁰⁵ Bill, cl 179.

³⁰⁶ Soorley Report, p 53 (Appendix 5 – ECQ proposed legislation amendments).

³⁰⁷ Bill, cl 179, s 85A.

at the office of the returning officer with requirements to publish notices on the ECQ website and other ways considered appropriate³⁰⁸

- align the definition of ‘gift’ in the LGEA with the definition in the Electoral Act³⁰⁹
- amend the LGEA to remove the requirement for a separate, detachable flap on declaration envelopes,³¹⁰ and
- remove the requirement for each ballot paper to be attached to a butt that has a unique number for the local government area, or division of the local government area.³¹¹

Stakeholder views

Noting the Bill’s move to align the definition of ‘gift’ in the LGEA with that in the Electoral Act, the Isaac Regional Council expressed a concern that the wording the Bill’s amendment of the meaning of ‘gift’ in the LGEA ‘does not provide clarity on the accumulation of gifts’.³¹² Their submission questioned, for example, whether gifts should be disclosed if a number of gifts from the same source have been received that would not individually trigger a requirement for disclosure, but would collectively exceed the specified disclosure threshold.³¹³

The ECQ was supportive of the amendments to address its proposed reforms. The ECQ stated that removing the requirement for a separate, detachable flap on a declaration envelope would address the ‘ECQ experience that electors mistakenly remove this flap, resulting in the vote not being admitted to the count, effectively disenfranchising themselves by not having their vote count’.³¹⁴ Regarding the proposed removal of the requirement for ballot papers to be attached to a butt with a unique number, the ECQ submitted that the amendments would ‘reduce printing times and allow ECQ election staff to copy ballot papers when demand requires it’.³¹⁵

Department’s response

In response to the Isaac Regional Council’s comments, the department advised that while the Bill proposes to amend the definition of gift in s 107 of the LGEA, s 117(5) of the LGEA and cl 230 (new s 118A) of the Bill provide for the value of a gift where the same entity gives more than one gift.³¹⁶ These sections confirm that gifts are cumulative, meaning it does not matter whether the expense or gift was made or received in small amounts, or all at once (see also section 3.1.2 of this report).

The department has acknowledged the ECQ’s support for the Bill.³¹⁷

³⁰⁸ Explanatory notes, p 17; Bill, cl 161.

³⁰⁹ Bill, cl 222.

³¹⁰ Bill, cl 181; 184.

³¹¹ Bill, cl 171, s55.

³¹² Submission 23, p 2.

³¹³ Submission 23, p 2.

³¹⁴ Submission 11, p 3.

³¹⁵ Submission 11, p 3.

³¹⁶ Department, correspondence dated 3 June 2019, p 20.

³¹⁷ Explanatory notes, p 59.

5 Local government system and decision making

The Bill contains a range of reforms to local government administration and decision making, including amendments relating to conflicts of interest, the councillor complaints framework, mayoral powers, councillor access to information, caretaker arrangements, state intervention powers, local government changes, and aligning certain provisions of the COBA with those in the LGA.

5.1 Conflicts of interest

The Bill proposes to amend the LGA and the COBA to strengthen and clarify the process for councillors dealing with personal interests.³¹⁸ The department advised that conflicts of interest were ‘one of the main issues raised by stakeholders with the department over the past 12 months’,³¹⁹ and that although the Belcarra Stage 1 Act made significant amendments to address conflicts of interest matters, councillors remain confused about what constitutes a conflict of interest.³²⁰

*They are confused by the difference between a conflict of interest and what we call a material personal interest. They also currently believe that all personal interests must be disclosed under the Local Government Act, irrespective of whether it is a \$20,000 donation or a \$20 donation.*³²¹

Currently, chapter 6, part 2, division 5A of the LGA and chapter 6, part 2 division 5A of the COBA provide for how councillors are to deal with personal interests in an accountable and transparent way.³²² The Bill would omit these divisions and insert new provisions regarding the personal interests of councillors. The provisions would apply when councillors are participating in decisions under an Act, a delegation or other authority, as well in a local government meeting. Particular matters which are recognised as ‘ordinary business matters’ would be excluded from the operation of the provisions.³²³ This includes, for example, matters which solely involve or relate to the making or levying of rates and charges, the fixing of a cost recovery fee, a resolution required for the adoption of the budget, a planning scheme or amendment of a planning scheme for the local government area, and the remuneration and provision of superannuation or insurance to councillors.³²⁴

Regarding the proposed changes to the conflict of interest provisions, the department stated:

*It really is, I guess, about saying to councillors that not everything must be disclosed. We have had a lot of feedback from councillors that they are disclosing everything to the point where they are losing their quorum. The result of that is that matters are having to be delegated to a CEO. Some of these might be standard matters; some of them might be really important planning matters. What we are trying to do here is strike a really good balance between what has to be disclosed and what does not have to be disclosed ...*³²⁵

5.1.1 Prescribed conflicts of interest

The Bill would introduce a new concept – prescribed conflicts of interest – to ‘provide some certainty in what is notoriously an uncertain area’.³²⁶

The Bill sets out three categories of prescribed conflicts of interest – those relating to particular gifts or loans, those relating to sponsored hospitality benefits, and those relating to other matters.³²⁷ The

³¹⁸ Explanatory notes, p 20.

³¹⁹ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 2.

³²⁰ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 2.

³²¹ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 2.

³²² Explanatory notes, p 20.

³²³ Explanatory notes, p 20.

³²⁴ Bill, cl 106, s 150EF.

³²⁵ Ms Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 3.

³²⁶ Ms Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 3.

³²⁷ Bill, cl 7, ss 177D, 177E and 177F; cl 106, ss 150EG, 150EH and 150EI.

latter category encompasses matters such as contracts between the council and the councillor for the supply of goods or services to the council.³²⁸

In summary, a councillor has a prescribed conflict of interest in a matter if any of the following circumstances are met:

- a gift or loan or sponsored hospitality benefit of total value \$2,000 or more is given to the councillor or a close associate of the councillor by a donor with an interest in the matter during the relevant term for the councillor and, for a gift or loan, it is required to be the subject of a return under the LGEA, part 6, or is given in other circumstances³²⁹
- the matter is or relates to a contract between the council and the councillor, or a close associate of the councillor, for the supply of goods or services to the council, or the lease or sale of assets by the council³³⁰
- the CEO is a close associate of the councillor and the matter is or relates to the appointment, discipline, termination, remuneration or other employment conditions of the CEO,³³¹ or
- the matter is or relates to an application made to the council by the councillor, or a close associate of the councillor, if:
 - the matter is or was for the grant of a licence, permit, registration, approval or consideration of another matter under a local government related law, and
 - the councillor, or a close associate of the councillor, has made a written submission to the council about the application before it is or was decided.³³²

The Bill also establishes the following offences in relation to prescribed conflicts of interest, for which a maximum penalty of 200 penalty units (\$26,110) or two years imprisonment applies:

- a councillor must not participate in making a decision relating to the matter if the councillor has a prescribed conflict of interest on a matter³³³
- if a councillor may participate, or is participating, in a decision about a matter and the councillor becomes aware at a council meeting that the councillor has a prescribed conflict of interest in the matter, the councillor must inform the meeting of the prescribed conflict of interest (including the specified particulars), or if the meeting has not yet commenced, must give notice of the prescribed conflict of interest, including the specified particulars,³³⁴ and
- if a councillor gives a notice at or informs a meeting of the councillor's prescribed conflict of interest in a matter, the councillor must leave the place at which the meeting is being held and stay away while the matter is discussed and voted on, unless the Minister has approved the councillor participating in deciding a matter in a meeting.³³⁵

³²⁸ Bill, cl 7, s 177F; cl 106, s 150EI.

³²⁹ Bill, cl 7, ss 177D and 177E; cl 106, ss 150EG, 150EH. See cl 7, s 177G and cl 106, s 150EJ for the definition of 'close associate'. See cls 14 and 122 for the definition of 'relevant term' for a councillor. See cl 7, 177E(2) and cl 106, s 150EH(2) for the definition of 'sponsored hospitality benefit'.

³³⁰ Bill, cl 7, s 177F(a); cl 106, s 150EI(a).

³³¹ Bill, cl 7, s 177F(b); cl 106, s 150EI(b).

³³² Bill, cl 7, s 177F(c); cl 106, s 150EI(c).

³³³ Bill, cl 7, s 177H; cl 106, s 150EK. See also, Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1327; explanatory notes, p 21. See cl 7, s 177B and cl 106, s 150EE for when a person participates in a decision.

³³⁴ Bill, cl 7, s 177I; cl 106, s 150EL.

³³⁵ Bill, cl 7, s 177J; cl 106, s 150EM.

5.1.2 Declarable conflicts of interest

If a personal interest does not fall within the definition of a prescribed conflict of interest, it may still amount to a declarable conflict of interest.³³⁶

The Bill provides that a councillor has a declarable conflict of interest in a matter if the councillor has, or could reasonably be presumed to have, a conflict between the councillor's personal interests, or the personal interests of a related party of the councillor, and the public interest; and because of the conflict, the councillor's participation in a decision about the matter might lead to a decision that is contrary to the public interest.³³⁷

The Bill sets out certain interests that are not declarable conflicts of interest. These include:

- if the councillor, or a related party of the councillor, stands to gain a benefit or suffer a loss because of the conflict of interest is no greater than the benefit or loss that a significant proportion of persons in the local government area stand to gain or lose, or
- if the conflict of interest arises solely because the councillor, or a related party of the councillor, receives gifts, loans or sponsored hospitality benefits from an entity totalling \$500 or less during the councillor's relevant term.³³⁸

If a local government meeting is informed that a council has personal interests in a matter by a person other than the councillor, the eligible councillors at the meeting would be required to decide whether the councillor has a declarable conflict of interest in the matter.³³⁹

If a councillor has a declarable conflict of interest in a matter as notified at a meeting or decided by eligible councillors, the eligible councillors at the meeting would be required to decide whether the councillor may participate in the decision, or must not participate in the decision and must leave the place at which the meeting is being held while the eligible councillors discuss and vote on the matter. Where eligible councillors decide to permit the councillor to participate in the decision, they would be able to impose conditions on the councillor's participation.³⁴⁰

The Bill also provides that a decision by eligible councillors about whether a councillor has a declarable conflict of interest or whether a councillor with a declarable conflict of interest may participate in a decision may be made, even if the number of eligible councillors is less than a majority or do not form a quorum for the meeting.³⁴¹ The department advised that this provision improves on the present legislation:

*Currently the legislation deems that no quorum can be reached where a majority of Councillors declare a personal interest. The Bill seeks to amend this by referencing conflicts of interest rather than merely personal interests. This reflects feedback from stakeholders indicating quorum issues are arising when Councillors have merely declared personal interests which may or may not be declarable conflicts of interest.*³⁴²

Under the amendments, the councillor who is the subject of the decision may remain at the meeting while the decision is being made, but cannot vote or otherwise participate in the making of the decision, other than by answering a question put to the councillor necessary to assist the eligible councillors to make the decision.³⁴³

³³⁶ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 3. See also: Bill, cl 7, s 177L; Bill, cl 106, s 150EO.

³³⁷ Bill, cl 7, s 177K; Bill, cl 106, s 150EN. See also: Bill, cl 7, s 177M and cl 106, s 150EP for who is a 'related party' of a councillor.

³³⁸ Bill, cl 7, s 177L; cl 106, s 150EO.

³³⁹ Bill, cl 7, s 177O; cl 106, s 150ER; cls 14, 122. 'Eligible councillor', for a matter at a meeting, means a councillor at the meeting who does not have a prescribed conflict of interest or declarable conflict of interest in the matter.

³⁴⁰ Bill, cl 7, s 177P; cl 106, s 150ES.

³⁴¹ Bill, cl 7, s 177Q; cl 106, s 150ET.

³⁴² Department, correspondence dated 3 June 2019, p 11.

³⁴³ Bill, cl 7, s 177Q; cl 106, s 150ET.

Further, if the eligible councillors cannot make a decision, the Bill provides that the eligible councillors are taken to have decided that the councillor must leave, and stay away from, the place where the meeting is being held while the eligible councillors discuss and vote on the matter.³⁴⁴

The maximum penalty for each of the following offences relating to declarable conflicts of interest is 100 penalty units (\$13,055) or one year of imprisonment:

- if a councillor may participate, or is participating, in a decision about a matter at a council meeting and the councillor becomes aware that they have a declarable conflict of interest in the matter, the councillor must stop participating and must not further participate in a decision relating to the matter, and must immediately inform the meeting of the declarable conflict of interest³⁴⁵
- if a councillor first becomes aware that they have a declarable conflict of interest other than at a council meeting, the councillor must stop participating and must not further participate in a decision relating to the matter, and as soon as practicable, must give notice of the councillor's declarable conflict of interest to the CEO (and at the next meeting), including the specified particulars,³⁴⁶ and
- a councillor must comply with a decision about the councillor not participating in a decision and any conditions imposed on the councillor.³⁴⁷

5.1.3 Other matters relating to conflicts of interest

The Bill provides that if there is less than a quorum remaining at a local government meeting after one or more councillors have left the meeting because of a prescribed conflict of interest or declarable conflict of interest, the local government must:

- delegate deciding the matter unless the matter cannot be delegated, or
- decide by resolution to defer the matter to a later meeting.

The Bill provides that the local government must not delegate deciding the matter to an entity if the entity, or a majority of its members, have personal interests that are, or are equivalent in nature to, a prescribed conflict of interest or declarable conflict of interest in the matter.³⁴⁸ The Minister may approve a councillor participating in deciding a matter in a meeting if the matter could not otherwise be decided at the meeting because of a lack of quorum, or the matter cannot be delegated.³⁴⁹

The Bill would also:

- require a councillor to inform the person presiding at a meeting or the CEO if the councillor reasonably believes or reasonably suspects another councillor who has a prescribed or declarable conflict of interest is participating in a decision relating to the matter³⁵⁰
- set out a process for dealing with a councillor's possible conflict of interest reported by another councillor³⁵¹
- make it an offence for a person to take retaliatory action because a councillor complied with the duty to report another councillor's prescribed conflict of interest or declarable conflict of interest (maximum penalty – 167 penalty units (\$21,801.85) or two years imprisonment)³⁵²

³⁴⁴ Bill, cl 7, s 177Q; cl 106, s 150ET.

³⁴⁵ Bill, cl 7, s 177N; cl 106, s 150EQ.

³⁴⁶ Bill, cl 7, s 177N; cl 106, s 150EQ.

³⁴⁷ Bill, cl 7, s 177P; cl 106, s 150ES.

³⁴⁸ Bill, cl 7, s 177R; cl 106, s 150EU.

³⁴⁹ Bill, cl 7, s 177S; cl 106, s 150EV.

³⁵⁰ Bill, cl 7, s 177T; cl 106, s 150EW. Failing to do so could result in disciplinary action being taken against the councillor (see also Bill, cl 7, s 177T(2) – Note; cl 106, s 150EW(2) – Note).

³⁵¹ Bill, cl 7, s 177U; cl 106, s 150EX.

³⁵² Bill, cl 7, proposed new s 177V in COBA; cl 106, proposed new s 150EY in LGA.

- make it an offence for a councillor with a prescribed conflict of interest or declarable conflict of interest to direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter (maximum penalty – 200 penalty units (\$26,110) or two years imprisonment),³⁵³ and
- require specified information to be recorded in the minutes of the meeting if a councillor gives notice to or informs a local government meeting that the councillor, or another councillor, has a prescribed conflict of interest or declarable conflict of interest in a matter.³⁵⁴

5.1.4 Integrity offences

As previously noted, certain offences under the LGEA, LGA and COBA (in addition to the Criminal Code and the Electoral Act), are classified as integrity offences.³⁵⁵ If convicted of an integrity offence, a person automatically stops being a councillor and is disqualified from being a councillor for four years.³⁵⁶ Additionally, a person is automatically suspended as a councillor if they are charged with an integrity offence.³⁵⁷

In replacing provisions governing the management of conflicts of interest in the LGA and COBA, the Bill would omit certain integrity offences as they apply to the current provisions, and insert new integrity offences relevant to the amended conflicts of interest scheme. Specifically, the Bill would omit the following integrity offences relating to councillors' personal interests:³⁵⁸

Table 2: Integrity offences to be omitted from the LGA and the COBA

| LGA | COBA | Integrity offence |
|------------------|------------------|--|
| s 175C(2) | s 177C(2) | Councillor's material personal interest at a meeting |
| s 175E(2) or (5) | s 177E(2) or (5) | Councillor's conflict of interest at a meeting |
| s 175H | s 177H | Offence to take retaliatory action |
| s 175I(2) or (3) | s 177I(2) or (3) | Offence for councillor with material personal interest or conflict of interest to influence others |

For the proposed new conflict of interest provisions, the Bill provides that the following integrity offences would apply:³⁵⁹

Table 3: New offences to be prescribed as integrity offences from the LGA and the COBA

| LGA | COBA | Integrity offence |
|-------------------|------------------|--|
| s 150EK(1) | s 177H | Councillor must not participate in decisions |
| s 150EL(2) or (3) | s 177I(2) or (3) | Obligation of councillor with prescribed conflict of interest |
| s 150EQ(2) or (3) | s 177N(2) or (3) | Obligation of councillor with declarable conflict of interest |
| s 150EY | s 177V | Offence to take retaliatory action |
| s 150EZ(2) | s 177W(2) | Obligation of councillor with prescribed conflict of interest or declarable conflict of interest to influence others |

³⁵³ Bill, cl 7, proposed new s 177W in COBA; cl 106, proposed new s 150EZ in LGA.

³⁵⁴ Bill, cl 7, proposed new s 177X in COBA; cl 106, proposed new s 150FA in LGA.

³⁵⁵ COBA, Schedule 1; LGA, Schedule 1.

³⁵⁶ LGA, s 153; COBA, s 153.

³⁵⁷ LGA, s 182A (renumbered as 175K by the Bill); COBA, s 186B. Explanatory notes, pp 14-15.

³⁵⁸ Bill, cls 13, 121.

³⁵⁹ Bill, cls 13, 121.

5.1.5 Stakeholder views and the department's response

Stakeholders expressed a range of views on the proposed amendments to the provisions on councillors' conflicts of interest.

Some stakeholders strongly supported the proposed amendments³⁶⁰ while others expressed general support but considered that certain changes should be made.³⁶¹ At least one stakeholder was not convinced that the proposed new provisions would achieve their objective of clarifying and further strengthening how councillors' conflicts of interest are managed.³⁶²

The LGAQ supported many of the proposed changes to councillors' conflict of interest provisions but considered that certain terms need clarifying:

*We do support in principle the proposed conversion of what is presently defined as a material personal interest to a prescribed conflict of interest. Further, we support the draft bill's intent to clarify and better define a prescribed conflict of interest as opposed to the current definition of material personal interest. However, like the Law Society, we believe there are a number of ambiguities that require refinement. We have gone to those around declarable conflicts of interest. Similar to the Law Society, we have major concerns about the definitions...*³⁶³

The Office of the Independent Assessor (OIA) considered that the Bill would generally assist in making the conflict of interest provisions clearer, but that it would not support councillors and councils to develop their capacity to identify, properly disclose and determine whether a personal interest amounts to a conflict of interest.³⁶⁴ The OIA stated that this is because the Bill 'places the onus on individual councillors to identify whether they have a conflict of interest and disclose it, and removes their ability to disclose a personal interest and have council determine whether it is a conflict of interest'.³⁶⁵

Redlands2030 submitted that it supported the thrust of the conflict of interest amendments but that it had some reservations:

- *We remain concerned that inappropriate behaviour may continue to occur in discussions by councillors outside the official minuted meetings which are regulated under the Local Government Act.*
- *In particular we note the potential for matters to be discussed inappropriately at unofficial meetings of councillors, 'workshops', in corridors and in lunchrooms.*
- *We think it very important that councillors be placed under a general obligation to avoid any participation in **any** discussion with other councillors (or officers) if they have a declarable conflict of interest.*³⁶⁶

The Whitsunday Regional Council held the view that the proposed reforms would not provide more 'certainty and clarity' regarding conflicts of interest, 'as it represents a further change in a short period of time regarding how Councillors should conduct themselves regarding conflicts of interest'.³⁶⁷

³⁶⁰ See, for example: OSCAR, submission 7, p 2; Cr Paul Bishop, submission 8, p 1.

³⁶¹ See, for example: LGAQ, submission 5, p 3; BRU, submission 9, p 5; Redlands2030, submission 16, p 3; Office of the Independent Assessor (OIA), submission 19, p 5.

³⁶² See, for example: Whitsunday Regional Council, submission 14, p 2. See also: explanatory notes, p 4.

³⁶³ Greg Hallam, LGAQ, public hearing transcript, Brisbane, 27 May 2019, p 10.

³⁶⁴ Submission 19, p 5.

³⁶⁵ Submission 19, p 5.

³⁶⁶ Submission 16, p 3 (emphasis in original).

³⁶⁷ Submission 14, p 2.

Further, Burdekin Shire Council Mayor and Chair of the NQROC, Cr Lyn McLaughlin, commented on the difficulties the Bill may, if passed, present for some councillors. Cr McLaughlin stated:

... I think it needs to be recognised that the majority of councillors in Queensland are not full-time councillors. That is very, very important. The majority of councillors run a business to survive and to support their families. With some of the onerous requirements, they are going to have to either employ someone or give up some of their own time to try to administer all of the paperwork and responsibility around being a councillor.

I make it very clear that at no time has this group ever disagreed with the principles of fairness, openness and no bias. They are not in question; it is not that. It is just that we appear to be legislating for the worst performers when the best performers are nowhere near that. Everyone gets pulled down to whoever the lowest performers are, instead of having them rise to the people who do the right thing—declare everything and never have any conflicts of interest...³⁶⁸

The LGAQ made similar comments regarding the basis for the amendments:

... We are all for openness and transparency. We have supported all of these reforms for a decade but, as others have said, the sins of a few—and they are very few, and we are talking 579 elected members—are going to create a system that is not capable of producing outcomes. At the end of the day, whatever you do, the system has to be able to deliver for local people. It has to be able to do all of the basic things that people expect of it. If we are in terminal discussions about who has a conflict and why it is not, it is not going to get there. There has to be a balance in all of this.³⁶⁹

Stakeholder comments in relation to different aspects of the proposed amendments to councillor conflict of interest provisions are examined below, as are the department's responses to these comments.

Participating in a decision

For the purposes of Chapter 5B (Councillors' conflicts of interest) of the LGA, proposed new s 150EE sets out when a person participates in a decision. It provides that a reference to a councillor of a local government or other person participating in a decision includes a reference to the councillor or other person:

- considering, discussing or voting on the decision in a local government meeting, and
- considering or making the decision under an Act or a delegation or another authority.³⁷⁰

The Balonne Shire Council supported the intent of proposed new s 150EE, but considered the expressions 'other person' and 'local government meeting' to be too broad.³⁷¹

The LGAQ described the proposed section as 'extremely troubling'.³⁷² It recommended that the term 'other person' be deleted because it is unclear and not in keeping with the intent of Chapter 5B.³⁷³

The Sunshine Coast Regional Council also submitted that 'the word "considering" could apply to both non-decision/information/briefing sessions and formal or statutory decision making meetings of the local government'.³⁷⁴

³⁶⁸ Public hearing transcript, Brisbane, 27 May 2019, p 5.

³⁶⁹ Greg Hallam, LGAQ, public hearing transcript, Brisbane, 27 May 2019, p 14.

³⁷⁰ See also: Bill, cl 7, which inserts equivalent s 177B in the COBA.

³⁷¹ Submission 2, p 2.

³⁷² Submission 5, p 3.

³⁷³ Submission 5, p 3.

³⁷⁴ Submission 13, p 2.

In response to these comments, the department advised that the reference to ‘other persons’ in proposed s 150EE would address circumstances in which an individual other than a councillor may participate in a local government meeting or under an Act, delegation or authority, without specifically limiting the persons to whom this applies.³⁷⁵

The department noted that the influencing offence in proposed new s 150EZ of the Bill also makes reference to ‘other persons’, providing that a councillor with a prescribed conflict of interest or declarable conflict of interest in a matter must not direct, influence, attempt to influence or discuss the matter with another person who is participating in a decision of the local government on the matter. The department advised:

*This would include, for example another Councillor, the Chief Executive Officer or a Local Government officer deciding the matter under a delegation.*³⁷⁶

Regarding stakeholder concerns that the expression ‘local government meeting’ is too broad or unclear, the department noted that a new definition of ‘local government meeting’ that is identical to the definition currently contained in s 150C of the LGA would be inserted into the LGA dictionary by cl 122 of the Bill.³⁷⁷

Ordinary business matters

The Bill proposes that the provisions relating to conflicts of interest will not apply to specified ordinary business matters of a local government.³⁷⁸

OSCAR submitted that the conflict of interest provisions should apply to the ordinary business of councils or that there needs to be ‘a new and tighter definition of “ordinary business”’.³⁷⁹

... We believe it is totally inappropriate that planning scheme matters are regarded as ordinary council business and therefore currently exempt from conflict of interest provisions.

Under the existing legislation we believe a Councillor is not deemed to have a conflict of interest even if they own property that is impacted by a new Planning Scheme, or an amendment to an existing scheme, on which they are voting (beyond an interest that is no greater than other individuals in the area), and which has the potential to impact on the value of that property. Nor would the past receipt of a donation from a developer or individual who had a financial interest in a parcel of land trigger a conflict of interest declaration.

*In our view, if our interpretation is correct, this is inconsistent with the principle of transparency and therefore totally unacceptable.*³⁸⁰

The department has advised in this respect:

When it comes to a planning scheme, there are so many different iterations of the impact of a planning scheme. Sometimes when a council puts through a planning scheme the councillors may in any respect have an interest that is no greater than anyone else’s in the community, but there could technically be a planning scheme, particularly in a smaller area, where the only impact is on a parcel of land that is owned by the councillor. The impact really can differ, based on what the planning scheme is saying or what is an amendment to a planning scheme. We appreciate the business of government. The business of the council must continue. The issue we found with removing the concept of ‘ordinary business matter’ is that you would have every councillor saying, ‘Oh gosh, I have a conflict of interest in terms of the budget. How are we going to get the

³⁷⁵ Department, correspondence dated 3 June 2019, p 8.

³⁷⁶ Department, correspondence dated 3 June 2019, p 8.

³⁷⁷ Department, correspondence dated 3 June 2019, p 8.

³⁷⁸ Bill, cl 7, s 177C; cl 106, s 150EF.

³⁷⁹ Submission 7, pp 2-3.

³⁸⁰ Submission 7, p 3.

*budget through?’ We have to be able to strike a balance, be it the budget or a planning scheme, between transparency and accountability versus ensuring that the business of council can continue.*³⁸¹

Committee comment

Noting stakeholder concerns regarding the breadth of the matters captured within the definition of ‘ordinary business matter’, the committee considers that the department may wish to consider the issues raised by stakeholders during consultation on the next stage of the Belcarra reforms to local government administration.

Sponsored hospitality benefits

‘Sponsored hospitality benefit’ is defined in proposed new s 150EH(2) as travel or accommodation undertaken or used by a person, other than travel or accommodation paid for by the state or a local government, if another entity contributes to the cost of the travel or accommodation and the other entity is not the person’s spouse, other family member or friend.³⁸²

The NQROC submitted that it is unclear why travel and accommodation paid for by the Commonwealth Government is not similarly excluded from the definition,³⁸³ and considered that the definition should be amended to also exclude any contribution paid for by the Commonwealth Government.³⁸⁴

The NQROC also submitted that the definition ‘does not clearly deal with travel or accommodation benefits supplied to the relevant person as a value-in-kind contribution’.³⁸⁵ To illustrate the issue, the NQROC provided the following example:

*... during site visits and overseas trade missions it is not uncommon for the relevant organisations in the host country, (either government or non-government entity) to provide transport and/or accommodation at no charge to the site visit delegates or the state or local government entity organising the visit.*³⁸⁶

The NQROC recommended that where the relevant activities form part of the official itinerary, no conflict of interest should be considered to arise, and that appropriate amendments be made to reflect this.³⁸⁷

Representing NQROC at the public hearing, Mr Graeme Finlayson, Chief Legal Officer of the Townsville City Council, stated:

*... There used to be an exclusion for gifts received except in an official capacity. I absolutely fully agree that, if you are getting free bottles of Cristal or buckets of gold otherwise on official business, that is a problem. That is certainly not what the legislation now does. The legislation assumes that if you get any form of travel or accommodation support above \$2,000 and it is not from the state government or the local government itself that creates a conflict.*³⁸⁸

The department noted the NQROC’s comments.³⁸⁹

³⁸¹ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 5.

