



8/205 Montague Rd WEST END, QLD 4101

tel +61 7 3211 4466 fax +61 7 3211 4655

edoqld@edoqld.org.au www.edoqld.org.au

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Committee Secretary  
Economics and Governance Committee  
Parliament House

Dear Chair and Committee Members

### **Submission on the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018**

Thank you for the opportunity to make this submission on the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 (**Bill**).

#### **About EDO Qld**

EDO Qld is a non-profit community legal centre with clients from both rural and urban areas and backgrounds. Our solicitors provide legal advice to over a thousand individuals every year in total, both through our educational events and in response to specific advice requests by clients. We also provide representation on public interest environment matters. Our legal work covers a range of planning, environmental and resource law topics, including accountability and transparency in governance. A key function of EDO Qld is to provide assistance to the Queensland Parliament and government in improving the drafting of Bills relevant to EDO Qld's areas of practice.

#### **Overall comments on the Bill**

We congratulate the government for taking this first step to address the Crime and Corruption Committee's (CCC) recommendations in their report 'Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government' (**Belcarra Report**).

Overall, we support this Bill, but we note that more needs to be done in Queensland to increase integrity, accountability and transparency of decision making to ensure it is in the public interest.

While we understand that this Bill is titled 'Stage 1' of the implementation of the Belcarra Report; therefore implying that further policies are being developed to address the Report Recommendations, we strongly support the government implementing the full suite of recommendations made by the CCC in the Report.

For example, the cap on expenditure for elections (Belcarra Report Recommendation 1) would be a useful mechanism to increase fairness and transparency around elections. Alternatively, we consider that the option of publically funded elections may be the most effective means of reducing risks associated with election donations winning favour for private interests.

We note that the Bill extends the proposed prohibition on property donations to state government, as well as local government. This is commendable as the risks associated with election donations are clearly relevant for both local and state parliamentarians.

We also note with support the amendments seeking to clarify the means by which perceived or real conflicts of interest or material personal interests are to be dealt with by councillors. Many important decisions are made by our local governments that affect our communities and environment. The necessity of ensuring the highest level of integrity, transparency and accountability for local government decision making cannot be understated. EDO Qld hears from communities around Queensland that the public has lost faith in many of our local governments to carry out their business in the public interest. This Bill will go some way to restoring that faith, but more could be done.

We provide below our recommendations for improvement in summary and our submissions in detail on this Bill.

### **Recommendations for improvement in summary:**

#### **Recommendation 1:**

*Amend clause 6, new sections 177C(3), 177E(6) and clause 24, new sections 175C(3) and 175E(6) - to clarify that, where a majority of councillors have a personal interest in a matter of consideration, the delegate chosen to make the decision as to how to address the matter must not have a conflict of interest or material personal interest in the subject matter.*

#### **Recommendations 2:**

- Amend the bill to ban all corporate donations to candidates, third parties, political parties and councillors, to reduce the loopholes provided by limiting the ban to one narrowly defined sector.
- We suggest the Committee recommends to government that other, stronger options be considered for reducing the risks to integrity surrounding election donations, particularly:
  - a) publically funded elections;
  - b) a cap on expenditure by candidates and other parties for elections (Belcarra Report Recommendation 1).

#### **Recommendations 3:**

We suggest that the Committee recommend that the government investigate or introduce the following methods of increasing integrity in decision making:

- 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:

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

#### **Recommendations 4:**

We suggest that the Committee recommends that the government prepares amendments to allow the CCC to investigate:

- a) 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
- b) possible corrupt conduct by unsuccessful candidates.

#### **Submissions in detail:**

##### **1. Strengthened provisions for addressing Councillor conflict of interest and material personal interest**

EDO Qld the proposed amendments to the *City of Brisbane Act 2010* (Qld) and the *Local Government Act 2009* (Qld) with respect to strengthening the legislative requirements that regulate how a councillor must deal with a real or perceived conflict of interest or a material personal interest, if such an interest relates to matters to be considered at a meeting of the council or any of its committees. CLAUSES –

Currently there are not sufficiently rigorous and clear processes provided in these Acts to guide councillors in how to address perceived or real conflicts of interest when they arise. The Acts allow a councillor to decide how they will address their conflict; whether they will remain part of discussion and debate the subject of their conflict or whether they will leave the room. This is poor process, so we are pleased to see that the Bill provides a mechanism by which the councillor must declare a conflict and then the matter is put to debate by the councillors as to how to address it.

We note the requirement to delegate this vote to available delegates under the relevant Acts where a majority of councillors at a meeting may have similar person interests where a conflict may arise. This is a sensible move to ensure the matter is dealt with effectively, however we recommend that the Bill be amended to state that the delegate chosen must also not have a conflict of interest or material personal interest in the subject matter.

