



Department of Local Government,
Racing and Multicultural Affairs

Our ref: DGC18/265

Your ref: A293891

16 MAR 2018

Mr Linus Power MP
Chair
Economics and Governance Committee
egc@parliament.qld.gov.au

Dear Mr Power

Thank you for your letter of 12 March 2018 about the Economics and Governance Committee's inquiry into the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 (the Bill).

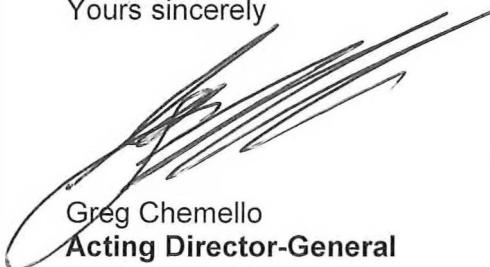
Please find enclosed a written briefing on the Bill for the Committee's information.

The Department of Local Government, Racing and Multicultural Affairs will be pleased to provide a briefing to the Committee on 19 March 2018 along with officers from the Department of Justice and Attorney-General.

Details of the officers attending the briefing have been provided to the Committee Secretariat by email.

Ms Josie Hawthorne, Acting Director, Legislation Services is the Department's contact officer. If you require further information, I encourage you to contact Ms Hawthorne on [REDACTED] or by email at [REDACTED]

Yours sincerely



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Briefing for the Economics and Governance Committee

Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018

Background and policy intent

The Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 (the Bill) amends the *City of Brisbane Act 2010* (COBA), the *Electoral Act 1992* (EA), the *Local Government Act 2009* (LGA) and the *Local Government Electoral Act 2011* (LGEA) to implement the Government's response¹ to certain recommendations of the Crime and Corruption Commission's (CCC) report *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (the Belcarra Report)² to:

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

Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government

Following the Queensland local government elections on 19 March 2016, the CCC received numerous complaints about the conduct of candidates in the 2016 local government elections for the Gold Coast City Council, Moreton Bay Regional Council, Ipswich City Council and Logan City Council.

In response to these allegations, in September 2016 the CCC initiated Operation Belcarra to:

- determine whether candidates committed offences under the LGEA that could constitute corrupt conduct; and
- to examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government, with a view to identifying strategies or reforms to help prevent or decrease corruption risks and increase public confidence.

The objectives of the terms of reference for the Operation Belcarra Inquiry included examining issues and practices associated with a number of related matters, including the management of councillor conflicts of interest.³

On 4 October 2017, the Speaker caused the Belcarra Report to be tabled in the Legislative Assembly. The report contains 31 recommendations that the CCC believes will help to reduce corruption risks and promote integrity and public confidence in future local government elections, and in local government more broadly.⁴

¹ A copy of the Government's response to *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* is available at:

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1960.pdf>

² *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*. A copy of the report is available at:

<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T1861.pdf>

³ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 96.

⁴ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 6.

On 10 October 2017, the Premier and Minister for the Arts tabled the Government's response to the Belcarra Report which supports or supports in principle all recommendations.

The following recommendations are considered significant by government to require urgent legislative change:

- Recommendation 20 to ban donations from property developers for candidates, third parties, political parties and councillors. The Premier announced that the ban would be extended to state government elections and as such this is extended in the Bill to Members of State Parliament and candidates for election to the State Parliament.
- Recommendations 23 to 26 to strengthen the processes associated with the management of conflicts of interest within council meetings and penalties for non-compliance. This is extended to material personal interests where appropriate.

The Bill will also strengthen the processes for the declaration of councillors' conflicts of interest and material personal interests.

In October 2017, the Queensland Ombudsman released *The Cairns Regional Council councillor conflicts of interest report: An investigation into the way in which councillors at Cairns Regional Council deal with conflicts of interest* (the Ombudsman's Report).⁵

The Ombudsman's Report states that '*the purpose of commencing the investigation was to determine whether council and councillors comply with relevant legislative and policy requirements and act reasonably in relation to the disclosure and management of councillors' conflicts of interest*'.⁶

The Ombudsman formed 5 opinions and made 5 recommendations.⁷ The findings and recommendations contained in the Ombudsman's Report were considered as part of the analysis feeding into the preparation of the Bill.

Prohibition on donations from property developers

The Belcarra Report recommendation 20: *That the Local Government Electoral Act, the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers. This prohibition should reflect the New South Wales provisions as far as possible, including in defining a property developer (s. 96GB, Election Funding, Expenditure and Disclosures Act 1981), making a range of donations unlawful, including a person making a donation on behalf of a prohibited donor and a prohibited donor soliciting another person to make a donation (s. 96GA), and making it an offence for a person to circumvent or attempt to circumvent the legislation (s. 96HB). Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors.*

Background

In Queensland, the LGEA and the EA govern the conduct of local government and State elections respectively. Both Acts include provisions relating to the disclosure of gifts.

