



21st May 2019

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email to: egc@parliament.qld.gov.au

Dear Chair and Committee Members

We welcome the opportunity to make submissions on the proposed Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019.

This submission is made on behalf of Brisbane Residents United, Brisbane's peak body for community resident actions groups. Whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice Governments on matters pertaining to urban planning and development.
- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

We welcome the Government's response to Operation Belcarra Report and its timely response to the most important issues raised by that report. We look forward to further legislation to deal with the remaining outstanding recommendations. We would like to see this legislation expanded so that it would apply at the State Government level.

We believe the proposed Bill (Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019) goes some way to meeting the intention of the Crime and Corruption Commission(CCC), and the desire of the community, for reform in the area of Local Government.

We support the changes made in relation to developer donations but would like the definition of developer to be expanded. As we have seen in Ipswich in the last election one of the companies donating to selected candidates had at the time an application before council to increase their dump size. This increase was of considerable commercial advantage to the company and yet they would not be seen as a development company under the proposed legislation.

With a significant amount of real estate development taking place in provision of retirement villages and aged care facilities, these businesses should be specifically included as prohibited donors since they may not be caught by the definition of property developer.

Consideration should be given to banning donations from other organisations which may benefit from regulatory and procurement decision making by local councils. Both State and Local Government award large contracts and are major employers and we feel these roles need to be taken into account with this legislation. This would mean including any organisation that would gain a financial advantage from its commercial dealings with either of these levels of Government.

Councils should not be permitted to set up investment corporations or industry advisory panels which are exempt from public scrutiny and not subject to the normal checks and balances that should be applied as governance to government operations at all levels.

There is much in the proposed Bill that is seen as positive. We have listed our response to the individual components of the Bill as follows:

Multi-member divisions - we support this proposal

Postal ballot elections - In principal we would support the implementation of postal ballot elections but only if they were carefully controlled and monitored. We would welcome more detailed on the implementation of this proposal.

Mandatory candidate training - In principal we would support the implementation of mandatory candidate training but would like to outline a few concerns where we feel more information is required. For example in remote areas who would bear the costs of attending such training sessions and how would access for remote candidates be accommodated? 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 or via video) a mandatory precondition of having a candidate's nomination accepted could create a significant barrier for time-poor candidates.

Groups of candidates - we support this proposal

Electoral finance records - we support this proposal

Caretaker - In principal we would support the implementation of the caretaker proposals but we have some concerns about the rule against signing contracts

worth more than \$200 000. While it is valuable and worthwhile to maintain protections against last-minute pork-barrelling or nepotism in the weeks leading up to an election, for large councils like BCC, it could conceivably be necessary to engage in new contracts for ongoing maintenance or emergency works that exceed the value of \$200k. Setting a cap based purely on the proportion of total budget revenue or rates revenue may be a cleaner and more appropriate mechanism. Alternatively, the \$200k cap could be retained, but with a clause that allows the Local Government minister discretion to approve urgent contracts within the caretaker period if the CEO applies to do so.

Dual candidacy - we support this proposal

Registers of interest for candidates - in principal we would support the implementation of this proposal as long as there is a clear definition of the term 'close associate'.

Prohibited campaigning techniques - we support this proposal

Postal voting applications - strong concerns about earlier cut-off period to apply for postal votes.

In some regions, residents may not even be aware of an impending council election until a few days beforehand (particularly for by-elections) at which point it would be too late to apply for a postal vote, or may have to travel interstate/overseas at short notice to an area without a polling booth.

This change would tend to impact unfairly upon residents in remote areas and upon demographics who are more mobile and have to travel at short notice, or who find that their travel plans to return to their council region in time for an election are unexpectedly delayed. While pre-polling options help mitigate this risk in some situations, it's not a perfect solution. The risk of voters being disenfranchised due to reduced access to postal voting options would seem to outweigh any possible benefit of reducing the delays in counting postal votes.

Real time financial disclosures - while we strongly support the stronger donation and spending disclosure requirements for parties and party-like group tickets, we have some concerns about what kinds of 'third parties' these disclosure rules would apply to, and what kind of administrative burden this might place on smaller community groups who are seeking to engage with the political process."