#### **Recommendation 1:**

***Amend clause 6, new sections 177C(3), 177E(6) and clause 24, new sections 175C(3) and 175E(6) - to clarify that, where a majority of councillors have a personal interest in a matter of consideration, the delegate chosen to make the decision as to how to address the matter must not have a conflict of interest or material personal interest in the subject matter.***

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.’

## **2. Banning property developer donations – good start, more could be done to increase integrity**

EDO Qld supports the purpose behind the intention to ban election donations from property developers for candidates, third parties, political parties and councillors, including Members of State Parliament. The Belcarra Report noted significant concern around allowing property and construction industry and associates the ability to donate to candidates. We are concerned that the proposed amendments do not sufficiently reinforce the integrity and minimise the corruption risk that political donations have the potential to cause, at both a state and local government level.

The term ‘prohibited donor’ is defined to mean a property developer, or an industry representative organisation, a majority of whose members are property developers. The term ‘property developer’ is then defined by reference to whether a corporation is a business that regularly engages in the making of ‘relevant planning applications’ by or on behalf of the corporation in connection with the residential or commercial development of land with the ultimate purpose of sale or lease of the land for profit.

We consider that this policy is too limited to have true impact at reducing the risks of corruption of decision making processes inherent in allowing political donations.

The Bill emulates the NSW regulatory framework, which we are concerned has proven to not be sufficient to prevent the risks associated with allowing any kind of election donations to candidates. [Operation Spicer](#), undertaken by the Independent Commission Against Corruption and reporting in August 2016, uncovered a number of issues of corrupt conduct involving donations in NSW even with the prohibition on property developer donations, as donations were going through other entities. Operation Spicer also demonstrated the strong need for enforcement of the ban as well, to ensure it is effective at achieving its aim.

We therefore recommend that there be a ban on all corporate donations introduced through the Bill, to reduce the loopholes provided by limiting the ban to one narrowly defined sector.

We suggest that the Committee recommends to government that publically funded elections be investigated, as a means to truly reduce the risks to integrity surrounding election donations. Alternatively, a cap on expenditure by candidates and other parties for elections (Belcarra Report Recommendation 1) may assist in stopping the constant hunt for donations to support election promotional work and for donors to find ways around the rules. This is in place in NSW currently.

#### **Recommendations 2:**

- **Amend the bill to ban all corporate donations to candidates, third parties, political parties and councillors, to reduce the loopholes provided by limiting the ban to one narrowly defined sector.**
- **We suggest the Committee recommends to government that other, stronger options be considered for reducing the risks to integrity surrounding election donations, particularly:**
  - a) **publically funded elections;**
  - b) **a cap on expenditure by candidates and other parties for elections (Belcarra Report Recommendation 1).**

### **3. Further action needed to truly address threats to integrity of decision making in Qld**

As above, this Bill is a good start, but significant new provisions are needed in this Bill to reduce incentives which increase corruption risks in Queensland.

#### **Recommendations 3:**

**We suggest that the Committee recommend that the government investigate or introduce the following methods of increasing integrity in decision making:**

- **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:
  - c) 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
  - d) better enforcing existing limitations on lobbyists moving between government and the private sector.

#### 4. CCC jurisdiction must be extended to ensure adequate powers to investigate corruption

We highlight the need for reforms which would enable the CCC jurisdiction to extend to investigating potential corrupt conduct more adequately. The limitations on the CCC powers to investigate were raised in the CCC Belcarra Report at page 3. To address these limitations, we recommend the Committee recommends that the government prepare amendments to allow the CCC to investigate:

- 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.

#### **Recommendations 4:**

**We suggest that the Committee recommends that the government prepares amendments to allow the CCC to investigate:**

- c) 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**
- d) possible corrupt conduct by unsuccessful candidates.**

#### 5. Further matters

We note that no amendments have been proposed clarifying the purpose of the *Electoral Act 1992* (Qld) (**Electoral Act**) because, as explained by the Explanatory Notes, page 2, '[as] the EA does not include a purpose provision, no amendment is being made in this regard to the EA.' We suggest that this Bill could be amended to provide for a purpose to the Electoral Act to improve the drafting of this Act.

It is also suggested that the definition of 'relevant planning application' should include a reference to the *Integrated Planning Act 2009* (Qld) and earlier planning legislation. This is because there are development applications still in existence under the earlier planning legislation, and significant coordinated projects, for which there is no reason to provide an exemption from the terms of the Bill.

We request the opportunity to please appear before the Committee in their hearing into these Bills.

Yours faithfully



Revel Pointon,  
Solicitor,  
Environmental Defenders Office (Qld) Inc