Speech By
Hon. Stirling Hinchliffe

MEMBER FOR SANDGATE

Record of Proceedings, 15 May 2018

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

Second Reading (Cognate Debate)

Hon. SJ HINCHLIFFE (Sandgate—ALP) (Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs) (11.48 am): I move—

That the bills be now read a second time.

Queenslanders expect and deserve good government—government that is transparent and accountable. It is on these very foundations that all good governments are built. For reasons of integrity, transparency and accountability, in 2017 we enacted laws introducing real-time donation disclosure for state and local government elections to ensure Queenslanders are better informed when they go to the polls.

This government's comprehensive reforms will give Queenslanders greater faith in their elected officials. The bills are not designed to catch those who make genuine mistakes but rather to deal with those few councillors not living up to their communities' expectations. The legislation will face ongoing review to identify more opportunities for reform and ensure the public can have ongoing confidence in councillors upholding the highest ethical standards.

I will discuss the councillor complaints bill first. I thank the Economics and Governance Committee for its thorough examination of the complaints bill. After careful consideration of the committee's report, I am pleased to table the government's response.

Tabled paper: Economics and Governance Committee: Report No. 5—56th Parliament: Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018, government response [651].

The committee recommended that the complaints bill be passed. I will address one further recommendation and other issues raised by the committee as I outline the policy objectives and key elements of the complaints bill. The bill's policy objective is to provide a simpler, streamlined system for councillor complaints. The bill represents the implementation of the government's response to the independent Councillor Complaints Review Panel's report titled *Councillor complaints review: a fair, effective and efficient framework*.

The report contained 60 recommendations for change. In its July 2017 response, the government supported, partially supported, or supported in principle 50 of the recommendations. The bill establishes clear standards of behaviour for councillors. It provides for the minister to make a uniform and mandatory code of conduct to set appropriate standards for councillors. The introduction of a code of conduct will bring councillors in line with members of parliament, local government employees and state government employees, all of whom operate under a code of conduct.

The complaints bill establishes the new Councillor Conduct Tribunal to hear and determine alleged misconduct; to decide what, if any, disciplinary action to take; and, at the request of a local government, to investigate the suspected inappropriate conduct of a councillor. It establishes the new Local Government Remuneration Commission to establish categories of local governments; decide the category to which each local government belongs; and decide the maximum remuneration payable to councillors.

The committee noted that requiring hearings to be conducted by a panel of at least two members while allowing other administrative functions to be performed by individual members may more appropriately balance efficiency considerations with the importance of maintaining public and council confidence in the decisions of the Councillor Conduct Tribunal. In relation to the constitution of the Local Government Remuneration Commission, the committee had similar views. The government agrees and therefore supports recommendation 2 and will amend the complaints bill accordingly during consideration in detail.

The complaints bill establishes the Office of the Independent Assessor to investigate and deal with councillors' conduct where it is alleged, or suspected, to be inappropriate conduct, misconduct or, when referred to the Independent Assessor by the Crime and Corruption Commission, a complaint about corruption. Local government chief executive officers will no longer be in the invidious position of undertaking preliminary assessments of complaints. The Independent Assessor will investigate all complaints and information about councillor conduct before deciding how it should be dealt with.

Recommendation 5.15 of the independent review panel's report was that the Local Government Liaison Group review the proposed system 12 months after it commences and review the way councils have been adjudicating inappropriate conduct matters with a view to determining whether it is necessary and desirable to introduce an appeal system as described in the report. The government supported a review after 12 months. The Economics and Governance Committee has suggested that the scope of this review be expanded in certain respects. The government supports the majority of these matters being referred to the Local Government Liaison Group for consideration during its review.

The functions of the Independent Assessor include providing advice, training and information to councillors, local government employees and other persons about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct. The Independent Assessor is required to prepare an annual report prepared in a way that does not disclose the identity of any councillor investigated. The committee suggested that the relevant section be clarified to prevent disclosure of a complainant's identity. The government supports this suggestion and proposes to amend the bill during consideration in detail.

The bill provides for local governments to investigate and deal with suspected inappropriate conduct of councillors in accordance with an adopted investigations policy. I would like to highlight that, under the proposed new framework, it is not intended that councillors who are party to a complaint be allowed to participate in the investigation or decision-making.

The committee noted that the bill imposed requirements on members of the Councillor Conduct Tribunal in relation to interests that may conflict with the fair and impartial hearing of a councillor's conduct. The government notes the committee's comments. We propose to amend the bill during consideration in detail to impose requirements on members of the Councillor Conduct Tribunal in relation to interests that may conflict with the fair and impartial investigation of suspected inappropriate conduct of a councillor.

