

PO Box 269 3 Porters Lane  
Nambour QLD 4560  
info@scec.org.au  
T 07 5441 5747 F 07 5441 7478  
www.scec.org.au

SUNSHINE COAST  
Environment Council



23 March 2018

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

Dear Committee

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

The opportunity to provide comment on the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation and Amendment Bill 2018* is appreciated.

Please note that a submission was provided on the previous Bill and we include some of this content as it remains pertinent to this current Bill, however, some of the clause references may have altered. We trust the Committee is able to link our comment with the relevant sections/clauses and thank you for doing so.

Established in 1980, the Sunshine Coast Environment Council (SCEC) is the peak environmental advocacy organisation for the Sunshine Coast region. SCEC currently represents 60 member groups predominantly working in the areas of natural resource management, conservation, environmental restoration and protection and sustainability. This membership represents a collective of almost 10,000 individuals with a further 4000 people as SCEC supporters.

It is on behalf of our members, supporters and wider community with whom we engage that we submit the following comment for due consideration.

SCEC commends the government for taking this step to introduce some of the recommendations from the compelling Belcarra Report findings.

We particularly highlight the significance of the following recommendations and urge they pass into legislation;

- banning donations from property developers for candidates, third parties, political parties and councillors and proposed to be extended to Members of State Parliament.
- strengthening the process associated with the declaration of councillor conflicts of interest, the management of conflicts of interest and material personal interests within council meetings and penalties for non-compliance.

SCEC still raises its concern regarding the continued resistance of the LGAQ has not taken the opportunity as the peak body for local government to fully acknowledge the seriousness of the findings of the inquiry and the obvious need to address the substance of the recommendations.



Indeed, the [REDACTED] and [REDACTED] of the Sunshine Coast Council [REDACTED], himself a recipient of considerable election campaign donations from developers and related development industry parties<sup>1</sup>, rejected the key two proposals<sup>2</sup>;

- a ban on campaign donations from property developers and;
- return to empowering councils to exclude councillors with a conflict of interest from council meetings

SCEC provides the following comment for consideration on this draft Bill;

- providing for a 'betterment tax' payable to the government where land zoning benefits a property developer in order to reduce the incentive in existence to change zoning to benefit particular developers, and to compensate the community adequately in exchange for the windfall to the developer due to the change in planning regulation; and
- addressing the revolving door between industry and government, which can lead to inside relationships being used to the benefit of the private sector without due regard being given to the public interest. While Queensland has comparatively strong restrictions around when a senior public servant/Minister can work as a lobbyist, our framework could be further strengthened by:
  - improving the definition of 'lobbyist', for example to include acting for even non-profit entities that represent private industry, such as the Queensland Resource Council; and
  - better enforcing existing limitations on lobbyists moving between government and the private sector.
- SCEC highlights the need for reforms which would enable the CCC jurisdiction to extend, as raised in the Belcarra Report (p3), to:
  - disciplinary breaches by councillors. Currently councillor disciplinary breaches do not fall within the definition of corrupt conduct under the CC Act as they are not 'criminal offences' or non-discretionary dismissible breaches; and
  - possible corrupt conduct by unsuccessful candidates.

### **Conflicts of interest and material personal interests**

SCEC Qld supports the strengthened provisions proposed requiring that perceived or real conflicts of interests held by councillors must be disclosed as they arise and then put to vote by the other members as to whether the councillor should not remain in the meeting.

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[REDACTED]

[REDACTED]

[REDACTED]

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We are concerned that where there are many other councillors with shared interests, or possibly lower levels of integrity within a council, that this vote may be biased towards the councillor remaining regardless of the level of conflict, however this is an improvement on current regulations which leave the discretion as to how to manage the conflict to the person holding the conflict.

We support the further provisions increasing regulation and clarity of process around conflicts of interest and material personal interests, as outlined in the explanatory notes:

- 'prescribe additional information to be provided by a councillor when informing a meeting of a real or perceived conflict of interest or a material personal interest in a matter other than an ordinary business matter
- require any councillor at a meeting who believes or suspects on reasonable grounds that another councillor at the meeting has a real or perceived conflict of interest or a material personal interest in a matter other than an ordinary business matter to inform the person who is presiding at the meeting of the councillor's belief of suspicion
- strengthen penalties for councillors who fail to comply with their obligations
- provide that it is an offence for a councillor who has a material personal interest or a real or perceived conflict of interest in a matter other than an ordinary business matter to influence or attempt to influence any vote by another councillor or any decision by a council employee or contractor in relation to the matter'

In SCEC's view the decision as to whether a councillor can remain in the room cannot be made by his/her fellow councillors. Once a conflict of Interest is declared (or reported by a third party), amendments to the LGA and COBA must mandate that a councillor can take no part in debate or voting on the matter under consideration and must leave the room.

