Speech By

Ann Leahy

MEMBER FOR WARREGO

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LOCAL GOVERNMENT (COUNCILLOR COMPLAINTS) AND OTHER LEGISLATION AMENDMENT BILL; LOCAL GOVERNMENT ELECTORAL (IMPLEMENTING STAGE 1 OF BELCARRA) AND OTHER LEGISLATION AMENDMENT BILL

Ms LEAHY (Warrego—LNP) (12.12 pm): I rise to speak on the Local Government (Councillor Complaints) and Other Legislation Amendment Bill, which is being debated in cognate with the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill. I understand from the minister's second reading speech that a number of amendments will be brought forward during the consideration in detail. I understand he has flagged those amendments.

There are two core matters for all councils in Queensland: one is sustainability in all of its forms and the other, of course, is integrity. The cognate bills deal with a range of matters including councillor complaints, conflict of interest provisions and circumstances where elected members of council are required to stand down or be removed from office. However, all the council legislation in the world will not stop the systemic corruption issues in the Labor Party that we have seen recently spilling into the public arena and that members on the government side of the House have been complaining about for years. These bills do actually move in the right direction. However, there is still some room for improvements.

I thank the Economics and Governance Committee members from both sides of the House for their consideration of the bills and the recommendations which they have put forward. I note that the government has made responses to those recommendations. From the outset I think it is important in the current climate to stress that the local government (councillor complaints) bill has not arisen because of a large number of complaints; in fact, it is the opposite. At the public committee hearing the LGAQ summed it up fairly well. I will read a comment from Sarah Buckler from the LGAQ. She said—

The Councillor Complaints Review Panel found that only 30 of a total of 245 complaints received by the then department of infrastructure, local government and planning over two years were ultimately upheld. This is only about 12 per cent.

Although this legislation will affect all elected members of local government, it has not come about because of a high number of complaints—and let us be very clear about that fact. In fact, it is the opposite: the number of upheld complaints is small in percentage. The LGAQ went on to say—

The LGAQ believes the introduction of an independent assessor into the system and the removal of the role of the council CEO in undertaking preliminary assessments of complaints will lead to a better system for all involved. The current system is too complex and lacks an effective front-end triage process. This means that it often gets overloaded with unsubstantiated complaints and logjams occur.

There has been significant consultation in the lead-up to this bill. This bill is in the interests of achieving better outcomes for local government. Therefore, the LNP will not be opposing this legislation in relation to the Local Government (Councillor Complaints) and Other Legislation Amendment Bill.

I would like to acknowledge the work that is performed every day across Queensland, from Currumbin to the Torres Strait, by the elected mayors and councillors. Those elected members work very hard every day to improve their communities and the livability of their communities. There are also

thousands of staff working for local government—some 40,000—who make sure that community essential services like drinking water, sewerage, libraries, roads, street sweepers and local events like Anzac Day and Australia Day all operate and occur as the community expects that they should.

The Local Government (Councillor Complaints) and Other Legislation Amendment Bill seeks to implement the government's response to the independent Councillor Complaints Review Panel report, titled *Councillor complaints review: a fair, effective and efficient framework*—the councillor complaints report—to provide for a simpler, more streamlined system for making, investigating and determining those complaints about councillor conduct in Queensland.

The review was initiated in response to the concerns raised by the Local Government Managers Australia in Queensland and the Local Government Association about the effectiveness of the current framework. Concerns included the role of local government chief executive officers in assessing complaints, the inability to seek review of decisions and the need for a better system to ensure natural justice for all parties. I do wish to thank the members of the LGMA and the LGAQ for this very professional review. What they have undertaken is in the best interests of local government and with a view to finding good, workable outcomes for local government, noting that not all local governments across Queensland have the same population, area or demographics.

The councillor complaints report made some 60 recommendations for change, and I understand the government has responded to the vast majority of those recommendations. I note the proposed legislation does not apply to the Brisbane City Council as the City of Brisbane Act 2010 continues to provide for a way complaints about councillors of Brisbane City Council are dealt with. I do ask the government that, should Brisbane City Council eventually come under the jurisdiction of this legislation, there is full, open and transparent consultation with the city council so that they can be assured that it will deal with their particular situations.

The bill establishes a position of Independent Assessor and the Office of the Independent Assessor to investigate all complaints and information about councillor conduct and provides sufficient powers for that office to undertake investigations. Importantly, it removes the role of the council CEO in undertaking the preliminary assessment of councillor complaints. The assessor would do the preliminary assessment, not the CEO. This does seem to be a more transparent way of handling complaints. It certainly makes for a better situation for the CEO, who is often subject to performance review by the councillors about whom a complaint may be made. The assessor can assess the complaint and, if required, he can refer it back to council to decide the outcome. However, this would be difficult in some of the more factional councils. Some have suggested that perhaps the mayor should have this responsibility. I would be interested if the minister could perhaps highlight how this might operate in those councils that are far more factional in their operation, and there are quite a number of those across Queensland. I would be very interested in the minister's comments as to how he would see that provision actually operating in future.

