



9th January 2020

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 Electoral and Other Legislation (Accountability, Integrity and Other Matters) 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.

This Bill has a number of components (Chapters). This submission in the main focusses on the *Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters* section and on proposed changes to Local government Regulations that will follow.

Please find our responses to these provisions on the following pages. These responses reflect material provided by the Department of Local Government, Racing and Multicultural Affairs

(DLGRMA) in its *Information paper* published in November 2019 and the Explanatory Notes in one instance.

We have not taken the opportunity to make comments on **expenditure caps** at this stage. We will make a detailed submission in relation to this matter by the deadline of 20 January 2020 as per the recently released *Issues Paper* from your Committee.

Proposed reform	BRU response
Changes to legislation	
<p>Chapter 3 – Amendments relating to signage at State elections</p> <p>Chapter 3 of the Bill will achieve the stated policy objectives by:</p> <ul style="list-style-type: none"> • creating an offence of 10 penalty units for the display of unpermitted signage during voting hours within 100 metres of the entry to a pre-poll voting office or an ordinary polling booth, or a designated entry to the ground, with a candidate (or endorsing registered political party) being permitted to display up to two signs of a specified size; and • creating an offence of 10 penalty units for displaying an election sign or setting up other items to be used for a purpose related to an election within 100m of a building to be used as an ordinary polling booth, the grounds in which a polling booth is located or within 100m of any entrance to the grounds. 	<p>BRU Strongly support:</p> <p>Polling booths are becoming increasingly alarming places to visit due to over enthusiastic supporters from all sides. The number of people handing out how to vote cards should be restricted to the two people with the signs.</p> <p>It has become a race to the bottom as far as signage goes and this should be restricted to two signs per candidate at both pre-poll voting offices and ordinary polling booths. Rolls of plastic signage should be banned totally.</p> <p>Road side signage should also be restricted to two signs at manned positions. These rules need to be strictly enforced.</p> <p>Signage such as the pretend Electoral commission signage used in the last Federal election needs to be totally banned with very heavy penalties imposed for such misuse of electoral signage and material.</p> <p>The use of signage on vehicles or portable signs needs to be treated as if they were fixed. This would prevent vehicles being parked outside polling booths. Their signage size should also be restricted.</p> <p>Private premises within the 100m boundary of polling booths or pre-poll voting offices should not be allowed to display political signage if they have a very recent short term lease.</p> <p>Third party signs should be restricted to outside the 100m perimeter</p>

Proposed reform	BRU response
<p>Chapter 4 – Amendments relating to dishonest conduct of Ministers</p> <p>Chapter 4 of the Bill will give effect to CCC recommendations three and four.</p> <p>The <i>Integrity Act 2009</i> will be amended to create a criminal offence for a Minister who knowingly fails to disclose a conflict of interest with the intent to dishonestly gain a benefit to themselves or another person, or cause detriment to another person. The amendment is intended to capture a Minister’s responsibility to bring all conflicts of interest to the attention of the relevant body or person (Cabinet, a Cabinet committee or the Premier), even if the conflict arises out of an interest already recorded in the Register of Members’ Interests.</p> <p>In addition, the <i>Parliament of Queensland Act 2001</i> will be amended to create a new offence where a Minister intentionally fails to comply with section 69B(1), (2) or (4) (which deal with the obligations on Members of Parliament to register their interests with the Clerk of Parliament) with dishonest intent to obtain a benefit for themselves or another person, or cause detriment to another. The offence only applies to Ministers and reflects the decision-making nature of Cabinet, the higher obligation on Ministers to uphold the standards of integrity and ensure there is public confidence in government.</p> <p>Each of the new offences have a maximum penalty of 2 years imprisonment or 200 penalty units. A member of Parliament may also face the additional consequence of losing their seat in circumstances where they are convicted of either offence and are sentenced to more than one year imprisonment, as provided in section 72(1)(i) of the <i>Parliament of Queensland Act 2001</i>. Charges for both of the new criminal offences will not be able to be laid without the consent of the Director of Public Prosecutions.</p>	<p><i>BRU Strongly support:</i></p> <p>Governments at all levels have lost public trust and support. Without a social licence to govern our political system is weakened and will eventually falter.</p> <p>It is important that there are enforceable Codes of Conduct at all levels of government and we include local government. The penalties must be sever for breaching public trust and for failing to ensure the best outcome for the public for an elected officials personal gain.</p>

