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Crime and Corruption Commission
QUEENSLAND

Our Reference: AD-19-0991
Contact Officer: Mr Justin Gorry

9 January 2020

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

Via email: egc@parliament.qld.gov.au

Dear Committee Secretary,

Electoral and other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

I refer to the Economics and Governance Committee's invitation for submissions in relation to the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019*.

Please find attached the Crime and Corruption Commission's submission.

Thank you for the opportunity to comment on the Bill. Your office may contact Mr Justin Gorry (Acting Director, Corporate Legal) on telephone [redacted] or via [redacted] to discuss the submission further if required.

Sincerely,

A J MacSporran QC
Chairperson

Crime and Corruption Commission
QUEENSLAND

Submission to the Economics and Governance Committee

For the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

9 January 2020

Contents

Introduction

The *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019* (the Bill) was introduced on 28 November 2019 and then referred for consideration by the Economics and Governance Committee to report by 7 February 2020.[1]

The Crime and Corruption Commission (CCC) welcomes this opportunity to assist the Economics and Governance Committee in its consideration of the Bill. Now that the CCC has seen the Bill, the CCC is pleased to make the following informed commentary.

The CCC has also considered the *Criminal Code and Other Legislation (Ministerial Accountability) Amendment Bill 2019* (the Opposition's Bill) which was tabled by the Honourable Ms Deborah Frecklington MP, Leader of the Opposition on 23 October 2019. Where relevant to its submissions on the current Bill, the CCC makes reference to the proposals in the Opposition's Bill.

The policy objective of Chapter 4 (Amendments relating to dishonest conduct of Ministers) of the Bill is to improve the integrity and accountability of ministers by amending the *Integrity Act 2009* and the *Parliament of Queensland Act 2001* by creating a new offence under each act.[2]

The policy objective of Chapter 5 (Amendments relating to dishonest conduct for councillors and other local government matters) is to continue the Government's reform agenda for local government to improve transparency, integrity and consistency by amending the *Local Government Act 2009* and the equivalent provisions of the *City of Brisbane Act 2010*.[3]

In introducing the Bill, the Honourable Attorney-General and Minister for Justice, Ms Yvette D'Ath MP placed these policy objectives within the context of implementing the CCC's recommendations regarding ministerial conflicts of interest.[4]

Cross River Rail Project

On 6 September 2019, the CCC issued a media statement regarding the completion of the CCC's assessment of allegations of corrupt conduct relating to the Honourable Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, Ms Jacklyn Trad MP and her involvement in decision-making relating to the Cross River Rail Project and the Inner City South State Secondary College.[5]

The CCC made five recommendations as follows:

1. That during the current term of Parliament, the Government amend Cabinet processes to ensure a standing agenda item is included for each Cabinet meeting and decision to mandate the proactive declaration of any actual, potential or perceived conflicts of interest, and the recording of any management or treatment of these conflicts.
2. That during the current term of Parliament, the Government ensure Cabinet processes provide guidance to ministers to prepare a management plan for any conflict of interest before being involved in Cabinet or other related decisions.
3. That Parliament create a criminal offence for occasions when a member of Cabinet does not declare a conflict that does, or may conflict, with their ability to discharge their responsibilities.

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[1] Hansard 28 November 2019, pp. 3944-3951

[2] Hansard 28 November 2019 p. 3947; and the Bill's Explanatory Notes p.2

[3] Hansard 28 November 2019 p. 3948; and the Bill's Explanatory Notes pp. 2-3

[4] Hansard 28 November 2019, p. 3947

[5] https://www.ccc.qld.gov.au/news/ccc-determines-not-investigate-deputy-premier-calls-improvements-cabinet-processes-and

4. That Parliament create a criminal offence to apply when a member of Cabinet fails to comply with the requirements of the Register of Members' Interests, and the Register of Members' Related Persons Interests by not informing the Clerk of Parliament, in the approved form, of the particulars of an interest or the change to an interest within one month after the interest arises or the change happens. A suitable penalty should apply, including possible removal from office, if it is found that the member's lack of compliance was intentional.
5. That during this term of Parliament, the Department of Premier and Cabinet, in consultation with the Integrity Commissioner, review all handbooks and guidance material in relation to conflicts of interest to ensure there is consistency and all material reflects best practice.

