

Briefing for the Economics and Governance Committee

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

The Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 (the Bill) amends the *City of Brisbane Act 2010* (COBA), the *Local Government Act 2009* (LGA), the *Local Government Electoral Act 2011* (LGEA), the *Referendums Act 1997* and the *Right to Information Act 2009* to continue the Government's rolling local government reform agenda guided by four key principles of integrity, transparency, diversity (reflecting electorate diversity) and consistency, as appropriate, with State and Commonwealth electoral and governance frameworks.

Policy intent and background

The policy objectives of the Bill are to implement:

- the Government's policy in relation to a number of remaining recommendations of the Crime and Corruption Commission's (CCC) report: *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (the Belcarra Report);
- 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); and
- other significant reforms to improve diversity, transparency, integrity and consistency in local government.

Belcarra Report

The CCC's Belcarra Report made 31 recommendations to reduce corruption risks and improve equity, transparency, integrity and accountability in local government elections and decision-making. The CCC formed the view that the systemic issues identified through Operation Belcarra, and other reviews before it, justify the implementation of a more stringent regulatory framework.

On 21 May 2018, the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Belcarra Stage 1 Act) was assented to. The Belcarra Stage 1 Act implemented the government's response to five of the 31 recommendations of the Belcarra Report including:

- banning donations from property developers for candidates, groups of candidates, third parties, political parties and councillors, and
- strengthening the processes associated with the management of councillor conflicts of interest and penalties for non-compliance.

This Bill represents stage 2 of reform and continues to implement the government's policy in relation to further recommendations of the Belcarra Report:

- 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)
- recommendations 29 and 30 (increasing penalties, including by prescribing additional integrity offences and amending limitation periods for particular offences).

Soorley Report

In 2016, an independent panel was established to undertake an inquiry into the performance of the Electoral Commission Queensland's (ECQ) conduct of the 2016 local government elections, the referendum on fixed four-year terms as well as the by-election for the state seat of Toowoomba South. The resulting report (the Soorley report) made 74 recommendations including recommendations relating to operational matters for the ECQ and recommendations of a policy and legislative nature.

The policy objective of the Bill also implements the Government's response to a number of the recommendations of the Soorley Report:

- recommendation 41 (earlier timeframes for receipt of an application for a postal vote)
- 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)
- recommendation 74 (amendments relating to operational electoral matters).

In relation to local government elections, the Bill amends 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

- achieve better alignment between State and local government elections and make operational improvements and support efficiencies in the local government electoral system.

In relation to the local government system and decision-making, the Bill will:

- clarify and further strengthen how councillors' conflicts of interest are managed
- strengthen the existing State intervention powers in chapter 5, part 1 of the Local Government Act 2009 (LGA) and apply the full suite of LGA State intervention provisions to the Brisbane City Council (BCC)
- apply the LGA councillor complaints framework to the BCC
- make amendments to the LGA councillor complaints 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
- amend the powers of mayors (other than for BCC) in relation to budgets, the appointment of senior executive employees, and directions to the chief executive officer and senior executive employees and provide for a record of directions from the mayor to the chief executive officer
- improve access to information for all councillors and provide for greater transparency regarding BCC decision-making
- clarify the status of suspended councillors in relation to their absence from local government meetings
- prescribe additional decisions that councils are prohibited from making during a caretaker period
- extend the prohibition on publishing or distributing election material during a caretaker period to local government-controlled entities
- introduce new requirements relating to councillors' registers of interests to align with the requirements applying to State Members of Parliament for statements of interests
- clarify that a proposed 'local government change' could request multi-member divisions.

Amendments in the Bill

To implement the government's response to the Belcarra report and Soorley Report and to implement other significant reforms, the Bill makes the following amendments.

Amendment to the LGEA

Electoral funding and financial disclosure

Currently, candidates and groups of candidates must disclose to the electoral commission all gifts and loans of a value equal to or more than \$500 received during the relevant disclosure period (refer sections 114–116) for the election on or before the disclosure date (sections 117, 118 and 120).

The disclosure date is 7 business days from the relevant event (refer *Local Government Electoral Regulation 2012* (LGER) sections 5, 6 and 7). A summary return is also required to be given to the electoral commission within the required period (15 weeks after polling day – refer LGEA section 106) irrespective of the value of gifts received or if no gifts were received.