Proposed reform	BRU response
<p>Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters</p> <p>Local government system and decision-making</p> <p>Conflicts of interests, ordinary business</p> <p>Planning schemes – ordinary business exemption to apply only to the adoption of new schemes or amendments impacting on the whole of the local government area</p> <p>In more localised planning amendments, councillors with COI to disclose COI and deal with them under existing requirements</p>	<p><i>BRU Qualified Support</i></p> <p>We have previously argued that the notion of “ordinary business” needs to be removed from the legislation or there needs to be a new and tighter definition of “ordinary business”. We continue to believe it is totally inappropriate that planning scheme matters are regarded as ordinary council business and therefore currently exempt from conflict of interest provisions.</p> <p>When most of the Conflict of Interest issues arise out of planning matters it seems absurd to include them in the definition of “ordinary business”.</p> <p>Nevertheless we accept the proposal to restrict the ordinary business exemption to only apply to the adoption of new schemes or amendments that impact on the whole LGA as a reasonable compromise and therefore welcome this reform.</p>

Clarification of Conflicts of interest (COI) requirements

COI provisions do not apply to ordinary business matters (e.g. rates and charges, planning schemes applying to whole local government area, budgets, remuneration of councillors) or where the COI arises due to a councillor being nominated by the council to a board of a corporation or association. However, a council may voluntarily comply with the provisions for a declarable conflict of interest.

Prescribed COIs

Councillors with a prescribed COI in a matter are prohibited from participating in a decision on the matter. (Replaces material personal interest provisions).

Declarable COIs

Declarable COIs are when a councillor has, or could be reasonably presumed to have, a conflict between their or a related party's interest in a matter and the public interest that could lead to a decision being made that is not in the public interest.

A councillor who may participate, or is participating, in a decision about a matter and becomes aware that they have a declarable conflict of interest and, with intent to dishonestly gain a benefit or cause a detriment for the councillor or another person, fails to stop participating in the decision and inform the meeting or the chief executive officer of the interest as required under those subsections commits a serious integrity offence and faces up to two years imprisonment.

A councillor who fails to comply with a decision of eligible councillors that they must not participate in a decision or must leave a meeting, or any conditions on the participation imposed by the eligible councillors, commits an integrity offence with a penalty up to 100 penalty units or a one-year imprisonment (current penalty).

Additional points from the Bill's Explanatory Notes - Chapter 5. Councillor Conflicts of Interest (page 5 & 6):

The new process provides that where a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter unless the Minister has approved the councillor's participation in the decision and must inform a local government meeting or the chief executive officer of the interest, including prescribed particulars, as appropriate.

The Bill also provides for:

- an offence where a councillor with a conflict of interest influences another person who is participating in a decision relating to the matter; and

BRU Strongly support with suggested amendment

We would hope that councils are encouraged to adopt a policy of voluntary compliance.

Prescribed COIs

Support this reform with one reservation/request for amendment:

We believe the gift/donation threshold should be \$500 which is consistent with electoral donations reporting threshold; this would remove potential confusion and we believe \$500 is a sufficient amount to give rise to material interest.

We believe the proposed penalties are appropriate.

Declarable COIs

The proposed reform is too vague due to the failure of the legislation to define what is meant by "public interest".

This may be rectified if the Department develops some guidelines and case studies to assist councillors better understand what is in the public interest.

Again, we believe the proposed penalties are appropriate.

BRU values the role of the Minister in this situation, but is very concerned in relation to the situation where a councillor has a Prescribed COI, for example, where a mayor or councillor is a paid director of a public fund and that fund has a significant investment in, and major contract with the Council in relation to a multi-million dollar Council asset.