⁵ *The Cairns Regional Council councillor conflicts of interest report*. A copy of the report is available at: <https://www.ombudsman.qld.gov.au/improve-public-administration/reports-and-case-studies/investigative-reports/the-cairns-regional-council-councillor-conflicts-of-interest-report>

⁶ *The Cairns Regional Council councillor conflicts of interest report*, page 29.

⁷ *The Cairns Regional Council councillor conflicts of interest report*, Executive Summary Opinions and Recommendations pages iv, v.

The current governance regime for political donations in Queensland relies on disclosure of gifts and loans to promote transparency and accountability. At present, the EA requires gifts of \$1000 or more to be disclosed by political parties, candidates, third parties, associated entities and donors. Similarly, the LGEA requires candidates, groups of candidates and third parties to disclose gifts and loans of \$500 or more.

In Queensland, whilst there are currently no caps on political donations under the LGEA or the EA, there is precedent for imposing restrictions on certain political donations. Under the EA restrictions include:

1. gifts of foreign property;
2. anonymous donations of \$200 or more for candidates or \$1000 or more for political parties; and
3. loans of \$1000 or more from a non-financial institution, without prescribed records.

Under the LGEA restrictions include:

1. anonymous donations of \$500 or more for candidates or groups of candidates; and
2. loans of \$500 or more for candidates or groups of candidates from a non-financial institution, without prescribed records.

In New South Wales, Part 6, Division 4A of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) prohibits the making or acceptance of a political donation by a prohibited donor or the soliciting of a person by or on behalf of a prohibited donor to make a political donation. The term 'prohibited donor' is defined to mean a property developer, a tobacco industry business entity or a liquor or gambling industry business entity.

The New South Wales ban was the subject of a High Court challenge in 2015, however the majority of the High Court upheld the validity of Part 6, Division 4A.⁸

Aside from New South Wales, no other jurisdictions ban political donations. In 2015, the Australian Capital Territory (ACT) removed a restriction on receiving donations from organisations and persons not enrolled in the ACT for use on ACT elections.

Policy intent

The Belcarra Report noted *'the inherent potential for political donations to adversely affect public confidence in local councils, particularly when donors have private interests that are significantly impacted by council decision-making.'*⁹

The Belcarra Report states *'the fact that allegations of this nature have been repeatedly examined in major inquiries in Queensland and other Australian jurisdictions over the last 25 years highlights the inherent potential of donations to lead to perceptions of corruption. ...*

It is notable that concerns about local government corruption in Queensland continue to arise from political donations despite increased transparency of donations and council decision-making over time. In the CCC's view, this is evidence that relying solely on transparency has some limitations. Specifically, the inevitably close connections between property development interests and local government decision-making mean that transparency is insufficient to manage the risks of actual and perceived corruption associated with donations from property developers. The CCC therefore

⁸ *McCloy v New South Wales* [2015] 257 CLR 178

⁹ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 76.

considers that Queensland must follow the lead of New South Wales in banning donations from property developers.”¹⁰

Although the Belcarra Report was focused on the local government level, consistent with the approach in New South Wales, the Bill also includes amendments to the EA to introduce a ban at the State level. In his explanatory speech, the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, the Honourable Stirling Hinchliffe stated: “*Consistent with the approach adopted in New South Wales following a number of ICAC¹¹ investigations and to address the risk of corruption and undue influence that political donations from property developers has the potential to cause at a local government and state government level, the Bill applies at both a local and state government level.*”

As outlined in the Explanatory Notes,¹² the State has a significant role in Queensland’s planning framework – administering the entire planning framework; mandating the powers that can be exercised by the Planning Minister, including approving planning schemes and other local planning instruments, sometimes deciding on a development application when council is the assessment manager; mandating the role and responsibilities of local governments; and assessing and advising on applications that trigger a state planning matter.

Amendments in the Bill

To implement the government’s response to the Belcarra report recommendation 20, clauses 9 to 20 of the Bill amend the EA and clauses 27 to 35 of the Bill amend the LGEA.

The Bill:

- makes the making and acceptance of political donations made by, or on behalf of, prohibited donors unlawful;
- makes it unlawful for prohibited donors (or others on their behalf) to solicit other persons to make political donations; and
- provides for appropriate transitional arrangements.

The term ‘prohibited donor’ is defined in new section 273 of the EA (clause 13) and new section 113 of the LGEA (clause 32) to mean a property developer and any industry representative organisation whose members are mainly property developers. It does not include an entity which the Electoral Commissioner has determined is not a prohibited donor under new section 277 of the EA or new section 113D of the LGEA.