Third parties must disclose to the electoral commission any expenditure for a political activity for an election of \$500 or more incurred during the disclosure period and any gifts received to enable expenditure for a political activity for an election of \$500 or more received during the disclosure period and applied for a political activity (sections 124 and 125). The return must be made by the disclosure date which is prescribed as seven business days from the relevant event (refer LGER sections 8 and 9).

Part 6, division 5 (Operation of accounts) (sections 126-127) provides that candidates and groups of candidates must operate a dedicated account for an election. All gifts and loans received for the election must be placed in the account and all expenditure for the election must be paid out of the account. The maximum penalty for failing to comply with the dedicated account requirements is 100 penalty units.

The Bill amends the electoral funding and financial disclosure process to provide for:

- real time disclosure of electoral expenditure by candidates, groups of candidates, registered political parties and associated entities (Belcarra Report recommendation 2)
- additional details to be provided on disclosures for gifts, loans and third-party expenditure (Belcarra Report recommendations 6, 18 and 19)
- deeming election participants to have knowledge of the original source of a gift or loan in a proceeding for an offence against that Act relating to a gift or loan made to the participant (Belcarra Report recommendations 7 and 21)
- all gift recipients, within seven business days of receiving a gift requiring a third-party return, to notify the donor of the donor's disclosure obligations (Belcarra Report recommendation 8)
- candidates, agents for groups of candidates and third parties to take reasonable steps to prospectively notify any proposed donor of the candidate's, group's or third party's disclosure obligations (Belcarra Report recommendation 10)
- restrictions on use of campaign (dedicated) accounts for candidates and groups of candidates, including by prohibiting the use of credit cards to make payments from campaign accounts (Belcarra Report recommendation 14)
- increase penalties for particular offences relating to disclosure returns and prescribe these as integrity offences under the LGA and COBA (Belcarra Report recommendation 29)
- prescribe offences relating to the operation of campaign accounts as integrity offences and increase the limitation period for bringing an action to four years (Belcarra Report recommendations 29 and 30)

- amend the definition of ‘candidate’ so that sitting councillors and another person who has announced or otherwise publicly indicated an intention to be a candidate or has otherwise indicated an intention, for example by accepting an electoral gift, will be required to disclose gifts and loans regardless of when the gift or loan is received during the disclosure period, including the period prior to their nomination for the next election being certified
- amend the disclosure period in relation to third party expenditure to align with the disclosure period for gifts to previous candidates, groups of candidates and third parties (that is, from 30 days after the polling day for the last quadrennial election until 30 days after the polling day for the election unless a regulation prescribes a different start or end date)
- align the definition of gift in the LGEA with the definition in the EA (Soorley report recommendation 74).

Candidates for local government elections

Part 4, division 2, subdivision 1 of the LGEA (Nomination as candidates) (sections 25–38) deals with matters relating to candidates in local government elections, including who may be nominated and how a nomination is made and certified.

The Bill amends the process of nominating as a candidate for a local government election to provide for:

- candidates to disclose particular interests in relation to the Local Government and membership of political parties, trade or professional organisation as a condition of nomination (Belcarra Report recommendations 3 and 4);
- completion of a mandatory training course to be a condition of nomination as a Local Government candidate (Belcarra Report recommendation 12);
- candidates to advise of their dedicated account details on nomination (Belcarra Report recommendation 15).

Groups of candidates

Part 4, division 2, subdivision 3 of the LGEA (Recording of membership and agents for group of candidates) (sections 41–43) deals with matters relating to groups of candidates, including requiring groups to give the returning officer a record of membership of the group after the candidates in the group are nominated for the election but before noon on the last day for the receipt of nominations for candidates in the election.

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

The Bill makes the following amendments relating to groups of candidates:

- to provide that a person must not engage in a group campaign activity for an election unless the activity relates to candidates who are members of a group of candidates or candidates who are endorsed by the same political party for the election (Belcarra Report Recommendation 5(a))
- to require a record of membership of a group of candidates to be given to the electoral commission during the period starting 30 days after the polling day for a quadrennial election or the day after the 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 (Belcarra Report Recommendation 5(b))
- amend the period for bringing an action in relation to the offence about engaging in group campaign activities to four years (Belcarra Recommendation 30).

System of voting

Part 4, division 5, subdivision 1 of the LGEA (System of voting) (sections 65-66) provides for the system of voting at local government elections and specifies that voting is compulsory. The system of voting that applies at local government elections is optional-preferential voting (for single-member divisions) and first-past-the-post in any other case.