³⁸² Bill, cl 106, s 150EH(2). See also: COBA, cl 7, s 177E(2).

³⁸³ Submission 15, p 2. See also: Graeme Finlayson, Chief Legal Officer, Townsville City Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 7.

³⁸⁴ Submission 15, p 2.

³⁸⁵ Submission 15, p 2.

³⁸⁶ Submission 15, p 2.

³⁸⁷ Submission 15, p 2.

³⁸⁸ Public hearing transcript, Brisbane, 27 May 2019, p 8.

³⁸⁹ Department, correspondence dated 3 June 2019, p 8.

Committee comment

The committee notes stakeholder comments regarding the definition of sponsored hospitality benefits in the Bill, and considers that some clarification of the definition may be of assistance.

Prescribed conflicts of interest

Proposed new s 150EI of the LGA defines the circumstances in which a councillor has a prescribed conflict of interest that does not involve particular gifts or loans or sponsored hospitality benefits. The provision uses the phrase ‘the matter is or relates to’ in describing the circumstances in which the councillor has a prescribed conflict of interest.

Both the LGAQ and the OIA advocated omitting the words ‘or relates to’ in s 150EI to make the provision clearer.³⁹⁰ The OIA explained its position:

*The addition of these words would mean that a councillor’s consideration of certain related policy matters could be considered to “relate to a contract between the local government and a councillor”. For example, for councillors who have personal businesses that contract with council this may cause uncertainty over to what extent their consideration of a general procurement policy for council raises a prescribed conflict of interest under section 150EI(a). When you consider this uncertainty, together with the very broad nature of the offence of influence, this could cause concerns that councillors with business, agricultural or divisional interests commit the disqualifying offence of influence through their participation in broad/strategic policy discussions.*³⁹¹

The Property Council of Australia (Property Council) was concerned that the prescribed conflicts of interest provisions would ‘create perverse outcomes which interfere with the operations and decision making ability of democratically elected councils’.³⁹² It submitted:

The Property Council is concerned that in party-political councils these provisions could see many Councillors ruled out of considering matters due to unrelated electoral donations. Political parties may have received donations from the entity in question for a federal campaign, or they may have received the donation in another state or territory. Electoral gifts received by a political party for unrelated purposes, should not create an automatic conflict for local government representatives of that political party.

Similarly, conflicts that relate to ‘close associates’ of a councillor also may bear no relation to the appropriateness of a councillor making a decision on a matter. For instance, if a councillor’s sibling is a director of a planning firm this may be classified as a ‘close associate’ conflict, and as such the councillor would be prohibited from dealing with any matter associated with that firm’s applications. Rather than simply excluding councillors conflicted in this manner, a more flexible approach is required to ensure each conflict is considered on its merits.

*The Property Council recommends that conflicts related to ‘close associates’ of a councillor, or a councillor’s political party, should be designated as declarable conflicts of interest under the new framework. This would enable the non-conflicted councillors to make an appropriate judgement on whether the councillor could make an objective decision in relation to the matter.*³⁹³

In response to stakeholders’ concerns about the words ‘or relates to’, the department stated:

*The words ‘or relate to’ are intended to cover matters which are not directly about a contract, employment of the CEO or application to the Local Government, but are associated with these matters, for example matters that are preliminary to making a contract.*³⁹⁴

³⁹⁰ Submission 5, p 3; submission 19, p 7.

³⁹¹ Submission 19, p 7.

³⁹² Submission 17, p 2.

³⁹³ Submission 17, p 2.

³⁹⁴ Department, correspondence dated 3 June 2019, p 9.

The department further advised in relation to prescribed conflicts of interest:

*The Bill provides that a prescribed conflict of interest arises where a Councillor, group or party has received electoral gifts or loans or sponsored hospitality benefits totalling \$2,000 or more during a relevant term from a person or entity with an interest in a matter before Council. Section 150EG(3) provides that for working out the total gifts or loans given to a group of candidates or political party, the amount must be divided by the number of candidates in the group or political party.*³⁹⁵

The department also noted that the reference to a 'close associate' in the prescribed conflict of interest provisions is consistent with the scope of the current provisions for material personal interests, which they would replace.³⁹⁶

Definition of close associate

Proposed new s 150EJ of the LGA defines who is a close associate of a councillor.³⁹⁷

The LGAQ recommended the following amendments to the proposed section:

- delete the subparagraphs with the words 'a spouse' and 'a parent, child or sibling' and replace them with a new subparagraph which simply states 'a related person'
- insert a definition of 'related person' at the end of proposed s 150EJ in virtually identical terms to that provided in s 171B(3) of the LGA, and
- make consequential changes to paragraph (2) in line with the above recommendations.³⁹⁸

In relation to the definition of 'close associate', the department advised:

The reference to spouse, parent, child and sibling in the definition of 'close associate' reflects the wording in current section 175B of the LGA which applies to material personal interests. 'Related persons' referred to in the LGAQ submission are in relation to registers of interest. In this regard the amendments in the Bill reflect the existing scope of conflict of interest provisions and register of interest provisions.

The definition of 'close associate' in the LGEA is more limited than the definition in the conflict of interest provisions in the LGA and COBA. The more limited definition is considered appropriate in relation to disclosure of interests of candidates.

The definition includes an entity, other than a Government entity for which the Councillor is an executive officer or board member.

*This reflects the current provision for material personal interests (refer s175B LGA). This entity is also a related party for the purpose of declarable conflicts of interest (s150EF(a)). However, s150EF(2) provides that the conflict of interest provisions (in relation to both prescribed conflicts of interest and declarable conflicts of interest) do not apply if the conflict of interest relating to a corporation or association arises solely because of a nomination or appointment of the Councillor by the Local Government to be a member of the board of the corporation or association.*³⁹⁹

The LGAQ and the Sunshine Coast Regional Council also observed that the word 'candidate' appears to have been used instead of 'councillor' in s 150EJ(2).⁴⁰⁰ In response, the department stated that it had noted the comment and that 'further consideration and consultation will be carried out'.⁴⁰¹

³⁹⁵ Department, correspondence dated 3 June 2019, p 7.

³⁹⁶ Department, correspondence dated 3 June 2019, p 9. See also: LGA, s 175B, s175C; COBA, s 177B, s 177C.

³⁹⁷ See also: Bill, cl 7, s 177G.

³⁹⁸ Submission 5, pp 3-4.

³⁹⁹ Department, correspondence dated 3 June 2019, p 9.

⁴⁰⁰ Submission 13, p 2; submission 5, p 4.

⁴⁰¹ Department, correspondence dated 3 June 2019, p 9.

Release of private information

The LGAQ and the Balonne Shire Council were concerned that 'declaring confidential or private details of name and nature of the interests could potentially put someone at risk or cause them harm (for example, domestic violence)'.⁴⁰² These stakeholders suggested a possible solution: that councillors declaring a personal interest be exempt from providing the name of the other person and the nature of the relationship with the other person if it could result in a serious threat to the life, health, safety or welfare of the other person.⁴⁰³

In relation to the concerns about the potential to put someone at risk by declaring confidential or private details, the department advised:

*The obligation to disclose the name and nature of interest of other parties is equivalent to current requirements for material personal interests and conflicts of interests (refer section 175C(2) and s175E(2) of the LGA). DLGRMA [The Department] has considered restricting the information which should be disclosed to deal with "at risk" situations but it is not proposed to take this forward at this point.*⁴⁰⁴

Declarable conflict of interest – removal of the process for peer determination

The LGAQ had concerns about the Bill's proposal to omit the current process by which councillors identify their personal interests at a meeting and either volunteer to leave the meeting or ask the other councillors to make a determination about the personal interest. The LGAQ described the current process as 'transparent' and stated that it 'allows a councillor's peers to examine and determine whether the interest disclosed is, truly, a declarable conflict of interest'.⁴⁰⁵ The LGAQ submitted:

What is proposed by the amending Bill removes the ability for peer review of a possibly erroneous determination by a councillor of a "declarable conflict of interest" (as defined by the amending Bill). This may result in other councillors (with an identical or similar interest) being falsely accused of failing to declare the same interest which, in turn, will slow down meeting processes and, quite likely, result in more complaints about councillor misconduct being referred to the Office of the Independent Assessor.

*Accordingly, the LGAQ submits **that the regime prescribed for declaring "personal interests" prescribed by section 175E of the Act be retained in the amending Bill.** If accepted, this would require the term "declarable conflict of interest" being changed. As an alternative, the term "declarable interest" could be used. To be clear, apart from the current process for declaring interests being retained, the LGAQ is not suggesting wholesale changes to the remaining drafting of these new provisions.*⁴⁰⁶

The OIA was also of the view that the Bill should provide a formal mechanism for a councillor to disclose a personal interest and ask the council to discuss and vote on whether that personal interest amounts to a declarable conflict of interest.⁴⁰⁷ The OIA explained:

Declarable conflicts of interest ... are effectively the 'catch all' for conflicts of interest that do not fall within the clearer prescribed category. These conflicts of interest are likely to include more uncertain, complex or borderline matters.

It is counterintuitive then that these conflicts require individual councillors to themselves identify whether they have a conflict and disclose it. There is a high risk that councillors who do not have

⁴⁰² Submission 2, p 2. See also Submission 5, pp 4, 5. See cl 106, ss 150EL(4), 150EQ(4); cl 7, ss 177I, 177N.

⁴⁰³ Submission 2, p 2; submission 5, p 4.

⁴⁰⁴ Department, correspondence dated 3 June 2019, p 6.

⁴⁰⁵ Submission 5, p 4.

⁴⁰⁶ Submission 5, p 4 (emphasis in original).

⁴⁰⁷ Submission 19, p 8.

this capacity will get this wrong and expose themselves to disciplinary, or criminal action - if they do so repeatedly.

*The OIA supports the category of declarable conflicts of interest, but submits that there should be a mechanism in the Bill to allow councillors to fully disclose a personal interest and allow other councillors to discuss the matter and determine whether this personal interest amounts to a **declarable conflict of interest**.*

Such a mechanism would deliver on the educative and preventative element ... by helping councillors to develop capacity, and could reasonably be expected to reduce the number of matters where well intentioned councillors fail to recognise a conflict of interest. Councils deciding conflict of interest should be required to transparently record the reasons for their decisions.⁴⁰⁸

The department advised that the matters raised by the LGAQ and OIA regarding peer review of councillors' personal interests would be considered prior to the debate on the Bill.⁴⁰⁹

Declarable conflicts of interest – gifts and donations

The LGAQ submitted that the Bill may be missing clauses which make it clear that when assessing declarable conflicts of interest, gifts and donations to a group of candidates should be divided by the number of candidates in the group, as is the case for prescribed conflicts of interest.⁴¹⁰

The department advised that it had noted the LGAQ's comment and that 'further consideration and consultation will be carried out'.⁴¹¹

Declarable conflicts of interest – 'relevant term'

The NQROC sought clarification in relation to gifts, loans, sponsored hospitality and other benefits or interests received outside a 'relevant term'.⁴¹² The NQROC noted that the Bill does not expressly state that gifts, loans, donations outside this timeframe are excluded from the definition of a 'declarable conflict of interest'.⁴¹³

In response, the department advised that '[g]ifts or loans received outside the relevant term would not be prescribed conflicts of interest, but may amount to declarable conflicts of interest if they fall within the definition in s150EN and 150EO' (which respectively set out what is a declarable conflict of interest, and interests that are not declarable conflicts of interest).⁴¹⁴

Definition of related party

The Bill would define a person as a 'related party' of a councillor if the person is any of the following in relation to the councillor:

- a close associate, other than certain entities
- a parent, child or sibling of the councillor's spouse, or
- a person who has a close personal relationship with the councillor.⁴¹⁵

⁴⁰⁸ Submission 19, p 8 (emphasis in original).

⁴⁰⁹ Department, correspondence dated 3 June, p 8.

⁴¹⁰ Submission 5, p 4.

⁴¹¹ Department, correspondence dated 3 June, attachment, p 10.

⁴¹² Submission 15, p 4. See also: Graeme Finlayson, Townsville City Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 7.

⁴¹³ Submission 15, p 4. See also: Graeme Finlayson, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 7.

⁴¹⁴ Department, correspondence dated 3 June 2019, p 7.

⁴¹⁵ Bill, cl 106, s 150EP; cl 7, s 177M.

A number of local government representatives expressed concerns about the reference to ‘a person who has a close personal relationship with the councillor’ in the definition of related party.⁴¹⁶ The Burdekin Shire Council held the view that this aspect of the definition ‘could be subject to broad and subjective interpretation’ and therefore ‘its inclusion in the definition should be reviewed’.⁴¹⁷ Citing similar concerns, the Sunshine Coast Regional Council and the NQROC recommended that clearer guidance or examples be provided in the Bill as to what determines a close personal relationship, to help councillors in applying the section.⁴¹⁸ The NQROC submitted that if such guidance cannot be included, ‘this part of the definition of ‘related party’ should be removed’.⁴¹⁹

The LGAQ also submitted that the term ‘is ambiguous and should be deleted’.⁴²⁰

Townsville City Council Mayor Cr Jenny Hill sought to illustrate the potential difficulties that may arise with the use of the term ‘related party’:

*... I have a family member whom I will never speak to again whose company occasionally does business with local councils around Australia. I do not know what his business is, yet without the definition of what is a close personal relationship, I have already been investigated on matters relating to him. I would not speak to him. I do not send him Christmas cards. I do not really know what he is up to, but persons have used the fact that he is related to me as a method of attempting to claim inappropriate behaviour.*⁴²¹

In response to stakeholders’ concerns, the department advised:

*The definition of ‘related party’ includes a person who has a close personal relationship with a Council to include a range of relationships which may give rise to a declarable conflict of interest. Eligible Councillors may consider the nature of this relationship when determining whether the Councillor may participate in a decision on the matter.*⁴²²

Procedure if meeting informed of councillor’s personal interests

Proposed new s 150ER of the LGA provides that if a local government meeting is informed that a councillor has personal interests in a matter by a person other than the councillor, the eligible councillors at the meeting must decide whether the councillor has a declarable conflict of interest in the matter.⁴²³

The LGAQ queried the necessity for s 150ER, noting that the issue appears to be addressed by proposed new s 150EW and s 150EX.⁴²⁴

The department explained the rationale for the section as follows:

Section 150ER requires eligible Councillors to decide whether a Councillor has a declarable conflict of interest if another person informs the meeting of the Councillor’s personal interests. This may arise if another Councillor is complying with their duty under s150EW to report another Councillor’s declarable conflict of interest. Section 150EX provides for the obligation of the

⁴¹⁶ Submission 3, p 3; submission 5, p 4; submission 13, p 3; submission 15, p 3; Cr Jenny Hill, Townsville City Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 8.

⁴¹⁷ Submission 3, p 3.

⁴¹⁸ Submission 13, p 3; submission 15, p 3.

⁴¹⁹ Submission 15, p 3.

⁴²⁰ Submission 5, p 4.

⁴²¹ Public hearing transcript, Brisbane, 27 May 2019, p 8.

⁴²² Department, correspondence dated 3 June 2019, p 10.

⁴²³ Bill, cl 7, s 177O.

⁴²⁴ Submission 5, p 5. The LGAQ stated that if s 150ER is omitted, consequential changes would need to be made to proposed new section 150ES. See also COBA, cl 7, ss 177T and 177U.

*informing Councillor and how the conflict of interest provisions apply if the eligible Councillors decide the Councillor does have a conflict of interest.*⁴²⁵

Procedure if councillor has a declarable conflict of interest

Proposed new s 150ES of the LGA sets out the procedure if a councillor has a declarable conflict of interest, providing that the eligible councillors at the meeting must decide whether the councillor may participate in the decision, or must not participate in the decision and must leave the meeting while the eligible councillors discuss and vote on the matter.⁴²⁶

BRU raised the prospect that a councillor with a personal interest in a matter may be able to participate in a decision about the matter despite the councillor's personal interest if the council is comprised of councillors in blocs or cliques. BRU contended: 'the clique will decide that their colleague with the conflict of interest should deal with the matter because it will be in the public interest'.⁴²⁷

The Sunshine Coast Regional Council was also concerned with the practicalities of the proposed provision:

*Should eligible councillors be able to decide that a councillor with a declarable conflict of interest may remain in the room for the debate on an issue, but then vacate the room and not participate in the vote for that matter, the situation could arise whereby the councillor with the declarable conflict of interest uses his or her participation in the debate to influence the vote of the eligible councillors. The application of this subsection within the meeting context is impractical at best.*⁴²⁸

Further, the Sunshine Coast Regional Council submitted:

Application of proposed 150ES(4) [involving the potential imposition of conditions on a decision] is also impractical as it would require continued review of decisions made and applied about a councillor. The interests and associations of individual councillors can and do change over time and each declarable conflict of interest should be considered in relation to the current decision before Council.

*Importantly, one must consider the perceptions a 'reasonable person' in the community may have if the procedure for leaving or staying in the chamber during a formal meeting is complicated. We believe this procedure should be kept as simple as possible.*⁴²⁹

The LGAQ also expressed particular concerns about proposed s 150ES(2)a and 150ES(3). In respect of proposed s 150ES(2)(a), the LGAQ stated that '[i]n the context of individual councillors having no individual decision making power, the LGAQ does not understand the use of the words "...have been decided by the councillor under an Act, delegation or other authority"'.⁴³⁰ Regarding s 150ES(3), which enables the eligible councillors to impose conditions on the councillor under certain decisions, the LGAQ considered the provision 'to be impractical as currently worded' and proposed that 'the conditions available to councillors be made explicit'.⁴³¹

In response to BRU's suggestion that councillors may vote in blocs to allow councillors with declarable conflicts of interest to vote on those matters, the department noted that the LGA and the COBA require

⁴²⁵ Department, correspondence dated 3 June 2019, p 10.

⁴²⁶ Bill, cl 7, proposed new s 177P.

⁴²⁷ Ms Elizabeth Handley, President, BRU, public hearing transcript, Brisbane, 27 May 2019, p 17.

⁴²⁸ Submission 13, p 3.

⁴²⁹ Submission 13, p 3.

⁴³⁰ Submission 5, p 5.

⁴³¹ Submission 5, p 5.

councillors to perform their responsibilities under those Acts in accordance with the local government principles.⁴³² The department further stated:

*... Conduct which adversely affects, directly or indirectly, the honest and impartial performance of the Councillor's functions or exercise of the Councillor's powers is misconduct (s150L(1)(a) LGA). Disciplinary action for misconduct includes suspension or removal from office.*⁴³³

In response to the LGAQ's comments regarding proposed s 150ES(2)(a), the department advised that individual councillors do decide matters under a delegation, Act or other authorities. For example: 'a Mayor or Councillor may be delegated powers under s 257 and s 258 of the LGA and the Mayor approves the allocation of discretionary funds under s 202(4) of the Local Government Regulation'.⁴³⁴

The department also expressed a view that the imposition of conditions, if any, 'is a matter for the eligible Councillors to determine depending on the individual circumstances of each situation'.⁴³⁵

Procedure if no quorum because of conflicts of interest

The Isaac Regional Council praised the inclusion of the procedure for when there is no quorum for deciding a matter because of councillors' prescribed conflicts of interest or declarable conflicts of interest.

*The inclusion of a procedure if there is no quorum due to prescribed or declarable conflicts of interest ... provides greater clarity and guidance to Councils in these situations. It has been a missing element for managing conflicts of interests and is a meritable inclusion.*⁴³⁶

Offence to influence others

As previously noted, under the proposed amendments it would be an offence for a councillor with a prescribed conflict of interest or declarable conflict of interest to direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter.⁴³⁷ The department advised that 'another person' would include, for example, another councillor, the CEO, or a local government officer deciding the matter under a delegation.⁴³⁸

The Burdekin Shire Council considered that the proposed offence is too broad:

*... the use of the term 'or discuss the matter with' is extremely restrictive of a councillor's rights to seek basic information. The intent of the provision is understood but the current wording takes the provision too far and the inclusion of the above wording should be reviewed.*⁴³⁹

The LGAQ also had concerns with the words 'or discuss the matter with' on the following grounds:

- a. A Councillor with a declarable conflict of interest may well be allowed by eligible Councillors to stay and vote on the matter when it reaches a meeting - difficulty arises with these additional words as it would be difficult for the Councillor to attend a briefing session or even ask a question of an officer prior to the meeting (as officers are involved in the decision-making process);*
- b. The words impinge on basic rights of a Councillor to ask the simplest of questions of officers or the Mayor such as 'where is this matter at and when will it come to Council?'*

⁴³² Department, correspondence dated 3 June 2019, p 6.

⁴³³ Department, correspondence dated 3 June 2019, p 6.

⁴³⁴ Department, correspondence dated 3 June 2019, p 10.

⁴³⁵ Department, correspondence dated 3 June 2019, p 10.

⁴³⁶ Submission 23, p 2. See also: Bill, cl 7, s 177R (cl 7); cl 106, s 150EU.

⁴³⁷ Bill, cl 106, s 150EZ. See also: Bill, cl 7, s 177W.

⁴³⁸ Department, correspondence dated 3 June 2019, p 8.

⁴³⁹ Submission 3, p 3.

*c. The inclusion of the words heightens the possibility of inadvertent error - it may be that an application is received, Councillors are aware of the basic information but not the details and have discussions they should not have had when the detail becomes known. These discussions need not even stray into influence for this section to be contravened, as drafted.*⁴⁴⁰

The QLS contended that a councillor may inadvertently breach the prohibition on councillors discussing a matter with which they have a conflict of interest if, for example, the councillor discusses a development with another councillor before realising that one of the parties to be impacted by the development was a donor to the councillor's electoral campaign.⁴⁴¹ The QLS submitted:

*The drafting of the provision should be amended to remove the reference to "discuss the matter with", given that the intent of the section is to ensure that the councillor with the conflict does not "influence" decisions in relation to the matter, rather than inadvertently raise the matter in a "discussion".*⁴⁴²

Mr Graeme Finlayson, Chief Legal Officer, Townsville City Council, and representative of NQROC, advised:

*As is clear from the LGAQ and Queensland Law Society submissions, it is very difficult to even have basic conversations with constituents for fear of there being a conflict about a matter that they just may wish to inform you about. Any discussion with any other person that could lead to a conflict could potentially place a councillor in jeopardy.*⁴⁴³

The OIA considered that the offence of influence should also apply before a matter is on the agenda of council and before it is formally before a council decision maker, but only in clearly articulated circumstances. That is:

- 1. Where it is reasonably anticipated that a matter will come before council, council employee or contractor for a decision; and*
- 2. Where it is reasonably anticipated that a councillor would have a conflict of interest (prescribed or declarable) in relation to that matter; and*
- 3. Where the councillor, a related party, or an election donor of the councillor is likely to receive either a significant benefit or a significant detriment as a result of the decision, to which the conflict relates.*⁴⁴⁴

The department advised that it will further consider the matters raised by the OIA prior to the debate on the Bill.⁴⁴⁵

Natural disaster management

The NQROC expressed concern that the conflict of interest provisions in the Bill may be wider than those under the existing LGA and therefore may have unintended consequences in relation to disaster management activities. The NQROC submitted:

... These new changes could have unintended consequences in term of Councillors involved with Local Disaster Management Groups being prevented from being able to exercise their obligations and duties as members of those groups or in accordance with the Disaster Management Act 2003 in responding to disaster management or emergencies response issues.

Similar concerns may arise where local governments operate critical infrastructure, such as dams, and Councillors are involved with the governance and decision-making of this type of

⁴⁴⁰ Submission 5, p 5.

⁴⁴¹ Submission 28, p 4.

⁴⁴² Submission 28, p 4.

⁴⁴³ Public hearing transcript, Brisbane, 27 May 2019, p 7.

⁴⁴⁴ Submission 19, p 9.

⁴⁴⁵ Department, correspondence dated 3 June 2019, p 7.

*infrastructure. Further consideration should be given in relation to the above issue to ensure that the proper operation of LDMG's and critical infrastructure is not unintentionally impacted by the newly proposed conflicts of interest regime.*⁴⁴⁶

Accordingly, the NQROC recommended that consideration be given to including a schedule that seeks to exclude certain legislation from being covered by proposed new s 177B.⁴⁴⁷

Regarding this suggestion, the department advised:

*... The Bill does not provide for an exemption where a natural disaster has been declared. It is not proposed that this forms part of this Bill but will be considered by DLGRMA as part of future reforms.*⁴⁴⁸

Penalties

The QLS submitted that some of the decisions that could be influenced by a councillor in breach of offences in the Bill 'could result in a potential financial benefit far exceeding the value of \$26,100'.⁴⁴⁹ The QLS further submitted:

*The deterrent of a prison sentence exists in most of these offences for conduct at the most egregious end of the spectrum. However, QLS queries whether it might be appropriate to reconsider and increase the maximum financial penalties to respond to those circumstances where a councillor might obtain a significant financial profit (e.g. from a development approval in favour of the councillor or a related person).*⁴⁵⁰

The QLS stated that for the maximum financial penalty of 200 penalty units proposed for some of the conflict of interest offence provisions:

*If there was a particular development, for example, and someone stood to make a very significant financial gain as a result of that, that kind of penalty may be seen as a cost of doing business rather than actually impacting on the decision as to whether or not to do the conduct.*⁴⁵¹

The LGAQ submitted that under the Bill, a councillor, unlike a state member of the Queensland Parliament, could lose office on the basis of an honest mistake – an 'incomprehensible' situation.⁴⁵²

With respect to the penalties that would be imposed for offences relating to councillors' conflicts of interest, the explanatory notes state:

*The maximum penalties that apply under the new provisions are substantial. However, they are reasonable and proportionate to ensure integrity in local government decision-making and to reflect the local government principles that decision-making is in the public interest and supported by transparent and effective processes.*⁴⁵³

As previously noted, the proportionality of penalties is considered further in section 7.1.1 of this report.

⁴⁴⁶ Submission 15, p 3. See also Graeme Finlayson, Townsville City Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 7.

⁴⁴⁷ Submission 15, p 3.

⁴⁴⁸ Department, correspondence dated 3 June 2019, p 8.

⁴⁴⁹ Submission 28, p 4.

⁴⁵⁰ Submission 28, pp 4-5. See also Matt Dunn, QLS, public hearing transcript, Brisbane, 27 May 2019, p 38.

⁴⁵¹ Matt Dunn, QLS, public hearing transcript, Brisbane, 27 May 2019, p 38.

⁴⁵² Greg Hallam, LGAQ, public hearing transcript, Brisbane, 27 May 2019, p 14.

⁴⁵³ Explanatory notes, p 47.

Commencement and training

The Isaac Regional Council noted that the Bill introduces many new terms which in some cases replace 'terms that have seen much training and awareness over recent years'.⁴⁵⁴ The Council questioned whether there would be a transition period and/or training on the amendments, submitting that while councillors 'are becoming familiar and proactive with the declaration of conflicts, this amended approach with terms and clarification may take some time to become accustomed'.⁴⁵⁵

The Burdekin Shire Council, NQROC and LGAQ all recommended that commencement of the proposed changes to the conflict of interest terminology and processes be delayed until training has been provided to councillors.⁴⁵⁶ The LGAQ submitted:

*... To expect proper implementation and compliance with the new regime, from the date of assent of the amending legislation, will likely result in the number of complaints about councillor conduct unnecessarily escalating in the short term. This undesirable outcome will be avoided if sufficient time is allowed to educate and train councillors as to how the new regime is intended to operate.*⁴⁵⁷

The LGAQ advocated implementing the changes after the next council election. Mr Greg Hallam, CEO of LGAQ, stated: 'To try to bring in major fundamental changes in a rushed six-month period I think would be quite deleterious'.⁴⁵⁸

With respect to training, the Independent Assessor commented:

*... I think this has been a significant adjustment period and in the next six to 12 months we are likely to see continued discomfort with people as they adjust to what is quite a fundamentally different councillor conduct process. A lot of the key to it is in education, particularly around new candidates coming into local government. If you are used to being the subject of no or a very low level of complaints and then all of a sudden matters are coming in and in appropriate matters you are being asked to account for yourself, then that comes as a shock. We need to ensure that candidates coming into local government and councillors who run again have a really good understanding of the expectations of councillors and what is expected of them in the conduct of their business.*⁴⁵⁹

The QLS also asserted that 'Without training, proper resources and a responsible approach to the councillors, this legislation has the potential to capture the innocent mistakes rather than the corrupt activity'.⁴⁶⁰

The department advised that it would conduct training on the new provisions.⁴⁶¹

5.2 Registers of interests

Under the LGA and COBA, councillors are required to inform the CEO within 30 days if the councillor or a person related to the councillor has an interest that must be recorded in a register of interests, or if there is a change to an interest that is recorded in a register of interests.⁴⁶²

The maximum penalty for failing to comply with this requirement is 85 penalty units (\$11,096.75), though a higher maximum penalty applies if the offence is committed with intent. In the latter

⁴⁵⁴ Submission 23, p 2.