The bill provides that a councillor and chief executive officer must notify the Independent Assessor if they 'become aware of' information indicating that a councillor may have engaged in inappropriate conduct or misconduct. The committee noted stakeholder concerns regarding the threshold for when a councillor or chief executive officer has a duty to notify the Independent Assessor about a councillor's conduct. The committee noted that the proposed threshold for a councillor to report another councillor's conflict of interest under the Belcarra bill is that the councillor 'believes, or suspects, on reasonable grounds'. The committee believed there may be benefits in aligning the thresholds for when a councillor—and CEO—has a duty to report the conduct of another councillor and when a councillor has a duty to report a conflict of interest of another councillor. This would ensure the same threshold is applied to obligations to report matters about councillors.

The different thresholds are considered appropriate because the Belcarra bill applies to a specific matter to be discussed at a meeting of the council, or any of its committees, and requires that the councillor with the belief or suspicion of another councillor's conflict of interest must, as soon as practicable, inform the person presiding at the meeting. A failure to do so is misconduct that may result in disciplinary action. Whereas the bill provides that, if a local government official—that is, a mayor, councillor or chief executive officer of the council—becomes aware of information indicating a councillor

may have engaged in conduct that would be inappropriate conduct or misconduct, the local government official must give the Independent Assessor notice about the councillor's conduct. The Independent Assessor must investigate the councillor's conduct.

I turn now to the bill's appeal and review rights. Currently, decisions of the regional conduct review panels and the Local Government Remuneration and Discipline Tribunal cannot be appealed by a councillor. The complaints bill introduces a right for the councillor or the Independent Assessor to apply to the Queensland Civil and Administrative Tribunal for a review of a decision of the Councillor Conduct Tribunal, other than a decision recommending a councillor's suspension or dismissal.

I turn now to potential breaches of the fundamental legislative principle that legislation is to have sufficient regard to the rights and liberties of individuals. The bill strengthens offences to support the new councillor complaints system including providing protection from reprisal for local government employees and councillors who make complaints against councillors; discouraging frivolous and improper complaints; and ensuring the confidentiality of investigations. The committee suggested that I review the maximum penalties for offences proposed in the complaints bill to ensure that penalties are proportionate. The new offences in the bill for frivolous and other improper complaints are modelled on equivalent provisions in the Crime and Corruption Act 2001 and have equivalent monetary penalties. The penalties in the complaints bill are considered proportionate to the equivalent offences under the Crime and Corruption Act 2001.

The government proposes to monitor the new councillor complaints system including whether penalties for offences are appropriate. In its consideration of fundamental legislative principles, the committee further noted that the legislation should be unambiguous and drafted in a sufficiently clear and precise way. The government supports the committee's four suggestions for amendments to clarify certain provisions and proposes to amend the bill during consideration in detail to clarify the relevant provisions in the following way. The bill provides for arrangements necessary for transition to the new councillor complaints system. It will commence on a day fixed by proclamation to allow for the development of the code of conduct, model procedures and other standards; the training of councillors and local governments on the new complaints system; the appointment of the Independent Assessor; and the development of necessary regulation amendments.

In turning to the Belcarra bill, we not only support or support in principle all 31 CCC recommendations but also undertake further measures aimed at reinforcing integrity and minimising the risk of corruption. This government believes that property developers should not be able to buy political influence simply because they can. The CCC chair identified developer donations—and only developer donations—as a clear and genuine risk. The bill aims to reinforce integrity and minimise corruption risk that political donations from property developers have the potential to cause at both a state and local government level; improve transparency and accountability in state and local government; and strengthen the legislative requirements that regulate how a councillor must deal with a real or perceived conflict of interest or a material personal interest.

The Belcarra bill implements the government's response to recommendations 20 and 23 to 26 of the Belcarra report. To implement the government's response to recommendation 20 of the Belcarra report, the Belcarra bill amends the Electoral Act 1992 and the Local Government Electoral Act 2011. This bill makes the making and acceptance of political donations made by, or on behalf of, prohibited donors unlawful. It makes it unlawful for prohibited donors, or others on their behalf, to solicit other persons to make political donations.

The Belcarra bill includes a range of new offences with strong penalties. The transitional provisions apply from the date of introduction of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017—that is, 12 October 2017. Any payments that would be unlawful under the property developer donation prohibition made on or after 12 October 2017 will, on commencement, need to be repaid to the donor within 30 days after commencement. No offence is committed in respect of donations made or received between 12 October and commencement. However, it will be an offence to fail to repay the donation.

To implement the government's response to recommendation 23 of the Belcarra report, the Belcarra bill amends the City of Brisbane Act 2010 and the Local Government Act 2009 to ensure councillors are not voting on matters where they have personal interests. The bill requires other councillors to decide on two issues: first, whether the councillor has a real or perceived conflict of interest; and, second, if they decide the councillor does have a real or perceived conflict of interest, whether the councillor must leave the meeting while the matter is discussed and voted on or whether the councillor may participate in the meeting, including by voting on the matter.

Community concern surrounds councillors making rudimentary declarations that do not provide sufficient information for a reasonable person to understand the nature of the interest or the potential conflict. To address these concerns and to implement recommendation 23 of the Belcarra report, the

Belcarra bill requires councillors to provide additional specific information about their conflicts of interest and material personal interests. These amendments are designed to better accord with community expectations.