The term ‘property developer’ is defined in new section 273 of the EA and new section 113 of the LGEA to mean a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land; and with the ultimate purpose of the sale or lease of the land for profit and a close associate of a corporation mentioned above. ‘Close associates’ include a related corporation, a director of the corporation and their spouse.

For the purposes of the ban, a ‘political donation’ is defined in new section 274 of the EA and new section 113A of the LGEA to mean:

¹⁰ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 78.

¹¹ The Independent Commission Against Corruption (ICAC). New South Wales.

¹² See page 3 of the Explanatory Notes to the Bill.

- gifts made to or for the benefit of a political party, elected member of Parliament, councillor or candidate (or group of candidates for local government) in an election, or
- gifts made to another entity to reimburse the entity for, or to enable the entity to make a gift listed above or to incur electoral expenditure.

While gifts made by a person in a private capacity to an individual for the recipient's private use are specifically excluded from the ban under new section 274(2) of the EA and new section 113A(2) of the LGEA, the ban will apply to political party subscription fees which exceed \$1000 per year and any fundraising contributions which form part of the proceeds of a fundraising venture or function.

The Bill includes a range of new offences with strong penalties. The maximum penalty for doing an act or making an omission that is unlawful, if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful, is 400 penalty units or 2 years imprisonment (new section 307A of the EA and new section 194A of the LGEA). Further, it is an offence for a person to knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition about political donations. The maximum penalty that may be imposed for these offences is 1,500 penalty units or 10 years imprisonment (new section 307B of the EA and new section 194B of the LGEA).

It is also an offence for a person to give the Electoral Commissioner information for the purposes of a determination under section 277 of the EA or section 113D of the LGEA that the person knows is false or misleading in a material particular (new section 307C of the EA and new section 194C of the LGEA). The maximum penalty that may be imposed for these offences is 400 penalty units or 2 years imprisonment.

The new offences in sections 307A to 307C of the EA and section 194A to 194C of the LGEA are indictable offences.

The Bill also includes specific provision for prohibited donations to be recovered by the State (new section 276 of the EA and new section 113C of the LGEA). Under these provisions, if a person accepts a prohibited donation, the State may recover:

- if the person knew it was unlawful to accept the prohibited donation, an amount equal to twice the amount or value of the prohibited donation; or
- otherwise, an amount equal to the amount or value of the prohibited donation.

The transitional provisions for the property developer donations prohibition (new section 427 of the EA and new section 212 of the LGEA) apply from the date of introduction of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 - that is, 12 October 2017. Accordingly, any payments that would be unlawful under the property developer donation prohibition which are made on or after 12 October 2017 will, on commencement, need to be repaid to the donor within 30 days of the commencement. No offence is committed in respect of donations made or received between 12 October and commencement, however it will be an offence to fail to repay the donation.

Managing councillor conflicts of interest and material personal interests

The Belcarra Report 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.

Background

Currently, the COBA section 175(4) and the LGA section 173(4) provide that a councillor must deal with a real conflict of interest or perceived conflict of interest in a transparent and accountable way.

The COBA section 175(5) and the LGA section 173(5) provide that without limiting subsection (4), the councillor must inform the meeting of—

- the councillor's personal interests in the matter; and
- if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.

On commencement of the LGA in 2009 and the COBA in 2010, sections 173(4) and section 175(4) respectively (the original provisions) provided that if the other persons who are entitled to vote at the meeting are informed about a councillor's interest in a matter, by the councillor or someone else, the other persons must—

- decide whether the councillor has a conflict of interest, or could reasonably be taken to have a conflict of interest, in the matter; and
- if the other persons decide that is the case—direct the councillor to leave the meeting room (including any area set aside for the public), and stay out of the meeting room while the matter is being discussed and voted on.

In 2011, the *Local Government Electoral Act 2011* (Act No. 27 of 2011) sections 250 and 278 substituted the original provisions to provide the current legislative requirements.

The explanatory notes for the Local Government Electoral Bill 2011 stated the unamended COBA section 175 and LGA section 173 'required councillors to decide whether another councillor had a conflict of interest. The nature of some potential conflicts of interest are such that it is possible, and at times appropriate, for a councillor to determine that they are able to make a decision in the public interest, particularly where the conflict of interest is at best tenuous. Also, the other councillors of the Council may not be in a better position than the councillor concerned to determine whether that councillor has a conflict of interest'.¹³

The amendments are consistent with the provisions under the repealed Local Government Act 1993, whereby a councillor with a conflict of interest or perception of a conflict of interest, in a matter under consideration at a local government's meeting could decide whether he or she was able to make a decision in the public interest. If the councillor was able to act in the public interest, then the councillor was able to participate in the discussion and vote on the matter. Any councillor who failed to adequately manage his or her conflict of interest at a meeting was subject to disciplinary proceedings before the conduct review panels that operated under that legislation'.¹⁴

¹³ Explanatory Notes for amendments moved during consideration in detail to the Local Government Electoral Bill 2011, pages 10-11.