⁴⁵⁵ Submission 23, p 2.

⁴⁵⁶ Submission 3, p 2; submission 5, p 3; submission 15, p 4.

⁴⁵⁷ Submission 5, p 3.

⁴⁵⁸ Public hearing transcript, Brisbane, 27 May 2018, p 9.

⁴⁵⁹ Kathleen Florian, Independent Assessor, OIA, public hearing transcript, Brisbane, 27 May 2019, p 22.

⁴⁶⁰ Public hearing transcript, Brisbane, 27 May 2019, p 39.

⁴⁶¹ Department, correspondence dated 3 June 2019, p 6.

⁴⁶² LGA, s 171B; COBA, s 173B.

circumstance, the applicable maximum penalty is 100 penalty units (\$13,055), and the offence is also prescribed as an integrity offence.⁴⁶³

The Bill proposes to replace the two-tier offence and maximum penalties of 85 penalty units and 100 penalty units for unintentionally or intentionally failing to provide a correct register, with a single offence and maximum penalty of 100 penalty units, as well as omitting the offence from the prescribed list of integrity offences in the LGA and COBA.⁴⁶⁴

The Bill also proposes to introduce scheduled reporting requirements in relation to registers of interest, to 'increase transparency, accountability and integrity', and align the requirements for councillors with those imposed on state members of Parliament in relation to statements of interest.⁴⁶⁵ That is, in addition to the general requirement for a councillor to report any new interest or change to an interest within 30 days, the Bill also specifies that a councillor must:

- within 30 days from the start of the councillor's term, or a longer period allowed by the Minister, inform the chief executive of the particulars of their interests (and the interests of a person related to the councillor); with a person ceasing to be a councillor if the person does not comply with this requirement;⁴⁶⁶ and
- within 30 days after the end of each financial year, inform the CEO:
 - whether a register of interests under a regulation in relation to the councillor or a person who is related to the councillor is correct
 - if the councillor has an interest that must be, but is not, recorded in a register of interests in relation to the councillor or a person who is related to the councillor – of the particulars of the interest that must be recorded in the register of interests
 - if there is a change to an interest recorded in a register of interests in relation to the councillor or a person related to the councillor – of the change to the interest.⁴⁶⁷

The Bill specifies that the maximum penalty for failing to comply with this annual reporting requirement is 100 penalty units.⁴⁶⁸

Stakeholder views

OSCAR and BRU supported the proposed amendments to provisions for councillors' registers of interests.⁴⁶⁹ OSCAR commended the alignment of requirements for councillors with those applying to state members of Parliament, submitting that 'consistency between all tiers of government in Queensland is desirable'.⁴⁷⁰

The QLS, however, submitted that 'councillors do not receive nearly the same level of resources and training, and these obligations place a significant compliance burden on councillors, the penalties for which appear to be highly disproportionate'.⁴⁷¹ The QLS continued:

One of the consequences for failing to comply with these provisions is that the person ceases to be a councillor. As acknowledged in the Explanatory Notes at page 47, this is a greater consequence than for a State MP who fails to comply with equivalent disclosure requirements.

⁴⁶³ LGA, s 171B(2); COBA, s 173B (2). See report sections 3.3 and 5.1.4 regarding integrity offences.

⁴⁶⁴ Explanatory notes, p 32. See: Bill, cls 49, 53, 149 and 152.

⁴⁶⁵ Explanatory notes, p 32.

⁴⁶⁶ Bill, cl 48, s 173AA; cl 148, s 171AA.

⁴⁶⁷ Bill, cl 50, s 174; cl 150, s 172.

⁴⁶⁸ Bill, cl 50, s 174; cl 150, s 172.

⁴⁶⁹ OSCAR, submission 7, p 4; BRU, submission 9, p 5.

⁴⁷⁰ Submission 7, p 4.

⁴⁷¹ Submission 28, p 6.

*QLS is concerned at the significant penalty for failing to comply, particularly where the failure might be unintentional and could also potentially be as a result of an unintentional failure to identify an interest associated with a person related to the councillor. Such a significant penalty seems extraordinary in these circumstances.*⁴⁷²

The QLS was of the view that ‘there should be a clear intention to apply a lower penalty where the offence is unintentionally committed’.⁴⁷³

Department’s response

The explanatory notes commented on the penalties for the proposed new provisions:

*While the consequences for non-compliance of the proposed new requirements are greater than those that apply to State MPs, the penalties are considered reasonably proportionate and commensurate to the seriousness of the non-compliance. The proposed amendments promote the public interest ahead of the private interests of councillors and enhance local government transparency, accountability and integrity. The proposed maximum penalties of 100 penalty units for failing to correct a register of interests within 30 days after a change happens or failing to provide an annual confirmation that a register of interests is correct and complete, are equivalent to the existing maximum penalty under the LGA and the COBA for intentionally failing to correct a register of interests within 30 days after a change happens. Further, the consequence of a person ceasing to be a councillor if the person does not inform the chief executive officer of their interests (and the interests of a person related to the councillor) within 30 days after the day the councillor’s term starts or a longer period allowed by the Minister is identical to the consequence for a councillor failing to make the declaration of office within one month after being appointed/elected or a longer period allowed by the Minister (LGA/COBA section 169(5)). The Minister being empowered to allow a longer period for the giving of particulars of interests at the start of a councillor’s term is considered a sufficient safeguard.*⁴⁷⁴

In relation to stakeholder concerns about training, the department stated that it ‘will ensure that training is provided to Councillors with respect to these requirements’.⁴⁷⁵

5.3 Councillor complaints framework

In April 2016, the government appointed the ICCRP to review the arrangements for dealing with complaints about the conduct of local government councillors, and to recommend ‘policy, legislative and operational changes to achieve better results’.⁴⁷⁶

The ICCRP provided its final report (Councillor Complaints Report), in January 2017, which included 60 recommendations setting out a new model and strategic direction for the handling of complaints, to assist councils and councillors to reduce inappropriate conduct, misconduct and corrupt conduct.⁴⁷⁷ Concluding that the existing legislative and policy framework was overly confusing and difficult to navigate, the ICCRP called for the establishment of:

- an Independent Assessor to receive, categorise, investigate and, if necessary, prosecute complaints, and
- a reconstituted Councillor Conduct Tribunal (Conduct Tribunal) to determine misconduct matters.⁴⁷⁸

⁴⁷² Submission 28, p 6.

⁴⁷³ Submission 28, p 5.

⁴⁷⁴ Explanatory notes, p 47.

⁴⁷⁵ Department, correspondence dated 3 June 2019, p 23.

⁴⁷⁶ ICCRP, Councillor Complaints Report, January 2017, p 10; ICCRP, *Discussion Paper*, August 2016, p 5.

⁴⁷⁷ ICCRP, Councillor Complaints Report, January 2017, p 10.

⁴⁷⁸ ICCRP, Councillor Complaints Report, January 2017, pp 10-13.

The government's response to the Councillor Complaints Report supported, partially supported or supported 'in principle' 50 of the ICCRP's recommendations. The government's response to the Councillor Complaints Report was implemented by the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*, which received assent on 21 May 2018.

While the Councillor Complaints Report recommended that amendments be made to both the LGA and COBA, in introducing the legislation, the Minister stated:

*At this time, amendments are not proposed to the City of Brisbane Act 2010... The government will review the new framework for dealing with councillor conduct within six months of its commencement to determine whether the Brisbane City Council would benefit from adopting the new system.*⁴⁷⁹

With the department having since concluded its review of the new framework, the Bill now proposes to amend the COBA to apply the framework under the LGA to the BCC.⁴⁸⁰ The department explained:

*Currently, all the other local governments are subject to a councillor complaints framework under the Local Government Act that involves the Independent Assessor. The Independent Assessor considers all of those complaints and assesses them all. Brisbane City Council does not at the moment have that, but the bill is proposing that Brisbane City Council will be subject to the same councillor complaints regime as all the other councils. This is a significant change and, as I said, it represents where the government thinks there should be consistency between Brisbane City Council and all the other councils. This means that every complaint about a Brisbane City councillor will come in to the Independent Assessor, who will assess it. If it is about corrupt conduct it will go to the CCC. If it is about misconduct the Independent Assessor can make an application to the tribunal for a hearing about it. If it is about inappropriate conduct it will go back to Brisbane City Council. Once again, there is complete consistency between all councils.*⁴⁸¹

In addition, drawing on lessons from the operation of the new framework and feedback from the OIA,⁴⁸² the Bill proposes a series of other amendments including:

- amending the LGA to provide that a local government official must not give a notice about a councillor's conduct to the Independent Assessor vexatiously or other than in good faith (maximum penalty of 85 penalty units (\$11,096.75))⁴⁸³
- providing that the Independent Assessor must investigate the conduct of a local government employee if the conduct is the subject of a complaint referred to the Independent Assessor by the CCC and the conduct is connected to the conduct of a councillor that is the subject of a complaint referred to the Independent Assessor by the CCC⁴⁸⁴
- extending the functions of investigators to include investigating the conduct of local government employees, with corresponding amendments, including amendments to the powers of investigators to require information and require attendance⁴⁸⁵
- providing that if the Independent Assessor is reasonably satisfied a councillor's conduct is inappropriate conduct, and the conduct is connected to conduct that the Independent Assessor is reasonably satisfied is misconduct, the Independent Assessor may make an application to the Conduct Tribunal about the alleged misconduct and inappropriate misconduct⁴⁸⁶

⁴⁷⁹ Minister, Queensland Parliament, Record of Proceedings, 15 February 2018, p 149.

⁴⁸⁰ Explanatory notes, p 25. See cls 16, 34, 35, 41, 123 and 125.

⁴⁸¹ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 3.

⁴⁸² Department, correspondence dated 20 May 2019, p 12.

⁴⁸³ Bill, cl 76, s 150R. See also cl 130 and explanatory notes, p 26.

⁴⁸⁴ Bill, cls 79, 80. See also explanatory notes, p 26.

⁴⁸⁵ Bill, cls 93(1), 94, 95, 98. See also cls 96, 97. See further, explanatory notes, p 26.

⁴⁸⁶ Bill, cl 81. See also explanatory notes, pp 26-27.

- amending the circumstances in which the Independent Assessor may apply to the Conduct Tribunal to include when a councillor has engaged in inappropriate conduct that is connected to conduct of the councillor that is alleged misconduct⁴⁸⁷
- providing that if the Conduct Tribunal decides that the councillor has engaged in misconduct and inappropriate conduct, the Conduct Tribunal, in deciding what action to take, must have regard to the action a local government could have taken in relation to inappropriate conduct⁴⁸⁸
- providing that if the Conduct Tribunal decides that the councillor has only engaged in inappropriate conduct, the Conduct Tribunal may only take the action a local government could have taken under the LGA in relation to inappropriate conduct⁴⁸⁹
- making confidential the notice given by the Independent Assessor to a person stating that the fact of the person's attendance, or information given by the person, is also confidential information⁴⁹⁰
- inserting a new provision stating that if the Conduct Tribunal, at the request of a local government, is investigating the suspected inappropriate conduct of a councillor referred to the local government, by the assessor, to be dealt with by the local government, and is reasonably satisfied the conduct is misconduct, the Conduct Tribunal must refer the conduct to the Independent Assessor for further investigation,⁴⁹¹ and
- providing that if conduct was referred to the Independent Assessor by the Conduct Tribunal under s 150DLA, the Independent Assessor may:
 - if the assessor is reasonably satisfied the councillor's conduct is misconduct – make an application to the Conduct Tribunal about the conduct, or
 - if the assessor is not reasonably satisfied the councillor's conduct is misconduct – give the Conduct Tribunal a notice stating the Independent Assessor is not reasonably satisfied the councillor's conduct is misconduct.⁴⁹²

According to the explanatory notes, the amendments relating to inappropriate conduct of a councillor that is connected to misconduct of the councillor 'will assist in streamlining investigations and will ensure that any disciplinary action reflects the totality principle, i.e. the total penalty is just and appropriate'.⁴⁹³

Stakeholder views

The Torres Shire Council supported the amendments to the councillor complaints framework, 'including the streamlining of investigations where alleged corrupt conduct of a local government employee is linked to alleged corrupt conduct of a councillor or where alleged inappropriate conduct and misconduct of a councillor are linked',⁴⁹⁴ while the Whitsunday Regional Council supported the proposed amendments.⁴⁹⁵

OSCAR submitted that it strongly supported the extension of the councillor complaints framework to the BCC, bringing it in line with the other local governments.⁴⁹⁶ The OIA also considered the application

⁴⁸⁷ Bill, cl 87. See also cls 85, 86, 88, 89. See further, explanatory notes, p 27.

⁴⁸⁸ Bill, cl 90, s 150AR. See also cl 91, s 150AS.

⁴⁸⁹ Bill, cl 90, s 150AR. See also cl 91, s 150AS

⁴⁹⁰ Bill, cl 96, s 150CK.

⁴⁹¹ Bill, cl 101, s 150DLA. See also, cls 77, 78, 102-105.

⁴⁹² Bill, cl 81, s 150W.

⁴⁹³ Explanatory notes, p 27.

⁴⁹⁴ Submission 25, p 2.

⁴⁹⁵ Submission 14, p 2.

⁴⁹⁶ Submission 7, p 3.

of the LGA councillor complaints framework to the BCC to be 'In the interests of the enforcement of consistent standards of councillor conduct'.⁴⁹⁷

The LGAQ was concerned about the broad scope of proposed new s 150TA (Assessor must investigate particular conduct of local government employee), noting that the Independent Assessor's remit is the investigation of councillor conduct, not the investigation of the conduct of council staff. The LGAQ suggested that the scope of the provision could be limited by amending it so that the Independent Assessor only has the power to investigate a local government's CEO.⁴⁹⁸ The LGAQ submitted that this 'would be consistent with the notion, to be implemented with this Bill, that the Council employs the CEO and the CEO employs other employees'.⁴⁹⁹

The OIA also provided comment on proposed new s 150TA and the proposed amendments to the investigative powers, observing:

- the conduct of a local government employee that is connected to the conduct of a councillor that comes to the OIA's attention during the course of an investigation by the OIA, or which is referred by a councillor, local government or member of the public, cannot be investigated by the OIA
- particular conduct of local government employees would only be investigated by the OIA when there is a reasonable suspicion of corrupt conduct on the part of the councillor and or council employee, so that the OIA would not be able to investigate, for example, where a councillor and council employee's misconduct is intertwined
- the Bill enables the OIA to investigate particular conduct of a local government employee in prescribed circumstances but does not provide a mechanism for the OIA to deal with the conduct after the investigation, including by referring back to the relevant local government for disciplinary action to be taken
- the LGA defines inappropriate conduct and misconduct for councillors but the Bill does not provide disciplinary standards to be applied to particular conduct of local government employees in these circumstances, and
- proposed amended s 150V provides that the investigative power under Part 4 of the LGA would be available for the investigation of the conduct of local government employees but it is unclear how this fits with the specific investigative power provisions, such as the power to require information in s 150CH.⁵⁰⁰

The OIA held the view that:

*... the OIA should be able to investigate the alleged or suspected corrupt conduct **or misconduct** of council employees where that conduct is connected to the conduct of the councillor whether that conduct is referred by the CCC, **referred by local government, a local government official, a member of the public or is identified during an OIA own motion investigation**; and there should be a mechanism in the Act – similar to the current 150AA which allows the OIA to refer the conduct of a council employee, back to local government to be dealt with on a disciplinary basis.*⁵⁰¹

Department's response

The department noted submitters' concerns about the broad scope of proposed new s 150TA, including the reference to 'local government employee'.⁵⁰²

⁴⁹⁷ Submission 19, p 3.

⁴⁹⁸ Submission 5, pp 5-6.

⁴⁹⁹ Submission 5, pp 5-6.

⁵⁰⁰ Submission 19, pp 9-10.

⁵⁰¹ Submission 19, p 10 (emphasis in original).

⁵⁰² Department, correspondence dated 3 June 2019, p 17.

Regarding the OIA's view that it should be able to investigate the alleged or suspected conduct or misconduct of council employees in certain circumstances, and that there should be a mechanism in the LGA that allows the OIA to refer the conduct of a council employee back to the local government to be dealt with on a disciplinary basis, the department advised:

*... the policy intent is not to permit the Office of the Independent Assessor to have jurisdiction with respect to Local Government employees with respect to misconduct. It is appropriate that other agencies such as the CCC remain the investigating and assessing agency.*⁵⁰³

With respect to the OIA's recommendation that the LGA be amended to allow the OIA to refer inappropriate conduct directly to the local government for investigation and that s 150AA be retained only for OIA referrals to local government in limited circumstances, the department stated:

*... this comment is noted and DLGRMA [department] will further consider prior to debate of the Bill. It is DLGRMA's [department's] view that this amendment would improve the efficiency of the handling of complaints.*⁵⁰⁴

5.4 State intervention powers

Chapter 5, part 1 of the LGA provides the state with certain powers of intervention in relation to a local government or councillor, including:

- gathering information⁵⁰⁵
- acting on the information gathered⁵⁰⁶
- appointing an advisor or a financial controller (appointment by the department's chief executive)⁵⁰⁷
- removing an unsound decision of the local government (suspension or revocation by the Minister, by gazette notice)⁵⁰⁸
- suspending or dismissing a councillor or every councillor (suspension or dismissal by the Governor in Council on the recommendation of the Minister),⁵⁰⁹ and
- dissolving a local government (suspension or dismissal by the Governor in Council on the recommendation of the Minister).⁵¹⁰

The Belcarra Stage 1 Act amended the LGA to extend the circumstances in which a local government can be dissolved and a councillor or every councillor can be suspended or dismissed, to enable the Minister to recommend such actions to the Governor in Council (and the Governor in Council to give

⁵⁰³ Department, correspondence dated 3 June 2019, p 17.

⁵⁰⁴ Department, correspondence dated 3 June 2019, p 17.

⁵⁰⁵ Section 121 of the LGA provides that to monitor and evaluate a local government's or councillors performance and compliance, the department's chief executive may examine the information contained in the local government's records and operations, or otherwise carry out an investigation of the local government's or councillor's performance and compliance.

⁵⁰⁶ Section 116 of the LGA sets out actions the Minister can take in response to information gathered by the department's chief executive that shows that the local government or councillor is not performing their responsibilities properly or is not comply with the local government Acts.

⁵⁰⁷ Sections 117 and 118 of the LGA provide for the department's chief executive to appoint an advisor or financial controller for the local government where the information gathered shows that the local government is not performing its responsibilities properly or is not complying with the local government Acts.

⁵⁰⁸ Section 121 of the LGA provides for the Minister to suspend or revoke a local government decision by gazette notice if the Minister reasonably believes that a decision of the local government is contrary to any law or inconsistent with local government principles.

⁵⁰⁹ LGA, ss 122, 123.

⁵¹⁰ LGA, s 123.

effect to the Minister's recommendations), if the Minister reasonably believes it is in the public interest to do so.⁵¹¹

The explanatory notes state that 'for consistency', the Bill proposes to further amend chapter 5, part 1 of the LGA, to apply the public interest ground to other powers of intervention.⁵¹² Specifically, the proposed amendments would:

- allow the information gathering power to be exercised to monitor, evaluate and investigate whether it is in the public interest to take remedial action, as well as for monitoring, evaluating and investigating a local government's or councillor's performance and compliance⁵¹³
- allow powers for acting on the information gathered and appointing an advisor or financial controller to be exercised where the department's chief executive believes it is otherwise in the public interest for the action to be taken, in addition to when the department's chief executive believes a local government or councillor is not performing their responsibilities properly or is not complying with laws applying to the local government or councillor, including the LGA/COBA,⁵¹⁴ and
- allow the Minister to remove an unsound decision of a local government when the Minister believes it is otherwise in the public interest to do, in addition to when a decision of a local government is contrary to any law or inconsistent with the local government principles.⁵¹⁵

To reflect these amendments, the Bill would also amend the purposes of chapter 5, part 1, to provide that the purpose of the part is:

- to gather information to monitor and evaluate whether a local government or councillor is performing their responsibilities properly or complying with the laws applying to the local government or council, including the local government Acts, or whether it is otherwise in the public interest for the Minister or the department's chief executive to take remedial action under chapter 5, part 1,⁵¹⁶ and
- to take remedial action, being action to improve the local government's or councillor's performance or compliance, *or that is in the public interest*.⁵¹⁷

The Bill does not define the term 'public interest', nor is it currently defined in the LGA. The explanatory notes state that 'this is intentional, to permit the phrase to evolve over time to reflect community expectations over time'.⁵¹⁸ However, the explanatory notes also advise that relevant factors in determining the 'public interest' may include, but are not limited to:

- complying with applicable law (both its letter and spirit)
- carrying out functions fairly and impartially
- complying with the principles of procedural fairness/natural justice
- acting reasonably
- ensuring accountability and transparency
- exposing corrupt conduct or serious maladministration

⁵¹¹ LGA, s 122(1)(d); s123(1)(d).

⁵¹² Explanatory notes, p 23.

⁵¹³ Bill, cl 61, s 115.

⁵¹⁴ Bill, cl 54, s 116; cl 65, s117; cl 66, s 118.

⁵¹⁵ Bill, cl 68, s 121.

⁵¹⁶ Explanatory notes, p 23.

⁵¹⁷ Bill, cl 61, s 113.

⁵¹⁸ Explanatory notes, p 23.

- avoiding or properly managing private interests conflicting with official duties, and
- community confidence in a local government and/or its councillors.⁵¹⁹

The Bill also proposes to amend the COBA to make the full suite of expanded state intervention powers applicable to the BCC. Currently, comparable provisions in the COBA are limited to:

- an information gathering power,⁵²⁰ and
- where a performance or non-compliance issue is identified, a power for the Minister to act on the information gathered by directing the council or a councillor to take action to improve their performance or correct the non-compliance with the local government related law.⁵²¹

If the Minister's direction is not followed to the Minister's satisfaction, the Minister may also publish information about the inadequate performance or non-compliance of the council or councillor/s.⁵²²

However, there are no corresponding powers at present under the COBA that would enable BCC councillors to be suspended or dismissed, the BCC to be dissolved, or an interim administrator to be appointed.⁵²³

The Bill would omit the current COBA provisions and replicate the powers contained in chapter 5, part 1 of the LGA, as amended, 'to ensure the same sanctions across all local governments for the same conduct'.⁵²⁴

Stakeholder views

OSCAR, Wildlife Queensland and BRU expressed support for the proposed amendments to state intervention powers,⁵²⁵ while the Whitsunday Regional Council stated that it supported the amendments in principle.⁵²⁶ OSCAR submitted that the state must be appropriately empowered to intervene where necessary, citing the importance of recent intervention actions with respect to the Ipswich and Logan City Councils.⁵²⁷

OSCAR also submitted that it accepted that the term 'public interest' 'is not defined at this stage in order to allow the phrase to evolve over time to reflect community expectations', but trusted 'that the DLGRMA [department] will develop a more definitive list of factors that determine public interest'.⁵²⁸

Other stakeholders called for a definition of 'public interest' to be included in the Bill. The QLS submitted that this should be considered 'in the interests of transparency and providing some certainty to the intended application of the sections'.⁵²⁹ Gecko Environment Association Council Inc also considered a clear definition would have broader benefits with respect to council decision making, submitting that 'without a clear understanding by Councillors and Mayors of what 'public interest' actually means, it remains a term to be loosely bandied about to further the interests, generally, of purely economic outcomes demanded by the development industry'.⁵³⁰

The QLS also noted that the amendments would only require that the Minister or department's chief executive 'believes' that there is an issue in order for an advisor or financial controller to be appointed

⁵¹⁹ Explanatory notes, p 23.

⁵²⁰ COBA, s 112.

⁵²¹ COBA, s 113.

⁵²² COBA, s 113.

⁵²³ Explanatory notes, p 25.

⁵²⁴ Explanatory notes, p 25.

⁵²⁵ OSCAR, submission 7, p 3; Wildlife Queensland, submission 20, p 1; Elizabeth Handley, BRU, public hearing transcript, Brisbane, 27 May 2019, p 17.

⁵²⁶ Submission 14, p 2.

⁵²⁷ Submission 7, p 3.

⁵²⁸ Submission 7, p 3.

⁵²⁹ Submission 28, p 7.

⁵³⁰ Submission 29, pp 1-2.

or for an unsound decision to be removed, where the current standard, and the standard that continues to apply in respect of the powers of suspension and dismissal, is ‘reasonably believes’.⁵³¹ The QLS submitted that given the exercise of these powers may result in ‘the loss of livelihood and significant damage to reputation, potentially in circumstances where allegations of improper behaviour will not be tested by a Court’, the absence of a requirement of “reasonable” belief ‘is not acceptable’.⁵³²

QLS considered that either:

- *the word “reasonably” should be reinstated; or*
- *“belief” should be defined as “on the evidence before the Minister, on the balance of probabilities”, there is a reason to exercise the powers in these provisions.*⁵³³

Townsville City Council Mayor Cr Jenny Hill expressed her support for the QLS’ proposal, stating:

*There are powers being exercised in this legislation that will allow people to make allegations against us without necessarily a modicum of proof that will destroy our reputations and destroy us personally. It is wrong.*⁵³⁴

The QLS also noted that the amendments would provide that if the Minister takes remedial action, the Minister ‘may publish’ certain information, including the way in which the local government or councillor is not performing, or is not complying with applicable laws.⁵³⁵ The QLS submitted:

*QLS suggests that in practical application and in the interests of ensuring that the Minister’s decisions are properly scrutinised, there should be a preference for publishing this information unless there is a sound reason for not doing so.*⁵³⁶

Noting the significance and implications of the amendments, the LGAQ submitted that it is ‘grateful’ that the Minister has committed to review the new public interest powers within two years of their introduction, as it is important ‘to ensure that they are being applied as intended’.⁵³⁷ The Balonne Shire Council requested that the Minister reaffirm his commitment to a review within two years.⁵³⁸

Department’s response

The department reiterated that it is intentional that the Bill does not define the term ‘public interest’, ‘to permit the phrase to evolve over time to reflect community expectations over time’.⁵³⁹ The department also noted that a list of relevant factors in determining ‘public interest’ was provided in the explanatory notes to the Bill.⁵⁴⁰ Further:

*This particular issue formed part of the Belcarra Stage 1 Bill and this current Bill does not propose any amendments to the concept of public interest.*⁵⁴¹

In response to comments regarding the standard of proof being changed from ‘reasonably believes’ to ‘believes’ for certain powers, the department advised that it considers that ‘the drafting of the provisions achieves the policy intent’.⁵⁴²

⁵³¹ QLS, submission 28, p 7; Matt Dunn, QLS, public hearing transcript, Brisbane, 27 May 2019, p 33.

⁵³² Submission 28, p 7.

⁵³³ Submission 28, p 7.

⁵³⁴ Public hearing transcript, Brisbane, 27 May 2019, p 6.

⁵³⁵ Submission 28, p 7.

⁵³⁶ Submission 28, p 7.

⁵³⁷ Submission 5, p 6.

⁵³⁸ Submission 2, p 3.

⁵³⁹ Department, correspondence dated 3 June 2019, p 14.

⁵⁴⁰ Department, correspondence dated 3 June 2019, p 14.

⁵⁴¹ Department, correspondence dated 3 June 2019, p 14.

⁵⁴² Department, correspondence dated 3 June 2019, p 14.