The Bill amends section 65 of the LGEA to mandate that, for an election for a mayor or for a local government area divided into single-member divisions, the system of voting is full-preferential voting. No changes will be made to the system of voting in other cases.

Operational electoral matters

The LGEA provides for the conduct of local government elections including by providing for:

- the requirement for a voters roll (part 3, division 1)
- the types and dates of elections (part 4, division 1)
- a process for local governments to apply to the Minister for a poll to be conducted by postal ballot (part 4, division 3, subdivision 1)
- types of polling booths and the process for declaring polling booths or adjourning a poll (part 4, division 3, subdivision 2)
- requirements for ballot boxes, ballot papers and other documents (part 4, division 3, subdivision 3)
- how voting takes place, including the system of voting, ways in which votes may be cast, postal voting processes, and how votes are to be recorded on ballot papers (part 4, division 5)
- counting of votes, including processing of declaration envelopes (part 4, division 7).

The Bill makes a number of amendments to implement particular recommendations of the Soorley Report, to achieve better alignment between State and local government elections and make operational improvements and support efficiencies in the local government electoral system, including by:

- providing for earlier timeframes for receipt of an application for a postal vote (Soorley report recommendation 41)
- providing for an amended process for local governments to apply to the Minister for a local government election to be held by postal ballot (Soorley report recommendation 44)
- allowing pre-election processing of postal votes (Soorley report recommendation 61)
- removing the need for an elector at a polling booth to make a declaration when requesting a replacement ballot paper if the ballot paper given to the elector is accidentally defaced or destroyed (Soorley report recommendation 74)
- requiring an elector casting a postal vote to make a declaration when casting the postal vote, rather than when applying for a replacement ballot paper and declaration envelope, that the ballot paper sent to the elector has not been received or has been marked, damaged or destroyed and the elector has not otherwise voted in the election (Soorley report recommendation 74)
- modernising the public notice requirements under the LGEA to reflect contemporary means of communication by replacing requirements to publish notices in newspapers or display notices at the office of the returning officer with requirements to publish notices on the ECQ website and other ways considered appropriate (Soorley report recommendation 74)
- removing the requirement for a separate detachable flap on declaration envelopes (Soorley report recommendation 74)
- removing 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 (Soorley report recommendation 74)
- increasing penalties for a number of offences (Belcarra Report recommendation 29)
- providing for earlier approval of how-to-vote cards in recognition that voting may occur prior to polling day
- aligning Queensland's position on prisoner voting with the Commonwealth position post the High Court decision in *Roach v Electoral Commission* [2007] HCA 43
- expanding the categories of persons who must complete a declaration envelope for an election to include electors who are serving a sentence of imprisonment or are otherwise detained on polling day and electors who attend a polling booth on polling day but are unable to make an ordinary vote for reasons beyond the elector's control
- requiring the ECQ to publish election information in relation to first preference votes and the distribution of preferences, and provide elector information to a registered political party, a group of candidates if at least one member of the group was elected at the election, or a councillor who was elected at the election but was not a member of a group of candidates or endorsed by a political party on request for a purpose related to an election

- providing for ECQ to change the nomination day or polling day if exceptional circumstances exist that are likely to impact on the conduct of the election
- 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 other emergency
- ensuring that persons receiving voters roll information use that information for particular purposes
- mandating that ECQ publish returns and other documents on its website
- clarifying that, if the date for a quadrennial election is changed by regulation, the new date must be a Saturday
- providing that the issuing officer at a polling booth may reproduce a ballot paper if the polling booth does not have, or runs out of ballot papers for an election
- providing that applications to cast postal votes may be made orally or in writing
- clarify that a pre-polling booth may be outside the local government area as long as at least one pre-polling booth is inside the local government area
- provide that a regulation may prescribe details from a candidate's nomination form that may be published on the ECQ website
- providing for notification to be given by the returning officer to an applicant if the application is received late or the elector is not entitled to cast a postal vote in the election.

Amendments to the LGA and COBA

Councillor complaints

The LGA chapter 5A (Councillor conduct) provides the councillor complaints framework for all local governments, other than the Brisbane City Council (BCC).

Overall, chapter 5A deals with:

- (a) setting appropriate standards for the behaviour of councillors
- (b) the conduct of councillors at local government meetings that does not meet the standards
- (c) investigating and dealing with complaints about the conduct of councillors
- (d) disciplinary action that may be taken against councillors who engage in inappropriate conduct or misconduct
- (e) the entities that investigate and deal with complaints about the conduct of councillors.