¹⁴ Explanatory Notes for amendments moved during consideration in detail to the Local Government Electoral Bill 2011, page 14.

Policy intent

The Belcarra Report states ‘...the CCC sees as the key problem underlying the failure of some councillors to declare or appropriately deal with real or perceived conflicts of interest — for the most part, the legislative framework does not compel councillors to act in a particular way, but councillors are not in turn given sufficient guidance to help them exercise their discretion.’¹⁵

The Belcarra Report states ‘...the CCC does not believe that all conflicts of interest should require the councillor to leave the room and abstain from voting. However, the CCC considers that there is value in the other aspects of [the original] provisions. 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.

The CCC notes that the rationale for removing the original requirement in 2011 was that it is sometimes possible and appropriate for a councillor to determine that they can make a decision in the public interest, and that other councillors are not necessarily in a better position than the councillor themselves to determine if there is a conflict. The CCC acknowledges that this may sometimes be the case. However, the CCC believes that other councillors can give voice to other perspectives, and may be better able to reflect on the perception of a conflict than the councillor in question...’¹⁶

Amendments in the Bill

To implement the government’s response to the Belcarra Report recommendation 23, clause 6 of the Bill inserts new section 177E(3), (4) in the COBA, and clause 24 inserts section 175E(3), (4) in the LGA to provide that if the other councillors who are entitled to vote at the meeting are informed about a councillor’s personal interests in a matter other than an ordinary business matter by the councillor or another person, and the councillor has not voluntarily left the meeting while the matter is discussed and voted on - the other councillors must decide—

- whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and
- if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor—
 - must leave the place at which the meeting is being held while the matter is discussed and voted on; or
 - may participate in the meeting in relation to the matter, including by voting on the matter.

The councillor must comply with a decision under subsection (4) that the councillor must leave and stay away from the place. Maximum penalty—100 penalty units or 1 year’s imprisonment.

Staying in a meeting to maintain a quorum

Background

Currently section 173(7) of the LGA and section 175(7) of the COBA provide that if a quorum at a local government meeting cannot be formed because a councillor proposed to exclude themselves from the meeting because they have a real or perceived conflict of interest in a matter other than an ordinary business matter to be discussed at the meeting, the councillor does not contravene the requirement to deal with the conflict of interest in a transparent and accountable way by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the councillor, together with any other required number of councillors, forms a quorum for the meeting.

¹⁵ Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government, page 82.

¹⁶ Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government, page 84.

In relation to material personal interests, section 172(7) of the LGA and 174(7) of the COBA provide that the Minister may, by signed notice, approve a councillor taking part in a meeting, or being in the chamber where the meeting is being conducted, if, because of the number of councillors subject to the obligation to leave the meeting because of a material personal interest, conduct of the meeting would be obstructed if the approval were not given; or (b) it appears to the Minister to be in the interests of Brisbane that the approval be given. The Minister may give the approval subject to conditions stated in the notice.

In the opinion (opinion 2) of the Ombudsman, the Ombudsman's Report states *'The practice of all Unity Team members using s.173(7) of the LGA to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum, does not comply with s.173(7) and is therefore administrative action which is contrary to law under s.49(2)(a) of the Ombudsman Act.'*¹⁷

Policy intent

Recommendation 2 of the Ombudsman's Report is *'Council's CEO advise Unity Team members to cease using s.173(7) of the LGA as a group to stay in a meeting to maintain a quorum, in circumstances where it is not necessary for all members to stay to maintain a quorum.'*

The Ombudsman commented *'I note the department's advice as to the proposed changes to relevant legislation. Should the changes proceed, s.173(7) of the LGA will be repealed and the issue raised in this report will not be of specific relevance going forward, as there will no longer be provision for councillors with a conflict of interest to stay in a meeting for the sole purpose of maintaining a quorum.'*

Amendments in the Bill

As it would not be practical for a vote on a matter to occur where the majority of councillors have declared personal interests in the matter, the Bill provides clause 6 inserts new s177C(3) in the COBA and clause 24 inserts new section 175C(3) in the LGA to provide that if a majority of councillors at the meeting of the council inform the meeting about material personal interests in a matter, the council must delegate deciding the matter under the LGA section 257 and the COBA section 238 unless deciding the matter can not be delegated under those sections.

Clause 6 also inserts new s177E(6) in the COBA and clause 24 inserts new s175E(6) in the LGA to provide that if a majority of councillors at the meeting of the council inform the meeting about a real or perceived conflict of interest in a matter, the council must delegate deciding the matter under the LGA section 257 and the COBA section 238 unless deciding the matter can not be delegated under those sections.