5.5 Amendments to the powers of mayors (and record keeping directions)

Since a series of 2012 reforms, the LGA has recognised the mayor as having certain ‘extra responsibilities’ to those of councillors, one of which is ‘preparing a budget to present to the local government’.⁵⁴³ In support of this change, the 2012 reforms also introduced a process for budget approval, which specifies that a local government must consider the budget presented by the mayor and, by resolution, adopt the budget with or without amendment.⁵⁴⁴ As part of this process, the mayor must give a copy of the budget, as proposed to be presented to the local government, to each councillor at least two weeks before the local government is to consider adopting the budget.⁵⁴⁵ The relevant section further states that the local government must adopt a budget before 1 August in the financial year to which the budget relates.⁵⁴⁶

The explanatory notes acknowledge that the LGAQ passed a resolution at its 2017 conference to lobby the state government for a change to the LGA to remove the provisions (first added in 2012) that place responsibility for the preparation and presentation of a budget solely on the position of mayor.⁵⁴⁷ The department advised that ‘in reality’, these provisions do not reflect what occurs on the ground:

*Typically, a budget is worked up with the CEO and all the councillors are involved in that. We do not want to see a circumstance where the mayor just plonks the budget in front of the councillors for debate. It is really important that councillors are involved in that process.*⁵⁴⁸

The Bill proposes to remove the specific power for the mayor to prepare and present the budget by repealing the relevant provisions of the LGA (but not the COBA, which is unaffected). The explanatory notes acknowledge the importance of a collaborative approach in the lead up to the formal budget adoption, and state that repealing the provisions will ‘allow each local government to implement processes which are most efficient and effective given the circumstances’.⁵⁴⁹

Further to this amendment, the Bill also proposes a number of other changes to the LGA relating to interactions between the mayor or other councillors and the CEO and senior executive employees. Specifically, the explanatory notes state that while it is accepted that the mayor should have the power to direct the CEO, subject to certain limitations, and that the local government should appoint the CEO, the Bill proposes to amend the LGA to:

- remove the power of the mayor to direct senior executive employees
- provide that the CEO appoints all employees, including senior executive employees (with transitional provisions for existing senior employees),⁵⁵⁰ contrary to existing provisions which provide for the appointment of senior executive employees by a panel constituted by the mayor, the CEO, and
 - if the senior executive employee is to report to only one committee of the local government, the chairperson of the committee, or
 - otherwise, the deputy mayor.⁵⁵¹

⁵⁴³ LGA, s 12(4).

⁵⁴⁴ LGA, s 107A(1).

⁵⁴⁵ LGA, s 107A(2)

⁵⁴⁶ LGA, s 107A(3)

⁵⁴⁷ Explanatory notes, p 28.

⁵⁴⁸ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 5.

⁵⁴⁹ Explanatory notes, p 28.

⁵⁵⁰ Explanatory notes, p 28.

⁵⁵¹ LGA, s 196.

With regards to the current provision for mayors to direct senior employees, the department explained:

*What we found, particularly through Operation Windage at the CCC, was the ability to reach into an organisation and direct senior executive employees without the CEO's knowledge or any involvement in the CEO. The CCC found that that increases corruption risks. ... From an operational perspective, it also makes it really quite difficult for the CEO. They need to know what directions are being given to their staff.*⁵⁵²

In terms of appointment processes, the department advised:

*One of the other powers was the requirement that councillors sit on recruitment panels for certain staff. Once again, we have repealed that to really show that it is the CEO who runs the organisation and the CEO who really is responsible for the discipline of staff and should be responsible for recruitment.*⁵⁵³

The Bill also contains amendments which provide that:

- a direction by the mayor to the CEO must not be inconsistent with a resolution, or a document adopted by resolution, of the local government, and
- the CEO must keep a record of each direction given by the mayor to the CEO and make each direction available to the local government.⁵⁵⁴

The explanatory notes state that these amendments to powers and responsibilities provide for a 'clear separation between the elected councillors who decide the policies, priorities and strategic direction and employees who are responsible for implementing the decisions of councils'.⁵⁵⁵

Stakeholder views

Local governments, individual councillors, and community and environmental stakeholders were united in their support for the proposed changes to mayoral powers as they relate to local government budgets.⁵⁵⁶ There was agreement among submitting local governments and councillors that the development of the local government budget should be the responsibility of all councillors, and that this should be reflected in the legislation,⁵⁵⁷ as it was prior to the introduction of the current provisions in 2012.⁵⁵⁸ A number of local governments outlined the collaborative budget process undertaken by their own council,⁵⁵⁹ and the Whitsunday Regional Council also noted that the changes to the budgetary provisions would implement the LGAQ's policy on this matter.⁵⁶⁰ The Mareeba Shire Council suggested, however, that as BCC 'is entirely different to other Local Governments', that this might be 'recognised in the reforms'.⁵⁶¹

⁵⁵² Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 5.

⁵⁵³ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 5.

⁵⁵⁴ Explanatory notes, pp 28-29.

⁵⁵⁵ Explanatory notes, p 29.

⁵⁵⁶ FNQROC, NWQROC and NQROC, submission 1, p 2; Burdekin Shire Council, submission 3, p 2; Mareeba Shire Council, submission 4, p 2; Cr Paul Golle, submission 6, p 8; OSCAR, submission 7, p 3; Cr Paul Bishop, submission 8, p 1; Whitsunday Regional Council, submission 14, p 3; NQROC, submission 15, p 6; Redlands2030, submission 16, p 2; Wildlife Queensland, submission 20, pp 1-2; QLGRA, submission 24, p 3; Cr Wendy Boglary, submission 27, p 2; NWQROC, submission 31, p 2; Ms Elizabeth Handley, BRU, public hearing transcript, Brisbane, 27 May 2019, p 17.

⁵⁵⁷ FNQROC, NWQROC and NQROC, submission 1, p 2; Burdekin Shire Council, submission 3, p 2; Cr Paul Bishop, submission 8, p 1; Whitsunday Regional Council, submission 14, p 3; NQROC, submission 15, p 6; NWQROC, submission 31, p 2. See also: QLGRA, submission 24, p 3.

⁵⁵⁸ Burdekin Shire Council, submission 3, p 2; Cr Lyn McLaughlin, Burdekin Shire Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 8; Cr Wendy Boglary, submission 27, p 2.

⁵⁵⁹ See, for example: Burdekin Shire Council, submission 3, p 2; Mareeba Shire Council, submission 4, p 2.

⁵⁶⁰ Submission 14, p 3.

⁵⁶¹ Submission 4, p 2.

Views on the other proposed changes to mayoral powers were mixed, with the LGAQ and submitting local governments generally opposing the amendments,⁵⁶² while other stakeholders – including the QLGRA, Wildlife Queensland, BRU, OSCAR, Redlands2030, and some individual councillors – conveyed their support for the amendments.⁵⁶³

Amongst those in support of the reforms, the QLGRA submitted that the current legislation has been colloquially referred to as facilitating ‘the powerful mayor syndrome’, as well as offering little transparency about directions given, potentially helping to enable some of the corrupt conduct that Operation Belcarra and other subsequent investigations have uncovered.⁵⁶⁴ Redlands2030 submitted that it is appropriate that mayors are only be able to direct the CEO in accordance with council policies and directions, and also that the power to direct senior executive staff rests only with the CEO:

Clarifying this separation of powers should result in an enhanced role for CEOs and improve the organisational culture within councils.

We regularly hear that staff in Redland City Council feel intimidated by certain elected councillors.

*This is an important reform which should reduce the risk of incompetence and corruption in local government.*⁵⁶⁵

Wildlife Queensland also supported the Bill’s ‘recall’ of broad mayoral powers of direction and provision for ‘open records of mayoral directives’, submitting that ‘centrist’ or ‘autocratic control’, whether actual or perceived, together with the real or perceived exclusion of some councillors from contributing their knowledge and participating in decision making, ‘negates the Whole of City avowed obligation of full Council and undercuts the duty to State Legislation’.⁵⁶⁶ Wildlife Queensland further submitted that the LGAQ’s ‘unfavourable stance’ in regards to these and other reforms additional to those of the Belcarra Report and Soorley Report, ‘must be weighed against the fact that this Association is largely formed by input from Mayors themselves’:⁵⁶⁷

Many have acceded to power under the Legislation which gave unprecedented authority to the mayoral role, in an unusual departure from traditional Queensland Local Government tradition, and some have had substantial funding from exclusively focussed vested interests.

*...[S]uch opposition from the Association tends not only to overlook the fact that its leadership mode of participation, in spite of its Association title, is not proactively inclusive of the wider spectrum of elected local governance representation. ... in its somewhat negative response to the reform agenda, [the LGAQ] appears not to give consideration to or reflection upon the causal factors, wherein there has been recently an unprecedented dismissal of a Council representation due to findings of corruption.*⁵⁶⁸

Cr Paul Bishop and Cr Wendy Boglary of Redland City Council emphasised the importance of the provisions to ensure the mayor may not provide a direction to the CEO that is inconsistent with a resolution adopted by a quorum of the local government,⁵⁶⁹ with Cr Boglary submitting that there must

⁵⁶² See, for example: Balonne Shire Council, submission 2, p 2; Burdekin Shire Council, submission 3, p 2; LGAQ, submission 5, p 2; NQROC, submission 15, p 6; Torres Shire Council, submission 25, p 1; Banana Shire Council, submission 26, p 1;

⁵⁶³ OSCAR, submission 7, p 3; Cr Paul Bishop, submission 8, p 1; Redlands2030, submission 16, p 2; Wildlife Queensland, submission 20, pp 1-2; QLGRA, submission 24, p 3; Cr Wendy Boglary, submission 27, p 2; Elizabeth Handley, BRU, public hearing transcript, Brisbane, 27 May 2019, p 17.

⁵⁶⁴ Submission 24, p 2.

⁵⁶⁵ Submission 16, p 2.

⁵⁶⁶ Submission 20, p 2.

⁵⁶⁷ Submission 20, p 2.

⁵⁶⁸ Submission 20, p 2.

⁵⁶⁹ Submission 8, p 1; submission 27, p 2. Cr Paul Golle also submitted that directions to the CEO should be provided only with the authority of all councillors as a quorum of the board. See: submission 6, p 8.

be 'definite clarity' that a direction cannot come simply from 'the mayor or a select few', to ensure accountability.⁵⁷⁰ Cr Boglary further submitted of the changes to mayor powers:

*Recently before the Local Government forum to discuss these changes, direction from the whole of Redland City Council was given to the Mayor for these discussions. The majority of Councillors were in favour of this particular reform as was the previous whole of Council submission.*⁵⁷¹

In relation to the requirement for the CEO to keep a register of directions, the QLGRA, OSCAR and Redlands2030 submitted that the register of mayoral directions to the CEO must be recorded in a form that is publicly available,⁵⁷² 'such as a register available on the council's website'.⁵⁷³ OSCAR also submitted that the register 'should include a reference to the appropriate Council policy under which the direction is given',⁵⁷⁴ while Cr Paul Bishop requested that any direction from mayor to CEO be made in writing.⁵⁷⁵

Amongst those who opposed the amendments, most key concerns related to the practicalities and technical implications of the changes. NQROC submitted that the provision for the mayor to direct senior staff should be retained, to maintain relationships and support the operations of the council.⁵⁷⁶ By way of explanation, the Mareeba Shire Council submitted that:

*By legally prohibiting the Mayor from directing Senior Staff the situation will arise that all directions would have to go through the CEO which would have an impact on the CEO's workload, compounded by the requirement to maintain a register of directions. This would be akin to a Minister being prevented from giving directions to a Deputy Director General and is clearly unworkable. A harmonious working relationship between the Mayor and the Executive staff, particularly the CEO, is essential and by excluding the Mayors interactions with other Senior Staff this relationship will be put under pressure.*⁵⁷⁷

Additionally, the FNQROC, NWQROC and NQROC, while approving of the requirement that directions reflect council policies, raised the prospect that the reforms may not be supportive of councils that have 'an identified conflict between the CEO and Mayor or Councillors'.⁵⁷⁸ These submitters stated:

*In our Indigenous communities many of the executive staff are external to the communities and conversations need to be had about history and cultural sensitivities which may affect a technical recommendation.*⁵⁷⁹

In relation to the proposed changes to the appointment of senior executive employees, the Burdekin Shire Council submitted that it believes 'that the Mayor and Deputy Mayor or the Committee Chair should have an involvement in the appointment of senior executive employees given the importance of these roles in supporting the strategic direction of Council'.⁵⁸⁰

The Mareeba Shire Council further stated:

The involvement of the Mayor and Councillors in the appointment of Senior Staff is seen as an important part to developing a good working organisation. If the Local Government is to be

⁵⁷⁰ Submission 27, p 2.

⁵⁷¹ Submission 27, p 2.

⁵⁷² OSCAR, submission 7, p 3; Redlands2030, submission 16, p 2; QLGRA, submission 24, p 3.

⁵⁷³ Redlands2030, submission 16, p 2. The QLGRA also submitted that the register of directions should be 'available to the ratepayers via council websites (as a minimum)'. See: submission 24, p 3.

⁵⁷⁴ Submission 7, p 3

⁵⁷⁵ Submission 8, p 1.

⁵⁷⁶ Submission 15, p 6.

⁵⁷⁷ Submission 4, p 2

⁵⁷⁸ Submission 1, p 4; submission 31, p 4.

⁵⁷⁹ Submission 1, p 4; submission 31, p 4.

⁵⁸⁰ Submission 3, p 2.

*successful it is essential that good working relationship is developed between the Councillors and Senior Staff and they operate as a unified team. By removing the Councillor involvement in the recruitment and leaving it purely with the CEO this is less likely to occur. The culture of the organisation is determined by its leadership group, i.e. the Councillors and Executive staff and it is essential that when a Senior Member of staff is recruited that all parties of this leadership team are involved to ensure the successful candidate will be the best fit to the organisation.*⁵⁸¹

The Whitsunday Regional Council also submitted that ‘if there is to be a change to powers, Council believes it is important for the CEO to consult with the Mayor and Councillors regarding the appointment of senior executive staff’.⁵⁸²

The Balonne Shire Council highlighted that the proposed removal of the powers of the mayor to direct senior executive employees, and the removal or the power of the mayor, in conjunction with either the deputy mayor or a committee chair, to participate in the decision to appoint senior executive employees, were both rejected by resolutions carried overwhelmingly at the 2 April 2019 LGAQ General Meeting.⁵⁸³ The Whitsunday Regional Council expressed concern that the proposals, which were not derived from the Belcarra Report or Soorley Report, ‘are not substantiated’;⁵⁸⁴ while the LGAQ emphasised that ‘Queensland councils supported the 2012 reforms that empowered councillors in this regard and oppose the winding back of this 2012 reform’.⁵⁸⁵

Department’s response

In response to stakeholder comments, the department stated:

The Mayor and Councillors have and will continue to have the ability to drive the Local Government’s agenda via the following powers:

- *all significant decisions or policies that a Local Government must make or adopt such as the budget and organisational structure are made by all Councillors at a Council meeting*
- *the Mayor and Councillors appoint the CEO*
- *the Mayor can provide strategic direction to the CEO*
- *the amendments do not prevent the CEO consulting with the Mayor and Councillors about the appointment of senior executive employees.*

*Further, under the LGA all employees have the responsibility to implement the policies and priorities of the Local Government, the CEO appoints all other employees, and the CEO is responsible for managing and taking disciplinary action against employees.*⁵⁸⁶

The department further stated that the amendments would help to address integrity concerns associated with ‘over-reach by Councillors into the Council administration’, as identified by the CCC’s Operation Windage:

*The amendments provide for a clear separation between the elected Councillors who decide the policies, priorities and strategic direction and employees who are responsible for implementing the decisions of the Councillors.*⁵⁸⁷

⁵⁸¹ Submission 4, p 2.

⁵⁸² Submission 14, p 3.

⁵⁸³ Submission 2, p 2.

⁵⁸⁴ Submission 14, p 3.

⁵⁸⁵ Submission 5, p 2.

⁵⁸⁶ Department, correspondence dated 3 June 2019, p 3-4.

⁵⁸⁷ Department, correspondence dated 3 June 2019, p 3-4.

5.6 Councillor access to information

Under the LGA and COBA, a councillor may ask a local government employee to provide advice to assist the councillor to carry out their responsibilities under these Acts, and may ask the CEO to provide information that the local government has access to.⁵⁸⁸ With respect to a request to the CEO for information, the CEO must make all reasonable endeavours to comply with the request, otherwise a maximum penalty of 10 penalty units applies.⁵⁸⁹ The legislation does not specify any timeframes for complying with a request for assistance or information.⁵⁹⁰

The explanatory notes advise that there are currently some anomalies between the LGA and COBA provisions:

*... namely, the LGA section 170A(2) refers to the information that can be requested as 'relating to the local government' where the COBA does not; and the COBA section 171(4) places restrictions on the advice or information that can be requested by providing that a request of a BCC councillor is of no effect if the request relates to any ward of BCC other than the ward the councillor represents.*⁵⁹¹

The department advised that councillors have raised issues with the ward-specific information provisions in the COBA, arguing that they detract from their ability to 'uphold the local government principles about acting in the best interests of the local government as a whole'.⁵⁹² In addition:

... we have heard from some councillors ... that they were just not getting the information in a timely manner and that it was sometimes taking months to get information.

CHAIR: *On issues that they then have to vote on and make decisions on for the public?*

Ms Blagoev: *Correct.*⁵⁹³

The Bill proposes changes to ensure consistency between the LGA and COBA and 'improve councillor access to the advice and information they need to carry out their responsibilities and to make informed decisions in the public interest'.⁵⁹⁴ Specifically, the Bill amends the relevant sections of the LGA and COBA to provide that:

- the information that can be requested under the COBA is to relate to the council and that a BCC councillor can request advice or information across all wards of BCC
- if the request for advice or information relates to a document, a copy of the document must also be provided
- the CEO must comply with a request made to the CEO for advice or information within 10 business days after receiving the request or within 20 business days after receiving the request if the CEO reasonably believes it is not practicable to comply with the request within 10 business days (a maximum penalty of 20 penalty units (\$2,611) applies), and
- the CEO must, if the CEO reasonably believes it is not practicable to comply with the request within 10 business days after receiving the request, give the councillor written notice about the belief and the reasons for the belief within 10 business days after receiving the request.⁵⁹⁵

⁵⁸⁸ LGA, s 170; COB, s 171.

⁵⁸⁹ Explanatory notes, p 29.

⁵⁹⁰ LGA, s 170; COB, s 171.

⁵⁹¹ Explanatory notes, p 29.

⁵⁹² Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 9.

⁵⁹³ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 9.

⁵⁹⁴ Explanatory notes, p 29.

⁵⁹⁵ Explanatory notes, pp 29-30.

Stakeholder views

OSCAR, BRU, the Torres Shire Council and Cr Paul Bishop of the Redland City Council expressed their support for the proposed amendments,⁵⁹⁶ while the Whitsunday Regional Council supported the amendments in principle.⁵⁹⁷ In commending the change, BRU noted:

*In relation to councillor access to information, councillors are elected to represent their wards. How can they do that if the dominant factions in a council will not allow them to do so?*⁵⁹⁸

Cr Paul Golle of the Redland City Council considered the provisions could be further improved by reducing the timeframe for providing councillors with access to information, to 'no longer than 7 days from the time of request'.⁵⁹⁹

Conversely, a number of local government representatives took issue with the amendments. The FNQROC, NWQROC and NQROC objected to the introduction of a timeframe for responding to requests, arguing it would put pressure on council resources, and may not always be able to be met:

*The CEO may need to get legal advice or the request maybe for a significant volume of information – one example given identified three (3) months to fulfil a request as they needed to access and many archives are stored on offsite. There needs to be some consideration around the nature of the request, the timing of the request and whether the information will inform a decision of council, otherwise council staff can become 'drowned' in requests taking them from the core role of delivering to our communities. The individual Councils should be left to establish their own policy in this regard and determine what they believe is reasonable.*⁶⁰⁰

The LNP Administration Councillors of the BCC also objected to the provisions, submitting:

*Despite the fact they already have broad access to Council records, Opposition Councillors can now demand such information even if it has nothing to do with their Ward. It is our view that Council public servants have been set up to become research assistants for Opposition Councillors at the expense of their primary jobs. We note the State Government does not afford Opposition members at State level similar access to State public servants or records, nor are Directors General threatened with 200 penalty unit fines in relation to procedural responsibilities.*⁶⁰¹

The LGAQ stated that it is 'grateful that the Government has listened to feedback and has changed the period within which a CEO is required to comply with an access to information request from 5 to 10 business days, as requested by the LGAQ'.⁶⁰² However, the LGAQ and Balonne Shire Council submitted that they do not consider it appropriate to make non-compliance an offence, requesting that the penalty for non-compliance by the CEO be removed.⁶⁰³

Department's response

In response to stakeholder comments regarding the timeframe specified in the amendments, the department stated the proposed timeframe of 10 business days (or 20 business days if the CEO reasonably believes it is not practicable to comply with the request within 10 business days and gives the councillor written notice of the belief), 'is considered appropriate and fair to all parties'.⁶⁰⁴

⁵⁹⁶ OSCAR, submission 7, p 3; Cr Paul Bishop, submission 8, p 1; Torres Shire Council, submission 25, p 2; Elizabeth Handley, BRU, public hearing transcript, Brisbane, 27 May 2019, p 17.

⁵⁹⁷ Submission 14, p 3.

⁵⁹⁸ Elizabeth Handley, BRU, public hearing transcript, Brisbane, 27 May 2019, p 17.

⁵⁹⁹ Submission 1, p 5; s submission 31, p 5.

⁶⁰⁰ Submission 1, p 5; s submission 31, p 5.

⁶⁰¹ Submission 10, p 3.

⁶⁰² Submission 5, p 6.

⁶⁰³ LGAQ, submission 5, p 6; Balonne Shire Council, submission 2, p 3.

⁶⁰⁴ Department, correspondence dated 3 June 2019, p 15.

While noting the comments of the LNP Administration Councillors of the BCC, the LGAQ and the Balonne Shire Council, the department further stated:

*The amendments reflect the importance of Councillors acquiring in a timely manner all the advice and information needed to carry out their responsibilities and to make informed decisions in the public interest.*⁶⁰⁵

5.7 Greater transparency around Brisbane City Council decision making

Under the *Right to Information Act 2009* (RTI Act), information relating to the BCC's Establishment and Coordination Committee is exempt from right to information requests for a period of 10 years if the information has been brought into existence for the consideration of the committee, or its disclosure would reveal any consideration of the committee or would otherwise prejudice the confidentiality of committee considerations or operations.⁶⁰⁶ This includes committee submissions, briefing notes, agendas, decisions, and minutes or notes of discussions in committee, as well as any draft versions of these documents.⁶⁰⁷ The explanatory notes advise that this exemption is similar to the exemption provided under the RTI Act in relation to Cabinet information, 'however, no other local governments in Queensland have such an exemption'.⁶⁰⁸

The Bill proposes to amend the RTI Act to remove the current exemption that applies to information relating to the BCC's Establishment and Coordination Committee.⁶⁰⁹ The explanatory notes state that the removal of the exemption will 'improve transparency around BCC decision making and to better align the regimes across all local governments in Queensland'.⁶¹⁰

The Bill includes transitional provisions to ensure that any information of the BCC's Establishment and Coordination Committee that was exempt information before the commencement would continue to be exempt information for 10 years after:

- for information considered by the Establishment and Coordination Committee – the date the information was most recently considered by the Committee, or
- for other information – the information was brought into existence.⁶¹¹

Stakeholder views

OSCAR submitted that it 'strongly supports' the removal of the RTI Act exemption relating to the BCC's Establishment and Coordinating Committee, stating that consistency between the LGA and the COBA in this respect 'is desirable'.⁶¹²

However, the LNP Administrators Council of the BCC strongly objected to the proposal, pointing to the differences between the BCC and other local governments, which it argued were recognised when the exemption was established.⁶¹³

Noting that the BCC's Establishment and Coordination Committee is now known as the 'Civic Cabinet', the LNP Administrators Council of the BCC submitted:

Given its unique size and responsibilities, the City of Brisbane Act 2010 structures BCC along the lines of the State Government. Unlike any other Council in Queensland, the City of Brisbane Act

⁶⁰⁵ Department, correspondence dated 3 June 2019, p 15.

⁶⁰⁶ RTI Act, Schedule 3, s 4A.

⁶⁰⁷ RTI Act, Schedule 3, s 4A(3).

⁶⁰⁸ Explanatory notes, p 3.

⁶⁰⁹ Bill, cl 259.

⁶¹⁰ Explanatory notes, p 3.

⁶¹¹ Explanatory notes, p 3; Bill, cl 258, s 206C.

⁶¹² Submission 7, p 3.

⁶¹³ LNP Administration Councillors of the Brisbane City Council, submission 10, p 2.

2010 provides for a formal Leader of the Opposition, a Chairperson of Council who is not the Mayor and a Civic Cabinet.

The Bligh State Government specifically granted 'Cabinet Confidentiality' provisions to Civic Cabinet in 2010 when they drafted and passed the City of Brisbane Act 2010. This provision was included for the same governance reasons that are used to justify Cabinet-in-Confidence protections enjoyed by the State Government Cabinet.⁶¹⁴

The LNP Administrators Council of the BCC further stated:

When provisions of the first Belcarra Bill were introduced in October 2017, Premier Anastacia Palaszczuk stated: "Queenslanders should have confidence in the transparency and integrity of all levels of government. [But] I will not make rules for local councils that I am not prepared to follow myself, so any changes we make will apply to state as well as local government."⁶¹⁵

To retain any credibility on this matter, the Premier should immediately announce the removal of State Cabinet confidentiality. The values of 'transparency and integrity' should not become tools that are selectively used for party political expediency.⁶¹⁶

Department's response

Noting that the BCC is the only local government with an RTI exemption of this nature, the department stated that the proposed amendments would 'align the regimes across all Local Governments in Queensland', and 'improve transparency around BCC decision making'.⁶¹⁷

The department also highlighted the Bill's transitional provisions, which would ensure that information of the BCC's Establishment and Coordination Committee that was exempt information prior to commencement, would continue to be exempt for 10 years from the date it was most recently considered or brought into existence.⁶¹⁸

5.8 Caretaker period prohibitions

The LGA and COBA set out certain restrictions on the activities that can be undertaken by a local government during a caretaker period – that is, the period of time from when public notice of an election is given, to the conclusion of the election.⁶¹⁹ During this period, a local government is prohibited from making a major policy decision, and from publishing or distributing election material.⁶²⁰

A 'major policy decision' for a local government currently means a decision about the appointment, remuneration or termination of the CEO of the local government, or a decision to enter into a contract the total value of which is more than the greater of \$200,000 or one per cent of the local government's net rate and utility charges.⁶²¹ 'Election material' is anything able or intended to influence an elector about voting at an election or affect the result of an election.⁶²²

The Bill proposes to extend the meaning of 'major policy decision' in the LGA and COBA to specify that the following decisions are also major policy decisions that a local government would be prohibited

⁶¹⁴ Submission 10, p 2.

⁶¹⁵ Submission 10, p 2-3.

⁶¹⁶ Submission 10, p 2-3.

⁶¹⁷ Department, correspondence dated 3 June 2019, p 22.

⁶¹⁸ Department, correspondence dated 3 June 2019, p 22.

⁶¹⁹ LGA, s90A. There is no caretaker period during a by-election or fresh election.

⁶²⁰ LGA, s 90B, 92B; COBA, s 92B.

⁶²¹ LGA, Schedule 4 (Dictionary); COBA, Schedule 2 (Dictionary).

⁶²² LGA, s 90D(2); COBA, s 92D(2).

from making during a caretaker period without the Minister's approval:

- a decision relating to making or preparing an arrangement, list, plan or register in the way provided under a regulation that can be used to establish an exception to obtaining quotes or tenders when entering into a contract (eg procurement decision)
- a decision to make, amend or repeal a local law
- a decision to make, amend or repeal a local planning instrument under the Planning Act
- a decision under the Planning Act, chapter 3, part 3, division 2 on a development application that includes a variation request,⁶²³ and
- a decision under the Planning Act, chapter 3, part 5, division 2, subdivision 2 on a change application that is a change to a variation approval.⁶²⁴

The explanatory notes state that 'these decisions are considered significant policy decisions which should not be made in the lead up to a local government election as they could bind a future local government'.⁶²⁵

The Bill would also amend the prohibition on publishing or distributing electoral material to provide that a controlled entity of a local government, in addition to the local government itself, is prohibited from publishing or distributing election material during a caretaker period for the local government.⁶²⁶

Further, the Bill would insert an example of 'election material', namely 'a fact sheet or newsletter that raises the profile of a councillor'.⁶²⁷

Stakeholder views

Stakeholders had mixed views on the Bill's proposed changes to the activities prohibited during a caretaker period. The Torres Shire Council expressed their support for the Bill's 'clarification' of the application of the caretaker period prohibitions⁶²⁸ and OSCAR submitted that it 'strongly supports' the amendments.⁶²⁹ Further, BRU and the Whitsunday Regional Council conveyed their in principle support for the proposals.⁶³⁰ However, some of these stakeholders, together with a number of other submitters, objected to particular aspects of the amendments, citing concerns about potential unintended consequences and disruptions to long-term projects and service delivery.⁶³¹

One of these concerns related to the proposed prohibition on decisions to make, amend or repeal planning schemes (eg local planning instruments) during a caretaker period, as a result of the inclusion of these decisions in the definition of a major policy decision. The LGAQ and Balonne Shire Council described this definitional change as 'problematic'.⁶³² These stakeholders submitted:

*The adoption of a planning scheme is simply the formality of finalising a lengthy and costly process. If the State delays the timing for its State interest check, councils may potentially be unable to finish a multi-year project.*⁶³³

⁶²³ A variation request means part of a development application for a preliminary approval for premises that seeks to vary the effect of any local planning instrument in effect for the premises. See: Planning Act, Schedule 2.