The bill strengthens offences to support new councillor complaints systems such as providing protection from reprisal for local government employees who make complaints against councillors. That too is a particularly important provision to have in this legislation. The bill provides for the minister to make a uniform code of conduct to set appropriate standards of behaviour for councillors. Given that there has been such extensive consultation in the preparation of this bill, it would seem a sensible step for a similar level of consultation to occur with the development of the regulation that will form the code of conduct. I believe that interest groups and councils would be interested to hear how the government intends to consult on the development of that code of conduct. A lot of time and effort has gone into these reforms, and it would be disappointing if that consultation and goodwill did not continue with the development of the code of conduct. I look forward to hearing from the government and the minister in his summing-up how this code might be progressed and the time frames involved.

I note that in the departmental briefing it is proposed to amend Local Government Regulation 2012 at an appropriate time to require councillors to declare that they will uphold the code of conduct as part of their declaration of office. I would be interested to know whether the government has any time frames, because we are already halfway through the current council term. It would seem a little bit strange to ask all councillors to take another declaration of office, but perhaps the minister in his summing-up can provide some clarification because I am sure councillors across Queensland are interested.

The bill reallocates the functions of the current Local Government Remuneration and Discipline Tribunal and the regional conduct review panels by establishing a new Councillor Conduct Tribunal to hear and determine complaints of councillor misconduct. The bill details the qualifications for membership of the Councillor Conduct Tribunal, and members of political parties are excluded; however, given the involvement of unions with the local government workforce I ask why union

members are not excluded as well. I note the explanatory notes detail that the costs of conducting the tribunal are to be met by individual local governments. Recommendation 5.14 of the councillor complaints report states—

Where councils elect to use a Tribunal member to investigate and make recommendations about a complaint of inappropriate conduct, the council should pay the member's costs.

As stated in the explanatory notes—

The Government's response to recommendation 5.14 at page 9 *"… supports that council pays the costs of using the services of a CCT member in investigating and considering inappropriate conduct."*

I am sure that councils would be interested to know if they can seek an early indication of costs prior to any referral to the tribunal, as we know that issues have arisen in the past with the Electoral Commission and the costs associated with conducting council elections. Perhaps in his summing-up the minister can explain how councils would be informed of any future potential costs they may bear when they choose to make referrals to the tribunal. The bill also establishes the new Local Government Remuneration Commission to decide the maximum remuneration payable to councillors.

I will now turn to the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018. The objectives of the terms of reference for the Operation Belcarra inquiry included examining the practices associated with a number of related matters, including the management of councillor conflicts of interest. I will address the matters relevant to local government and my parliamentary colleague, the member for Toowoomba South, will speak on the matters relevant to the amendments in the Electoral Act that are contained in this legislation.

There were some particularly interesting comments raised by the Noosa Shire Council in relation to the Belcarra bill. If the intent of the proposed amendments is to stop some of the scenarios that were identified in the Belcarra report, where councillors choose to stay in a meeting despite receiving an electoral donation from the applicant, it has been suggested by the Noosa Shire Council that a better option would be to tighten the definition of a real conflict of interest to identify the circumstances that require a councillor to declare the real conflict and leave the meeting. I have no doubt that the Noosa Shire Council would be interested in a response to their suggestion, and perhaps the minister would be so kind as to outline that in his summing-up.

The bill also provides that if a majority of councillors at a meeting of council inform the meeting about material personal interest in a matter or a real or perceived conflict of interest on a matter, under section 257 of the Local Government Act and section 238 of the City of Brisbane Act the council must delegate deciding the matter unless the matter cannot be delegated under those sections. On the surface that would seem like quite a reasonable way to deal with some of those issues; however, it can get particularly complicated. It could be the case—and this has been raised with me by a CEO—that if the CEO or staff to which the matter is delegated have also declared a conflict of interest, this could be a very difficult situation for the council. It is one that does concern council staff, because quite often CEOs declare to council that they too have conflicts of interest. The LGAQ remains strongly opposed to empowering councils to force councillors to leave a meeting over a conflict of interest they may not even have.

It is worth noting that this power used to be in the Local Government Act 2009, but in 2011 it was removed by a previous Labor government upon advice from the then Crime and Misconduct Commission, the Ombudsman and the Integrity Commissioner because it was proven not to work. This is an ironic set of circumstances. In 2018 the Labor government, upon advice from the Crime and Corruption Commission, is now reinstating these provisions which were removed just seven years ago. Unfortunately, it has been used by some councillors to gag minority councillors.