BRU supports the provision of an offence where a councillor with a COI and we presume a Prescribed COI, influences another person participating in a decision relating to the matter. We seek clarification in relation to the definition of "influences". Is the Councillor (Mayor) with the COI or Prescribed COI able to have private discussions with other councillors who will be making decisions re the matter on which the COI has been declared? Is the councillor/mayor with the COI able to participate in discussions during, for example

<ul style="list-style-type: none">• requirements about keeping records about conflicts of interest.	<p><i>an adjournment of the meeting or informal discussions prior or post the meeting?</i></p>
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Proposed reform	BRU response
<p>Registers of interests</p> <p>Within 30 days of their election councillors must submit new register of interests for themselves and any specified related persons, or they will cease to be a councillor</p> <p>Councillors must notify of any changes to their interests within 30 days</p> <p>Councillors must provide an update to their register within 30 days of end of financial year</p> <p>A councillor, with intent to dishonestly gain a benefit for the councillor or another person, commits a serious integrity offence and could face up to two years imprisonment (indictable offence under the Criminal Code) if they:</p> <ul style="list-style-type: none"> • knowingly fail to inform the chief executive officer, in the approved form, of the particulars of the new interest or change of interest within 30 days after the interest arises or the change happens, or • knowingly fail to inform the chief executive officer, in the approved form, whether a register of interests for the councillor or a person related to the councillor is correct or the particulars of an interest to be recorded in the register of interests • give the chief executive officer a register of interests or information relating to a register of interests that the councillor knew to be false or misleading in a material particular. <p>NOTE: where there is no intent to gain a benefit or no knowledge element, the conduct is prescribed as misconduct.</p>	<p><i>BRU Strongly support</i></p> <p>BRU has always advocate for consistency across local and state jurisdictions where appropriate and the Bill achieves this by introducing new obligations on councillors in relation to registers of interests to align with State MPs statements of interests, including appropriate offences and penalties for non-compliance.</p> <p>Might we also suggest a Code of Conduct or Local Government Elected Officials.</p>

Proposed reform	BRU response
<p>Political and support staff for councillors</p> <p>New code of conduct for political and support staff to be made by the Minister for Local Government</p> <p>Councillors can direct administrative assistants consistent with guidelines about administrative assistance</p> <p>Councils must make a resolution to create political staffer positions</p> <p>Political staff are appointed by contract for the councillor's term, and cease if councillor ceases to be a councillor, unless re-appointed by new councillor</p> <p>Political staff required to submit a register of interests</p> <p>Political staff subject to offences about dishonesty matters and about the use of information obtained in their role</p> <p>Costs of political staffers to be reported (e.g. in annual report)</p>	<p><i>BRU Support with strong reservations noted</i> <i>We do not believe that councils should be appointing political staff and would favour a total ban on such appointments.</i></p> <p>If political staff appointments are to continue to be made however, we would offer the following recommendations:</p> <ul style="list-style-type: none"> • That the code of conduct for such staff be developed as a matter of urgency once this legislation is passed. • Resolutions to create political staff positions and appoint or reappoint political staffers must be by resolution of full council in open sessions. • Reporting of costs associated with political staff must be available to the public. We agree that the Annual Report would be a good mechanism for doing this but feel this should also be included in each council's Budget and should be publicly announced at the time of such appointments. <p>We would also like clarification as to whether political staff can represent their Mayor or Councillor and whether they can attend informal meetings. In our view they should not be able to do either; we see the role of a political advisor as being limited to purely providing advice to their Mayor/Councillor.</p> <p><i>BRU would support the inclusion of the provision that "where a councillor or mayor declares a Prescribed COI in relation to a council matter under discussion" that their associated political adviser (under whatever guise or name they function) have the same restrictions apply to them for that particular issue.</i></p> <p><i>We are aware of instances where currently the councillor declares a COI and leaves the meeting but the political adviser remains in the meeting.</i></p>