⁶²⁴ Explanatory notes, p 31. A variation approval means the part of a preliminary approval for premises that varies the effect of any local planning instrument in effect for the premises. See: Planning Act, Schedule 2.

⁶²⁵ Explanatory notes, p 31.

⁶²⁶ Explanatory notes, p 31. Bill, cl 4, s92D(1); cl 60, s 90D(1).

⁶²⁷ Bill, cl 4, s92D(2); cl 60, s 90D(2).

⁶²⁸ Submission 25, p 2.

⁶²⁹ Submission 7, p 3.

⁶³⁰ BRU, submission 9, pp 2-3; Whitsunday Regional Council, submission 14, p 3.

⁶³¹ OSCAR, submission 7, p 3; Burdekin Shire Council, submission 3, p 3. For example, Burdekin Shire Council submitted that it 'supports the inclusion of some items' but was concerned about the proposed prohibition of variations to existing development approvals.

⁶³² Balonne Shire Council, submission 2, p 3; LGAQ, submission 5, p 6.

⁶³³ Balonne Shire Council, submission 2, p 3; LGAQ, submission 5, p 6.

The FNQROC, NWQROC and NQROC also called for a reconsideration of the inclusion of ‘those items which take a long time to develop such as planning schemes’, highlighting that the lengthy and ‘involved’ development process requires ‘considerable community and State Government consultation before the Council can resolve to finally adopt’.⁶³⁴

A number of stakeholders also argued that the business of assessing planning applications (eg applications for variation requests and applications for changes to variation approvals) should be allowed to continue during the caretaker period.⁶³⁵ The LGAQ, NQROC, Burdekin Shire Council and Balonne Shire Council noted that there are statutory requirements in relation to the timeliness of these assessment activities that councils are required to comply with under planning legislation, which would be impacted by the proposed changes.⁶³⁶ Further, the Property Council submitted that a variation of a development approval ‘is not in the same category as the other types of decisions identified as major policy decisions’:

*The other decisions in this category are, in the main, related to employment and commercial matters. While making, amending and repealing a local law or a local planning instrument (see sub-clauses (f) and (g) of the definition) will now be caught by the definition of a "major policy decision", these decisions have much broader effect across a wider area.*⁶³⁷

Additionally, the Property Council, the NQROC, and the Burdekin Shire Council also submitted that the variation of a development approval is typically a ‘minor’ administrative action undertaken by council officers under delegated authority, having followed a ‘highly regulated’ assessment and decision making process.⁶³⁸

In relation to changes to variation requests, the Property Council stated:

*Changes to variation requests under Chapter 3, Part 5, Division 2, Subdivision 2 could be minor changes or other changes. A minor change is, by definition, minor, and there is no justification for such decisions being deferred during the caretaker period as it will not have any policy implications. An example of a minor matter requiring a variation application in many Queensland local governments would be to alter boundary setbacks for a residential block, including to construct a carport, deck or rainwater tank. Given there is typically no political involvement in these decisions, it is appropriate for decisions about variation requests and changes to variation approvals to continue to be approved during the caretaker period. Any restrictions on decision-making relating to new or varied development applications should be confined only to those applications that require a decision of the full Council.*⁶³⁹

The proposed prohibition on decisions that could be used to establish an exception to obtaining quotes or tenders when entering into a procurement contract (eg making a list or register) also raised concerns for some stakeholders. NQROC submitted that ‘it is unclear why decisions of this type should be prevented’, arguing that this could potentially compromise the ability of local governments to respond to disasters or emergencies in a timely fashion.⁶⁴⁰ The NQROC noted that the caretaker period prior to the 2020 local government elections ‘is likely to cover much of the North Queensland storm season period’.⁶⁴¹

⁶³⁴ FNQROC, NWQROC and NQROC, submission 1, p 3; NWQROC, submission 31, p 3.

⁶³⁵ LGAQ, submission 5, p 6; Balonne Shire Council, submission 2, p 3; Burdekin Shire Council, submission 3, p 3; NQROC, submission 15, p 5.

⁶³⁶ LGAQ, submission 5, p 6; Balonne Shire Council, submission 2, p 3; Burdekin Shire Council, submission 3, p 3; NQROC, submission 15, p 5.

⁶³⁷ Submission 17, p 1.

⁶³⁸ Property Council of Australia (Property Council), submission 17, p 1; Burdekin Shire Council, submission 3, p 3; NQROC, submission 15, p 5.

⁶³⁹ Submission 17, p 2.

⁶⁴⁰ Submission 15, p 4.

⁶⁴¹ Submission 15, p 5.

A number of stakeholders also commented on the existing threshold value for contract decisions to qualify as a major policy decision (the greater of \$200,000 or one per cent of rates), which is unaffected by the Bill.⁶⁴²

In relation to the extension of the prohibition on election material, the Sunshine Coast Regional Council submitted that the definition of 'control' and 'controlled entity' is unclear, 'specifically with the inclusion of the wording 'dominate decision-making, directly or indirectly''.⁶⁴³ The Sunshine Coast Regional Council suggested that this wording could be clarified, and examples of application included.⁶⁴⁴

Department's response

In response to stakeholders' comments, the department advised that the proposed amendments are a result of the department receiving complaints about local governments making major planning decisions during caretaker periods that bind future local governments.⁶⁴⁵

While the Bill does not allow local governments to make decisions about matters such as amending planning schemes, changing planning rules or developing new local area plans during a caretaker period, the department advised:⁶⁴⁶

... Local Governments will be able to continue to make decisions about development applications, subject to the statutory timeframes for making such decisions under the Planning Act 2016.

The proposed changes in relation to planning decisions have been developed in full consultation with the Department of State Development, Manufacturing, Infrastructure and Planning.

It is worth noting that the Bill does not affect the Minister's powers under the LGA (s90B) and the COBA (s92B) to allow a Local Government to make a major policy decision during a caretaker period if satisfied that, having regard to exceptional circumstances that apply, it is necessary for the Local Government to make the major policy decision in the public interest.

*The prohibition upon variations to existing development approvals is intended to be a narrow provision. In general, a 'variation request' under division 2, part 3, chapter 3 of the Planning Act 2016 is a specific type of application that involves an application to effectively change the planning scheme. It is not intended to capture all variations.*⁶⁴⁷

In relation to concerns about local governments being prohibited from making decisions relating to particular procurement activities during the caretaker period, the department emphasised that these decisions are limited to those that can be used to establish an exception to obtaining quotes or tenders when entering into a contract, 'such as decisions relating to preparing a quote or tender consideration plan or making a register of pre-qualified suppliers'.⁶⁴⁸ Accordingly, the department asserted that these restrictions would 'not impact on the timely procurement decisions that Local Governments sometimes need to make during natural disasters and emergencies'.⁶⁴⁹

The department also stated that it is 'not considered necessary' to further define 'control' and 'controlled entity' for the purposes of clarifying who will be prevented from publishing or distributing election materials. The department advised that the definitions employed by the Bill 'are based on the

⁶⁴² OSCAR, submission 7, pp-3-4; BRU, submission 9, pp 2-3; NQROC, submission 15, p 5.

⁶⁴³ Submission 13, p 2.

⁶⁴⁴ Submission 13, p 2.

⁶⁴⁵ Department, correspondence dated 3 June 2019, p 11.

⁶⁴⁶ Department, correspondence dated 3 June 2019, p 11.

⁶⁴⁷ Department, correspondence dated 3 June 2019, p 11-12.

⁶⁴⁸ Department, correspondence dated 3 June 2019, p 12.

⁶⁴⁹ Department, correspondence dated 3 June 2019, p 12.

definitions of ‘control’ and ‘controlled entity’ in the *Auditor-General Act 2009* and are considered to be clear’.⁶⁵⁰

5.9 Suspended councillors – absence from a meeting

Under the LGA, the responsible Minister has the power to suspend a councillor, or every councillor, under certain circumstances.⁶⁵¹ A councillor is also automatically suspended when charged with a disqualifying offence under the relevant provisions of the LGA and COBA.⁶⁵²

The LGA also makes provision for when a councillor’s office becomes vacant. The LGA specifies that a councillor’s office becomes vacant if the councillor is absent for two or more consecutive ordinary meetings of the local government over a period of at least two months, unless the councillor is absent:

- in compliance with an order made by the conduct tribunal, the local government or the chairperson of a meeting of the local government or a committee of the local government, or
- with the local government’s leave.⁶⁵³

The Bill proposes to add a further exemption to these provisions, to clarify that a councillor’s office also does not become vacant in these circumstances if the councillor is absent while they are suspended as a result of the Minister exercising his powers in this respect,⁶⁵⁴ or as a result of an automatic suspension for being charged for a disqualifying offence.⁶⁵⁵

The Bill would also amend the COBA to insert the same clarification.⁶⁵⁶

Stakeholder views

The Torres Shire Council expressed its support for the Bill’s clarification of the status of suspended councillors in relation to their absence from local government meetings.⁶⁵⁷

5.10 Local government change – multi-member divisions

Chapter 2, part 3 of the LGA sets out a process for making a local government change, involving:

- an assessment of the proposed change by the Local Government Change Commission, and
- the implementation of the change by regulation.

The LGA defines a ‘local government change’ as a change of a local government’s boundaries, divisions (other than the City of Brisbane), number of councillors, name, or classification (from a town to a city, for example).⁶⁵⁸

The Bill proposes to amend this definition to clarify that a change of the number of councillors for a local government area can include a change of the number of councillors for a division of a local government area, such that a proposed ‘local government change’ could request multi-member divisions and change the number of councillors per division.⁶⁵⁹

⁶⁵⁰ Department, correspondence dated 3 June 2019, p 12.

⁶⁵¹ Explanatory notes, p 30. More specifically, the Minister may recommend that the Governor in Council suspend the councillor and the Governor in Council may give effect to the Minister’s recommendation under a regulation. See: LGA, ss 122, 123.

⁶⁵² LGA, s 182A (renumbered as section 175K by the Bill); COBA, s 186B.

⁶⁵³ LGA, s162(1)(e).

⁶⁵⁴ Suspension is affected by the Governor in Council (under a regulation), on the Minister’s recommendation. See: explanatory notes, p 25.

⁶⁵⁵ Explanatory notes, pp 30-31.

⁶⁵⁶ Explanatory notes, p 31.

⁶⁵⁷ Submission 25, p 2.

⁶⁵⁸ LGA, s 17(2).

⁶⁵⁹ Explanatory notes, p 32; Bill, cl 59.

Stakeholder views

BRU and OSCAR expressed their support for the amendment.⁶⁶⁰

⁶⁶⁰ BRU, submission 9, p 2; OSCAR, submission 7, p 4.

6 Local government electoral reforms

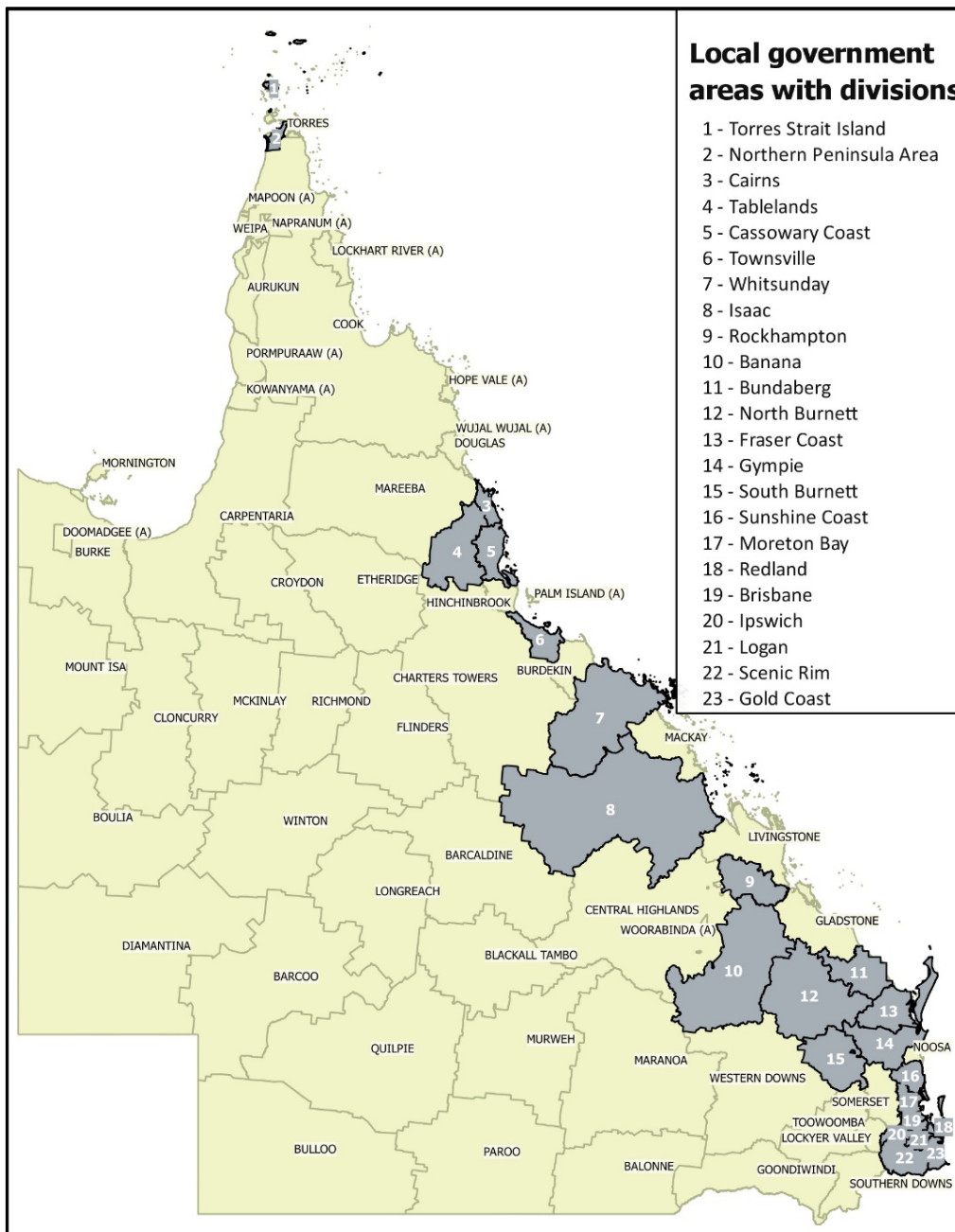
6.1 Full preferential voting for mayoral and single councillor elections

In Queensland, local government areas are either:

- (a) divided into divisions/wards, with the council comprised of the individual councillors elected for each division, or
- (b) undivided, with the council comprised of a set number of councillors elected for the whole local government area.

Twenty-three of the 77 local government areas in Queensland have divisions, as shown in Figure 1.

Figure 1: Queensland local government areas



Source: Based on Local Government Regulation 2012 (Qld), Schedule 1; City of Brisbane Regulation 2012 (Qld), Schedule 1; Australian Bureau of Statistics, 'Local Government Areas ASGS Ed 2018 Digital Boundaries in ESRI Shapefile Format', Australian Statistical Geography Standard (ASGS): Volume 3 - Non ABS Structures, July 2018, cat no 1270.0.55.003, ABS, 2018.

The voting system used for the election of mayors in all local government areas and for the election of councillors in local government areas which have divisions, is optional preferential voting. Optional preferential voting requires the voter to nominate one preferred candidate, with the numbering of some or all of the remaining boxes on the ballot paper being optional.⁶⁶¹

In local government areas which are undivided, all councillors are elected to the council using the first-past-the-post system. First-past-the-post voting requires the voter to select the number of candidates to be elected on the ballot paper. For example, if four candidates are to be elected, the voter must mark four boxes on the ballot paper (using a tick, cross or numerals).⁶⁶²

The Bill seeks to amend the LGEA to apply full preferential voting to the election of mayors in all local government areas and the election of single councillors in local government areas with divisions, replacing optional preferential voting as the system for these elections.⁶⁶³ Full preferential voting requires voters to show their preferences by ranking each candidate in numerical order, ensuring every box on the ballot paper is numbered.⁶⁶⁴

The first-past-the-post methodology would continue to apply for the election of councillors in all undivided local government areas.

The explanatory notes state that the change ‘will align local government voting methodologies with state and federal elections to minimise voter confusion’.⁶⁶⁵ Full preferential voting is the system used for the election of federal members of the House of Representatives and was reintroduced for the election of members of the Legislative Assembly of Queensland in 2016, having been previously used for state elections from 1962 to 1991.⁶⁶⁶ The department advised that the proposed change follows a review of the voting system, which the government committed to undertake in response to recommendation 21 of the Soorley Report.⁶⁶⁷

Recommendation 21 of the Soorley Report stated that ‘Queensland should retain the current optional preferential voting system for local government elections at least until after the next [2020] election’. The Independent Panel reported that it was aware of the argument that full preferential voting would align local, state and federal government election systems:

*... however, the local government electoral system has a greater diversity of candidates who do not necessarily align with parties. The panel supports the current OPV [optional preferential voting] system for local government elections for all mayors and councillors in divided councils and FPTP [first-past-the-post] for councillors in undivided councils.*⁶⁶⁸

The department has acknowledged:

The bill as a whole goes beyond Belcarra and Soorley and it has a number of matters that have been identified either by the department or by the government. In terms of the proposal to introduce compulsory preferential voting for mayors and single councillor divisions, as you are aware, voting at state elections and in the federal lower house is conducted by full preferential voting. While the voting methodologies for federal elections have remained the same for many

⁶⁶¹ LGEA, s 83; ECQ, Enrolment & Voting: Voting System, Optional Preferential Voting, <https://www.ecq.qld.gov.au/voters-and-voting/voting-system/optional-preferential-voting>

⁶⁶² ECQ, Enrolment & Voting: Voting System, <https://www.ecq.qld.gov.au/voters-and-voting/voting-system>

⁶⁶³ Bill, cl 209, s 65.

⁶⁶⁴ Bill, cl 215, s 86(5)-(6). If an elector numbers all preferences sequentially but leaves one box blank, the vote will still be formally counted, assuming it is compliant in all other senses. The Bill provides that the candidate whose name is opposite the blank square is taken to be the elector’s last preference.

⁶⁶⁵ Explanatory notes, p 18.

⁶⁶⁶ Full preferential voting was the system used for state elections between 1962 and 1991. See: <https://www.parliament.qld.gov.au/explore/about-us/parliament-overview/queensland-electoral-system>

⁶⁶⁷ Department, correspondence dated 20 May 2019, p 3.

⁶⁶⁸ Soorley Report, pp 20-21.

*years, at the state level the methodology changed from optional preferential voting to full preferential voting, as you are aware, before the 2017 state election. At the Queensland local government level, the current methodology for voting has existed for some time, except that before the 2016 local government elections the mayoral voting system changed from being consistent with the method used to elect other councillors to all mayors being elected by optional preferential voting. The intention is to align the voting methods for local government with state and federal elections. The government feels that this will assist in avoiding voter confusion by using the same voting methodologies across all levels of government. This will also ensure that the candidate preferred by more voters will be elected, ensuring that every vote counts.*⁶⁶⁹

To explore the concept of making every vote count, the committee requested data from the ECQ on the proportion of votes that were exhausted⁶⁷⁰ following the distribution of preferences in the last three state elections, for which the optional preferential voting system applied. The ECQ reported that the proportion of formal votes exhausted was 7.9 per cent in 2015, 11.2 per cent in 2012, and 7.0 per cent in 2009.⁶⁷¹ The committee noted that these votes would have been included in the final count to determine the winning candidate if those voters had allocated all preferences, as is required under full preferential voting.

To reflect the proposed change to full preferential voting, the Bill makes consequential amendments to provisions of the LGEA relating to the recording of votes,⁶⁷² the requirements for a formal ballot paper (including a saving provision which allows for ballot papers that are otherwise numbered consecutively but contain a single blank box, to count the blank box as the voter's last preference),⁶⁷³ the counting of votes,⁶⁷⁴ and the disposal of candidate deposits.⁶⁷⁵

Stakeholder views

The Bill's proposal to apply full preferential voting in mayoral and single councillor elections was a polarizing issue among stakeholders. While there was support from some residents and community organisations, the majority of submitters from the local government sector were opposed to the proposal.

Stakeholders supporting the amendments to apply full preferential voting affirmed the need for consistency in voting systems for local, state and federal elections.⁶⁷⁶ Ms Elizabeth Handley, President of BRU suggested:

*... why not just standardise the systems at all three levels of government? This is particularly so when you are doing the same election within the same year. To actually change your system of voting from one system to another system in the same year seems to me quite wasteful. People are already confused enough about some of the choices they are making in the political system without adding to that confusion.*⁶⁷⁷

OSCAR stated that it 'strongly supports this provision as a much fairer system of voting that allows electors to express their preference for candidates other than their preferred candidate if that candidate proves unsuccessful'.⁶⁷⁸

⁶⁶⁹ Bronwyn Blagoev, Department, public briefing transcript, Brisbane, 13 May 2019, p 4.

⁶⁷⁰ Under an optional preferential voting system, when preferences are required to be distributed to determine a winning candidate, ballot papers showing no more preferences are considered 'exhausted' and excluded from the final count.

⁶⁷¹ ECQ, response to question taken on notice at public hearing, Brisbane, 27 May 2019, p 2.

⁶⁷² Bill, cl 214, s 83.

⁶⁷³ Bill, cl 215, s 86.

⁶⁷⁴ Bill, cl 216, s 92; cl 217, s95; and cl 218, s97.

⁶⁷⁵ Bill, cl 204, s 40.

⁶⁷⁶ OSCAR, submissions 7; BRU, submission 9; Redlands2030, submission 16.

⁶⁷⁷ Public hearing transcript, Brisbane, 27 May 2019, pp 18-19.

⁶⁷⁸ Submission 7, p 4.

The ECQ also advised that aligning the voting systems used in elections for all levels of government would provide for efficiencies in electoral administration:

... there are a couple of benefits to us of having consistency of voting systems, and that plays out, for example, in the systems that the commissioner was talking about earlier such as our election management system and our electronic disclosure system. With systems like that, obviously you have to hard-wire, if you like, different voting systems into them in terms of the business processes that you follow and code into the system, so it makes it easier to code those systems if they are all similar voting systems.

*Probably more importantly, I would highlight the importance of training for polling officials. As you know, we employ a large number of polling officials in a short period of time. They receive training from ECQ. There is a lot on their shoulders and they cannot make a mistake so, for us, ensuring that training is professional and that it is consistent across events is really important, and a consistency of voting system does help in terms of the training of electoral officials who do not have much time to understand what they are doing. The more consistency there is, the easier it is for us from a training point of view as well.*⁶⁷⁹

Stakeholders who opposed the use of a full preferential voting system for the election of mayors and single councillors in divided local government areas were principally concerned that full preferential voting:

- requires voters to allocate a preference to candidates they do not support or do not know⁶⁸⁰
- could potentially increase the numbers of informal votes⁶⁸¹
- may disadvantage voters whose first language is not English; in particular, those voters in indigenous communities, and voters with limited literacy skills, who require a simple voting methodology to minimise confusion and the risk of casting an informal vote⁶⁸²
- would result in party politics becoming a feature of local government, rather than an emphasis on independent candidates serving the local community⁶⁸³
- would lead to candidates with group alliances or political party alliances making preference arrangements that would disadvantage independent candidates in local government elections⁶⁸⁴
- increases the 'complexity and length of the count' of votes in an election,⁶⁸⁵ and
- 'does not show a true indication of who the majority of the community want in office'.⁶⁸⁶

In relation to concerns that the introduction of full preferential voting would potentially result in an increased number of informal votes, Mr Wade Lewis, Assistant Electoral Commissioner advised:

One of the things that I would say about linking the rise in informality to full preferential voting is that informality is a very complex subject and it is not always possible to draw a causal connection between the voting system itself and the nature of informal voting.

...

⁶⁷⁹ Wade Lewis, Assistant Electoral Commissioner, ECQ, public hearing transcript, Brisbane, 27 May 2019, pp 30-31.

⁶⁸⁰ See, for example: submissions 1, 2, 3, 4, 5, 10, 12, 13, 15, 25, 26, 28.

⁶⁸¹ See, for example: submissions 1, 2, 3, 5, 15, 25, 26, 28.

⁶⁸² See, for example: submissions 1, 4, 28.

⁶⁸³ See, for example: submissions 4, 6, 10, 13, 27; Cr Lyn McLaughlin, NQROC, Burdekin Shire Council, public hearing transcript, Brisbane 27 May 2019, p 5.

⁶⁸⁴ See, for example: submissions 6, 10, 27; Cr Lyn McLaughlin, NQROC, Burdekin Shire Council, public hearing transcript, Brisbane 27 May 2019, p 5.

⁶⁸⁵ Balonne Shire Council, submission 2, p 2; LGAQ, submission 5, p 2.

⁶⁸⁶ FNQROC, NWQROC and NQROC, submission 1, p 3.

*... it is not a direct relationship between the introduction of the new voting system and the rise in informality. One of the reasons that I say that is that a rise in informality is actually a consistent trend across Australia and across a lot of other jurisdictions as well, including when the same voting system is in play. Even in Queensland, for example, across the last two local government elections there was a rise in informality though the voting systems did not change. Some of that is about elector engagement in the political process. Some of it might be about the movement of people and literacy and numeracy issues. We are cautious about drawing that very direct link between the voting system and a rise in informality.*⁶⁸⁷

The suggestion that the application of full preferential voting for mayoral and single councillor elections would result in party politics having a greater influence in local government was not endorsed by OSCAR.⁶⁸⁸ Some stakeholders, however, were concerned that preference arrangements which were considered likely to be made under a full preferential voting system, would lack transparency and would undermine the democratic process.⁶⁸⁹ For example, Cr Wendy Boglary, Redland City Council submitted:

*I am a genuine independent Councillor and I do not support having to nominate other candidates on my voting form in a preferential order, as this is the voters' decision. ... I believe preferential voting will only lead to candidates that have Political Party and group alliances nominating as running partners to work together to stack the odds against independent candidates.*⁶⁹⁰

Similarly, Townsville City Council Mayor, Cr Jenny Hill, expressed a concern that full preferential voting would encourage 'groups to do deals to ensure that certain people may get elected'.⁶⁹¹

Some submitters were also concerned that reform of the voting system was not recommended by either the Belcarra Report or the Soorley Report,⁶⁹² with the LGAQ stating that the amendments would 'fundamentally alter the way the community elects their local representatives, yet there has been no genuine consultation with the community about these far-reaching changes'.⁶⁹³

The Mareeba Shire Council and the FNQROC, NWQROC and NQROC also raised concerns about confusion that may arise if the full preferential voting system was used in the future for elections in local government areas with multiple councillors in a division, or for elections in local government areas where there are single as well as multiple councillor divisions, noting that while there are no local government areas with these arrangements in place at present 'there are applications presently before the Minister'.⁶⁹⁴

Department's response

The department advised that aligning voting methodologies for all levels of government in Queensland would provide an opportunity to standardise informational resources for voters, meaning 'voters will only need to understand one form of voting'.⁶⁹⁵

⁶⁸⁷ Public hearing transcript, Brisbane, 27 May 2019, pp 29, 33.

⁶⁸⁸ Submission 7; Greg Smith, public hearing transcript, Brisbane, 27 May 2019, p 19.