The Bill seeks to address recommendations three and four. Recommendations one, two and five have not been addressed as they concern internal Cabinet processes.

The Bill seeks to implement amendments to:

1. the *Integrity Act 2009* regarding declarable conflicts of interest and the introduction of a criminal offence for failing to declare a conflict of interest and the nature of the interest
2. the *Parliament of Queensland Act 2001* regarding the introduction of a criminal offence for contravening statements of interests notifications requirements
3. local government legislation relating to, amongst other things, requirements and offences relating to declaring and managing conflicts of interest, and the engagement of advisors to assist councillors.

Operation Belcarra

Following the Queensland local government elections on 19 March 2016, the CCC received numerous complaints about the conduct of candidates for several councils, including the Gold Coast, Ipswich, Moreton Bay and Logan local government authorities. In accordance with the CCC's responsibilities to investigate corruption, prevent corruption and promote integrity, the CCC commenced Operation Belcarra.

On 10 October 2019, a CCC report was tabled in Parliament setting out the findings of Operation Belcarra and making 31 recommendations to address corruption risks in local government. On the day of the tabling of the report, the Honourable Premier of Queensland and Minister for Trade, Annastacia Palaszczuk issued a media release stating her government would endorse all recommendations in the report, supporting some in full and others in principle. Further, she declared that, in relation to political donations, she 'will not introduce measures on local government that do not apply to ourselves [state government].'[6]

It is noted that the local government legislation now contains comprehensive provisions addressing conflicts of interest and their management in the local government context.[7] The CCC considers that the Belcarra recommendations and their legislative implementation for local government present a strong foundation for crafting an equivalent regime applicable at state government level. The CCC considers that departures from this existing statutory framework should only been made where relevant differences exist for state government or evidence-based assessment supports divergence from the current local government approach.

The CCC notes that Belcarra recommendations 7, 16, 21 and 22 have not yet been implemented.

6 Media Statement, Tuesday 10 October 2017 – Operation Belcarra – Government response to CCC recommendations
7 See for example Division 5A of the Local Government Act 2009

Recommendations 7 and 21 relate to deeming provisions about gifts and sources of gifts, which would assist in proving offences under the *Local Government Electoral Act 2011*, the *Local Government Act 2009* and the *City of Brisbane Act 2010*.

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 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.

Recommendations 7 and 21 were to be introduced as clauses 51, 144, 244 and 246 of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019* but were removed prior to the Bill being passed. On 15 October 2019, the Honourable Mr Sterling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, stated in Parliament:

> *The bill deems election participants and councillors to have knowledge of the original source of a gift or loan in a proceeding for an offence against the legislation to implement the government's response to Belcarra recommendations 7 and 21. I acknowledge the significant concerns of some stakeholders about this reversal of the onus of proof. Earlier I tabled the government's response to the committee report. The response outlines our intention to remove these provisions from the bill. Consistency between the local government and state electoral systems and governance frameworks is one of the key policy objectives of the bill. Reversing the onus of proof imposes a higher obligation on councillors and participants in local government elections than applies to members of the state parliament and participants in state elections.*
>
> *I note the CCC Chairperson Alan MacSporran's comments that this provision was a recommendation of Belcarra as an extraordinary measure because of the high corruption risk in the local government sector and the need to lift the standards—a drastic measure for drastic circumstances. However, I particularly emphasise that the new requirements in the bill for donor entities to disclose the true source of contributions will ensure that election participants and councillors are, in fact, informed of the origins of the gifts or loans they receive. This very significant transparency reform remains unaffected by the removal of the deeming provisions.*[8]

As noted above, the CCC agrees with the Premier's stance on consistency between the local and state electoral systems and governance frameworks. The current proposed legislative change presents a perfect opportunity for ensuring that both state and local governments implement optimal deeming provisions. The concern about imposing a more onerous requirement on local government no longer applies if consistent amendments are made at both levels in accordance with the Belcarra recommendations. This is the CCC's preferred approach.

