LGAQ
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

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

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The LGAQ is grateful for the opportunity to provide a submission on the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 (the Bill). The LGAQ's comments in this submission are grouped into three sections: 1.) reasons for the LGAQ's opposition to the Bill; 2.) comments on the conflict of interest provisions; and 3.) other comments. The LGAQ will limit its comments to amendments proposed to the *Local Government Act 2009* and *Local Government Electoral Act 2011.*

1.) Introduction: LGAQ's opposition to the Bill

The LGAQ has long recognised the need for increased transparency and accountability in local government and supports implementation of the remaining Belcarra recommendations. The LGAQ stepped up to the challenge presented by the CCC's Belcarra investigation and, working with Queensland's councils, came up with an appropriate and constructive response – Beyond Belcarra, proposed reforms that went further than even the CCC was prepared to do. The LGAQ did this to demonstrate the local government sector's commitment to transparency, accountability and the integrity of the local government system.

However, the LGAQ **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. At a Special General Meeting of the LGAQ membership held in Brisbane on 2 April 2019, the councils of Queensland voted overwhelmingly to oppose several of these proposed changes, namely:

- Compulsory preferential voting at local government elections – clause 209 (Resolution 1).
- Removing the power of the mayor to direct senior executive employees – clause 108 (Resolution 8). Queensland councils supported the 2012 reforms that empowered the Mayor in this regard and oppose the winding back of this 2012 reform.
- Removing 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 – clause 116 (Resolution 9). Queensland councils supported the 2012 reforms that empowered councillors in this regard and oppose the winding back of this 2012 reform.

At the 2 April meeting, the LGAQ membership also voted to oppose a number of changes which have been mooted by the Government for introduction in a future Bill, including the introduction of public funding and proportional representation to local government elections.

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. They 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, e.g. no discussion paper, no call for submissions, no community hearings, etc. The LGAQ believes the Government should have been explaining these proposed changes to the community through processes such as these. Queenslanders deserve to be properly informed about how they can go about lodging their vote – one of the most fundamental democratic rights in Australia.

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.

There are significant arguments against compulsory preferential voting, including the potential for high numbers of informal votes and/or "donkey" votes, the complexity and length of the count, and voters being required to express 'preferences' for candidates whom they do not know or even dislike. The Government has failed to make the case for the introduction of compulsory preferential voting, particularly considering that a Colmar Brunton poll commissioned by the LGAQ showed that more than 70 per cent of Queenslanders were satisfied with the current system for electing mayors and councillors.

2.) Proposed re-write of the material personal interest and conflict of interest provisions

Introduction

The LGAQ supports, in principle, the proposed "conversion" of what is presently defined as a "material personal interest" to a "prescribed conflict of interest". Further, the LGAQ supports the draft Bill's intent to clarify and better define what is a prescribed conflict of interest (as opposed to the current definition of material personal interest). However, there are, in the LGAQ's view, a number of ambiguities that require refinement (see below).

The LGAQ also supports, in principle, the proposed "conversion" of what is presently defined as a conflict of interest (real or perceived) to a "declarable conflict of interest". However, the LGAQ holds concerns as to the ability of councillors to properly comprehend and comply with the new processes proposed for dealing with declarable conflicts of interest.

It is noted that the proposed re-write of the material personal interest and conflict of interest provisions is to be achieved by: -

1. Clause 106 - Inserting Chapter 5B - sections 105ED to 105FA (inclusive); and
2. Clause 111 – Deleting sections 175A to 175J (inclusive).

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. 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.

Notwithstanding the LGAQ's request to defer the commencement of the conflict of interest provisions, we recognise the difficulties that arose as a result of last year's conflict of interest changes in councils with groups. The LGAQ has repeatedly called on the Government to expedite the implementation of a legislative fix for these issues. The LGAQ requests that consideration be given to implementing transitional provisions to rectify the unintended consequences that councils with groups have been living with.

Prescribed Conflicts of Interest

As already mentioned, there are, in the LGAQ's view, **a number of ambiguities that require refinement**, including: -

1. Section 150EE – This section is extremely troubling. The reference to "other person" requires further explanation. Chapter 5B is intended to deal with how councillors are to deal with their personal interests in a matter. Chapter 5B is not concerned with the conduct of any "other persons". The words "other person" should be deleted.

2. Section 150EI – To remove ambiguity, the words "or relates to", wherever they appear in the section, should be removed.

3. Section 150EJ - The definition of "close associate" needs further refinement in the following ways: -

    a. Consistent with section 171B of the Act, sub-paragraphs (a) and (b) of proposed subsection 150EJ should be deleted and replaced with a new sub-paragraph (a) which simply states "a related person".

    b. Inserting a definition of "related person" at the end of section 150EJ in virtually identical terms to that provided in subsection (3) of section 171B of the Act (it is noted that this

definition is virtually identical to the definition of "related person" appearing in section 69A of the *Parliament of Queensland Act 2001*).

c. In paragraph (2) of section 150EJ, changing the reference to "parent, child or sibling" wherever it appears to "related person".

d. Again, in paragraph (2) of section 150EJ, changing the word "candidate" to "councillor".