The Bill further provides in new section 177F of the COBA and new section 175F of the LGA that the Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting or being present while a matter is being discussed and voted on, if the matter could not otherwise be decided at the meeting because councillors are subject to the obligation to leave the meeting or because councillors have informed the meeting about personal interests in the matter, and deciding the matter can not be delegated.

¹⁷ *The Cairns Regional Council councillor conflicts of interest report*, page 13.

Records about conflicts of interests and material personal interests at meetings

Background

Currently, the COBA section 175(8) and the LGA section 173(8) provide that the following must be recorded in the minutes of the meeting, and on the local government's website—

- the name of the councillor who has the real or perceived conflict of interest;
- the nature of the personal interest, as described by the councillor;
- how the councillor dealt with the real or perceived conflict of interest;
- if the councillor voted on the matter—how the councillor voted on the matter;
- how the majority of persons who were entitled to vote at the meeting voted on the matter.

Policy intent

The Belcarra Report recommendation 23 also stated '*The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting*'.

Amendments in the Bill

Conflict of interest

To implement the government's response to the Belcarra Report recommendation 23 in relation to recording particular information about conflicts of interest in the minutes of the meeting, clause 6 of the Bill inserts new section 177J(2) in the COBA and clause 24 inserts new section 175J(2) in the LGA to provide that the following must be recorded in the minutes of the meeting and on the council's website—

- the name of the councillor who has a real conflict of interest or perceived conflict of interest in the matter;
- the councillor's personal interests in the matter, including the particulars mentioned in section 177E(2) COBA/175E(2) LGA, as described by the councillor;
- the decisions made under section 177E(4) COBA/175E(4) LGA and the reasons for the decisions;
- whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F COBA/175F LGA;
- if the councillor voted on the matter—how the councillor voted on the matter;
- how the majority of councillors who were entitled to vote at the meeting voted on the matter.

Material personal interest

To complement the amendments in relation to recording conflicts of interest, clause 6 of the Bill inserts in COBA new section 177J(1) and clause 24 inserts in the LGA new section 175J(1) to provide that the following information must be recorded in the minutes of the meeting and on the council's website—

- the name of the councillor who has a material personal interest in the matter;
- the material personal interest, including the particulars mentioned in section 177C(2)(a) COBA/175C(2)(a) LGA, as described by the councillor;
- whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F COBA/175F LGA.

Declaring a conflict of interest or a material personal interest at a meeting

Background and policy intent

Community concern surrounds councillors making rudimentary declarations that may not provide sufficient information for a reasonable person to understand the conflict of interest as described nor the precise nature of the conflict of interest.

The Ombudsman commented in the Report that *'section 173(4) of the LGA requires councillors to deal with conflicts of interest in a 'transparent and accountable way'. It appears that the focus of disciplinary bodies, and consequently councillors, is on ensuring conflicts of interest are declared where appropriate. The basis for this appears to be that, once a conflict of interest is declared, it is generally considered to be transparent. In terms of accountability, it is then left largely to the court of public opinion as to whether the councillor in question has dealt appropriately with that conflict of interest, the day of judgement being the day upon which the next local government election is held.*

Fundamental to this reasoning is that there is true transparency, in that the information readily available in the public arena, is sufficient to allow the public to properly judge whether the conflict of interest has been appropriately dealt with. Based on the observations in this report, this is not always the case, in that it is not always possible to determine from conflict of interest declarations, the amount and timing of relevant electoral donations.

In considering the legislative requirements around conflict of interest declarations, I noted that s.173(4) and s.173(8) of the LGA do not complement each other in fulfilling the local government principles as they relate to transparent decision-making. The investigation found that s.173(4) and s.173(8) create uncertainty in terms of what is expected of councillors when making conflict of interest declarations during meetings. I referred this issue to the department for its consideration. The [then] department considered the findings and recommendations contained in my proposed report as part of its analysis feeding into the preparation of the Bill'.¹⁸

Recommendation 3 of the Ombudsman's Report is *'The Director-General of the Department of Infrastructure, Local Government and Planning consider and advise the government on necessary amendment to s.173(4) and s.173(8) of the LGA to clearly set out what is required to be disclosed by councillors to achieve transparency and accountability in relation to the declaration of conflicts of interest, including consideration of the amount and timing of an electoral donation.'*¹⁹

As mentioned previously, currently, the COBA section 175(4) and the LGA section 173(4) provide that the councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way requiring councillors to inform the meeting of—

- the councillor's personal interests in the matter; and
- if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.

Although the Belcarra Report did not make a recommendation regarding the specific information that a councillor must provide about their conflicts of interest or material personal interest, the report noted that *'where government officials have poorly guided discretionary powers, the resulting lack of certainty can lead to perceived corruption and reduced public confidence'.²⁰*

¹⁸ The Cairns Regional Council councillor conflicts of interest report, page 29, 30.