8 Hansard 15 October 2019, p. 3150

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, a 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), *Local Government Electoral Act*] and loans without prescribed records [s. 121(4), *Local Government Electoral Act*].

Recommendation 16 has not been implemented although the CCC notes the amendments made by the *Local Government Legislation (Implementing Stage 2 of Belcarra) Amendment Regulation 2019* (to commence shortly) which alter the disclosure requirements in the seven business days before polling day. The CCC continues to maintain that a prohibition should be implemented in relation to gifts or loans post polling day to ensure that disclosure requirements are not thwarted by gifts or loans being promised to candidates before polling day, followed by the promise being delivered on after polling day.

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 the 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.

It is noted that recommendation 22 is proposed to be implemented through administrative changes to the approved forms for making a development application to include the recommended information. The forms to date have not been changed to allow for these additional details. The CCC considers that expeditious updating of the forms in this way should be a priority for the complete implementation of the Belcarra reform package. However, the CCC ultimately considers that legislative change is required due to the more permanent nature of legislative requirements and the reduced transparency associated with the requirements only being subject to approved forms.

Amendment of the Integrity Act 2009

The following comments are limited to Chapter 4's policy objective in the context of improving ministerial accountability.

Clause 62

Section 40A

Section 40A creates a new criminal offence in the *Integrity Act 2009* for a minister who knowingly fails to disclose a conflict of interest with the intent to dishonestly gain a benefit for themselves or another person, or cause detriment to another person.[9] The penalty for this offence is 200 penalty units or two years' imprisonment.

Section 40A introduces the concept that a minister must have the intent to 'dishonestly obtain a benefit for the minister or another person' or 'dishonestly cause a detriment to another person.[10]' The Attorney-General stated that the new offences under the *Integrity Act 2009* and the comparable offences in relation to statements of interest in the *Parliament of Queensland Act 2001* 'seek to capture a deliberate and intentional dishonesty by ministers.'[11]

The CCC does not support the section in its present form.

The CCC considers that the proposed new section 40A does not achieve the purpose of the CCC's recommendation 3 to create a criminal offence in relation to undeclared conflicts of interest to strengthen the framework and obligations on ministers to avoid conflicts of interest.

The elements of the proposed offence, as drafted, overlap entirely with more serious offences already in existence: section 92A of the *Criminal Code*, 'Misconduct in relation to public office', and section 408C, 'Fraud'. Both these offences involve acts or omissions done dishonestly with intent to gain a benefit or cause a detriment. The new offence as proposed would essentially require proof of the same elements, but with a substantially lower penalty. An unintended consequence of the proposed provision may be to 'water down' the seriousness of conduct which may already amount to serious criminal offending, rather than strengthening the framework and obligations on ministers to avoid conflicts of interest.

The CCC recommends that the requirement for proof of dishonest intent be removed. Section 40A, as a misdemeanour, is a 'lesser offence' than the indictable offences of section 92A and section 408C of the *Criminal Code*. Appropriately, given the seriousness of conviction for fraud or misconduct in relation to public office, these sections require proof of dishonest intent. The intention of the CCC's recommendation 3 is to create a criminal sanction for the lesser offence of merely failing to declare a conflict. This offence would capture conduct where the evidence was insufficient to establish dishonest intent to the onerous criminal standard of beyond reasonable doubt. Making this misdemeanour an offence of 'strict liability' would appropriately recognise the lesser culpability where dishonest intent could not be proven, encourage transparency in the way ministers deal with conflicts of interest, and significantly contribute to reducing corruption risk.