The process that applies for BCC is in the COBA chapter 6, part 2, divisions 6 and 7 (Conduct and performance of councillors).

As part of the Government's response to the independent review panel's report '*Councillor Complaints Review: A fair, effective and efficient framework*', the Government gave an undertaking to review the councillor complaints framework applying to BCC within six months of the commencement of the new councillor complaints framework under the LGA to determine whether the new framework should be extended to the BCC. The new LGA councillor complaints framework commenced on 3 December 2018.

In 2018, the Department of Local Government, Racing and Multicultural Affairs undertook a review to determine whether the new councillor complaints framework under the LGA should be wholly applied to the BCC to provide a single and independent councillor complaints framework across all 77 local governments.

The Bill amends the LGA and COBA to apply chapter 5A of the LGA to the BCC and omits chapter 6, part 2, divisions 6 and 7 of the COBA. This will ensure that in relation to councillor conduct the same behavioural standards, offences, penalties and investigating and hearing bodies apply to all local governments and councillors in Queensland.

Further, the Bill makes the following amendments to the existing councillor complaints framework under the LGA to:

- provide that a local government official (a councillor or CEO) must not give the independent assessor a notice about a councillor's conduct vexatiously or other than in good faith
- expand the jurisdiction of the independent assessor to include the investigation of particular conduct of local government employees
- provide that if after investigating the conduct of a councillor the independent assessor is reasonably satisfied the councillor's conduct is inappropriate conduct that is connected to conduct of the councillor that the assessor is reasonably satisfied is misconduct, the assessor may decide to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct (rather than refer the suspected inappropriate conduct to the local government to deal with)
- clarify that if the assessor gives a notice about confidentiality to a person, the notice is also confidential information which must not be disclosed to another person without a reasonable excuse or in specified circumstances
- provide that if the conduct tribunal is investigating, at the request of a local government, the suspected inappropriate conduct of a councillor referred to the local government by the assessor and the conduct tribunal is reasonably satisfied the conduct is misconduct, the conduct tribunal must refer the conduct to the assessor for further investigation.

Conflicts of interest

Chapter 6, part 2, division 5A (Dealing with councillor's personal interests in local government matters) (sections 175A-175J) of the LGA and chapter 6, part 2, division 5A (Dealing with councillors personal interests in council matters) (sections 177A-177J) deal with the declaration and management of councillor conflicts of interests and material personal interests in local government meetings.

Under the current provisions, if a councillor has a material personal interest in a matter (other than an ordinary business matter), the councillor must declare the interest (including specified particulars) and must leave and stay away from the meeting while the matter is discussed and voted on. If a councillor has a conflict of interest in a matter, other than an ordinary business matter, the councillor must declare the interest, including specified particulars, and other councillors must decide whether the councillor has a conflict of interest, and if so, whether the councillor must leave and stay away from the meeting while the matter is discussed and voted on, or whether the councillor may participate in the meeting.

Feedback from stakeholders such as Councillors, Council Chief Executive Officers and the Local Government Association of Queensland was that the current conflict of interest provisions were confusing for Councillors and in some instances, difficult to implement.

The Bill amends the COBA and LGA by omitting current provisions and inserting new provisions regarding personal interests of councillors. These provisions will apply where councillors are participating in decisions under an Act, a delegation or other authority as well as in a local government meeting. Particular matters which are ordinary business matters will be excluded from the operation of the conflict of interest provisions.

The new process provides for *prescribed conflicts of interest* and *declarable conflicts of interest*. If a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter and must inform both the CEO and a meeting of the local government or a committee of the local government of the prescribed conflict of interest. A councillor with a declarable conflict of interest in a matter must not participate in a decision on the matter unless other councillors have decided that the councillor may participate in the decision.

State intervention powers

Chapter 5, part 1 of the LGA (Local governments) (sections 113-124) provides the State with certain powers of intervention in relation to a local government or a councillor, including:

- appointment, by the department's chief executive, of an advisor (section 117) or a financial controller (section 118)

- suspension or revocation, by the Minister, of an unsound decision of the local government (section 121)
- suspension or dismissal, by the Governor in Council on recommendation of the Minister, of a councillor (section 122)
- suspension or dissolution, by the Governor in Council on recommendation of the Minister, of the local government (section 123).

