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

Local Government (Implementing Belcarra) and Other Legislation Amendment Bill 2017

Electoral Act

273 Prohibited donors

The draft definition would not preclude a range of development related entities from providing a political donation. Such entities might include town planners, civil engineers, traffic engineers, architects, etc. Evidence of this can be readily observed – for example the 2016 election gift return for Cr [REDACTED] (Sunshine Coast) shows that development related entities provided about \$80,000 of the \$160,000 that he secured.

This limited definition therefore permits those entities and people associated with those entities to continue to provide generous financial support for a candidate, and opens the practice to abuse e.g. developments associated with those entities might be considered more favourably, or a Councillor might seek to influence the outcome of a development application that involves those entities as consultants.

S274 (2) Political donation

It is commonplace for candidates to partly or fully 'self-fund' their campaigns. Under the draft provisions, a developer could lawfully provide an unlimited sum of funds to a candidate who can use the funds for paying other personal commitments such as mortgages, car registration, school fees, groceries, or any other purpose, hence enabling the candidate to use his/her own funds for the purposes of the election campaign. That outcome seems contrary to the intent of the draft legislation.

I believe that the provisions which apply to 'political donations' should also apply to 'gifts', and prohibited donors should therefore be expressly prohibited from providing 'gifts'.

Local Government Act

S175D Conflict of Interest

Subsection (2)(a)(iii) confirms that a Councillor does not have a conflict if they are a member of a 'sporting club'.

Not all sporting clubs are the same or equally resourced and profiled. The local junior netball club is likely to have very few assets, and little capacity to influence strategic outcomes of a City. It is unlikely to submit development applications, it is likely to be run by volunteers, and its overall income and expenditure is likely to be small. By contrast, for example the Gold Coast Turf Club is a club with millions of dollars in assets, with substantial land under its control, it progresses development applications, it can therefore provide hospitality of a very high calibre at prestigious sporting carnivals and events, it employs full time staff, and it is able to substantially influence outcomes, because of its wealth, profile, Board membership and associations.

The community is very concerned about the following example: Black Swan lake.

Black Swan lake is a public asset (public open space) that has been given over to the Turf Club for the purposes of filling in to create new car parking area. Despite community opposition the Council has voted to allow the transaction to occur with little public benefit and significant environmental loss.

S175E Conflict of interest at a meeting

(2) (b) mentions a 'gift', and requires the Councillor to reveal the 'value and date of receipt of the gift'.

Clarification is sought on whether this is to be read as an 'electoral donation' as per s274 of the Electoral Act or a 'gift' that is required to be registered in accordance with s280 of the Local Government Act, or both?

If it is to encompass a 'gift' as per s280, please note that the Local Government Regulation confirms at s291(3) that the Register of Gifts expressly does not require "the monetary value of accommodation, an asset, a gift or travel" to be recorded. It is commonplace that the date of receipt of the gift is also not recorded.

In that case, this would make it difficult for a Councillor to reveal details such as the 'value and date of receipt of the gift' unless they have maintained a separate register with such details. In the case where a Councillor does declare a gift, it would be impossible for any other person to determine if the details of the gift declared at the meeting are correct or incorrect.

However, if s175E excludes the declaration of a 'gift' as per s280, a Councillor could theoretically receive substantial financial benefit from a developer whose development application is to be considered, and influence the outcome, without any person knowing this and without breaching the Act.

S175I (2) seeks to deal with potential influence on a Council officer in circumstances where a Councillor has a material personal interest or a conflict of interest.

On the Gold Coast, it is routine for officers to request that a Councillor enable a planning matter within their Division to be dealt with under 'Delegated Authority'. Under the draft wording, if a Councillor consents, that is not influencing, thereby potentially benefitting an applicant who was an election donor because the matter will not be presented to Committee. By contrast, if the Councillor requests the matter to be brought to committee, thereby enabling public scrutiny, that is a breach. This is possibly an unintended consequence of the draft wording but it requires revision.

The draft provisions do not address the issue of Councillors declaring an interest to officers where a matter is dealt with outside of Committee or Council meetings. On the Gold Coast, 98.5% of all applications are dealt with outside of the committee process. Yet there is no mechanism whereby a Council officer will know if the Councillor has an interest in a matter, for example when the Councillor participates in a meeting with officers and representatives of (or the actual applicant) in a planning matter, or where the Councillor meets with or discusses or corresponds with a Council officer in a matter.

In such circumstances, it appears that there is no requirement for a Councillor to declare an interest or conflict at all.

The provisions introduced under the Amendment Bill are well intentioned and appreciated however there are real consequences and shortcomings that require the attention of the Committee.

Regards



Philip Follent

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