The broad definition of what kinds of spending are covered by the expenditure disclosure requirements, and the apparently broad understanding of what kinds of groups might meet the definition of a 'third party' is quite concerning, and needs further detail and close consideration. In particular, to require disclosure of expenditure which is "used to benefit or support... a particular issue" is unhelpfully broad.

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.

If the third party expenditure disclosure requirements were to apply to these smaller community groups, this would create an additional administrative burden which could be difficult for small groups to comply with. 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. It may be appropriate for the expenditure disclosure threshold to be set at \$1000 for third parties, or to more clearly define 'third parties'. It would seem to me that the hosting of candidate forums or Q&A sessions with individual council candidates ought not to be treated as election expenditure, as this could have a chilling effect on public discourse and limit opportunities for under-resourced community groups to engage with council candidates.

Much greater consideration and clarity is required regarding the definition of a 'third party' and the definition of 'election expenditure' to ensure that local residents are not discouraged from engaging in the political process, while still guarding against the likely possibility that political parties will funnel money through fake community organisations in order to circumvent the proposed spending caps.

Disclosure requirements in relation to gifts - we support the proposal for disclosure requirements regarding candidates and groups, but we have some concerns about how this would apply to third parties.

As touched on in our comments above regarding the Real Time Financial Disclosures proposal, regulating the conduct of smaller third party community groups is a very different proposition to regulating the conduct of peak bodies, chambers of commerce, trade unions etc.

For example, if a community group is organising a pre-election protest or event against the current mayor's support for a particular development project, and someone loans that group a PA system, and a local business owner makes their venue available to host the event, and some local musicians donate their time to perform, would these in-kind donations/gifts need to be disclosed through the ECQ? If so, the organisers of such community groups may be discouraged from putting on such events due to the additional administrative responsibilities, and our democracy would be poorer for it.

If these proposed changes are introduced, 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.

Election expenditure caps - We wish to voice our very strong support for this proposal. This is a crucial and valuable improvement to help increase the chances that elections will be won by the best candidates rather than by the

candidates who spend the most money. We would not like to see a repeat of the recent Clive Palmer debacle played out at the Local or State Government level. We note that this proposal was strongly opposed by the Local Government Association of Queensland. We do not support their view.

This important and essential reform would have made a great deal of difference in providing a more level playing field for candidates in 2020 and encourage a greater diversity of candidates. The cost of elections to candidates is a substantial disincentive to potential candidates. The April paper Key Changes to proposed reforms states that you have decided not to proceed with this reform as a result of further stakeholder consultation. We are unaware of any further stakeholder consultation and can only assume that the stakeholder mentioned is the Local Government Association, an organisation which in itself is lacking in accountability and transparency.

According to media reports the LGAQ has stated that Councils will not accept caps on donations. We suggest there is a great deal of self-interest at work here in that Councils are made up of Councillors who are likely to stand in the next election and accordingly want to ensure that their chances of winning election should be bolstered by the maximum amount of donation funding possible. A sitting candidate has opportunities to leverage support from backers that is unavailable to less wealthy and influential candidates. The purpose of the cap was to open the field to worthy candidates, not simply those who can amass the largest campaign funds and to prevent vested interests from unduly influencing the make-up of Councils.

There are no reasons given for this change of mind by the Department other than stakeholder concern and this is disturbing to our members. We urge you to reconsider this decision.

Voters' experience - we support this proposal as it will help guard against wasted votes.

Public campaign funding - we support this proposal in principle as we believe the cost to the budget of public funding is not particularly burdensome for Brisbane City Council. It is well within BCC's capacity to absorb the costs of reimbursing campaign expenditure, and we do not anticipate this relatively minor cost will have any significant impact upon the level of service council provides to residents. However it may need to be funded by the State Government in those areas where the local council has a very restricted budget.