Requiring fellow councillors to decide whether a councillor has a real conflict of interest or perceived conflict of interest in the matter and then determine, in the cases where they do in fact decide the councillor has a real conflict of interest or perceived conflict of interest in the matter, as to whether they remain in the room appears to be introducing a level of unnecessary administrative complexity to the conduct of council meetings given the requirements of Section 175J and an undesirable 'tension' between Councillors.

It can also lead and/or perpetuate some council's practise of "voting blocs" and/or registered/unregistered "teams" of councillors, often associated with support for or against the Mayor. In such instances the community does not have faith that councillors/members of the "team" would vote against other team members had they indicated that they intended to stay in room and participate in the debate and subsequent voting.

The proposed process unacceptably removes the personal accountability of a councillor who under the legislation being proposed can claim it was his/her colleagues who determined

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whether she/he/they stayed in the room to take part in debate, and vote, on the matter in question. This makes the proposed section of the bill even less likely to result in ethical and consistent behaviour than is the case under the existing legislation. SCEC suggests this is not what the CCC intended despite the recommendation made on this issue.

The events that led to the establishment of Operation Belcarra, and its subsequent findings, strongly suggest that in the councils investigated, and clearly in other councils in Queensland (such as the Sunshine Coast Council where there is little consistency in how certain councillors act after declaring a conflict of interest), there has been a historical failure by councillors to observe the spirit of previous legislation governing conflict of interest and their discretionary power in this area must be removed.

SCEC believes the intent and recommendations of the Operation Belcarra Report are best served by legislation that treats conflict of interest in the same way as material personal interest. Accordingly, conflict of interest should be dealt with in the same way as determined by Section 175C (2) (b) which requires that in the case of material personal interest [The councillor must] “leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is being discussed and voted on”.

SCEC recommends;

- that Conflicts of Interest be dealt with in the same way as Material Personal Interest
- that all Conflicts of Interest or Material Personal Interest declarations be made and resolved in “Open session” of the meeting and recorded in the minutes of the meeting.
- that making such declarations in a confidential session is unlawful.
- That the exclusion rules apply during “adjournment periods” and to councillor and/or staff only councillor spaces.

SCEC supports the application of penalties and the Penalty Regime outlined in the proposed Bill.

SCEC urges the Government to ensure penalties are applied consistently across the state. We support inclusion of the ‘dismissal’ provision so a clear message is sent that the community no longer will tolerate some of the shady practices and dishonest actions of some councillors and councils in the past.

Councillors must understand that “ignorance of the law” is no defence. The Belcarra report identifies a number of such instances and some concerning large donation amounts. There are examples of where a complaint has been made in relation to non-declaration of donations and the Councillor has been excused arguing he/she was not aware of the details of the donation and the donor. There is strong support from the community for penalties to be applied and consider dismissal as appropriate.

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The previous Local Government Electoral Act was quite clear about the recording of donations, over a certain threshold from any source. It was arrogant or councillors to ignore these provisions. Despite the evidence arising from the thorough nature of the CCC inquiry, SCEC is frustrated that the Crime and Corruption Commission and some Regional Disciplinary Panels ultimately excused councillors who were found to have infringed the law but have not and will not be charged with an offence.

Finally, following the passing of the Bill and subsequent changes to the LGEA, SCEC makes the following recommendations;

That mandatory training be undertaken by ALL Councillors regardless of their period of incumbency in relation to the amended ACT

That mandatory training is undertaken by all Regional Disciplinary Panel Members both in relation to the changes to the Act and the Act in its entirety.

SCEC urges the members of the Legal Affairs and Community Safety Committee to consider favourably our request for the changes we have proposed. We believe this would better ensure that the "stated policy objective of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 ... 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
- strengthen the legislative requirements that regulate how a councillor must deal with a real or perceived conflict of interest or a material personal interest."

Resulting legislation should that truly reflect the desire of the broader community for more open and transparent local government.

Thank you again for opportunity to provide a submission on this landmark legislation is appreciated.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. McCarthy'.

Narelle McCarthy  
Liaison and Advocacy

██████████ / ██████████