The proposed section 97D of the Opposition's Bill would apply when a minister 'is aware or ought reasonably to have been aware' that they have a conflict of interest in the matter. The CCC notes that this broader approach is more consistent with the CCC's recommendations than the proposed new section 40A. The strict liability introduced by this provision is adequately mitigated by the requirement to prove knowledge or objectively reasonable knowledge. An alternative approach would be to provide a defence where a minister could not reasonably be expected to have been aware of the conflict.

9 *Bill's Explanatory Notes* p.4
10 s. 40A inserted by clause 62 Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019
11 Hansard 28 November 2019 p. 3947

The CCC notes that section 97D of the Opposition's Bill is unnecessarily restricted to known discussion in Cabinet meetings (i.e. Agenda items). The obligation may not apply to conflicts that only become apparent during the course of a meeting. The CCC prefers the broader approach of the Bill in this regard.

The proposed penalty for section 40A is a maximum of 200 penalty units or two years' imprisonment. The CCC considers that these maximum penalties are appropriate for the offence. They are consistent with the penalties under the *Local Government Act 2009* and the *City of Brisbane Act 2010*[12] and appropriately lower than the similar *Criminal Code* offences requiring dishonest intent.[13]

It is noted that the Opposition's Bill suggests 100 penalty units or one year's imprisonment for the comparable offence provision in that bill. The CCC prefers the higher penalties envisaged under the Bill.

It is noted that the Opposition's Bill also addresses the CCC's recommendations by introducing a new offence. This Bill proposes that new sections 97B, 97C and 97D are introduced into the *Criminal Code*. The CCC considers the location of the offence provisions in the *Criminal Code* to be preferable to the *Integrity Act* as more reflective of the seriousness of the conduct with which they deal. Further, the inclusion of the offence in the *Criminal Code* (in particular Chapter 13) would enable all offences involving corruption and abuse of office to be grouped together.

Sections 40B and 40C

Section 40B(1) introduces the offence for breaching section 40(A) as a misdemeanour. While the CCC does not disagree with the characterisation of the offence as a misdemeanour, as noted above, the CCC's preference would be for the offence to be inserted into the Criminal Code to adequately reflect the seriousness of the offence.

Section 40B(2) states that a proceeding for an offence under section 40A can only be commenced with the written consent of the director of public prosecutions (DPP). It is not apparent why the DPP's consent is considered necessary for what is (by reference to the available penalty) a relatively minor offence, and the CCC does not support this requirement.

It is noted that the Explanatory Notes[14] state that the Bill contains a safeguard against inappropriate prosecution by providing that the consent of the DPP is required in order to charge 'either of the new offences'. It is not clear to the CCC why these offences present a greater risk of inappropriate prosecution over and above the majority of criminal offences in Queensland which do not require the consent of the DPP.

Section 40C allows information given to the integrity commissioner in relation to advice requests to be used for the investigation and prosecution of offences against section 40A. The CCC observes that any investigatory or prosecutorial benefits provided by such an abrogation of the otherwise confidential nature of such disclosure should be carefully balanced against the collateral unintended

[12] Section 175E of the *Local Government Act* 2009 (fail to declare a conflict of interest) imposes a 100 penalty units or one year's imprisonment and Section 175C (material personal interest) imposes 200 penalty units or two years' imprisonment. Section 177E of the *City of Brisbane Act* (fail to declare a conflict of interest) imposes a maximum penalty of 100 penalty units or one year's imprisonment. Section 177C (material personal interest) imposes a maximum penalty of 200 penalty units or two years' imprisonment or otherwise 85 penalty units

[13] Section 92A of the Criminal Code 'Misconduct in relation to public office' carries a maximum penalty of seven years' imprisonment. Section 408C of the Criminal Code 'Fraud' has penalties of between five and 20 years' imprisonment depending upon circumstances of aggravation

[14] *Bill's Explanatory Notes* at p. 17

effect of discouraging frank advice-seeking from the Integrity Commissioner. The issue requires further consideration.