⁶⁸⁹ LNP Administration Councillors of BCC, submission 10, pp 1-2; Cr Wendy Boglary, Redland Shire Council, submission 27, p 2; Cr Jenny Hill, Townsville City Council, NQROC, public hearing transcript, Brisbane, 27 May 2019, p 3; Cr Lyn McLaughlin, NQROC, Burdekin Shire Council, public hearing transcript, Brisbane 27 May 2019, p 4.

⁶⁹⁰ Submission 27, p 2.

⁶⁹¹ Public hearing transcript, Brisbane, 27 May 2019, p 3.

⁶⁹² Burdekin Shire Council, submission 3; LGAQ, submission 5; LNP Administration Councillors of BCC, submission 10; NQROC, submission 15; Redland City Council, submission 21.

⁶⁹³ Submission 5, p 2.

⁶⁹⁴ FNQROC, NWQROC and NQROC, submission 1, p 3, Mareeba Shire Council, submission 4, p 2.

⁶⁹⁵ Department, correspondence dated 3 June 2019, p 2.

The department also noted that the ECQ had identified benefits from aligning local and state government electoral processes for the training of temporary electoral staff, reducing risk and complexity of ECQ's procedural requirements.⁶⁹⁶

In response to submitters' concerns that there may be confusion for voters if there are different voting systems in a local government area which has both single and multiple councillor divisions, the department confirmed that:

*The Bill provides that the system of voting for a Local Government area divided into single member divisions is full-preferential voting. In any other case the voting system is first past the post voting. Where a Local Government area is divided in to both single member and multimember division the voting system is first past the post in all divisions.*⁶⁹⁷

6.2 Applying consistent disclosure periods

Under the LGEA, the disclosure period for election gifts received by a sitting councillor starts 30 days after the polling day for the most recently held election for which the councillor was a candidate and ends 30 days after the polling day for the current election.⁶⁹⁸ However, because the LGEA defines a candidate to mean 'a person whose nomination for election as a councillor has been certified by the returning officer',⁶⁹⁹ in effect, a sitting councillor is not required to disclose any gifts or loans received until a returning officer certifies their nomination.⁷⁰⁰

To address circumstances in which a sitting councillor receives gifts or loans during their term of office but prior to the day before their nomination is certified before the next election, the Local Government Regulation 2012 (LGER) requires that the sitting councillor submit a 'catch-up' return on or before the seventh business day after their nomination is certified, outlining any gifts and loans received during the disclosure period prior to their nomination being certified.⁷⁰¹

The Bill proposes to amend the definition of a candidate for an election for the LGEA part 4, division 2, subdivision 3 (Membership and agents for group of candidates), part 6 (Electoral funding and financial disclosure) and part 9 (Enforcement), to include a person who:

- is an elected or appointed councillor at any time during the disclosure period mentioned in the LGEA s 106A for a candidate
- has announced or otherwise publicly indicated an intention to be a candidate in the election, or
- has otherwise indicated the person's intention to be a candidate in the election including, for example by accepting a gift made for the purpose of the election.⁷⁰²

As a result, a sitting councillor will be required to disclose any gifts or loans received during the disclosure period regardless of whether they were received prior to the councillor's nomination for the next election being certified. Real-time disclosure requirements, as discussed in section 3.1.1 of this report, will apply for all gifts and loans received.

The Bill also seeks to address an anomaly under the LGEA between the disclosure period for third party expenditure and the disclosure period for gifts received by previous candidates (eg sitting councillors), groups of candidates and third parties. Currently the following disclosure periods apply:

- third party expenditure – disclosure period starts on the day after the returning officer publishes notice of the election in a newspaper and ends at 6pm on the polling day for the election

⁶⁹⁶ Department, correspondence dated 3 June 2019, p 2.

⁶⁹⁷ Department, correspondence dated 3 June 2019, p 3.

⁶⁹⁸ Explanatory notes, p 18.

⁶⁹⁹ LGEA, Schedule (Dictionary).

⁷⁰⁰ Explanatory notes, p 18.

⁷⁰¹ LGER, s 5.

⁷⁰² Bill, cl 253 (Amendment of Schedule 2 definition of candidate (b)(i)-(iii)).

- gifts to previous candidates, groups of candidates and third parties – disclosure period starts 30 days after polling day for the most recently held election for which the candidate was also a candidate (30 days after the polling day for the most recently held quadrennial elections for groups of candidates and third parties), and ends 30 days after the polling day for the current election.⁷⁰³

As noted, at section 3.1.1 of this report, the Bill inserts a new requirement for third parties to provide real-time expenditure returns during the relevant disclosure period. To address the aforementioned anomaly, the Bill amends the LGEA to specify that the disclosure period for a third party to whom the new third party expenditure return requirements apply is the period commencing 30 days after the last quadrennial election and ending 30 days after the polling day for the election.⁷⁰⁴ The Bill also provides for a regulation to prescribe another day on which the disclosure period starts or ends.⁷⁰⁵

The explanatory notes further advise:

These amendments and associated transitional provisions will commence on a day to be fixed by proclamation to allow third parties to be informed of the amendments in advance of commencement and to allow for administrative arrangements to be made. Also, amendments to the LGER will be proposed in relation to the appropriate ‘disclosure date’ for third party returns under the LGEA.⁷⁰⁶

6.3 Other electoral reforms

In addition to amendments identified by the ECQ and implemented as part of the government’s response to Soorley Report recommendation 74, the Bill contains a series of other amendments ‘identified to align State and local government electoral systems or to enhance the local government electoral framework’.⁷⁰⁷

6.3.1 Earlier approval of how-to-vote cards

Currently, the LGEA provides that how-to-vote cards must be given to the ECQ by the person who has authorised them ‘no later than 5pm on the Friday that is at least 7 days before the polling day’.⁷⁰⁸ However, as the LGEA provides for voting at mobile polling booths from 11 days before the polling day and voting at pre-polling booths from 14 days before the polling day, the Bill proposes to amend the provisions relating to how-to-vote cards to specify that cards must be given to the ECQ by ‘no later than 5pm on the Friday that is at least 7 days before a day when votes may be cast for the election’.⁷⁰⁹

Additionally, if the ECQ accepts a how-to-vote card, the amendments provide that the returning officer must ensure an accepted how-to-vote card is available for public inspection before ‘the first day when votes may be cast for the election’ and, to the extent practicable, make them available on the day and at the place where the votes may be cast.⁷¹⁰ These amendments are intended to ensure that pre-poll voters are able to access how-to-vote cards when deciding on their vote.⁷¹¹

Enforcement provisions which allow an electoral officer to require a person to produce a how-to-vote card when the electoral officer reasonably suspects the person is distributing a how-to-vote card that does not comply with the legislative requirements, are also proposed to be extended to apply ‘on a

⁷⁰³ Explanatory notes, p 19.

⁷⁰⁴ Bill, cl 220, cl 221(3).

⁷⁰⁵ Bill, cl 221(4).

⁷⁰⁶ Explanatory notes, p 19.

⁷⁰⁷ Explanatory notes, p 19.

⁷⁰⁸ LGEA, s 179.

⁷⁰⁹ Bill, cl 192, s179; cl 193, s180.

⁷¹⁰ Bill, s 179(6)(7).

⁷¹¹ Explanatory notes, p 133.

day when votes may be cast' rather than only 'polling day'.⁷¹² As a result, related penalty provisions for obstructing an electoral officer in the exercise of this power would also be extended to apply to the obstruction of an electoral officer in the exercise of powers on a day when votes may be cast.⁷¹³

6.3.2 Prisoner voting

Under the LGEA, a person who is serving a sentence of imprisonment is not entitled to vote at a local government election.⁷¹⁴ This provision (and equivalent provisions for state elections in the Electoral Act) makes Queensland the only Australian jurisdiction that does not provide for some level of prisoner voting.⁷¹⁵

At the Commonwealth level, a person serving a term of imprisonment may vote if they are serving a sentence of imprisonment of less than three years.⁷¹⁶ The Commonwealth provisions reflect the findings of the High Court in *Roach v Electoral Commission [2007] HCA 43*, a constitutional challenge to 2006 amendments to the *Commonwealth Electoral Act 1918* (Cth) which prohibited all prisoners from voting.

The challenge to the 2006 amendments was upheld by the High Court, which found that the blanket ban was invalid as it cast the net of disqualification too widely without regard to the culpability of the offender.⁷¹⁷ The previous Commonwealth provisions, which applied to persons serving a sentence of imprisonment of at least three years, were held to be in force and valid.⁷¹⁸

The explanatory notes advise that the Bill would amend the LGEA to provide that only persons serving a sentence of three years or longer are disqualified from voting, aligning with the Commonwealth position after the High Court's decision.⁷¹⁹

Stakeholder views

The Whitsunday Regional Council expressed in principle support for change.⁷²⁰ Some other stakeholders also commented on an equivalent change to prisoner voting rights for state elections in Queensland, as proposed by the Electoral and Other Legislation Amendment Bill 2019, which has also been a subject of this committee's inquiry.⁷²¹ For example, the EDO Qld expressed support for improving fairness for those in shorter periods of detention, by aligning Queensland's position on prisoner voting with the Commonwealth position following the High Court decision.⁷²² The QLS submitted:

*As a representative democracy, the citizens of Queensland have the right to determine who governs through voting at an election for their electoral district. Moderating the Act's current position in favour of a broad class of prisoners will allow a greater percentage of Queenslanders to access their right to vote.*⁷²³

⁷¹² Bill, cl 193, s 180(2).

⁷¹³ Bill, cl 193; LGEA, s 180(3). Note: Section 180(3) is not amended by the Bill but its application is affected by amendments to allow the exercise of this power 'on a day when votes may be cast'.

⁷¹⁴ LGEA, s 64(3), s 205.

⁷¹⁵ Queensland Parliamentary Library and Research Service, research brief, May 2019.

⁷¹⁶ *Commonwealth Electoral Act 1918* (Cth), s 93(8AA).

⁷¹⁷ Explanatory Notes, p 36.

⁷¹⁸ *Roach v Electoral Commission [2007] HCA 43*, per Gleeson CJ, [19] and Gummow, Kirby and Crennan JJ [102].

⁷¹⁹ Explanatory notes, p 36.

⁷²⁰ Submission 14, p 3.

⁷²¹ The Electoral and Other Legislation Amendment Bill 2019 was introduced in the Legislative Assembly on 1 May 2019 by the Hon Yvette D'Ath MP, Attorney General and Minister for Justice. The Bill was subsequently referred to the committee for consideration. The committee was required to report to the Parliament on the Bill by 21 June 2019.

⁷²² EDO Qld, submission 4 to the committee's inquiry into the Electoral and Other Legislation Amendment Bill 2019, p 2.

⁷²³ QLS, submission 5 to the committee's inquiry into the Electoral and Other Legislation Amendment Bill 2019, p 2.

6.3.3 Electors who must complete a declaration envelope

To support the operation of the proposed extension of voting rights to persons serving a period of imprisonment of less than three years, the Bill expands the categories of persons who must complete a declaration vote to include electors who are serving a sentence of imprisonment or who are otherwise lawfully detained on the polling day for the election.⁷²⁴ The explanatory notes advise that the change ‘reflects operational considerations and current practice for prisoners who are eligible to vote’.⁷²⁵

The Bill would also require a declaration envelope to be completed by an elector who attends a polling booth on the polling day and is not able to make an ordinary vote at the polling booth for a reason beyond the elector’s control.⁷²⁶

6.3.4 Postal vote applications

The Bill proposes to provide that applications to cast postal votes may be made orally or in writing.⁷²⁷

Additionally, for non-postal ballot elections, the Bill would require the returning officer to give written notification to an elector if they have applied to cast a postal vote but the application is received late or the elector is not entitled to cast a postal vote.⁷²⁸

6.3.5 Changes to nomination or polling day

If exceptional circumstances exist that are likely to impact on the conduct of the election, such as a storm, flood, fire or a riot or open violence,⁷²⁹ the Bill proposes to allow the ECQ to change the nomination or polling day.⁷³⁰

6.3.6 Adjournment or temporary suspension of polling

The Bill makes provision for the returning officer or the presiding officer for a polling booth to adjourn a poll to another day if they are satisfied the poll is, or is likely to be, interrupted to the extent it cannot start or continue due to:

- a storm, flood, fire or a similar happening
- a riot or open violence
- a serious threat that a riot or open violence will happen
- circumstances that pose a serious risk to the health or safety of persons at the polling booth, or
- another emergency.⁷³¹

The returning officer or presiding officer for a polling booth would also be able to suspend a poll for up to four hours if they are satisfied the poll is, or is likely to be, temporarily interrupted or obstructed by:

- a serious threat that a riot or open violence will happen
- circumstances that pose a serious risk to the health or safety of persons at the polling booth, or
- another emergency.⁷³²

⁷²⁴ Bill, cl 175, s 175(1).

⁷²⁵ Explanatory notes, p 36.

⁷²⁶ Bill, cl 175 (2).

⁷²⁷ Bill, cl 177.

⁷²⁸ Bill, cl 177.

⁷²⁹ Explanatory notes, p 115.

⁷³⁰ Bill, cl 165, s 38.

⁷³¹ Bill, cl 170, s 53.

⁷³² Bill, cl 169, s 2A.

6.3.7 Changed election date to occur on a Saturday

The Bill includes an amendment to clarify that, if the date for a quadrennial election is changed by regulation, the new date must be on a Saturday.⁷³³

6.3.8 Reproduction of ballot papers

The Bill proposes to allow the issuing officer at a polling booth to reproduce a ballot paper if the polling booth does not have, or runs out of, ballot papers for an election. The issuing officer must keep a record of the number of ballot papers for an election that they reproduce.⁷³⁴

Stakeholder views

Mr Pat Coleman submitted that there would need to be 'strict compliance and methods of establishing that the ballots issued are for people marked off the roll'.⁷³⁵

Department's response

In response, the department highlighted that s 75 of the LGEA provides that an issuing officer must give an elector a ballot paper if the elector gives the issuing officer the elector's full name and address and the issuing officer is satisfied the elector is entitled to vote at the election. The department advised that this process will apply if a ballot paper is reproduced at a polling booth.⁷³⁶

6.3.9 Online publication of returns and other documents

The Bill proposes to require the ECQ to publish the following the following returns and other documents on its website:

- all electoral funding and financial disclosure returns (eg returns for gifts, loans and expenditure)
- applications made to the ECQ to correct or amend a return
- copies of information given by the ECQ to a person who is suspected or believed to have made an error or omission in a return, outlining that suspicion or belief
- statutory declarations given to the ECQ by a person who was suspected or believed to have made an error or omission in a return, but has established the accuracy of their return and completed a statutory declaration to the effect that the particulars of the return are correct
- copies of notices given by the ECQ to a person who has submitted an incomplete return, requesting that they provide the missing particulars within a stated period
- particulars given to the ECQ after a request for particulars to be provided within a stated period, and
- notices given to the ECQ after a person obtains further particulars in relation to a return they have submitted, outlining the information or particulars obtained.⁷³⁷

6.3.10 Release of election and elector information

The Bill proposes to require that if the ECQ has given notice of the final result of a poll for an election, it must publish details of the number of formal first preference votes cast for each candidate and information about the distribution of formal preference votes, as soon as practicable.⁷³⁸

⁷³³ Bill, cl 159, s 23

⁷³⁴ Bill, cl 173, s 58A.

⁷³⁵ Submission 12, p 4.

⁷³⁶ Department, correspondence dated 3 June 2019, p 24.

⁷³⁷ Bill, cl 240, s 128.

⁷³⁸ Bill, cl 219, s 101A.

It would also amend the LGEA to require the ECQ to provide information about electors who voted in the election ('elector information') on request to:

- a registered political party
- a group of candidates for the election, if at least one member of the group was elected, and
- a candidate who was elected at the election and was not a member of a group of candidates or endorsed by a registered political party.⁷³⁹

The elector information that would be required to be provided to the requestor is, for each elector on the 'relevant voters roll' who voted in the election:

- the elector's name and address
- whether the elector voted in person, by post or in another way, and
- if the elector voted in person at a polling booth in the local government area – the location of the polling booth.⁷⁴⁰

The 'relevant voters roll' is defined as:

- for a request made by a registered political party – the voters roll for each local government area
- for a request made by a group of candidates – the voters roll for the local government area, or division of a local government area, for each member of the group that was elected, or
- for a request made by a councillor – the voters roll for the local government area, or division of a local government area, for which the councillor was elected.⁷⁴¹

The release of elector information to a requestor would not be permitted, however, for a 'silent elector'.⁷⁴² Individuals can apply to be silent electors on the grounds that having their address on the electoral roll would place at risk their, or another person's, safety.⁷⁴³

The amendments provide that a person must not use, disclose to another person or allow another person to access elector information given to a registered political party, group of candidates or councillor, unless the use, disclosure or access is for a purpose related to an election. The maximum penalty for a breach of these conditions is 200 penalty units (\$26,110).⁷⁴⁴

Stakeholder views

The Balonne Shire Council and the LGAQ expressed a concern that the type of elector information that could be requested under the proposed amendments could be 'highly intrusive'.⁷⁴⁵

Department's response

The department acknowledged that the proposal to require the release of elector information to requestors is potentially inconsistent with the FLP that legislation should not adversely affect rights and liberties (including the right to privacy) by allowing political parties, groups of candidates and

⁷³⁹ Bill, cl 219.

⁷⁴⁰ cl 219, s 101A(6).

⁷⁴¹ Bill, cl 219, s 101A(5)

⁷⁴² Bill, cl 219, s101A(7). A silent elector is someone whose address is not shown on the publicly available version of the electoral roll. See Electoral Act, s 58(5).

⁷⁴³ Explanatory notes, p 39.

⁷⁴⁴ Bill, cl 219, s 101A(8).

⁷⁴⁵ Balonne Shire Council, submission 2, p 5; LGAQ, submission 5, p 6. See also: Banana Shire Council, submission 26, p 1.

elected councillors access to voters' personal information (see further discussion in section 7.1.1 of this report).

The department sought to highlight the potential benefits of making this information available, stating that it would assist in:

- the analysis of the demographics and patterns of voting at polling booths and changes in those demographics and patterns over time
- communicating relevant information to electors (for example, where the location of polling booths change between elections), and
- enabling political participants to communicate with electors using methods consistent with voting trends, allowing voters to be better informed when voting.⁷⁴⁶

⁷⁴⁶ Department, correspondence dated 3 June 2019, p 18.

7 Compliance with the *Legislative Standards Act 1992*

7.1 Fundamental legislative principles

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

It is the committee’s role to consider whether a bill has sufficient regard to the FLPs articulated in the LSA and to advise the Legislative Assembly accordingly. Where the committee identifies a possible breach of those principles, it considers and advises on whether the breach may be justified in the context of the objectives of a bill.

The committee has examined the application of the FLPs to the Bill and identified numerous clauses that raise potential FLP issues.

7.1.1 Rights and liberties of individuals

Employee investigations

Clause 79 inserts a new s 150TA into the LGA to provide that the Independent Assessor must investigate the conduct of a local government employee if the conduct is the subject of a complaint referred to the assessor by the CCC, and the conduct is connected to the conduct of a councillor that is the subject of a complaint referred by the CCC. Clauses 94 and 95 respectively amend s 150CH and s 150CJ of the LGA, to empower an investigator who is investigating the conduct of an employee to require the employee to give information, attend a meeting, and answer questions.

These provisions give the Independent Assessor significant investigative powers in relation to local government employees, over whom the Independent Assessor currently has no jurisdiction, raising a question as to the degree to which they give regard to the rights and liberties of these individuals. The LGAQ expressed concerns with the ‘broad scope’ of proposed section 150TA, particularly the extension of the Independent Assessor’s remit to the investigation of the conduct of council staff.⁷⁴⁷

The explanatory notes point out that the Bill does not empower the Independent Assessor to take disciplinary action against an employee, as well as stating that the amendments are considered:

*... appropriate and reasonable to provide for the streamlining of investigations where the alleged corrupt conduct of a local government employee is linked to the alleged corrupt conduct of a councillor.*⁷⁴⁸

Committee comment

The committee is satisfied that the provisions are appropriate in the circumstances, recognising both the limits of the proposed powers of the OIA in respect of local government employees, and the importance of ensuring the OIA is sufficiently empowered to access the information necessary to discharge its statutory role, including where the alleged corrupt conduct of a local government employee is linked to the alleged corrupt conduct of a councillor who is under investigation.

Voting rights for prisoners

Currently, s 64 of the LGEA prohibits all persons serving a sentence of imprisonment from voting at an election for an electoral district.

Clause 174 amends s 64 to provide that only persons serving a sentence of three years or longer are disqualified from voting. The amendments reflect the High Court decision in *Roach v Electoral*

⁷⁴⁷ Submission 5, p 5.

⁷⁴⁸ Explanatory notes, p 35.

Commission [2007] HCA 43, which held that a previous corresponding Commonwealth provision was invalid ‘because it cast the net of disqualification too widely without regard to the culpability of the offender’.⁷⁴⁹ The Court upheld the validity, however, of an earlier law which provided that prisoners serving a sentence of three years or longer are not entitled to vote.

Whilst the amendment proposed by cl 174 reduces the scope of the current disqualification, prisoners serving sentences of three years or more will remain ineligible to vote.

Committee comment

The committee notes that the Bill’s moderation of the current provision regarding the participation of prisoners in local government elections will ensure the state’s legislation is aligned with the Commonwealth position and High Court’s decision, as well as having regard to the culpability of a person’s offending in disqualifying them from voting.

Disclosure of elector information

Clause 219 inserts a new s 101A in the LGEA to provide that the ECQ must publish information about first preference votes and the distribution of votes, as well as giving certain ‘elector information’ to a registered political party, a candidate group with at least one elected member, or any other elected candidate on request. ‘Elector information’ includes an elector’s name and address, method of voting (eg in person or by post), and in some instances the location of the polling booth at which they voted. The disclosure provision will not extend to ‘silent electors’.

Allowing the disclosure of the personal information of voters raises concerns regarding those individuals’ right to privacy. The explanatory notes assert that making elector information available will assist in the analysis of trends in the demographics and patterns of voting at polling booths over time, and will assist political participants to ‘communicate with electors using methods consistent with voting trends’.⁷⁵⁰ The Bill incorporates a safeguard against the potential misuse of this information, with proposed s 133A(8) prohibiting the use, disclosure or access to elector information for purposes unrelated to an election.⁷⁵¹

Committee comment

The committee notes the safeguards incorporated in the Bill with respect to the permitted release of elector information – namely, the stipulation that the ECQ must not give information about a ‘silent elector’ to a registered political party, candidate group or independent member; and the establishment of an offence for a recipient of elector information to use, disclose or allow another person to access this information, unless for a purpose related to an election.

The committee notes the Bill does not contain a transitional provision in relation to the release of elector information from previous elections, and is unclear as to the extent of the provision’s retrospectivity. The committee considers a transitional provision, to articulate the date from which elector information from previous elections would be available, may be of benefit.

Disclosure of donor identifying information

Clause 235 inserts new s 121B in the LGEA to provide that where an entity makes a gift or loan (valued at \$500 or more) to a registered political party, candidate or group of candidates, or a gift of similar value to a third party to enable or reimburse political expenditure, the entity must give the recipient of the gift or loan certain personal identifying details (name, address, occupation, employing industry).⁷⁵² If the entity is not the source of the gift or loan, the entity must provide the recipient with details of the source. Requiring an individual to disclose personal information may give rise to concerns

⁷⁴⁹ Explanatory notes, p 36.

⁷⁵⁰ Explanatory notes, p 49.

⁷⁵¹ Explanatory notes, p 49. The maximum penalty for breaching s 133A(8) will be 200 penalty units.

⁷⁵² The Bill sets out the ‘relevant details’ for a gift in cl 225, new s 109 of the LGEA.

about the potential infringement of the individual's right to privacy of their personal data. The disclosure provision will not extend to 'silent electors'.

The explanatory notes advise that:

*This impact on an individual's privacy is necessary to allow for increased transparency of the electoral system and support electors to make informed decisions. Without this information, which supplements that already required under the LGEA by those who give disclosable gifts or loans, the information would not be meaningful enough to provide the degree of transparency to support this objective.*⁷⁵³

Committee comment

The committee is satisfied that the provisions are appropriate, recognising that the individual's right to privacy must be appropriately balanced against the public need for transparency about the nature and sources of electoral funding.

Penalties

Various clauses in the Bill have the effect of establishing new offences and penalties, expanding the reach of existing offences, or increasing existing maximum penalties for offences. Other clauses declare various offences to be 'integrity offences', with the consequence that a person charged with an integrity offence is automatically suspended as a councillor and a person convicted of that offence cannot be a councillor for four years.⁷⁵⁴

Some of these provisions are discussed below.

Offences with an expanded reach

Offences with an expanded reach include:

- offences in s 195 of the LGEA regarding electoral funding and disclosure returns, which would also extend to expenditure returns, and
- offences in s 180 of the LGEA regarding unauthorised how to vote cards (and an associated offence of obstruction of an electoral officer), which would extend beyond the current application of only on a polling day, to on a 'day on which votes may be cast' – to include, for example, pre-poll voting.⁷⁵⁵

New offences

Councillor conflicts of interest

Some of the new offences include offences relating to councillor conflicts of interest.

The following provisions, regarding prescribed interests, have a maximum penalty of 200 penalty units or two years imprisonment. The offences in ss 150EK and 150EL of the LGA and ss 177H and 177I of the COBA are prescribed as integrity offences.⁷⁵⁶

These penalties are equivalent to the higher maximum penalty that applies under current provisions in relation to material personal interests (s 175C(2) of the LGA; s 177C(2) of the COBA):

- section 150EK of the LGA and s 177H of the COBA – a councillor with a prescribed conflict of interest in a matter must not participate in a decision relating to the matter
- section 150EL of the LGA and s 177I of the COBA – a councillor must give notice of a prescribed conflict of interest to the CEO and subsequently to a meeting of the local government or a

⁷⁵³ Explanatory notes, p 39.

⁷⁵⁴ See s 182A of the LGA and s 186B of the COBA regarding suspension upon charge. See s 153 of the LGA and s 153 of the COBA regarding disqualification upon conviction.

⁷⁵⁵ Bill, cl 193; the maximum penalty in each case remains at 20 penalty units.

⁷⁵⁶ Bill, cls 13, 121.

committee, or, if the councillor first becomes aware of the prescribed conflict of interest in a meeting, the councillor must immediately inform the meeting of the conflict, and

- section 150EM(2) of the LGA and s 177J of the COBA – a councillor with a prescribed conflict of interest in a matter who has given notice to a meeting must leave the meeting while the matter is discussed and voted on.

The following provisions, regarding declarable conflicts of interests, have a maximum penalty of 100 penalty units or one year of imprisonment. These penalties are equivalent to the maximum penalty that applies under current provisions in relation to conflicts of interests (s 175E(2) and (5) of the LGA; s 177E(2) and (5) of the COBA). The offences in s 150EQ of the LGA and s 177N of the COBA are prescribed as integrity offences:⁷⁵⁷

- section 150EQ of the LGA and s 177N of the COBA – a councillor must not participate in a decision and must give notice of a declarable conflict of interest to the CEO and subsequently to a meeting of the local government or a committee, or, if the councillor first becomes aware of the declarable conflict of interest in a meeting, the councillor must immediately inform the meeting of the conflict, and
- section 150ES of the LGA and s 177P of the COBA – a councillor must comply with any conditions imposed by other councillors in relation to the councillor's participation in a decision in which the councillor has a declarable conflict of interest.

Relevant to conflicts of interest, the Bill also inserts the following offences, which are similar to existing offences in the LGA and the COBA:

- section 150EY of the LGA and s 177V of the COBA – offence to take retaliatory action. The maximum penalty for this offence is 167 penalty units or two years imprisonment and the offence will be prescribed as an integrity offence. This is equivalent to the maximum penalty that currently applies under s 175H of the LGA and section 177H of the COBA (offence to take retaliatory action), and
- section 150EZ of the LGA and s 177W of the COBA – offence for a councillor with a prescribed or declarable conflict of interest to influence others. The maximum penalty for this offence is 200 penalty units or two years imprisonment and the offence will be prescribed as an integrity offence. This is equivalent to the maximum penalty that currently applies under s 175I of the LGA and s 177I of the COBA (offence for councillor with material personal interest or conflict of interest to influence others).