Counting votes - we support this proposal

Electoral finance reforms - we support this proposal but note the concerns expressed above about the potentially excessive administrative burden that could be placed on smaller third parties - i.e. community groups, residents associations - who are seeking to engage with the political process

Councillor vacancies - we support this proposal

Registers of interests - we support this proposal

Conflicts of interests - we support this proposal in principal. The first dot point states

- *“Councillors with conflicts of interests will be prohibited from dealing with the matter unless council resolves that it is in the public interests for them to do so.”*

This appears to be contradictory. In a council made up of councillors where there is bloc or clique operating it is obvious that the bloc will decide that their colleague with the conflict of interest should deal with the matter because it will be in the public interest. Will there be more precise limitations on this matter?

Discretionary funds - we support this proposal in principle but feel more detail information about implementation is needed.

Currently, BCC councillors have partial discretionary control over two annual budgets - a \$75 000 community grants budget, and a \$540 000 budget for footpath and park upgrades. While discretion is reasonably broad for the grants budget, there are still some policy limits on how it can be spent.

In contrast, the park upgrades budget has such strict limits placed on how councillors can allocate it that it can't reasonably be described as discretionary. For example, recently a local councillor tried to allocate \$20 000 of his parks budget towards park benches that are homeless-friendly, and the council parks officers overruled this, saying that the bench design did not comply with council's standards. So while councillors have some discretion about which public spaces this money is spent in, there are very strict limits imposed in terms of exactly what the money can be spent on.

Furthermore, any allocation of this \$540 000 park upgrades budget which exceeds \$50 000 has to be voted on and approved by a council committee comprising six councillors, and then approved by a vote of full council.

This is a long way of saying that the term 'discretionary' is quite ambiguous, and it's not clear whether the State Government's proposed cap on discretionary fund allocations would actually apply to these two budgets - particularly the footpath and park upgrades budget, or the 'discretionary' allocations over \$50 000 that still need to be signed off by full council.

Allowing councillors discretionary control over budget allocations offers a range of benefits. Government bureaucracies have a tendency to overlook small, local needs and overestimate the priority of larger projects. Council bureaucracies are also notoriously slow at adapting plans and responding to new and emerging needs. Local councillors often have a more holistic understanding of their electorate than individual council departments, as well as stronger direct connections to residents, making them better placed to identify the highest priorities in their community. As such, the use of discretionary budgets allows councillors to fill gaps and compensate for oversights on the part of the bureaucracy.

Of course, allowing councillors discretionary control over budget allocations (particularly capital works budgets) also carries two obvious risks:

Councillors may allocate money to a project that primarily serves the needs of a particular stakeholder or interest group as opposed to one that is in the broader public interest. For example, a councillor may allocate funds towards improving a park next to the home of a political ally/supporter even if that park is of less value to the wider community.

Private contractors may directly lobby to allocate money towards a project that the contractor benefits from financially. For example, it is reasonably common for manufacturers of playground equipment to directly contact councillors to persuade them that a certain unique style of park equipment is needed in the community. If the councillor allocates discretionary funds towards that item, that manufacturer is likely to benefit as they are the only supplier who produces that equipment.

Note that the second risk is heightened significantly when a council is heavily reliant on external contractors as opposed to doing work in-house.

Our view is that giving elected representatives discretionary control over larger budgets is not necessarily a problem, as long as there are clear policies to guard against manifestly inappropriate expenditure, and to ensure that decisions about how money gets allocated are completely transparent so that the councillor can be held accountable by voters.

To guard against the two risks identified above, it would be appropriate to require that details of each discretionary budget allocation are published online on the council website in a timely fashion (e.g. every three months), with itemised project costings.

On some level, all budget allocations by a council involve the exercise of some form of discretion, most often by unelected public servants. For example, in deciding which roads to prioritise for the road resurfacing budget, council officers not only consider data such as traffic counts, but also more subjective and qualitative information, such as resident complaints about a road, the officer's personal assessment of a road's condition, and knowledge about other future projects that are planned for a road corridor (which might indicate that resurfacing should be postponed).