The Belcarra Stage 1 Act amended the LGA chapter 5, part 1 to provide that a local government can be dissolved and a councillor or every councillor can be suspended or dismissed where the Minister for Local Government reasonably believes it is in the public interest to do so.

For consistency, the Bill further amends chapter 5, part 1 of the LGA to apply public interest grounds to other powers of intervention.

Chapter 5, part 1 of the COBA (The council) (sections 110-113) provides for the Minister, on behalf of the State, to gather information and take remedial action to improve the council's or councillor's performance or compliance. Under this part, the department's chief executive may gather information to monitor and evaluate the council's or a councillor's performance and give this information to the Minister. The Minister may direct the council or councillor to take action to improve performance or correct non-compliance with a local government related law. There are no corresponding powers under the COBA which enable BCC councillors to be suspended or dismissed, the BCC to be dissolved, or an interim administrator to be appointed.

To ensure the same sanctions across all local governments for the same conduct, the Bill applies the full suite of the State's powers under the LGA chapter 5, part 1 (as amended above) to the BCC and omits the comparable provisions in the COBA (chapter 5, part 1). The State's new powers of intervention with respect to BCC include permitting:

- the department's chief executive to carry out an investigation into whether it is in the public interest to take remedial action in relation to the BCC or a BCC councillor and to appoint an advisor or a financial controller for the BCC
- the Minister to suspend or revoke an unsound decision of the BCC
- the Minister to recommend that the Governor in Council suspend or dismiss a BCC councillor, suspend every BCC councillor and appoint an interim administrator, or dissolve the BCC and appoint an interim administrator.

Councillors' registers of interest

Section 171B of the LGA and section 173B of the COBA require councillors to notify the chief executive officer of a change in the particulars of an interest required in their register of interests within 30 days. A two tier maximum penalty applies for failing to comply with this requirement - if the offence is committed intentionally the maximum penalty is 100 penalty units and the offence is defined as an integrity offence which means that the councillor automatically stops being a councillor and cannot be a councillor for four years if convicted of the offence, otherwise the maximum penalty is 85 penalty units.

The Bill replaces the two-tier offence and maximum penalties with a single offence and maximum penalty of 100 penalty units and omits the offence from the prescribed list of integrity offences under schedule 1 of the LGA and the COBA.

The Bill also introduces new requirements in relation to a councillor's register of interests to enhance local government transparency, accountability and integrity and to mirror the obligations imposed on State Members of Parliament in relation to statements of interests, namely:

- a councillor must inform the chief executive officer 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 requirement; and
- a councillor must inform the chief executive officer, within 30 days after the end of each financial year, 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 requirement is 100 penalty units.

Other amendments

The Bill makes a number of amendments to the LGA, COBA and the RTI Act relating to the operation of the local government system and decision-making to:

- repeal the powers of mayors (other than for BCC) in relation to budgets
- amend the powers of mayors (other than for BCC) in relation to the appointment of senior executive employees, and directions to the chief executive officer and senior executive employees by:
 - repealing the power of the mayor to direct senior executive employees
 - providing that the chief executive officer appoints all employees, including senior executive employees
 - providing that a direction by the mayor to the chief executive officer must not be inconsistent with a resolution, or a document adopted by resolution, of the local government
 - providing that the chief executive officer must keep a record of each direction given by the mayor to the chief executive officer and make each direction available to the local government
- improve access to information for all councillors by providing that:
 - the information that councillors can request 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 for advice or information within 10 business days or within 20 business days after receiving the request if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days and for an increased maximum penalty to apply
- remove the current exemption that applies to information of BCC's Establishment and Coordination Committee (schedule 3, section 4A) from right to information requests for a period of 10 years, including Committee submissions, briefing notes, agendas and minutes
- clarify that a councillor's absence from two or more consecutive ordinary meetings of the local government over a period of at least two months does not result in the councillor's office becoming vacant if the councillor is absent while the councillor is suspended under the LGA section 122 (Removing a councillor) or 123 (Suspending or dissolving a local government) or the LGA section 175K/COBA section 186B (Automatic suspension for certain offences)
- prescribe additional decisions that councils are prohibited from making during a caretaker period including decisions to make, amend or repeal a local law or local planning instrument or a development application under the *Planning Act* that includes a variation request
- extend the prohibition on publishing or distributing election material during a caretaker period to local government-controlled entities
- clarify that a proposed 'local government change' could request multi-member divisions.