Further, the Bill proposes to introduce new requirements that a councillor must inform the CEO (in the approved form) of the particulars of their interests (and the interests of a person related to the councillor) within 30 days after the day the councillor's term starts, or a longer period allowed by the Minister. A person ceases to be a councillor if the person does not comply with this new requirement.⁷⁵⁸

The Bill would also require that within 30 days after the end of each financial year, a councillor must inform the CEO (in the approved form) that their register of interests (which includes the interests of a person related to the councillor) is correct and complete or provide particulars of any new or changed interests. The maximum penalty for failing to comply with this new requirement is 100 penalty units.⁷⁵⁹

Increased or changed penalties

Some of the significant changes in maximum penalties are affected by:

- clause 190, which amends s 174 of the LGEA (Obstructing electoral officers) – to be increased from 10 penalty units to 20 penalty units or six months imprisonment

⁷⁵⁷ Bill, cls 13, 121.

⁷⁵⁸ Bill, cl 48 (for COBA) and cl 148 (for the LGA).

⁷⁵⁹ Bill, cl 50 (for COBA) and cl 150 (for the LGA).

- clause 191, which amends s 176A(2) of the LGEA (Confidentiality of information) – to be increased from 40 penalty units or 18 months imprisonment to 100 penalty units (with no imprisonment option)
- clause 195, which amends s 192(3) of the LGEA (Secrecy of voting) – to be increased from 10 penalty units to 20 penalty units or six months imprisonment
- clause 196, which amends s 195(1) of the LGEA (Failure to provide a return under part 6 within the time required) – to be amended from 20 penalty units to: 20 penalty units if the person took all reasonable steps to give the return within the time required, or otherwise 100 penalty units
- clause 197, which amends s 195(2) of the LGEA (Giving a return under part 6 which is false or misleading) – to be amended from 50 penalty units or 100 penalty units if the person required to give the return is a candidate, to 100 penalty units in all situations, and
- clauses 49 and 149, which amends s 171B of the LGA and s 173B of the COBA. These sections provide that a councillor must inform the CEO within 30 days if the councillor or a person related to the councillor has an interest that must be recorded in a register of interests or there is a change to an interest recorded in a register of interests. The amendments replace the current two-tier offence and maximum penalties of 85 penalty units and 100 penalty units respectively for unintentionally or intentionally failing to correct a register of interests, with a single offence and maximum penalty of 100 penalty units. The offences are also deleted from the prescribed list of integrity offences under each of these Acts (by cls 53 and 152).

Failure by a CEO to comply with a request for advice or information

Section 170A(8) of the LGA and s 171(7) of the COBA currently provide that a CEO must make all reasonable endeavours to comply with a request from a councillor for information that the local government has access to. The maximum penalty for failing to comply with this requirement is 10 penalty units.

Clauses 47 and 147 of the Bill provide that a CEO must comply with such a request within 10 business days after receiving the request, or if the CEO reasonably believes it is not practicable to comply with the request within 10 business days, within 20 business days. The maximum penalty is increased from 10 penalty units to 20 penalty units.

The Bill also applies the revised requirement and increased penalty with respect to a councillor asking the CEO for advice to assist the councillor in carrying out their responsibilities. Currently, a councillor may ask a local government employee to provide such advice but there is no penalty for non-compliance. The new penalty applies only where the request for advice has been made of the CEO.

Declarations as integrity offences

Clauses declaring offences to be integrity offences include:

- clauses 53 and 152, in respect of the offence regarding engaging in group campaign activities created by clause 248 (inserting a replacement s 183 in the LGEA). The offence has a maximum penalty of 100 penalty units
- offences in LGA ss 195(1), (2) and (3) regarding the giving of returns (eg not providing a return, providing a false or misleading return, or allowing an agent to give a return which to the knowledge of the candidate contains false particulars), and
- sections 126(8) and 127(8) LGEA, which place obligations on candidates and members of groups of candidates respectively to comply with requirements about the operation of dedicated campaign accounts. The penalty for failing to take reasonable steps to comply with the requirements is 100 penalty units.

Issue of fundamental legislative principle – Proportion and relevance

The new and increased penalties, and declarations as integrity offences, affect the rights and liberties of individuals.

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence.

In relation to the proportionality of penalties, the Office of the Queensland Parliamentary Counsel's (OQPC) Notebook states:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

*... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*⁷⁶⁰

Generally, the individual justifications for the new penalties and the various increases in penalties and declarations of offences as integrity offences, as set out in the explanatory notes, are centred around the need for integrity, accountability and transparency. They can be summed up in these examples:

*The maximum penalties that apply ... are substantial. However, they are reasonable and proportionate to ensure integrity in local government decision-making and to reflect the local government principles that decision-making is in the public interest and supported by transparent and effective processes.*⁷⁶¹

*The proposed amendments promote the public interest ahead of the private interests of councillors and enhance local government transparency, accountability and integrity.*⁷⁶²

Regarding all the conflict of interest provisions, as mentioned above, the explanatory notes state:

*The maximum penalties that apply under the new provisions are substantial. However, they are reasonable and proportionate to ensure integrity in local government decision-making and to reflect the local government principles that decision-making is in the public interest and supported by transparent and effective processes.*⁷⁶³

The declarations of offences as an integrity offence have various justifications in the explanatory notes, including:

- section 183 of the LGEA – offences regarding group activities:

*Given the importance associated with improving transparency around the intention of candidates to operate as a collective, prescribing this offence as an integrity offence with a maximum penalty of 100 penalty units is proportionate and reasonable. This, along with the maximum penalty of 100 penalty units, will provide for an adequate deterrent for candidates engaging in group campaign activities who fail to comply with their legislative obligations to register as a group of candidates.*⁷⁶⁴

⁷⁶⁰ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

⁷⁶¹ Explanatory notes, p 47.

⁷⁶² Explanatory notes, p 47.

⁷⁶³ Explanatory notes, p 47.

⁷⁶⁴ Explanatory notes, p 38.

- sections 126 and 127 of the LGEA – offences regarding requirements to operate dedicated accounts:

*Given the importance associated with dedicated accounts in allowing meaningful auditing of electoral financing the Bill prescribes these offences as integrity offences ...*⁷⁶⁵

- section 195 of the LGEA (cl 196) – offences regarding returns:
 - declarations of the offences in ss 195(1), (2) and (3) offences as integrity offences:
*Given the importance of transparent and accountable electoral disclosures and the seriousness of the offences ...*⁷⁶⁶
 - increased penalty in s 195(1):
*Given the importance of transparent and accountable electoral disclosures and the seriousness of the offence ...*⁷⁶⁷
 - increased penalty in s 195(2):
*To reflect the seriousness of knowingly providing false or misleading information in a return given to the ECQ ...*⁷⁶⁸

The QLS raised concerns regarding the proportionality of some of the new offences and increased penalties provided for in the Bill.⁷⁶⁹ The QLS made specific reference to the following provisions:

- section 174 – obstructing electoral officers – increase from 10 penalty units to 20 penalty units or six months imprisonment
- section 176A(2) – breaching confidentiality of information – increase from 40 penalty units or 18 months imprisonment to 100 penalty units
- section 192(3) – breaching secrecy of voting – increase from 10 penalty units to 20 penalty units or six months imprisonment.

After also noting the additional offences to be prescribed as integrity offences under the LGEA (including the requirements in ss 126 and 127 respectively for a candidate or a group of candidates to operate a dedicated account, offences in s 183 regarding engaging in group campaign activities, and the offences in ss 195(1) and (2) regarding giving of returns), the QLS expressed its view that the level of penalties was not evidence based:

... without evidence of a sufficient nexus between the offence and likelihood of imminent risk of physical or significant harm to the public interest, the proposed increases in maximum penalties and the addition of integrity offences raises a question of proportionality.

It is our position that the introduction or amendment of legislation of this nature should be evidence-based. The material provided does not demonstrate that there is data supporting the need for change to the offences concerning the operation of accounts and engagement in group campaign activities. For example, such an offence should not be introduced without a demonstrated link between councillors' recidivous activity and an increase in their use of credit cards for campaign expenses.

*In our opinion, there are more effective, fair and just ways to discourage the above-mentioned behaviour of councillors without the imposition of an integrity offence or additional penalties.*⁷⁷⁰

⁷⁶⁵ Explanatory notes, p 42.

⁷⁶⁶ Explanatory notes, p 43.

⁷⁶⁷ Explanatory notes, p 43.

⁷⁶⁸ Explanatory notes, p 43.

⁷⁶⁹ Submission 28, p 9.

⁷⁷⁰ Submission 28, p 10.

In relation to register of interests obligations, the explanatory notes state that the new requirements (cls 48 and 50 for COBA and cls 148 and 150 for LGA):

*... mirror the obligations imposed on State Members of Parliament ... to submit their first statements of interests within one month of taking office, ... confirm their statements of interests are correct within one month of 30 June annually ... and notify any changes to their statements of interests within one month after becoming aware of a change.*⁷⁷¹

In relation to the penalties and other consequences of non-compliance, the explanatory notes continue:

*While the consequences for non-compliance of the proposed new requirements are greater than those that apply to State MPs, the penalties are considered reasonably proportionate and commensurate to the seriousness of the non-compliance. The proposed amendments promote the public interest ahead of the private interests of councillors and enhance local government transparency, accountability and integrity. The proposed maximum penalties of 100 penalty units for failing to correct a register of interests within 30 days after a change happens or failing to provide an annual confirmation that a register of interests is correct and complete, are equivalent to the existing maximum penalty under the LGA and the COBA for intentionally failing to correct a register of interests within 30 days after a change happens. Further, the consequence of a person ceasing to be a councillor if the person does not inform the chief executive officer of their interests (and the interests of a person related to the councillor) within 30 days after the day the councillor's term starts or a longer period allowed by the Minister is identical to the consequence for a councillor failing to make the declaration of office within one month after being appointed/elected or a longer period allowed by the Minister (LGA/COBA section 169(5)). The Minister being empowered to allow a longer period for the giving of particulars of interests at the start of a councillor's term is considered a sufficient safeguard.*⁷⁷²

In relation to the changes regarding a CEO's failure to comply with an information request, the LGAQ stated that it:

*... remains of the view that it is not appropriate to make non-compliance by the CEO an offence. The LGAQ requests that the penalty for non-compliance by the CEO be removed.*⁷⁷³

The explanatory notes state that these amendments are reasonably justified:

*... as they reflect the importance of councillors acquiring all the advice and information needed to carry out their responsibilities and make informed decisions in the public interest. Further, the increase in penalty from 10 penalty units to 20 penalty units is considered reasonably proportionate to the seriousness of the offence and a suitable deterrent to the potential interruption of the functions of elected local government representatives. A safeguard is included where the chief executive officer can extend (by written notice) the timeframe for complying with a request from 10 business days to 20 business days if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days. The notice must contain the reasons for the belief and be given to the councillor within 10 business days after receiving the request.*⁷⁷⁴

Removal of imprisonment as a penalty option

It can be specifically noted that cl 191 increases the maximum monetary penalty for a breach of s 176A of the LGEA (unauthorised disclosure of information obtained by a person through their involvement in the administration of the LGEA) from 40 to 100 penalty units, but at the same time removes the

⁷⁷¹ Explanatory notes, p 47.

⁷⁷² Explanatory notes, p 47.

⁷⁷³ Submission 5, p 6.

⁷⁷⁴ Explanatory notes, p 45.

current provision for a penalty of imprisonment for up to 18 months. The explanatory notes do not disclose any reasoning for this latter change, making no mention of this effect of the clause, either when discussing the FLP implications of the penalty change or in the notes on the provision.⁷⁷⁵

As the explanatory notes point out, the new penalty aligns with that for a like offence contained in the Electoral Act.⁷⁷⁶

Committee comment

The imposition of penalties will by nature infringe on the rights and liberties of individuals. However, the committee acknowledges the identified need for strengthened offence provisions and consequences for non-compliance, noting recent events in local government, and the CCC's conclusions that the existing offences and penalties were inadequate to deter non-compliance, and potentially impeded efforts to ensure accountability among councillors and participants in local government elections.

The committee also notes that a number of the proposed amendments will align penalties in the LGEA with those in the Electoral Act.

Administrative Review

A number of provisions amended by the Bill do not allow for appeals from administrative decisions. Clause 118 replaces s 244 of the LGA. It provides that a decision that is declared by that Act to be 'not subject to appeal' is final and conclusive and cannot be challenged, appealed against, reviewed, quashed, set aside or called into question in another way under the JR Act, nor can it be subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The only recourse for an affected person would be by way of establishing jurisdictional error.

Clause 11 replaces s 226 of the COBA and cl 189 replaces s 158 of the LGEA with similar effect.

Pursuant to s 114 of the LGEA, decisions made by the Minister are not subject to appeal. This will now include decisions made under amended ss 116 and 121 of the LGA. The replacement s 116 now contains an additional ground for ministerial remedial action being taken, being if the department's chief executive believes a local government or councillor is not performing their responsibilities properly or is not complying with laws applying to them (including the local government Acts) or believes that it is otherwise in the public interest for the Minister to take remedial action, the chief executive may make recommendations to the Minister about what remedial action to take. The Minister may take the remedial action the Minister considers appropriate in the circumstances. Similarly, cl 68 amends s 121 of the LGA to provide that if the Minister believes it is in the public interest to suspend or revoke a decision of the local government, the Minister may suspend or revoke the decision. Clause 166 amends the LGEA to provide that a local government may apply for a poll to be conducted by postal ballot. Decisions of the Minister in relation to conducting postal ballots are also not subject to appeal (see s 45 of the LGEA).

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The OQPC Notebook states:

*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*⁷⁷⁷

⁷⁷⁵ Explanatory notes, p 42 and p 122.

⁷⁷⁶ Electoral Act, s 373(1); see also explanatory notes, p 42.

⁷⁷⁷ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

The explanatory notes state:

It is considered that if circumstances arise which lead to the exercise of the Minister's powers under amendments to the LGA sections 116 and 121, considerations of public interest justify the limitation on review of administrative decisions. Further, under general law, judicial review can only be excluded to the extent the decision is not affected by jurisdictional error. The power to review jurisdictional error is a defining characteristic of the Supreme Court of a State.⁷⁷⁸

In respect of the absence of appeal rights from the Minister's decision about conducting a poll by postal ballot (cl 166), the explanatory notes state:

It is appropriate for review rights not to be available in this situation to ensure that a ballot is able to proceed within the timeframes provided for in the LGEA and is not delayed while a review of the decision is carried out. Prescribing matters to be considered provides greater transparency around the commissioner's recommendation and the Minister's decision. Further, the proposed amendments will not affect the availability to voters of postal voting irrespective of whether the local government's application for a postal ballot is approved. In addition, if the local government's application is not approved, other options, such as pre-poll voting and electronically assisted voting may be available to voters.⁷⁷⁹

Committee comment

The committee is satisfied the provisions are appropriate in the circumstances.

Natural justice

If the Minister takes remedial action under amended s 116 of the LGA (in response to a recommendation of the department's chief executive where they believe the local government or councillor is not performing their responsibilities properly, not complying with applicable laws, or it is otherwise in the public interest), s 120 of the LGA requires that the Minister provide a notice of the proposed exercise of power to the local government or councillor and the reasons for exercising the power. The notice permits submissions to be made by the local government or councillor about the proposed exercise of power. This situation affords natural justice to the local government/councillors by providing them with an opportunity to respond to the proposed exercise of power before the Minister makes a final decision. One exception to this is the situation in s 120(2)(c), which provides that the Minister does not need to give any notice where the Minister considers that giving notice is likely to defeat the purpose of exercising the power or would serve no useful purpose. In such circumstances, the absence of notice significantly compromises the natural justice received by the councillors or the local government who are subject to the exercise of power.

Onus of proof

Clause 246 introduces new s 162A into the LGEA, which provides that in a proceeding for an offence against the Act relating to a gift or loan made to an election participant, the participant is presumed to know that the gift or loan was given to them, and the source of the gift or loan, unless the contrary is proven. Clause 244 amends s 131 of the LGEA, in relation to an inability to complete a return due to missing particulars, with a similar effect to new s 162A.

Cls 144 and 51 insert new ss 150FB and 177Y into the LGA and the COBA respectively, providing that in a proceeding for an offence against a conflict of interest provision relating to a gift or loan given or made to a councillor, the councillor is presumed to know both that the relevant gift or loan was given to the councillor, and the source of the relevant gift or loan, unless the contrary is proven.

⁷⁷⁸ Explanatory notes, p 51.

⁷⁷⁹ Explanatory notes, p 53.

It is an FLP that legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove their innocence:

*For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.*⁷⁸⁰

The QLS expressed concern about the insertion of the presumption in the LGA, and its equivalents in the COBA and the LGEA, noting:

*Currently, the prosecution must prove the circumstances surrounding the gift or loan. These changes will reverse the onus of proof and place the onus on the councillor to prove that they did not know that the gift or loan was given to the councillor and also to prove the source of the gift or loan.*⁷⁸¹

The QLS cautioned:

*That a person is “innocent until proven guilty” is a fundamental tenet of our justice system and a reverse onus should not be introduced lightly. In particular, a reversal of the onus of proof should not be introduced merely for the administrative convenience of prosecuting an offence and should only be contemplated in the limited circumstances outlined in the Handbook.*⁷⁸²

The explanatory notes provide the following justification:

*The Belcarra Report recommendation 7 recommend the inclusion of a provision to deem a gift and the source of a gift to be within the knowledge of persons required to lodge a return under the LGEA for the purposes of proving particular offences under that Act to increase transparency of donations for the benefit of voters and to ensure that candidates inquire about, and have full knowledge of, the true sources of their campaign funds. Recommendation 21 of the Belcarra report recommended amendments to deem a gift and source of the gift referred to in recommendation 6 to be deemed at all times within the knowledge of the councillor for the purposes of chapter 6 part 2 divisions 5 and 6 of the LGA and COBA to address concerns that a conflict of interest may be ‘washed away’ by virtue of a donation being made via a third party.*⁷⁸³

The explanatory notes refer to the introduction of clause 235 (which inserts new s 121B into the LGEA), to require that if an entity makes a gift or loan of \$500 or more to certain parties, the entity must give the recipient notice of the relevant details of the gift or loan. If the entity is not the source of the gift or the loan, the notice must disclose this fact, along with relevant details of the entity that is the source of the gift or loan. This, according to the explanatory notes, ensures that the recipient is aware of the gifts or loans they receive.⁷⁸⁴

Committee comment

The committee notes the QLS’ concerns regarding the proposed provisions. However, the committee also recognises that the provisions were recommended by the CCC in its Belcarra Report, as necessary measures to address serious issues of accountability and a lack of transparency regarding gifts or loans provided via third parties.

The committee also considers that the accompanying requirements for donor entities to disclose the true sources of contributions will help ensure candidates and councillors are informed of the origins of the gifts or loans they receive, such that any presumption of knowledge may be considered reasonable.

⁷⁸⁰ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

⁷⁸¹ Submission 28, p 3.

⁷⁸² Submission 28, p 3.

⁷⁸³ Explanatory note, p 57.

⁷⁸⁴ Explanatory notes, p 57.

Immunity provisions

Section 235 of the LGA gives state and local government administrators, including councillors, immunity from civil liability for acts done, or omissions made, honestly and without negligence, under the LGA or the LGEA. Clause 139 amends s 235 to extend the immunity to a BCC councillor and the CEO of the BCC as ‘local government administrators’ and extends the immunity to acts done or omissions made, honestly and without negligence, under the COBA.

One of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation does not confer immunity from proceeding or prosecution without adequate justification.⁷⁸⁵ Despite this principle, it is also recognised that the conferral of immunity is appropriate in certain situations:

The basis for this fundamental legislative principle is that persons who commit a wrong when acting without authority should not be granted immunity.

Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees.

If protection is needed ... the preferred provision provides immunity for actions done honestly and without negligence. In this case, if liability is removed from a person it is usually ... shifted to the State.⁷⁸⁶

Under s 235, where immunity applies to an individual, liability will instead attach to the state or the relevant local government, so an aggrieved party still has a cause of action. The immunity here does not extend to liability for dishonest or negligent acts or omissions.

The explanatory notes set out this justification for the extension of the grant of immunity:

The proposed amendments are considered reasonably justified to ensure that the same civil liability protections apply to the BCC that apply to all other local governments in Queensland for actions taken under the LGA. The provision provides immunity for an act done, or omission made, honestly and without negligence and shifts liability to the State or a local government in these circumstances. This safeguard ensures that an aggrieved party will be able to seek relief from the State or a local government.⁷⁸⁷

7.1.2 Institution of Parliament

Various clauses of the Bill allow for matters to be prescribed by regulation, as outlined below.

Clause 27 inserts new s 160AA in the COBA. It provides that a regulation may declare that the councillors elected at a fresh election are elected for a term ending at the conclusion of the quadrennial elections after the next quadrennial elections.

Clause 221 inserts new s 106A into the LGEA. It provides for disclosure periods for candidates, groups of candidates and third parties in an election and allows a regulation to prescribe another day on which a disclosure period may start or end.

Clause 226 inserts a new s 112A into the LGEA. It provides that for part 6 of the LGEA, expenditure is incurred when the goods or services for which the expenditure is incurred are delivered or provided. The section specifically provides when expenditure on advertising and expenditure on the production and distribution of material for an election is incurred. For expenditure of another kind, the provision allows a regulation to prescribe the time the expenditure is incurred.

⁷⁸⁵ LSA, s 4(3)(h).

⁷⁸⁶ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

⁷⁸⁷ Explanatory notes, p 50.

Clause 163 amends s 32 of the LGEA. It provides for the publication of information or statements contained in a nomination on the commissioner's website after the nomination of a person has been certified and allows a regulation to prescribe the details that are to be published on the website.

Clause 240 amends s 128 of the LGEA. It provides, in relation to publishing returns and other documents on the ECQ website, that if publishing a return or other document would disclose any information prescribed by regulation, the ECQ must publish a copy of the return or document from which the information has been deleted.

Clause 248 amends s 183 of the LGEA. It provides a definition of 'group campaign activity' and provides that a regulation may prescribe another activity as a group campaign activity.

Appropriate delegation of legislation

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.⁷⁸⁸ This matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

The explanatory notes provide the following justification:

It is appropriate to provide that these matters may be delegated to subordinate legislation to ensure flexibility, particularly given the unique local circumstances associated with local government elections. Further, a regulation, when made, will sufficiently subject the exercise of the delegated legislative power to Parliamentary scrutiny.⁷⁸⁹

7.2 Explanatory notes

Part 4 of the LSA requires an explanatory note to be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

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

⁷⁸⁸ LSA, s 4(4)(b).

⁷⁸⁹ Explanatory notes, p 58.

Appendix A – Submitters

| Sub # | Submitter |
|-------|---|
| 001 | Far North Queensland Regional Organisation of Councils, North West Queensland Regional Organisation of Councils, and North Queensland Regional Organisation of Councils |
| 002 | Balonne Shire Council |
| 003 | Burdekin Shire Council |
| 004 | Mareeba Shire Council |
| 005 | Local Government Association of Queensland |
| 006 | Cr Paul Golle, Redland City Council) |
| 007 | Organisation Sunshine Coast Association of Residents |
| 008 | Cr Paul Bishop, Redland City Council |
| 009 | Brisbane Residents United |
| 010 | LNP Administration Councillors of Brisbane City Council |
| 011 | Electoral Commission of Queensland |
| 012 | Pat Coleman |
| 013 | Sunshine Coast Regional Council |
| 014 | Whitsunday Regional Council |
| 015 | North Queensland Regional Organisation of Councils |
| 016 | Redlands2030 |
| 017 | Property Council of Australia |
| 018 | Moreton Bay Regional Council |
| 019 | Office of the Independent Assessor |
| 020 | Wildlife Queensland, Gold Coast and Hinterland Branch |
| 021 | Redland City Council |
| 022 | Environmental Defenders Office (Qld) Inc |
| 023 | Isaac Regional Council |
| 024 | Queensland Local Government Reform Alliance Inc |
| 025 | Torres Shire Council |
| 026 | Banana Shire Council |
| 027 | Cr Wendy Boglary, Redland City Council |
| 028 | Queensland Law Society |
| 029 | Gecko Environment Council Association Inc |
| 030 | Logan City Council |
| 031 | North West Queensland Regional Organisation of Councils |
| 032 | Cr Frank Wilkie, Deputy Mayor, Noosa Council |
| 033 | Cassowary Coast Regional Council |

Appendix B – Witnesses at the public briefing and public hearing

Public briefing

13 May 2019

Department of Local Government, Racing and Multicultural Affairs

- Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division
- Mr Tim Dunne, Acting Director, Local Government Reform, Local Government Division

Public hearing

27 May 2019

North Queensland Regional Organisation of Councils

- Cr Lyn McLaughlin, Chair, North Queensland Regional Organisation of Councils and Mayor, Burdekin Shire Council
- Cr Jenny Hill, Mayor, Townsville City Council
- Cr Liz Schmidt, Mayor, Charters Towers Regional Council

Local Government Association of Queensland

- Mr Greg Hallam, Chief Executive Officer

Brisbane Residents United Inc

- Ms Elizabeth Handley, President

Queensland Local Government Reform Alliance Inc

- Mr Greg Smith, Committee Member

Independent Assessor

- Ms Kathleen Florian, Independent Assessor

Electoral Commission of Queensland

- Mr Pat Vidgen, Electoral Commissioner of Queensland
- Mr Wade Lewis, Assistant Electoral Commissioner
- Ms Melanie Mundy, Acting Director, Compliance Division

Queensland Law Society

- Mr Matt Dunn, General Manager, Policy, Public Affairs and Governance
- Mr Calvin Gnech, Chair of the Occupational Discipline Law Committee
- Ms Deborah Kim, Policy Solicitor

Appendix C – Recommendations from the Belcarra Report

Recommendation 1

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

- (c) expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities
- (d) the merit of having different expenditure caps for incumbent versus new candidates
- (e) practices in other jurisdictions.

Recommendation 2

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

- (a) all expenditure, including that currently required to be disclosed by third parties, is disclosed within seven business days of the date the expenditure is incurred, or immediately if the expenditure is incurred within the seven business days before polling day
- (b) all expenditure disclosures are made publicly available by the ECQ as soon as practicable, or immediately if the disclosure is provided within the seven business days before polling day.

Recommendation 3

That the Local Government Electoral Act be amended to:

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

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

- (b) require candidates to advise the ECQ of any new interest or change to an existing interest within seven business days, or immediately if the new interest or change to an existing interest occurs within the seven business days before polling day.
- (c) make it an offence for a candidate to fail to declare an interest or to fail to notify the ECQ of a change to an interest within the required time frame, with prosecutions able to be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns. A suitable penalty should apply, including possible removal from office.

Recommendation 4

That the ECQ:

- (a) publish all declarations of interests on the ECQ website as soon as practicable after the close of nominations for an election
- (b) ensure that any changes to a candidate's declaration of interests are published as soon as practicable after being notified, or immediately if advised within the seven business days before polling day.

Recommendation 5

That:

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

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

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

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

Recommendation 6

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

Recommendation 7

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

Recommendation 8

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

Recommendation 9

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

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

- (a) adequately and accurately reflect all relevant requirements in Part 6 of the Local Government Electoral Act
- (b) contain clear and sufficiently detailed instructions to users to facilitate their compliance with these requirements.

Recommendation 14

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

Recommendation 15

That:

- (a) section 27(2) of the Local Government Electoral Act be amended to require candidates' nominations to also contain the details of the candidate's dedicated account under section 126 of the LGE Act
- (b) section 41(3) of the Local Government Electoral Act be amended to require the record for a group of candidates to also state the details of the group's dedicated account under section 127 of the LGE Act.

Recommendation 16

That the Local Government Electoral Act be amended to:

- (a) prohibit candidates, groups of candidates, third parties, political parties and associated entities from receiving gifts or loans in respect of an election within the seven business days before polling day for that election and at any time thereafter
- (b) state that, if a candidate, group of candidates, third party, political party or associated entity receives a gift or loan in contravention of the above, an amount equal to the value of the gift or loan is payable to the State and may be recovered by the State as a debt owing to the local government, consistent with the provisions relating to accepting anonymous donations [s. 119(4), LGE Act] and loans without prescribed records [s. 121(4), LGE Act].

Recommendation 17

That the ECQ:

- (a) makes the maximum amount of donation disclosure data available on its website
- (b) provides comprehensive search functions and analytical tools to help users identify and examine patterns and trends in donations
- (c) provides information to enhance users' understanding of donation disclosure data and facilitate its interpretation.