The LGAQ questioned the merit of the proposed section 175G, which introduces the requirement on the councillor to inform the person presiding at a meeting if the councillor reasonably believes that another councillor has a material personal interest or a conflict of interest which that other councillor has failed to declare. Contravention of that section would be an act of misconduct. Again this is the return of a provision which was removed in 2011.

Perhaps during his summing-up the minister can advise the House why Labor governments and the integrity bodies of this state seem to be on a merry-go-round with these provisions. We seem to take them in and put them out, take them in and put them out. What are we achieving by doing that? It is not just the government of the day: integrity bodies are also doing that and making those recommendations. I think they need to look a lot more closely at what they are trying to achieve and whether they are getting an outcome.

I draw the attention of the House to the LGAQ's submission, which includes a proposal that goes beyond the recommendations made by the CCC in Operation Belcarra. This proposal would require a councillor with a conflict of interest arising from a gift or a donation above $500 on their register of

interests to treat it in the same way as a material personal interest and remove themselves from the decision-making meeting. This would remove any discretion for the councillor as to whether they may participate in deciding a matter. Under section 172 of the Local Government Act 2009, a councillor with a material personal interest must leave the meeting when the matter is being debated.

The LGAQ sees this as an alternative and superior proposal to those contained in the Belcarra recommendations dealing with conflict of interest provisions, which were proven in the past not to work. There is a very clear recommendation from the LGAQ which does seem to pass the pub test: councillors with a gift or donation above $500 on their register of interests treat that conflict of interest in the same way as a material personal interest and remove themselves from the decision-making meeting. The question for the government and the minister is why not take on board the recommendation of the LGAQ, as this proposal is seen to be workable and a very transparent alternative for local government. I would appreciate it if the minister could outline why he did not take on board that suggestion of the LGAQ.

The government has signalled its intention to move some quite significant amendments to the Belcarra bill during consideration in detail. I think we should be particularly careful about those proposals the government has put forward. The parliament needs to be advised that those amendments have not gone through the committee system. The bills being debated cognately have been through the parliamentary committee system but the foreshadowed amendments—there are around 40 pages, which is around the same size as the councillor complaints bill—have not received the normal scrutiny of the parliamentary committee or the scrutiny of legislation secretariat. In relation to the extenuating powers to suspend or dismiss elected officials, the parliament is not able to see the relevant stakeholder feedback from mayors and councillors that it would normally be privy to. I think it is important that the parliament is aware that those foreshadowed amendments have not received that scrutiny.

I note from the explanatory notes that the LGAQ and the Queensland Law Society were consulted; however, we cannot see what they said about those amendments. Unfortunately, the parliament does not have the benefit of the comments of those two industry bodies that were consulted. That is disappointing. Perhaps there would have been a far better outcome for local government and also for integrity if those amendments had gone through the parliamentary committee system. Rushed law is not always good law.

I note that no other Australian jurisdiction requires mayors or councillors to stand down if they are charged with a criminal offence. I think that is something we should bear in mind. Members of this House are not required to stand aside from their position if they are charged with a criminal offence. Ministers may be required to stand down as a minister if they are charged with a criminal offence. Let us understand the powers that are being conferred on the minister and the government by the proposed amendments.

The amendment that gives effect to the automatic suspension of any mayor or councillor charged with one of a series of integrity offences may seem to be similar to that which currently applies to public servants; however, there is a major distinction. Public servants are not elected every four years as mayors and councillors are, and mayors and councillors are subject to far more community scrutiny than public servants. I think we should keep that in mind. We should not dumb down our elected officials to a situation whereby they are treated the same as public servants.

The other amendment that has been proposed expands the powers of the local government minister to dismiss or suspend a council, a councillor or a mayor in the public interest. This is not the first time a public interest test has been used in legislation. There was a public interest test contained in legislation relating to paedophiles. That was seriously criticised by the then leader of the opposition, Annastacia Palaszczuk, in 2013. She said—

> Wide consultation is the hallmark of good legislation and it is the hallmark of good government. This bill should have been referred to the committee to allow stakeholders to provide their input.

That is what was said by the then opposition leader specifically in relation to legislation that contained a public interest test. If wide consultation is a hallmark of good legislation and it was good enough then for the Labor opposition leader to demand that in relation to paedophiles, it stands to reason that it should be good enough for this government to allow the scrutiny of amendments that directly impact on mayors and councillors when it comes to a public interest test.

These amendments should have been referred to the committee due to the powers they confer on the minister. They are particularly wideranging powers. It is disappointing that the public interest test has not been defined in the bill. We are only given information in the explanatory notes. The powers outlined in the explanatory notes are quite broad. Such extraordinary powers should be clearly articulated in the bill and they should be given appropriate scrutiny.