It has been brought to our attention by a sitting councillor that this proposal could disadvantage a community in a division. There are times when community facilities are needed in a particular division, which may not make a whole of city priority list, and there is insufficient funds in one financial year's discretionary funds to meet that need. In this case it is common practice for councillors to quarantine funds from one year and combine them with the funds for the next year to have sufficient to meet the community need. This would not be possible with the suggested reforms. It could also disadvantage a community in which the divisional councillor is not part of the in favour bloc and so rarely receives sufficient funds for community needs in his/her division.

What's important is that where decisions are made there is adequate transparency about how and why those decisions were made, and that they were made in the public interest.

We would urge the members of the Economics and Governance Committee to consider favourably our request for the change we have proposed. We believe this would better ensure that the "stated policy objective of the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 ... to:

1. *reinforce integrity and minimise corruption risk that political donations from property developers has potential to cause at both a state and local government level*
2. *improve transparency and accountability in state and local government*
3. *strengthen the legislative requirements that regulate how a councillor must deal with a real or perceived conflict of interest or a material personal interest.”*

is achieved, resulting in legislation that truly reflects the desire of the broader community for more open and transparent local government which is at the crux of this component of the proposed legislative reform.

Our ideal scenario would be that political donations at all levels of government were replaced by a system where the only election materials allowed are those publicly funded for each candidate. The candidates would be provided with a certain number of flyers, a certain number of TV and radio spots and an article in the local paper explaining their platform and policies. They could door knock and stand on street corners or participate in their local communities as much as they wish.

We believe this system would actually prove less expensive for the taxpayer than the current system of electoral funding at all levels of government. This case would be proved if you consider both the opportunity cost and the true cost of some of the appalling political decisions that have been made and no doubt will be made in the future, as a result of the undue influence of political donors.

Until this ideal scenario is achieved significant new provisions are needed in this Bill to reduce incentives which increase corruption risks in Qld, including:

- a cap on campaign expenditure by all candidates in Local and State Government elections (Belcarra Report Recommendation 1) which will effectively stop the constant hunt for donations to support election promotional work and for donors to find ways around the rules. This would lead to a fairer electoral process that would not be restricted to the financially well off. This is in place in NSW currently;
- providing for a ‘betterment tax’ payable to the government where land zoning benefits a property developer in order to reduce the incentive in existence to change zoning to benefit particular developers, and to compensate the community adequately in exchange for the windfall to the developer due to the change in planning regulation; and
- addressing the revolving door between industry and government, which can lead to inside relationships being used to the benefit of the private sector without due regard being given to the public interest. While Queensland has comparatively strong restrictions around when a senior public servant/Minister can work as a lobbyist, our framework could be further strengthened by:
 - improving the definition of ‘lobbyist’, for example to include acting for even non-profit entities that represent private industry, such as the Queensland Resource Council; and

- better enforcing existing limitations on lobbyists moving between government and the private sector.

All legislation is only as good as its compliance procedures and the funding provided to ensure that these procedures are followed. We are heartened by the progress towards good governance that this legislation indicates. However the Bill emulates the NSW regulatory framework which has proven to not be sufficient to prevent the risks associated with allowing any kind of election donations to candidates. [Operation Spicer](#) uncovered significant corruption in NSW even with the prohibition on property developer donations, as donations were going through other entities.

We therefore recommend that there be a ban on all corporate donations, including from mining companies, the tobacco industry etc be introduced through the Bill, to prevent the loopholes provided by limiting the ban to one narrowly defined sector. Operation Spicer demonstrated the strong need for enforcement of the ban as well, to ensure it is effective at achieving its aim.

We call on the Queensland government to give serious consideration to our concerns to ensure that Queensland is moving towards the best government governance system in Australia; one that truly inspires confidence and certainty from all stakeholders and empowers our communities to meaningfully participate in all levels of government. Should you require any further information I can be contacted on [REDACTED].

We look forward to the rest of the legislative implementation of the CCC Operation Belcarra Report to deal with the remaining outstanding recommendations. We request the opportunity to appear before the Committee in their hearing into this inquiry.

Yours sincerely
Elizabeth Handley
President
The Brisbane Residents United Inc Steering Group