Amendment of the Parliament of Queensland Act 2001

Clause 73

Clause 73 inserts new sections 69D to 69F of the *Parliament of Queensland Act 2001*.

Section 69D

Section 69D introduces a new offence for a breach of section 69B of the current *Parliament of Queensland Act 2001* regarding the need to provide and then update a member's statement of interests. The section provides for a sanction of 200 penalty units or two years' imprisonment.

This penalty is greater than that envisaged by the Opposition's Bill[15] and that imposed by the *Local Government Act 2009* and the *City of Brisbane Act 2010.* The CCC supports the introduction of the increased penalty provision.

Section 69D again introduces the concept that a minister must have a 'dishonest intent' to fail to comply with section 69B. The CCC does not support the requirement for a dishonest intent for the reasons outlined above.

Section 69E

Section 69E mirrors the section 40B requirement to seek consent from the DPP before commencing proceedings. Again, the CCC does not consider it appropriate for proceedings for an offence under section 69D to be commenced only with the written consent of the DPP, for the reasons outlined above.

Intentional lack of compliance

This Bill does not implement the CCC's recommendation that a member should be removed from office if it is found that the lack of compliance was intentional. It is recommended that a circumstance of aggravation that attracts a commensurate consequence of removal from office be introduced to give effect to this recommendation. Currently, candidates can only be disqualified under section 64(2) of the *Parliament of Queensland Act 2001* if they are (among other disqualifying circumstances) sentenced to a term of imprisonment or detention, periodic or otherwise. This includes a person released on parole under section 64(4)(a), but not on a suspended sentence under section 64(4)(b). Section 72(1) deems a member's seat to become vacant in certain circumstances. It is recommended this section is amended to enable a member to be removed from office when there is an intentional lack of compliance.

[15] 100 penalty units or one year's imprisonment

Amendments to local government legislation relating to conflicts of interest

The CCC is very concerned about amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009* relating to the declaration and management of conflicts of interest.

Operation Belcarra

The CCC's Operation Belcarra report identified, amongst other things, that:

- The perception problems arising from donations are often compounded by councillors failing to adequately manage their conflicts of interest[16]
- Under the previous regime, each individual councillor was ultimately free to decide how they would identify and manage their conflicts of interest[17]
- The approach of self-identification and self-management could lead to allegations that councillors were not dealing with conflicts of interest in the most appropriate and transparent ways[18]
- In some instances, a major reason for councillors failing to declare conflicts of interest was that they did not consider that they had a conflict[19]
- Many councillors noted that the legislation was unclear and ambiguous[20]
- In some instances, even when conflicts of interest were declared, how they were dealt with (e.g. a councillor staying in the room to vote) raised concerns[21], and
- How conflicts of interest were dealt with varied, the varying approaches seemingly stemming from councillors having complete discretion in the way that they could deal with conflicts and also uncertainty and confusion about the requirements of the legislation.[22]

The CCC considered the issues and previous legislation. Ultimately, the CCC considered that[23]:

- Requiring other councillors to decide whether a councillor has a conflict of interest and whether they should stay in the room to vote on a matter ensures that alternative and more independent perspectives are taken into consideration.
- Re-introducing a specific obligation on councillors to report another councillor's conflict of interest would increase councillors' accountability and reinforce the importance of dealing with conflicts of interest in transparent and accountable ways.
- Re-introducing specific — and substantial — penalties for councillors who fail to comply with their obligations regarding conflicts of interest would help to ensure that non-compliance is responded to appropriately and councillors are held accountable for their actions and inactions.

Accordingly, the CCC made the following recommendations with respect to amendments to the *Local Government Act 2009* and the *City of Brisbane Act 2010*[24].