Recommendation 18

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

- (a) for a gift made by an individual, the individual's occupation and employer (if applicable)
- (b) for a gift purportedly made by a company, the names and residential or business addresses of the company's directors (or the directors of the controlling entity), and a description of the nature of the company's business
- (c) for all gifts, a statement as to whether or not the person or other entity making the gift, or a related entity, currently has any business with, or matter or application under consideration by, the relevant council.

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

Recommendation 19

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

- (a) whether the expenditure was used to benefit/support a particular candidate, group of candidates, political party or issue agenda, or to oppose a particular candidate, group of candidates, political party or issue agenda
- (b) the name of the candidate, group of candidates, political party or issue agenda that the expenditure benefitted/supported or opposed
- (c) the name and residential or business address of the service provider or product supplier to whom the expenditure was paid (if applicable).

Recommendation 20

That the Local Government Electoral Act, the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers. This prohibition should reflect the New South Wales provisions as far as possible, including in defining a property developer (s. 96GB, *Election Funding*,

Expenditure and Disclosures Act 1981), making a range of donations unlawful, including a person making a donation on behalf of a prohibited donor and a prohibited donor soliciting another person to make a donation (s. 96GA), and making it an offence for a person to circumvent or attempt to circumvent the legislation (s. 96HB). Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors.

Recommendation 21

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

Recommendation 22

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

- (a) include a statement as to whether or not the applicant or any entity directly or indirectly related to the applicant has previously made a declarable gift or incurred other declarable electoral expenditure relevant to an election for the local government that has an interest in the application
- (b) any application made to council by a company include the names and residential or business addresses of the company's directors (or the directors of the controlling entity).

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

Recommendation 23

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

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

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

Recommendation 24

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

- (a) require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the CEO of the council
- (b) require the CEO, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting.

Recommendation 25

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

Recommendation 26

That the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point

after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.

Recommendation 27

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

Recommendation 28

That:

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

Recommendation 29

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

Recommendation 30

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

Recommendation 31

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

- (a) how the ECQ is to perform this function be specified in legislation; this should include engaging with participants in local government elections to promote their compliance with the requirements of the Local Government Electoral Act, investigating offences under the Local Government Electoral Act, and taking enforcement actions against candidates, third parties and others who commit offences
- (b) the ECQ be required to publicly report on the activities conducted under this function after each local government quadrennial election, including reporting on the outcomes of its compliance monitoring and enforcement activities
- (c) the ECQ be given adequate resources to perform this function.

Appendix D – Recommendations from the Soorley Report

Recommendation 1

That ECQ secures a consultant in change management and organisational culture to work on management issues.

Recommendation 2

That the ECQ reviews its structure so that recruitment, training and management of all election staff is its core business. The ECQ therefore needs to have a more integrated approach to recruitment and training, involving both Events Planning and Human Resources.

Recommendation 3

That a more transparent process for the recruitment, selection and appointment of ROs needs be adopted.

Recommendation 4

That the current practice of the Governor in Council appointing ROs for state elections should be abolished and all ROs should be appointed by the ECQ.

Recommendation 5

That there should be a comprehensive review of RO position descriptions, including the scope of their roles and responsibilities.

Recommendation 6

That the RO job description should clearly state that all available ballots must be counted on election day, without exception.

Recommendation 7

That the RO operational manual be reviewed by ECQ to ensure procedures are clear and not open to interpretation.

Recommendation 8

That the ECQ undertakes a formal review of RO performance after each election, along with a process to document lessons learned.

Recommendation 9

That the RO remuneration structure be reviewed, taking into consideration the size of the electorate, the type of voting, the RO responsibilities and their workload.

Recommendation 10

That core RO training should be completed six weeks prior to the election. The panel acknowledges there will be weekly updates up to election day. Compulsory training should include online modules, face-to-face Q&A forum(s) and weekly online updates (webinars).

Recommendation 11

That ROs must competently complete training on the Declaration of Votes process and the how-to-vote cards approval process and subsequently ensure face-to-face training by the ROs with polling booth staff on these and all election processes.

Recommendation 12

That candidates must meet and engage with the ROs regarding their obligations as a candidate at least two weeks before the election to ensure they have clear understanding of the rules, guidelines and their responsibilities, both during pre-polling and on election day.

Recommendation 13

That the RO job description should include approval of how-to-vote cards. If there is any dispute on how-to-vote cards they should be referred to the ECQ for final approval.

Recommendation 14

That the ECQ provides a pro forma template for candidates to use for their how-to-vote card communication.

Recommendation 15

That an ECQ contact be provided to candidates in their election kit should they need to escalate contentious election day rulings by ROs.

Recommendation 16

That the ECQ sends a representative to the DILGP's Intending Candidates training to explain guidelines around how-to-vote cards and other election matters for those who are considering running for office.

Recommendation 17

That the ECQ should review the policy and legal framework around political material distributed by people who are not running in an election. Options should include removal of signage, confiscation of material, penalty notices and, where necessary, injunctions.

Recommendation 18

That regulations around the minimum distance from the entrance of the pre-polling and polling booths (including corridors) by volunteers and candidates be enforced by polling booth officers.

Recommendation 19

That volunteers handing out how-to-vote cards on behalf of candidates be controlled, particularly at large or contentious polls.

Recommendation 20

That in larger polling booths and/or hotly contested elections, the ECQ should consider the employment of a security officer to monitor activity which might be construed as canvassing for the elector's vote. Police intervention may need to be considered where warranted.

Recommendation 21

That Queensland should retain the current optional preferential voting system for local government elections at least until after the next election.

Recommendation 22

That ROs continue to have the responsibility for the recruitment of polling booth staff.

Recommendation 23

That job descriptions and responsibilities for polling booth staff be reviewed to ensure that there is clarity of roles and responsibilities for activities on the day and during counting.

Recommendation 24

That the ECQ should use all possible media channels, such as local newspapers, radio, ECQ website, council websites and online advertising, for the recruitment of polling booth staff.

Recommendation 25

That the ECQ should bring together some experienced ROs after each election for a total review of polling staff activity.

Recommendation 26

That there should be a merit-based recruitment process that includes a pre-qualification criterion for mandatory skills (i.e. local knowledge, ICT competency and managerial experience).

Recommendation 27

That ROs should not automatically appoint family members and friends as polling booth staff. The ECQ can only approve these appointments under special circumstances.

Recommendation 28

That the ECQ ensures its new SEMS includes the functionality to allow polling staff to lodge job applications online and also nominate their preferred booth location(s).

Recommendation 29

That training be compulsory for all polling booth staff.

Recommendation 30

That training includes staged modules, each of which must be completed in sequence, with all modules needing to be successfully completed before the election.

Recommendation 31

That ROs meet all polling booth staff prior to election day. In some cases this may involve training or simply discussing the operation of the day.

Recommendation 32

That the ECQ reviews the effectiveness and usability of the platform used for online training with the external provider.

Recommendation 33

That all electorates that offer pre-poll voting must take steps to ensure that voters can cast their ballots in the two weeks leading up to the election. In remote and Indigenous communities this may not apply.

Recommendation 34

That ROs should select pre-polling booth locations in consultation with local councils, real estate agents, businesses and community groups. Final numbers and location of pre-polling booths to be signed off by ECQ.

Recommendation 35

That the pre-polling locations must be advertised in advance of the commencement of pre-poll voting in traditional and online state and local media as well as on local council websites.

Recommendation 36

That the ECQ review the criteria around the selection of pre-polling booth locations and use the lessons learned from the 2016 local government elections to inform future location of pre-polling booths. These include:

- that all pre-poll and polling booths must be accessible to people with disabilities. Disabled parking must also be available as well as parking that is close to the venue for elderly voters.
- that locations with dense traffic should be avoided to ensure that people going about their daily business are not inconvenienced.

Recommendation 37

That pre-polling booths must be separate from, or a designated distance away from, current sitting councillor electorate offices.

Recommendation 38

That larger polling booths recruit an adequate number of staff to cater for an increased number and an expected ever-increasing number of pre-poll voters.

Recommendation 39

That if an RO is unable to perform their duties at a pre-polling booth they may delegate to another officer such as an assistant RO for those times.

Recommendation 40

That ECQ undertakes a comprehensive review of timelines for postal voting to expedite the election counting process.

Recommendation 41

That applications for postal votes be submitted to ECQ as soon as possible and no later than 10 working days prior to the election.

Recommendation 42

That ECQ must send out postal vote forms within 24 hours of receiving a request.

Recommendation 43

That the cut-off point for postal vote distribution be six working days before the election.

Recommendation 44

That postal-only voting be restricted to councils in remote and regional areas where the total number of electors is less than 5000. All other councils should only have pre-poll, absentee and election day polling booth voting.

Recommendation 45

That postal votes should only be counted if they are received within five working days after the election.

Recommendation 46

That if the number of outstanding postal votes cannot change the electoral outcome then the poll should be declared.

Recommendation 47

That ballot papers be distributed in a single envelope that folds out with a perforated edge. The ballot itself should be enclosed in another plain envelope.

Recommendation 48

That the ECQ voter information letter be tailored to individual electorates and the type of voting offered in the electorate.

Recommendation 49

That in the lead up to an election, ECQ needs to engage several experienced election participants to attend board meetings to provide an external perspective.

Recommendation 50

That a planned program to manage postal voting be developed to address issues of timing, security, accuracy and convenience, especially in remote areas.

Recommendation 51

That ECQ postal vote packages need to include an additional separate envelope for returning the ballot paper, which does not disclose the ballot to the person registering the envelope's return against the electoral roll.

Recommendation 52

That electronically assisted voting for the vision-impaired and people with a disability should continue to be supported.

Recommendation 53

That due to high setup costs, as a first step the ECQ introduces e- voting by the 2020 election at some pre-polling and polling booths.

Recommendation 54

That the ECQ investigates options for internet voting in the longer term and begins to prepare for full online voting at the first appropriate election.

Recommendation 55

That the ECQ should trial technology that will allow polling staff to register and print ballot papers for absentee voters.

Recommendation 56

That the ECQ introduces clear performance management criteria with the AEC for the management of the electoral rolls.

Recommendation 57

That the technology be upgraded to ensure the bar code system automatically marks voters off the roll.

Recommendation 58

That once the roll has formally closed, there should be no further changes to the roll permitted for the current election.

Recommendation 59

That the declaration voting process should be reviewed to maximise efficiency.

Recommendation 60

That to ensure the count is completed on the night, ROs be empowered to roster staff who have not worked during the day to commence the count. If staff wish to work throughout voting and counting, ROs should arrange a roster for refreshments, lunch breaks and dinner. In smaller remote communities, polling booth staff would obviously also complete the count.

Recommendation 61

That legislation be amended to allow all pre-poll and postal vote counting to commence at 4pm on election day in a secure area. This will place an added demand on scrutineers but will allow staff to focus on the close of the count and report results in a more timely manner.

Recommendation 62

That the ECQ and LGAQ negotiate an agreed budget and required resourcing prior to the election. This is of added significance due to the discounted costs of including the referendum in the 2016 election.

Recommendation 63

That the ECQ must establish thorough consultation processes with the LGAQ.

Recommendation 64

That the ECQ should continue to provide costing to councils for elections and by-elections.

Recommendation 65

That in the interests of transparency the panel supports the ECQ running all local government elections.

Recommendation 66

That the timing of elections be reviewed and consideration given to holding the election during October or November in non-state election years, when weather conditions and festive dates are less likely to affect administration, logistics and community involvement.

Recommendation 67

That the state CIO be asked to review all aspects of ECQ ICT, including technology processes, systems, personnel and contracts. This may include the recruitment of a permanent CIO.

Recommendation 68

That ECQ should make ICT a priority, ensuring use of the best of breed technology available.

Recommendation 69

That the LGEA be amended to only allow electronic payment methods, including online credit card transactions.

Recommendation 70

That ROs need to have designated specialist call centre resources to support their function.

Recommendation 71

That call centre staffing levels, training and scripting should be reviewed for each election and an FAQs booklet provided to all election staff.

Recommendation 72

The way ballot papers are produced, formatted, structured, and distributed needs to be reviewed.

Recommendation 73

That ballot papers be simplified for scanning purposes.

Recommendation 74

That ECQ's proposed legislation amendments be investigated and implemented as appropriate.

Soorley Report Appendix to Recommendation 74 – ECQ proposed legislation amendments

ECQ provided the panel with a number of legislation amendments to the *Local Government Electoral Act 2011* and the *Electoral Act 1992*. These amendments would assist ECQ to streamline the conduct of elections and increase consistency between state and local government election operations.

| | Topic | <i>Local Government Electoral Act 2011</i> | <i>Electoral Act 1992 (state elections)</i> | Comments |
|---|--|--|---|---|
| 1 | Appointment of Returning Officers (ROs) and Assistant Returning Officers (AROs) | <p>s9(2) Returning officers The electoral commission may appoint a person as the returning officer for an election.</p> <p>s10(2) Assistant returning officers The electoral commission may appoint a person as an assistant returning officer for an election.</p> | <p>s31(1) Returning officers The Governor in Council may, on the recommendation of the commission, appoint an elector as the returning officer for an electoral district.</p> <p>s32(1) Assistant returning officers The Governor in Council may, on the recommendation of the commission, appoint an elector as assistant returning officer, or electors as assistant returning officers, for an electoral district.</p> | To align both acts allows the Commissioner to appoint ROs and AROs. These positions are casual roles and allowing the Commissioner to appoint and separate (for underperforming ROs) will provide flexibility leading up to and during the election period. |
| 2 | Replacement of postal ballot papers | <p>s85 Replacement ballot papers (3) If a ballot paper given to an elector under section 79, 80 or 82 is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6pm on polling day, give the elector a replacement ballot paper and a declaration envelope for use in the election.</p> | Not required for state elections | Align with state. |

| | Topic | Local Government Electoral Act 2011 | Electoral Act 1992 (state elections) | Comments |
|---|--------------------------------|---|---|---|
| | | (4) However, before a replacement ballot paper can be given— (a) the elector must declare, in the approved declaration form, before the issuing officer or an adult witness that— | | |
| 3 | Statutory advertising/gazettal | Statutory advertising for the Notice of the Election, pre- polling booths be published in a newspaper circulating generally in the LG area. Same applies for mobile polling (s 49(3)(b), ordinary polling booths (s 48(3) and the complete list of candidates in ballot paper order (s 57) | Gazettal of the Writ and return of the Writ. Other gazettal advertising polling booths etc. on ECQ website. | Align as much as possible. While advertisements announcing LG elections should remain, the rest can be published on website. Polling booths, pre-poll centres, declared institutions and candidates etc. to appear on the ECQ website. |
| 4 | Material retention | s136(1) Storage of ballot papers and declaration envelopes Retain until the end of the period of the next Quadrennial Election | s102(2) Storage and disposal of material resulting from and election Retain until the issue of the writ for the next State General Election | Possible change to retain for 12 months after polling day for both state and local governments. |

| | Topic | <i>Local Government Electoral Act 2011</i> | <i>Electoral Act 1992 (state elections)</i> | Comments |
|----|--|---|---|---|
| 5 | Material retention | s196 Records to be kept a person who makes or receives a relevant record of an election must keep the record for at least 5 years after the conclusion of the election unless the record in the course of business or administration is transferred to someone else | s309 Records to be kept Period of at least 3 years commencing on the day on which the claim of return was made. | Align. No preference which is chosen, but consistency makes warehousing and archiving easier and more efficient. |
| 6 | Definition of a gift | 107 Meaning of gifts | 201 Meaning of gift | Align and provide the same definition of a gift for both Acts. ECQ accepts this is a policy decision for government. |
| 7 | Pre-poll closure | 50(2) (a) Pre-poll ends at 6pm on the day immediately before polling day | 118(1) Pre-poll ends at 6pm on the day before polling day | Consider closing pre-poll at 5pm on the day before polling day. Closing times would be consistent with all other pre-polling days - also avoids security issues where pre-poll is located in government buildings. |
| 8 | Removal of declaration flap for LG postal votes | 91(2)(a) Requires the declaration flap to be removed | Not required for State. | Align with State for consistency. |
| 9 | Nomination payments | 39(2)(c) by electronic funds transfer | Not available for State | Align with LGEA for consistency. |
| 10 | Announcement of nominations | 32(1) as soon as practical after the RO has certified the nomination | 93(1) as soon as practical after the cut-off day for nominations | Align with State for consistency. |

| | Topic | <i>Local Government Electoral Act 2011</i> | <i>Electoral Act 1992 (state elections)</i> | Comments |
|-----------|--------------------------------|--|---|--|
| 11 | Early counting of votes | 95(1) close of poll | 127(1) at the end of ordinary voting hours on polling day | Consider early counting of pre- poll and postal votes from 8am on polling day at the discretion of the Commissioner.* |
| 12 | Ballot papers | 55(1)(b) attached to butt | 102(2)(b) attached to a butt | Consider removing the need for the butt to have unique numbering. Costly and impacts the printing process. |
| 13 | Request for postal vote | 81(2A) Request must be received not later than 7pm on the Wednesday before polling day | 119 (3) Request must be received not later than 7pm on the Wednesday before polling day | Consider earlier closing time for receipt of postal vote application due to slow mail delivery by Australia Post. Suggest 5pm on Friday one week prior to polling day to allow sufficient time for delivery. |

| | Topic | Local Government Electoral Act 2011 | Electoral Act 1992 (state elections) | Comments |
|--|------------------------------------|---|--|--|
| 14 | Declaration (absent voting) | Absent voting does not normally occur in local government elections (See Section 47(1)(a) for City Hall voting) | 115 (a) & (b) Electors who wish to vote by going to a polling booth that has not been established for the electoral district for which the elector is enrolled must make a declaration vote. Also, electors who wish to vote by going to a polling booth described in section 99(4)(declared institutions during pre-poll period or (8) (mobile polling during pre-poll period) that is outside the electoral district for which the elector is enrolled must make a declaration vote. | 159,421 absent declaration votes were lodged and admitted at the 2015 state election either on polling day or at declared institutions or mobile polling.(353 rejected). Using an ECL, the elector could be marked off and issued with an ordinary vote for their own district eliminating the need to complete a declaration envelope. Scrutiny would not be required by the RO in the electors district as the elector has been marked off at the point of issue. Results of absent voting would also occur 3 days ahead of the current process. |
| *Note the panel recommends (recommendation 61) that counting starts at 4pm not 8am on polling day. | | | | |

Statement of reservation

NON-GOVERNMENT STATEMENT OF RESERVATION

The LNP Members of the Economic and Governance Committee wish to make the following Statement of Reservations and concerns regarding the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019.

At the outset, it is stressed that the LNP Opposition supports the intent of the Crime and Corruptions Commission's recommendations from the Operation Belcarra Report (the Belcarra Report) to minimise corruption risk and increase transparency and accountability in Local Government.

However, the LNP Members are concerned that the Bill also attempts to implement a number of legislative changes under the "guise of integrity" when these aspects of the Bill have no relationship to the Belcarra Report.

For instance; Brisbane City Council stated *"We express grave concern, however, over significant aspects of the Bill that have absolutely no relationship to the Belcarra Report but instead are calculated to provide significant partisan political advantage to our political opponents within BCC."*

Similarly, the Local Government Association of Queensland (LGAQ) has indicated it *"opposes this Bill because it includes a range of changes which were not recommended by the CCC in its Belcarra Report, nor were they recommended in the Soorley review of the 2016 local government elections."*

And further, Queensland councils are particularly concerned about the proposed changes to local government electoral arrangements in this Bill, i.e. mandating compulsory preferential voting for all mayoral elections and councillor elections in divided councils. As already stated, these have been put forward under the guise of transparency and accountability but have nothing to do with either Belcarra or Soorley."

LNP Members are concerned the Bill is more about political advantage for the Labor Party, rather than genuine integrity reform.

Submitters have informed the Committee *"Immediately after the 2016 Council elections, the Labor Leader of the Opposition in Council, Councillor Peter Cumming, publicly called for Compulsory Preferential Voting when addressing the Council Chamber on 12 April 2016."*

And

It was, however, highlighted as an important issue in the Australian Labor Party's written review of their unsuccessful 2016 Brisbane City Council Election Campaign (the Labor Review). The review states: "Analysis of past and present optional and compulsory preference data forwarded to the review indicates that optional preferential voting affected the results in both Northgate and Coorparoo, both of which are now LNP seats but would have been ALP seats if the same preference allocation had taken place as normally takes place in Federal elections."

Of further concern, there has not been genuine consultation with the community in relation to some of the far-reaching changes - for instance, compulsory preferential voting.

It is noted that the Answer to the Question on Notice provided at the committee hearings indicates 58 percent of the clauses do not relate to integrity body recommendations. LNP members wish to raise the following concerns.

1. Timing and training for the re-write of the material personal interest and conflict of interest provisions

With respect to timing and training, the LNP Committee members note the concerns in the submission from the LGAQ who expressed *“The timing of introduction of these electoral changes, only months out from the next quadrennial local government elections, is also a major concern, raising community equity issues.”*

The LGAQ requests that the commencement of these proposed changes be deferred to allow sufficient time for councillors to be properly trained as to the completely new regime proposed for dealing with "prescribed" and "declarable" conflicts of interest. To expect proper implementation and compliance with the new regime from the date of assent of the amending legislation, will likely result in the number of complaints about councillor conduct unnecessarily escalating in the short term.

LNP Members are concerned that in the re-write of the material personal interest and conflict of interest provisions, a large number of ambiguities have arisen in the new regime proposed for dealing with "prescribed" and "declarable" conflicts of interest. These have been detailed in the LGAQ submission and require further refinement.

2. Introduction of Compulsory Preferential Voting (CPV)

Changes to the voting system for Mayoral and divisional councillor elections were not contained in the Belcarra recommendations, nor has the Government consulted widely with the Queensland public on this reform.

LNP Members note that the following submitters either opposed or outright rejected the introduction of CPV

- Far North Queensland Regional Organisation of Councils (FNQROC), North West Queensland Regional Organisation of Councils (NWQROC), North Queensland Regional Organisation of Councils (NQROC) representing 27 Councils
- Balonne Shire Council
- Burdekin Shire Council
- Local Government Association of Queensland
- Cr Paul Golle, Redland City Council
- Brisbane City Council
- North Queensland Regional Organisation of Councils (NQROC)
- Redland City Council
- Torres Shire Council
- Banana Shire Council
- Cr Wendy Boglary, Redland City Council
- North West Queensland Regional Organisation of Councils (NWQROC)

Brisbane City Council raised concerns that *“A significant change to the voting system such as this should be driven by community interest, not blatant party political advantage. Such a change should only be contemplated after extensive community consultation and the subsequent demonstration of a clear desire for change. This has clearly not occurred on this*

occasion, with an LGAQ survey held two months ago showing that over 70% of residents are happy with the current Queensland Local Government voting system.”

3. Cost to ratepayers of CPV

LNP Committee Members were concerned to learn at the public hearings that the introduction of CPV has doubled the cost of running the 2020 Local Government Election.

LGAQ Mr Hallam: “It has gone from \$13 million in 2016 to \$27 million. It has doubled, but there are individual councils that are writing to us saying that their costs have trebled. There is a concern about the vote, but there is an extra \$14 million cost that the community will wear because we have moved to change the system this time around.”

4. Reverse Onus of Proof

LNP Members note the concerns raised in the submission by the Queensland Law Society in relation to how the bill reverses the onus of proof with the presumption of knowledge of particular gifts or loans.

“The Society is concerned about the insertion of this presumption (and its equivalent sections 177Y in the City of Brisbane Act 2010 (the COBA) and 162A in the Local Government Electoral Act 2011 (the LGEA)).

Currently, the prosecution must prove the circumstances surrounding the gift or loan. These changes will reverse the onus of proof and place the onus on the councillor to prove that they did not know that the gift or loan was given to the councillor and also to prove the source of the gift or loan.”

5. Prisoner voting

The Bill enables prisoners to vote in Local Government Elections. LNP Committee Members are concerned this was not recommended in the integrity reports.

6. Public Interest provisions review in 2 years

The Bill expands the public interest powers of the Minister to intervene in Council business. The public interest powers previously introduced by the Government were not sufficient to sack the Ipswich City Council and the Government, on their third attempt, resorted to Council specific legislation to sack the Labor Ipswich Council.

LNP Members are concerned the Ipswich sacking has shown how problematic the public interest powers are for the Government. Therefore, questions arise as to why these powers should be expanded, given that Council specific legislation delivers a timely outcome via the Parliament as was the case with Logan City Council. Given the shortcomings of the public interest powers; LNP Members question why the Bill does not propose a review of the provisions in two years' time.

7. Request for Information

The Bill provides timeframes for the Chief Executive Officer to provide information to Councillors and penalty units for non-compliance.

When provisions of the first Belcarra Bill were introduced in October 2017, Premier Anastacia Palaszczuk stated *"Queenslanders should have confidence in the transparency and integrity of all levels of government. [But] I will not make rules for local councils that I am not prepared to follow myself, so any changes we make will apply to State as well as Local Government."*

LNP Members of the Committee question why information requests from State Government Departmental Director Generals are not subjected to the same timeframes and penalty units, given the Premier's commitment.

8. Office of the Independent Assessor

The Bill gives power to the Office of the Independent Assessor to investigate Local Government employees. LNP Members of the Committee are concerned this is an overreach of the role of the Independent Assessor.

The LGAQ submitted *"The Independent Assessor's remit is the investigation of councillor conduct, not council staff conduct."*

9. Changes to Caretaker provisions

This part of the Bill places a prohibition on planning schemes being adopted in caretaker period and a prohibition on varying existing development approvals. LNP Members are concerned the community could be disadvantaged by potential delays caused by the State, which could mean the Council is unable to adopt its planning scheme during the caretaker period.

Submissions stated *"The business of assessing planning applications must continue through the caretaker period, due to planning legislation timing requirements, regardless of whether they are applications or varying existing approvals."*

10. Mandatory training for Candidates

LNP Members are concerned as to how the Government will deliver high quality training for candidates, that is easily accessible for all candidates, no matter where they live in the state.

11. Postal ballots

LNP Members of the committee are concerned that oral applications for postal votes could potentially increase voter fraud.

12. Retrospective provision date which candidates must keep records of gifts

LNP Members are concerned by the retrospectivity of the Bill in relation to records candidates must keep of gifts. The Bill is retrospective to its date of introduction to the Parliament. Given there are currently no councillors in the Ipswich and Logan Councils, possible candidates could already find themselves in contravention of this provision.

13. Civic Cabinet provisions removed from Brisbane City Council (BCC)

Brisbane City Council has not been the subject of any actions by the CCC stemming from Operation Belcarra. Further, LNP Members note that the removal of BCC's Civic Cabinet

provisions was not contained in the Integrity Body recommendations, only criticised in the Review by the Labor Party, into Labor's Brisbane City Council Election Campaign 2016.

Brisbane City Council submitted *"Given its unique size and responsibilities, the City of Brisbane Act 2010 structures BCC along the lines of the State Government.*

Unlike any other Council in Queensland, the City of Brisbane Act 2010 provides for a formal Leader of the Opposition, a Chairperson of Council who is not the Mayor and a Civic Cabinet.

The Bligh State Government specifically granted 'Cabinet Confidentiality' provisions to Civic Cabinet in 2010 when they drafted and passed the City of Brisbane Act 2010.

This provision was included for the same governance reasons that are used to justify Cabinet-in-Confidence protections enjoyed by the State Government Cabinet."

LNP Members of the Committee are of the view that to retain any credibility on this matter, the Premier should immediately announce the removal of State Cabinet confidentiality to uphold her Statement - *so any changes we make will apply to State as well as Local Government.*

14. Power of the Mayor to direct senior executive employees

LNP Members of the Committee are concerned that a number of Councils raised concerns or outrightly opposed the removal of the power of the mayor to direct senior executive employees and the power of the Mayor, in conjunction with either the Deputy Mayor or a Councillor who is a Committee Chair, to participate in the decision to appoint senior executive employees.

These provisions have no connection to the recommendations of Operation Belcarra.

Conclusion

In conclusion, LNP Members of the Committee are concerned the Bill is more about stacking the deck to favour Labor local government candidates (particularly in Brisbane) rather than delivering integrity reforms. We concur with the statement in the Brisbane City Council submission:

The Labor Review's stated *"To address some of the systemic disadvantages of opposition in BCC administration, it might be worth having a 'root and branch' review of the Local Government Act."* It is our view that the Bill satisfies this Labor Party recommendation."



Ray Stevens
Deputy Chair of Economics and
Governance Committee
State Member for Mermaid Beach



Sam O'Connor
Member for Bonney



Dan Purdie
Member for Ninderry