

25 October 2017

Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

mailto:lacsc@parliament.qld.gov.au

Dear Sir,

RE: Submission on the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017

I provide this submission on my own behalf in response to the Committee's invitation for submissions on the *Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017*.

1) Councillors deciding / reporting on conflicts of interest

I have a concern that where the Bill includes processes for councillors to make decisions or report on other councillors' conflicts of interest, this could easily lead to mischievous and malicious behaviour.

Of course, I understand that the reason for proposing changes to the legislation relates to identified councillor behaviour where councillors, for example, receive donations from developers and consistently do not declare a conflict of interest and remained in the chamber to vote.

Such clear conflicts of interest should be clearly so defined in the Local Government Act, and leaving the room and not being able to vote would be an appropriate requirement.

Meanwhile however, I am concerned that the generic remedies currently proposed could have far reaching unintended consequences.

177E Councillor's conflict of interest at a meeting - Clauses (3) (4) and (5)

If the councillor declares a conflict of interest or perceived conflict of interest but does not choose to leave the room, the other councillors decide whether the person has a conflict of interest or perceived conflict of interest, and whether they can stay or leave the room.

175G Duty to report another councillor's material personal interest or conflict of interest at a meeting

A councillor must inform, as soon as practicable, the person who is presiding at the meeting that that councillor 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.

These clauses give councillors the additional role and responsibility of deciding about other councillors' conflicts of interest, for which they may not have the knowledge, the understanding of the law or the capability to do, and change the role of councillors vis-à-vis each other.

The current Bill does not propose:

- An onus on reporting councillors to be required to provide evidence.
- Provisions to obviate a councillor or group of councillors from acting mischievously or maliciously in using these clauses for their own or political ends.
- A process of appeal for the targeted councillor, if they wish to challenge the other councillors' assessment as incorrect.

RECOMMENDATION: A better solution would be simply to more clearly define the variously used terms 'material conflict of interest', 'conflict of interest', 'real conflict of interest' and 'personal interest', and make it crystal clear what matters require departing from the room and not voting.

2) Definitions of 'Conflict of Interest'

Regardless of whether or not the Local Government Act is amended to include Bill Clauses 175G and 177E, there is a problem with lack of clarity about the definition and differentiation of terms used including 'conflict of interest', 'real conflict of interest', 'personal interest' and, particularly, the definition of "perceived conflict of interest" in the Local Government Act and the Belcarra Bill.

The Local Government Act 2009 and the Belcarra Bill both provide similar definitions of 'material conflict of interest' and 'conflict of interest', but do not provide definitions of the terms 'real conflict of interest', 'personal conflict of interest' and 'perceived conflict of interest'.

This currently leads to arbitrary interpretation and action by councils and councillors.

The definitions provided are these, including the Belcarra Bill amendments in blue:

~~173(2)~~ 175B A councillor has a **material personal interest** in ~~the a~~ matter if any of the following persons stands to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of the consideration of the matter ~~at the meeting—~~

- (a) the councillor;
- (b) a spouse of the councillor;
- (c) a parent, child or sibling of the councillor;
- (d) a person who is in partnership with ~~of~~ the councillor;
- (e) an employer, ~~{other than a government entity}~~, of the councillor;
- (f) an entity, ~~{other than a government entity}~~, of which the councillor is a member;
- (g) another person prescribed ~~under~~ by a regulation.

~~173(2)~~ 175D(1) A **conflict of interest** is a conflict ~~that~~ ~~between—~~

- (a) is between -
 - ~~(a)~~ (i) a councillor's personal interests; and
 - ~~(b)~~ (ii) the public interest; ~~and~~
- (b) ~~that~~ might lead to a decision that is contrary to the public interest.

Furthermore, Local Government Act Clause 173(1) and Belcarra Act Clause 175C(1) both state that Section 173 and 175, respectively, only apply if “(b) the matter is not an ordinary business matter”.

The matters thereby exempted are defined in the Local Government Act **Dictionary** which contains a full definition of ‘ordinary business matter’ including the following:

ordinary business matter means—

...

(g) a matter that is of interest to a person merely as—

- i. an employee of the State or a government entity; or
- ii. an elector, ratepayer or resident of the local
- iii. government area; or
- iv. a beneficiary under a policy of accident insurance, public liability or professional indemnity insurance held, or to be held, by the local government; or
- v. a user of goods, services or facilities supplied, or to be supplied, by the local government (whether under a contract or otherwise) as a member of the
- vi. public in common with other members of the public; or
- vii. a candidate for election or appointment as a mayor, deputy mayor or member of a committee of the local government; or
- viii. a member of a non-profit, charitable or religious organisation involving no personal financial gain or loss to the person.

LGA Section 173 and Belcarra Section 175 also specify where there is no conflict of interest.

173(3) and [175\(D\)\(2\)](#)

However, a councillor does not have a conflict of interest in a matter—

(a) merely because of—

- (i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in his or her capacity as a councillor; or
 - (ii) membership of a political party; or
 - (iii) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or
 - (iv) the councillor’s religious beliefs; or
 - (v) the councillor having been a student of a particular school or the councillor’s involvement with a school as parent of a student at the school;
- or

(b) if the councillor has no greater personal interest in the matter than that of other persons in the local government area.