Proposed reform	BRU response
<p>BCC senior contract employees</p> <p>BCC councillors cannot be involved in the appointment of contract employees except only for CEO and senior executive employees who report directly to the CEO</p>	<p><i>BRU Support</i></p>
<p>Dissolution of a local government</p> <p>The term of an administrator may expire at the conclusion of a quadrennial local government election (rather than require an ‘election’)</p> <p>Provision for short-term absences of an administrator</p> <p>State government can recover the costs of an Interim Management Committee from the local government</p>	<p><i>These reforms seem appropriate and BRU support in principle.</i></p>
<p>Councillor vacancies</p> <p>Mayors:</p> <ul style="list-style-type: none"> • in first 36 months: by-election • last 12 months: councillors appoint a mayor <p>Councillors:</p> <ul style="list-style-type: none"> • in first 36 months: <ul style="list-style-type: none"> ○ for single-councillor division: by-election ○ for multi-member or undivided council: appoint next candidate • last 12 months: appointment by council • last 3 months: may leave vacant 	<p>BRU Support the timeframes indicated</p> <p>BRU believe that Mayors and Councillors should not be allowed to resign in the last twelve months just to allow their party affiliated successors time to become established in the electorate. Elected officials who resign during that period must have a very good reason for doing so. Going to their next position is not a good reason.</p> <p>This has already happened a number of times in Brisbane. If political parties wish to take advantage of the value of incumbency they can do so via a by-election that they pay for.</p> <p>We agree that in the last 12 months councillors should appoint the Mayor from their number without the need to replace that councillor.</p> <p>In the case of councillor vacancies, there needs to be clarity as to how appointments in the last 12 months will be made. We would like more clarity on the mechanism for making such appointments and what constitutes a “qualified person”.</p> <p>We would urge that this process must be transparent; it should involve public advertising of the vacancy and require that any appointment is made by resolution of the full Council in a public session of Council.</p> <p>We accept that in the last 3 months vacancies can be left vacant.</p>

Proposed reform	BRU response
<p>Technical amendments</p> <p>Technical amendments to assist ECQ run elections</p>	<p><i>BRU Support</i></p> <p><i>The Part 3 Amendment of Local Government Electoral Act 2011</i> clauses appear appropriate.</p>
<p>Changes to regulations</p>	
<p>Registers of interests</p> <p>Any donations made of \$500 or greater must be recorded</p> <p>Gifts between \$500 and \$2000 need only to be recorded for two terms</p> <p>Electoral gifts do not need to be recorded</p> <p>Clarification that being a member of a board of a community organisation needs to be declared but not memberships</p> <p>Clarification of when interests arising from official duties are not included in register</p> <p>Only councillors' current interests to be published on the local government website</p> <p>Councils to keep ROIs for 10 years after councillor's office or officer employment ends</p>	<p><i>BRU Support</i></p> <p>We understand, that whatever threshold is legislated, it will be made clear that the amount applies to a single gift or where smaller gifts from the same source cumulatively exceed the threshold.</p> <p>We also understand that the reason electoral gifts do not need to be recorded in registers of interest is because candidates' electoral gifts will be recorded and published on the ECQ's EDS website (in real time) and they will be accessible to the public and need not be duplicated. This provision is therefore acceptable to us on that basis.</p> <p>We believe the <i>all councillor RoIs</i> in a council term should be retained and be publically available on council websites and not just the current RoI.</p>
<p>Agendas</p> <p>Agenda and associated reports and other documents to be published on council website by 5 pm on the day following the day it is made available to councillors</p> <p>Reports to be considered at the meeting provided after the agenda is sent are to be published on council website as soon as practicable after they are made available to councillors</p> <p>Confidential reports or papers exempt from publication on the website</p>	<p><i>BRU Strongly support</i></p>

Proposed reform	BRU response
<p>Minutes</p> <p>Committee meetings must have minutes</p> <p>Unless previously made available with the agenda, minutes must include reports and other associated information used in the meeting</p> <p>Unconfirmed minutes to be published five business days after the end of the meeting</p> <p>Confirmed minutes to be published immediately after the meeting at which they are confirmed</p> <p>Clarification that a councillor can confirm the meeting minutes despite having a conflict of interest in a matter discussed or decided in the meeting and regardless of whether they participated in that matter</p> <p>Confidential reports or papers to be exempt from publication on the council website</p>	<p>BRU Strongly support</p> <p>We would like to propose the following additional requirements for the Committee’s consideration:</p> <p>That the term “committee” meetings also includes workshops, portfolio meetings or a committee meeting by any other name.</p> <p>Mandate that the minutes of all Council meetings show how all councillors voted on each motion without the need for a councillor to request a division (a practice that most councils already do). Interested members of the community should be able to see how each councillor voted on individual motions rather than just indicating whether the motion was Carried or Lost.</p> <p>Mandate the introduction of live video steaming (for real-time community access) and video or audio recording (for post-meeting community access) of all public meetings of councils including committee meetings. With modern technology this should not be too expensive, even for small councils. If necessary the cost of this could/should be borne by the State Government for rural, remote, indigenous and very small councils.</p> <p>This would allow councils to prepare Hansard-like minutes and would allow voters to make judgements about the performance of their council as a whole, and of individual councillors.</p> <p>The introduction of live streaming in February 2019 at the Noosa Council suggests a perfectly satisfactory quality can be achieved at an affordable cost for even smaller councils.</p>