¹⁹ The Cairns Regional Council councillor conflicts of interest report, page 22.

²⁰ Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government, page 83.

The opportunity has been taken with this Bill to provide greater clarity and certainty on the details required to be disclosed when a councillor declares a real or perceived conflict of interest. These amendments have also been designed to better accord with community expectations on such matters.

Amendments in the Bill

Conflict of interest

To assist councillors in how to deal with a conflict of interest in a transparent and accountable way, clause 6 of the Bill inserts in COBA new section 177E and clause 24 inserts in the LGA new section 175E to provide that if a councillor has a real or perceived conflict of interest in a matter other than an ordinary business matter to be discussed at a local government meeting, the councillor must inform the meeting about the councillor's personal interests in the matter, including the following particulars about the interests:

- the nature of the interests
- if the councillor's personal interests in the matter arise because of the councillor's relationship with, or receipt of a gift from, another person:
 - the name of the other person
 - the nature of the relationship or value and date of receipt of the gift
 - the nature of the other person's interests in the matter.

The maximum penalty for failing to inform the meeting about the councillor's personal interests including the specified particulars is 100 penalty units or 1 year's imprisonment.

Material personal interest

Clause 6 of the Bill inserts in the COBA new section 177C and clause 24 inserts in the LGA new section 175C to provide that if a councillor has a material personal interest in a matter other than an ordinary business matter to be discussed at a local government meeting, the councillor must inform the meeting of the councillor's material personal interest, including the following particulars about the interest:

- the name of the person or other entity who stands to gain a benefit or suffer a loss depending on the outcome of the consideration of the matter at the meeting
- how the person or other entity stands to gain a benefit or suffer the loss
- if the person or entity who stands to gain the benefit or suffer the loss is not the councillor, the nature of the councillor's relationship to the person or entity.

New section 177C of COBA and new section 175C of the LGA are consistent with the current provisions in that if a councillor has a material personal interest in a matter the councillor must leave the place at which the meeting is being held while the matter is being discussed and voted on.

If a councillor votes on the matter with an intention to gain a benefit or avoid a loss, for the councillor or another person or entity the maximum penalty that may be imposed is 200 penalty units or 2 years' imprisonment, or otherwise the maximum penalty is 85 penalty units.

The Belcarra Report 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.

Background

Currently, the COBA and the LGA do not require councillors to report another councillor's conflict of interest.

On commencement of the LGA in 2009 and the COBA in 2010 section 174 and section 176 respectively provided that if a councillor knew, or suspected on reasonable grounds, that another councillor had a material personal interest, or conflict of interest, in a matter before the local government; or had engaged in misconduct, the councillor was required, as soon as practicable, to report to—

- for a material personal interest or conflict of interest—
 - if the material personal interest or conflict of interest arose at a meeting of a local government, or any of its committees—the person who was presiding over the meeting; or
 - otherwise—the chief executive officer; or
- for misconduct—the chief executive officer.

The explanatory notes for the Local Government Bill 2009 section 174 and for the City of Brisbane Bill 2010 section 171 provide that *'A councillor has a duty to report another councillor's MPI, COI or misconduct. The duty to report is consistent with the high ethical standards of behaviour expected of councillors... The duty to report acknowledges the collective responsibilities of the councillors to achieve the local government principles'*.²¹

In 2012, the *Local Government and Other Legislation Amendment Act 2012* (Act No. 33 of 2011) sections 48 and 129 omitted section 176 in the COBA and section 174 of the LGA respectively. The explanatory notes provide *'This requirement is an unnecessary duplication as all councillors are bound by the local government principles. Not disclosing another councillor's MPI, COI or misconduct knowingly would breach these principles, particularly the need for ethical and legal behaviour'*.²²

Policy intent

The Belcarra Report states *'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.*

*The CCC acknowledges that the previous requirement was removed on the basis that it was "an unnecessary duplication as all councillors are bound by the local government principles", and not disclosing another councillor's conflict of interest would breach these. In the CCC's view, however, relying on the local government principles alone does not reflect the seriousness of undeclared conflicts of interest. Indeed, the Explanatory Notes for the original LG Act note that the specific duty to report was "consistent with the high ethical standards of behaviour expected of councillors". As the then Queensland Integrity Commissioner noted at the public hearing, where a councillor remains silent about another councillor's undeclared conflict of interest, the public interest is not well served. Such concealment of conflicts of interest can significantly undermine public confidence in the integrity of local government, and the legislative obligations on councillors should reflect this.'*²³

²¹ Explanatory Notes for the Local Government Bill 2009 section 174, page 66 and Explanatory Notes for the City of Brisbane Bill 2010 section 171, page 54.