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[16] Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government at Page 79 https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf

[17] ibid

[18] ibid

[19] ibid

[20] ibid at Page 81

[21] ibid at Pages 81 - 82

[22] ibid at Page 82

[23] ibid at Page 84

[24] ibid at Page 85

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 Chief Executive Officer of the council

(b) require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting.

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.

Current legislation

Following the CCC's recommendations, there was legislative amendment. This submission will not outline the effects of the legislative amendments. By way of example, however (and to highlight the change in approach that would follow if the amendments proposed in the Bill were implemented), a councillor who does not inform a meeting about their personal interests, including prescribed particulars of the interests, commits an offence with a maximum penalty of 100 penalty units or 1 year's imprisonment.[25] Under the relevant provisions, after a councillor informs a meeting about their interests, the other councillors decide whether there is a conflict of interest and, if so, how the

[25] Section 175E(2) *Local Government Act 2009*

conflict will be managed.[26] If the other councillors decide that the councillor with the conflict must leave and stay away from the meeting whilst the matter is being considered, the councillor with the conflict commits an offence unless they comply (again, the maximum penalty is 100 penalty units or 1 year's imprisonment)[27].

There were a significant number of other legislative amendments made subsequent to the Belcarra recommendations. In short, the CCC contends that the current legislation with respect to conflicts of interest and material personal interests should not be amended. The current scheme is aligned with the Belcarra recommendations. Quite apart from the CCC's submission that the Bill introduces a significantly inferior scheme which increases the corruption risk, the CCC notes:

- The current scheme has not been operating for that long and more time is needed to assess the success or otherwise of the current scheme, including whether the current scheme has reduced the corruption risk. In this regard, it may be that the Office of the Independent Assessor and/or the Integrity Commissioner can provide information about how they perceive the current scheme is working; and
- Relatedly, no evidence base to support the amendments proposed in the Bill has been demonstrated.

The amendments proposed in the Bill

The current scheme contains a number of requirements relating to both material personal interests and conflicts of interest. Under the current scheme, failing to comply with these requirements constitutes offences and, for these offences, there is no requirement to prove an intent to dishonestly obtain a benefit or cause a detriment. The scheme proposed to be introduced by the Bill[28] involves prescribed conflicts of interest and declarable conflicts of interest. A councillor who has a prescribed conflict of interest in a matter cannot participate in a decision relating to the matter and there are certain notification requirements in relation to the prescribed conflict and particulars of it. In relation to declarable conflicts of interest, there are requirements for the councillor to give notice of the declarable conflict and particulars of it, requirements for the remaining councillors to decide whether there is a declarable conflict and how it will be managed, and, if the remaining councillors decide that the councillor must leave and not participate in that decision, a requirement that the councillor comply. If the councillor does not leave and not participate in the decision, they commit an offence with a maximum penalty of 100 penalty units or 1 year's imprisonment.

In relation to the scheme proposed under the Bill, with the exception of the requirement to leave and not participate in a decision, failing to comply with the requirements referred to in the preceding paragraph are an offence **only if** the contravention is accompanied with an intent to dishonestly obtain a benefit or cause a detriment. The CCC submits this constitutes a significant change which introduces a corruption risk by discouraging openness and transparency.

The proposed changes to the nature of the offence provisions, in practical terms, means that, for most non-compliances, instituting criminal proceedings will not be an option and disciplinary proceedings for councillor misconduct will be the most likely available course. Whilst this situation for first or second-time offenders may well represent an appropriate response to ensure compliance, the unavailability of criminal sanctions for recidivist offenders means that an escalation of enforcement action is not available and an important compliance tool is taken away from the Office of the Independent Assessor.

[26] Section 175E(4) *Local Government Act 2009*

[27] Section 175E(5) *Local Government Act 2009*

[28] For the amendments to the *Local Government Act 2009*, see clause 104 of the Bill – Insertion of new ch 5B

It is noted that the proposed procedural provision relating to the commencement and conduct of proceedings[29] requires the consent of the DPP. The CCC relies on the submissions that it has made earlier in relation to this requirement.