4. Section 150EL(4) - The LGAQ has concerns that declaring confidential or private details of name and nature of the interests could potentially put someone at risk or cause them harm (e.g. domestic violence example). One solution may be to exempt councillors declaring a personal interest from providing the name of the other person and the nature of the relationship with the other person where to do so could result in a serious threat to the life, health, safety or welfare of that other person.

Declarable Conflicts of Interest

The revised process for dealing with conflicts of interest (which commenced in May 2018) involves councillors identifying to their councillor colleagues, at a Council meeting, their "personal interests" in a particular matter, and volunteering to leave the meeting at that point or, alternatively, asking their colleagues to determine whether or not those personal interests amount to a conflict of interest and, if so, whether the councillor can stay in the meeting or leave the meeting because of that particular conflict of interest. The current process is transparent and allows a councillor's peers to examine and determine whether the interest disclosed is, truly, a declarable conflict of interest.

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.

Other issues identified with respect to the amending legislation are as follows: -

1. In general, see our suggested changes to the definition of "close associate" described above.

2. Sections 150EN and 150EO – In relation to declarable conflicts of interest, 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.

3. Section 150EO - Natural disaster management: there is the possibility in a small number of circumstances that the decisions of a mayor (or councillor) in his/her capacity as LDMG Chair could give rise to a conflict of interest. Given the speedy decision-making required in these circumstances, the LGAQ considers there is a need for an exemption to be provided where a natural disaster has been declared.

4. Section 150EP, sub-paragraph (c) – What is, or is not, a "close personal relationship" is ambiguous and should be deleted.

5. Section 150EQ(4) – As per the comments in relation to section 150EL(4), the LGAQ has concerns that declaring confidential or private details of name and nature of the interests could

potentially put someone at risk or cause them harm (e.g. domestic violence example). One solution may be to exempt councillors declaring a personal interest from providing the name of the other person and the nature of the relationship with the other person where to do so could result in a serious threat to the life, health, safety or welfare of that other person.

6. Section 150ER – We query the necessity for this section. The issue intended to be addressed by section 150ER appears to also be addressed by sections 150EW and 150EX.

7. Section 150ES(1) – If our submission in relation to section 150ER is accepted, the reference in paragraph (1) of section 150ES to "section 150ER(2)" should be deleted and replaced with a reference to "section 150EX(4)".

8. Section 150ES, sub-paragraph (2)(a) – In 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".

9. Section 150ES(3) - The LGAQ considers this subsection to be impractical as currently worded and proposes that the conditions available to councillors be made explicit.

10. Section 150EZ(2) – The current equivalent provision in the Act (section 175I(2)) does not contain the words "…or discuss the matter with…". Objection is taken to the inclusion of these words 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?'

    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.

3.) Other comments about the Bill

Local Government Act 2009

Intervention powers (clauses 61-68)

- The LGAQ is grateful for the Minister's commitment, provided in Parliament when the Bill was introduced, to review the new "public interest" powers within two years of their introduction. The changes, along with those made last year, significantly expand the Minister's intervention powers. It is important that they be reviewed within two years to ensure that they are being applied as intended.

Councillor complaints: investigation of local government employees (clause 79)

- The LGAQ is concerned about the broad scope of new proposed section 150AT – Assessor must investigate particular conduct of local government employee. The Independent Assessor's remit is the investigation of councillor conduct, not council staff conduct. The LGAQ recognises that the application of this provision is subject to certain conditions, including that

the conduct is connected to the conduct of a councillor that is the subject of a complaint referred to the assessor by the CCC, but nevertheless believes that "local government employee" is too broad. One solution may be to **limit the section's application to council CEOs** which would be consistent with the notion, to be implemented with this Bill, that the Council employs the CEO and the CEO employs other employees.

Caretaker (clause 122)

- The LGAQ has **concerns about the proposed changes to the definition of major policy decision** (amendment of Schedule 4 (Dictionary)). The prohibition on planning schemes being adopted in caretaker is particularly problematic. 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. The proposed prohibition on varying existing development approvals is equally problematic. 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.

Access to information (clause 147)

- The LGAQ 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. However, the LGAQ 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**.

<u>Local Government Electoral Act 2011</u>

- The LGAQ opposes the introduction of new criteria for councils wanting to conduct elections by postal ballot (clause 166) and instead **requests that councils be provided with the discretion to conduct full postal ballot elections** (2018 LGAQ Annual Conference Resolution 85). Full postal ballot needs to remain a readily accessible option e.g. for councils with sparse populations or impacted by monsoonal flooding.
- The LGAQ has concerns about the proposed new s101A (clause 219), i.e. registered political parties, groups and elected councillors being able to request elector information. The information that could be requested under this provision is highly intrusive.
- The LGAQ is concerned about the reference to industry or occupation of the donor in s109(1)(e) (clause 225). Donors could easily mask their identity by providing misleading information.
- In light of negative experiences at the 2016 local government elections where mayoral counts were held up, the LGAQ requests that consideration be given to introducing a new provision requiring the ECQ to, wherever practicable, undertake the mayoral election count first.

I trust this submission will assist the Committee with its consideration of the Bill.

Yours sincerely

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CHIEF EXECUTIVE OFFICER