²² Explanatory Notes to the Local Government and Other Legislation Amendment Bill 2012, pages 52 and 97.

²³ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 84.

Amendments in the Bill

To implement the government's response to the Belcarra Report recommendation 24, clause 6 of the Bill inserts new section 177G in the COBA, and clause 24 of the Bill inserts section 175G in the LGA to apply the sections if—

- a matter is to be discussed at a meeting of the council or any of its committees; and
- the matter is not an ordinary business matter; and
- a councillor at the meeting believes, or suspects, on reasonable grounds that another councillor at the meeting has a material personal interest, real conflict of interest or perceived conflict of interest in the matter; and
- the other councillor has not informed the meeting about the interest under COBA section 177C(2) or section 177E(2) and the LGA section 175C(2) and section 175E(2).

The councillor who has the belief or suspicion must, as soon as practicable, inform the person who is presiding at the meeting about—

- the belief or suspicion; and
- the facts and circumstances that form the basis of the belief or suspicion.

Note—Contravention is misconduct that could result in disciplinary action being taken against a councillor. See COBA sections 178(3)(c) and 183 and the LGA sections 176(3)(d) and 180.

The Bill also provides in new section 177H of the COBA and section 175H of the LGA that it is an offence to take retaliatory action against a councillor or another person because the councillor informed the person presiding at the meeting about the councillor's belief or suspicion. The maximum penalty that may be imposed for this offence is 167 penalty units or 2 years imprisonment.

Obligation on councillors to report inappropriate conduct or misconduct

The government's response to the Belcarra Report recommendation 24 states in part that '*A legislative amendment is already scheduled to be progressed in a separate Bill to parliament about councillor conduct, that (if passed) will establish an obligation on councillors to report inappropriate conduct or misconduct*'.

The Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (Councillor Complaints Bill) clause 12 inserts new section 150R in the *Local Government Act 2009* to provide that, if a local government official becomes aware of information indicating a councillor may have engaged in conduct that would be inappropriate conduct or misconduct (other than conduct mentioned in section 150J (Unsuitable meeting conduct that becomes inappropriate conduct) and other than by receiving a complaint to which section 150P (Complaints about councillor conduct must be referred to assessor) applies), the local government official must give the Independent Assessor a notice about the councillor's conduct.

In section 150R a 'local government official' means the following persons—

- a mayor;
- a councillor;
- a chief executive officer of a local government.

As for the obligation to report another councillor's material personal interest or conflict of interest, contravention of this requirement will be misconduct (see clause 12 new section 150L(1)(c)(iv) of the Councillor Complaints Bill).

The Belcarra Report 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.*

Background

As mentioned above, currently the COBA section 175(4) and (5) and the LGA section 173(4) and (5) provide that councillors must deal with a real conflict of interest or perceived conflict of interest in a matter other than an ordinary business matter to be discussed at a meeting of the local government or any of its committees in a transparent and accountable way, including by informing the meeting of:

- the councillor's personal interest in the matter and
- if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.

A contravention of these requirements is misconduct (section 178(3)(c) COBA and section 176(3)(d) LGA) which may result in disciplinary action being taken against the councillor by the BCC Councillor Conduct Review Panel under the COBA or a Regional Conduct Review Panel or the Local Government Remuneration and Discipline Tribunal under the LGA.

In relation to matters other than ordinary business matters discussed at a meeting of the local government or any of its committees in which a councillor has a material personal interest, the councillor must inform the meeting of the councillor's material personal interest in the matter and leave the meeting room, including any area set aside for the public, and stay out of the meeting room while the matter is being discussed and voted on (section 174(5) COBA and section 172(5) LGA).

If a councillor contravenes these requirements and votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or someone else it is an offence for which a maximum penalty of 200 penalty units or 2 years imprisonment may be imposed. Otherwise, the maximum penalty is 85 penalty units.

Policy intent

The Belcarra Report found that *'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'*.²⁴ It was considered that providing for severe penalties for the most serious breaches of the conflict of interest requirements would act as a sufficient deterrent even if the offences were rarely prosecuted.

Amendments in the Bill

To implement the government's response to recommendation 25 of the Belcarra Report, the Bill inserts the following penalties for councillors who fail to comply with the requirements in the LGA and COBA in relation conflicts of interest and material personal interest:

- new section 177E(2) COBA and new section 175E(2) LGA — failing to inform a meeting of the local government or any of its committees of the councillor's personal interest in a matter to be discussed at the meeting including failing to inform the meeting of prescribed particulars about the interest in the matter — maximum penalty of 100 penalty units or 1 year's imprisonment.
- new section 177E(5) COBA and new section 175E(5) LGA — failing to comply with a decision of the other councillors at the meeting that a councillor with a conflict of interest must leave the meeting — maximum penalty of 100 penalty units or 1 year's imprisonment.