<p>Closed meetings</p> <p>Tightening of topics that can be discussed in closed session as follows:</p> <p>o remove:</p> <ul style="list-style-type: none"> • appointment, dismissal or discipline of employees other than the CEO • contracts proposed to be made • actions or decisions under the Planning Act 2016 • other business where public discussion may prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage <p>o add:</p> <ul style="list-style-type: none"> • a council’s position in a negotiation <p>o retain:</p> <ul style="list-style-type: none"> • legal advice obtained by a council • matters that directly affect the health and safety of an individual or group 	<p>BRU Strongly support with one reservation</p> <p>Use of closed/confidential session at council meetings is completely out of hand in many councils.</p> <p>We strongly support the proposed changes that would mean councils will not be able to discuss or decide in closed session:</p> <ul style="list-style-type: none"> • appointment, dismissal or discipline of employees other than the CEO • contracts proposed to be made • actions or decisions under the Planning Act. <p>Local Government Regulations are weak in this area allowing councils to use this provision to avoid open and transparent governance. This is at odds with the Local Government Principles listed at the beginning of the Local Government Act 2009! There are very few exceptional circumstances that warrant being dealt with in closed session and the current legislation provides far too much leeway.</p> <p>We realise that actual decisions cannot be made in closed session but the motions passed once council meetings move back into open session are typically meaningless. They are in a form that provides the community no real knowledge of how the actual decision was made and more importantly an understanding of what informed councillors’ decision making. In most cases this results in ratepayers being denied any knowledge of how their rates are being used and therefore the capacity to determine if decisions made are in fact in their financial or other interests.</p> <p>We have significant concern about the addition of “a council’s position in a negotiation” clause. This is too vague and provides the opportunity for a “resourceful” CEO to overuse this clause to counter the removal of the existing clauses referred to above that they have previously relied on to recommend council moves into closed session.</p> <p>BRU recommends that whenever the “negotiation’ clause is applied to “close” a meeting to the public, or move into “confidential” session that a timeframe for release of the associated documents be included in any resolutions made in open session.</p> <p>We further recommend that where there are a number of items to be considered in closed session that each item be subject to a separate motion rather than be dealt with as a single “omnibus” motion. In the council we most closely monitor, councillors have consistently failed to exercise their right to do this which</p>
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	<p>suggests the need for a mandatory regulation to that effect.</p>
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Proposed reform	BRU response
<p>Informal meetings</p> <p>A councillor who has a declarable COI in a matter to be addressed in an informal meeting or a workshop cannot attend the informal meeting or workshop for that agenda item unless the local government has previously approved their participation in that matter</p> <p>A councillor who has a prescribed COI cannot attend an informal meeting or a workshop</p> <p>Any new or additional information arising at or from the informal meeting or workshop to be made available as soon as possible after the briefing session or workshop to all councillors and the public</p> <p>Councils to have a policy about informal meetings and are required to publicly notify when and where such meetings will be held and their outcomes</p>	<p>BRU Strongly support</p> <p>We would like clarification as to whether political staff can represent their Mayor or councillor or even attend informal meetings.</p> <p>A suggested above in the section on Prescribed COIs, BRU would support the inclusion of the provision that “where a councillor or mayor declares a Prescribed COI in relation to a council matter under discussion” that their associated political adviser (under whatever guise or name they function) have the same restrictions apply to them for that particular issue in informal meetings.</p> <p>We would recommend that councils are required to publicly notify when and where informal meetings will be held and their outcomes and who is in attendance.</p>

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.

We look forward to the rest of the legislative implementation of the CCC Operation Belcarra Report to deal with the remaining outstanding recommendations. Should you require any further information I can be contacted on [REDACTED].

We would appreciate the opportunity to appear before the Committee at the Public Hearing to be held on 20 January 2020. To expedite the Committee’s procedures we are happy to be included in a combined community presentation to the Committee that we are aware the SEQ Alliance (SEQA) is requesting on behalf of the broader community as represented by organisations such as BRU.

Yours sincerely
 Elizabeth Handley
 President
 The Brisbane Residents United Inc steering group