The CCC also submits that the scheme proposed under the Bill is more complicated and whether or not something constitutes a conflict of interest will be less obvious. By way of example, the prescribed and seemingly arbitrary monetary limits in relation to gifts and loans and sponsored travel or accommodation benefits[30] are unnecessarily complicated. Moreover, the CCC is unaware of any evidence base to suggest that, for example, there is no basis for a conflict of interest to arise as a result of a gift of relatively minimal value. The CCC would, in fact, submit the contrary – gifts of relatively small value may still corrupt, especially in the context of "grooming" by the giver of the gift. The overly complex nature of the proposed scheme will reduce openness and transparency.

Councillor advisors

It is noted that the Bill proposes a number of amendments to enable and facilitate the appointment of councillor advisors. The Explanatory Notes to the Bill note the 'growing trend, particularly in larger local governments, for the appointment of "political staff" predominantly to assist mayors and to undertake a range of duties including management of the mayor's office, administrative support, media activities, event management, policy development and in some cases political activities'.[31] The Bill seeks to amend the *Local Government Act 2009* and the *City of Brisbane Act 2010* to provide that the Brisbane City Council and other local government authorities

> *may contract persons as councillor advisors to assist councillors in performing responsibilities under the respective Acts; and to provide appropriate employment conditions, statutory obligations and offences and penalties. The same obligations that apply to councillors in relation to registers of interests are also to apply to councillor advisors, including the dishonest conduct offences for dishonestly contravening the register of interests obligations.*[32]

The proposed amendments endorse the appointment by mayors and councillors of political staff/advisors. It appears that such staff/advisors will perform a similar function to staff at State Government level appointed under the *Ministerial and Other Office Holders Staff Act 2010*. The interaction of such staff with members of the State Public Service has, at times, created problems and the need for clear protocols in this regard has been recognised.[33] *Protocols for communication between ministerial staff members and public service employees*[34] and the *Premier's Communique – Interaction between ministerial staff and public servants*[35] have been published in recognition of the difficulties.

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[29] See proposed section 201E of the *Local Government Act 2009*

[30] See proposed sections 150EG(1)(c), 150EH(1)(c) and 150EO(1)(e) of the *Local Government Act 2009*

[31] *Bill's Explanatory Notes* p.7

[32] *Bill's Explanatory Notes* p.7

[33] See, for example, the Report on an investigation into the alleged misuse of public monies, and a former ministerial adviser, CMC, December 2010, found at https://www.ccc.qld.gov.au/publications/report-investigation-alleged-misuse-public-monies-and-former-ministerial-adviser

[34] Protocols for communication between ministerial staff members and public service employees https://www.forgov.qld.gov.au/documents/policy/protocols-communication-between-ministerial-staff-members-and-public-service

[35] Premier's Communiqué Interaction between ministerial staff and public servants http://statements.qld.gov.au/Content/MediaAttachments/2010/pdf/Communiqu%C3%A9.pdf

The CCC submits that the legislation should ensure that clear protocols be set out to ensure proper and transparent communication between political staff/advisors and local government officers and clarify responsibilities for the management and, if necessary, disciplining of such staff. This could be achieved through specific provisions which require the Code of Conduct made by the Minister and/or the guidelines made by Chief Executive Officers to deal with these issues.

Further, in relation to the proposed section 194A(5) of the *City of Brisbane Act 2010* and section 197A(5) of the *Local Government Act 2009*[36], it is submitted that the provisions should prohibit a councillor advisor from carrying out or assisting in activities relating to campaigning or re-election and prohibit a councillor advisor from directing a council employee rather than simply stating those activities are not part of the councillor advisor's functions and responsibilities.