²⁴ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 84.

- new section 177H COBA and new section 175H LGA — taking retaliatory action because a councillor complied with their duty to report another councillor's material personal interest or real or perceived conflict of interest at a meeting — maximum penalty of 167 penalty units or 2 years imprisonment.
- new section 177I(2) COBA and new section 175I(2) LGA — a councillor who has a material personal interest or a real or perceived conflict of interest in a matter influencing, or attempting to influence, another councillor to vote on the matter in a particular way at a meeting of the council — maximum penalty of 200 penalty units or 2 years imprisonment.
- new section 177I(3) COBA and new section 175I(3) LGA — a councillor who has a material personal interest or a conflict of interest in a matter influencing, or attempting to influence, a council employee or a contractor of the council who is authorised to decide or otherwise deal with the matter, in a particular way — maximum penalty of 200 penalty units or 2 years imprisonment.

These offences are prescribed as *integrity offences* in the COBA and the LGA (clause 4 and clause 22 of the Bill). A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (COBA section 153(1)(d) and LGA section 153(1)(d)). A sitting councillor who is convicted of an integrity offence automatically stops being a councillor on conviction (COBA section 153(6) and LGA section 153(6)).

The current offences of failing to advise a meeting of a material personal interest in a matter other than an ordinary business matter to be discussed at a meeting of the local government or any of its committees (COBA section 174(5) and LGA section 172(5)) were previously prescribed as integrity offences. The equivalent offences inserted by the Bill (COBA new section 177C(2) and LGA new section 175C(2)) will continue to be integrity offences under the amendments made by the Bill (clause 4 and clause 22 of the Bill). The existing maximum penalties will also continue to apply.

As previously mentioned, the Bill inserts a requirement for a councillor who reasonably believes or reasonably suspects that another councillor at a meeting of the local government or any of its committees has a conflict of interest or a material personal interest which they have not informed the meeting about, to inform the person presiding at the meeting of their belief or suspicion (COBA new section 177G(2) and LGA new section 175G(2)). Failure to comply with this requirement will amount to misconduct for which disciplinary action may be taken against the councillor (clause 7 and clause 25 of the Bill).

The Belcarra Report 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 appear 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.*

Background

The COBA and LGA state that, to ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires that any action taken under the Acts is taken in a way that is consistent with the local government principles, including transparent and effective processes, and decision-making in the public interest; good governance of, and by, local government and ethical and legal behaviour of councillors and local government employees (COBA section 4 and LGA section 4).

Currently, the COBA and LGA do not include any specific provisions relating to councillors influencing decisions in which they have a conflict of interest or a material personal interest.

Policy intent

Allegations made in relation to the 2016 local government elections for the Gold Coast, Ipswich, Moreton Bay and Logan included perceptions that *'councillors unlawfully influenced the outcome of council decisions on development applications'*.²⁵ To improve how councillors manage conflicts of interest, the Belcarra Report recommended *'that it be an offence for a councillor who has a conflict of interest in a matter to influence or attempt to influence any decision-maker in relation to the matter'*.²⁶

Amendments in the Bill

To implement the government's response to recommendation 26 of the Belcarra Report, clause 6 of the Bill inserts in the COBA new section 177I and clause 24 inserts in the LGA new section 175I offences that will apply if:

- a councillor who has a material personal interest or a real or perceived conflict of interest in a matter influences, or attempts to influence another councillor to vote on the matter in a particular way at a meeting of the local government or any of its committees
- a councillor who has a material personal interest or a real or perceived conflict of interest in a matter influences, or attempts to influence, a local government employee or a contractor of the local government who is authorised to decide or otherwise deal with the matter, to do so in a particular way.

The maximum penalty that will apply for each of these offences is 200 penalty units or 2 years' imprisonment. Also, as noted above, these offences will be prescribed as 'integrity offences' meaning that a sitting councillor will stop being a councillor on conviction and any person convicted of the offence will be disqualified from being a councillor for four years.

A councillor will not commit an offence merely by participating in a meeting of the local government or any of its committees about the matter if their participation is authorised under the COBA or the LGA (COBA new section 177I(4) and LGA new section 175I(4)).

The Belcarra Report recommended that this offence apply from the time the matter appears on an agenda for a council meeting. However, the Bill does not limit the application of the offence, to ensure that a councillor must not, at any time, influence or attempt to influence another councillor, a local government employee or a contractor of the local government on a matter in which the councillor has a personal interest.

Fundamental Legislative Principles

Potential breaches of the fundamental legislative principles are outlined and justified on pages 11 to 15 of the explanatory notes to the Bill.

Costs

The costs associated with the amendments will be determined through normal budgetary processes.

²⁵ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 14.

²⁶ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, page 85.