General Conclusion

The CCC is concerned the Bill in its current form does not implement the CCC's recommendations arising out of Operation Belcarra and the assessment of a complaint in relation to the Cross River Rail Project. The main areas of concern are:

- The CCC considers that the proposed section 40A *Integrity Act 2009* does not achieve the purpose of the CCC's recommendation 3 to create a criminal offence in relation to undeclared conflicts of interest, intended to strengthen the framework and obligations on ministers to avoid conflicts of interest;
- The CCC does not support the inclusion of an element of "dishonest intent" in either the proposed s40A of the *Integrity Act 2009*, or s69D of the *Parliament of Queensland Act 2001*;
- The Bill does not implement the CCC's recommendation 4 (Cross River Rail Project) that a member of Cabinet should be removed from office if it is found that the lack of compliance with the requirement to update the Register of Members' Interests, and/or the Register of Member's Related Persons Interest, was intentional;
- the current legislation contained in the *City of Brisbane Act 2010* and the *Local Government Act 2009* with respect to conflicts of interest and material personal interests should not be amended. The current scheme is aligned with the Belcarra recommendations; the Chairperson would be able to address any matters contained in this submission further (if required) at any Inquiry held in relation to the Bill.

[36] See clauses 85 and 115 respectively of the Bill

Crime and Corruption Commission

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Crime and Corruption Commission
QUEENSLAND

Our Reference: AD-19-0991 / 20/028605
Your Reference: A524686

29 January 2020

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

Via email: *egc@parliament.qld.gov.au*

Dear Committee Secretary,

Electoral and other Legislation (Accountability, Integrity and Other Matters) Amendment) Bill 2019

On 28 January 2020, the Economics and Governance Committee (the Committee) called for further submissions concerning the subject Bill.

The Committee noted that:

> The CCC has also advised that it considers that offences relating to the contravention of conflict of interest and register of interest requirements should apply to all members of the Queensland Parliament (hearing transcript, p. 61).

Respectfully, my comments at the public hearing concerning the creation of offences relating to the contravention of conflict of interest requirements were intended to be limited to standards expected of the executive and cabinet and were not intended to extend to all members of parliament.

However, in respect of the failure to update the register of interests, I expressed the view that this ought not to be confined to Ministers but should extend to every Member of Parliament who is under an obligation to update their register of interests for good reason.

The relevant exchange, as recorded in the hearing transcripts, is reproduced below:

> **Chair**: … Originally this seemed to be for application to the executive and cabinet. On page 9 of your submission under the heading 'Intentional lack of compliance' it seems to imply that the bill should be applied to all members of parliament. Is that the intention?
>
> **Mr MacSporran**: I think so. In respect of the failure to update the register of interests, I think so. I cannot think of any sensible reason, frankly, to have that confined to simply ministers. It should apply. As I understand it, every member of parliament has an obligation to update their register, for good reason.

The proposal to create a strict liability offence for a member of parliament failing to update the register about interests (known or ought to be known) would provide a criminal sanction for contravention of the existing obligation imposed on members by s 69B of the *Parliament of Queensland Act 2001*. Currently such failures are only punishable by way of contempt proceedings [s 69B(4)]. However, for reasons given at the public hearing and the Crime and Corruption Commission's (CCC) initial submission, the CCC considers the public interest will be better served, in appropriate cases, by prosecution proceedings. Indeed, the Bill currently includes protection for prosecutions in the public interest by requiring the prior written consent of the Director of Public Prosecutions.

There is a final matter arising from the Bill's proposal to insert criminal offence provisions into the *Parliament of Queensland Act 2001*. Section 47(1) currently provides protections to persons against double punishment for conduct which is both a contempt of the Assembly and an offence against another Act. Section 47(2) empowers the Assembly to direct, by resolution, the Attorney-General to prosecute a person for the offence against the other Act. I recommend that the Bill include consequential amendments to s 47 so that its provisions apply to conduct that is also an offence against the *Parliament of Queensland Act 2001*.

Thank you again for the opportunity to comment on the Bill. Please contact my office directly to discuss the submission further if required.

Sincerely,

A J MacSporran QC
Chairperson