To implement the government's response to recommendation 24, amendments in this bill apply if a matter, other than an ordinary business matter, is to be discussed at a meeting of the council or any of its committees and a councillor at the meeting believes, or suspects, on reasonable grounds that another councillor at the meeting has a material personal interest, a real conflict of interest or a perceived conflict of interest. If the other councillor has not informed the meeting about the interest, the councillor who has the belief or suspicion must, as soon as practicable, inform the person presiding at the meeting of the belief or suspicion and the facts and circumstances that form the basis of the belief or suspicion. Failing to raise another councillor's conflict of interest or material personal interest may be misconduct that could result in disciplinary action being taken.

To implement the government's response to recommendation 25, the Belcarra bill inserts a number of penalties for councillors failing to comply with legislative requirements. These offences are prescribed as 'integrity offences'. A person who is convicted of an integrity offence cannot be a councillor for four years after the conviction. A sitting councillor who is convicted of an integrity offence automatically stops being a councillor on conviction.

To implement the government's response to recommendation 26, the Belcarra bill provides for offences where a councillor with a conflict of interest or material personal interest influences or attempts to influence another councillor's vote. The maximum penalty that will apply for each of these offences is 200 penalty units or two years imprisonment. These offences will also be prescribed as 'integrity offences'. The amendments to implement the government's response to recommendations 23 to 26 of the Belcarra report will commence on assent.

I turn now to the Economics and Governance Committee's report on the Belcarra bill, tabled on 23 April 2018. My thanks go to the committee for its thorough consideration of the Belcarra bill and to those stakeholders who made submissions and appeared as witnesses as part of the committee's examination of the Belcarra bill. After careful consideration, I am pleased to table the government's response.

Tabled paper: Economics and Governance Committee: Report No. 7—56th Parliament: Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018, government response [**652**].

In addition to recommending that the bill be passed, the committee made two further recommendations. Recommendation 2 was that the Department of Local Government, Racing and Multicultural Affairs and the Department of Justice and Attorney-General work with the Electoral Commission Queensland to develop examples of what is a property developer and a close associate, and what constitutes 'regularly' in the context of making relevant planning applications, to assist affected parties and the Electoral Commission Queensland and the courts in determining the application of the proposed legislation. The government does not support this recommendation. The Electoral Commission is established under the Electoral Act 1992 as an independent statutory authority responsible for administering the act. The proposed provisions in the Belcarra bill are modelled on the Election Funding, Expenditure and Disclosures Act 1981 of New South Wales. It would be a matter for the ECQ to decide what information is published to provide guidance in these matters.

Recommendation 3 was that the bill be amended to insert a purpose statement in the Electoral Act 1992, similar to the proposed purpose statement in the Local Government Electoral Act 2011. The government does not support this recommendation. As the Electoral Act 1992 does not presently include a purpose provision, no amendment is being made in this regard in this bill. The explanatory notes, parliamentary speeches and other extrinsic material may be used as an aid to assist in the interpretation and understanding of the purpose of the proposed amendments.

The amendments to the Electoral Act 1992 and the Local Government Electoral Act 2011, in parts 3 and 5 of the Belcarra bill respectively, are due to commence by proclamation. The ECQ in its submission to the committee indicated that a lead time of up to six months would be required to develop the administrative and compliance and enforcement policies, procedures and processes to support the implementation of the ban on political donations from property developers. The ECQ will be consulted on a suitable commencement date.

Although the provisions commence by proclamation, proposed clause 20 inserts a transitional provision that imposes an obligation on a recipient of a donation from a property developer made during the period on or after 12 October 2017 up to the date of commencement of part 3 of the Belcarra bill to repay the donation within 30 days. The government proposes to monitor the new provisions for managing councillor material personal interests and conflicts of interest for continual improvement, including whether penalties for offences are appropriate.

I now turn to the statement of reservation from the non-government members of the committee. Since the release of the Belcarra report on 4 October 2017, the government's intention has been clear. The Premier said that the ban would apply at both local and state government levels. Consistent with the New South Wales approach, and to address the risk of corruption and undue influence that political donations from property developers can cause, the bill applies to both levels of government. The government's decision to extend the ban to the state level also acknowledges the state's significant role in the state's planning framework. In relation to the non-government members' concerns about retrospectivity, if this bill is passed, a lead-in time between passage and commencement will not only ensure the Electoral Commission will have necessary administrative arrangements in place but also ensure that any person or entity potentially affected by the provisions can obtain any necessary advice.

The statement of reservation queries the definition of 'property developer' in the Belcarra bill and the use of the word 'regularly'. The definition of 'property developer', as recommended by the Crime and Corruption Commission in recommendation 20, has been modelled on the New South Wales definition. As the bill does not include a definition of 'regularly', it is to be given its ordinary meaning.

The government proposes to move amendments to the bills during consideration in detail. Minor amendments are considered necessary to ensure consistency between the complaints bill and the Belcarra bill. In addition to these minor amendments, it is proposed to amend the Local Government Act 2009 and the City of Brisbane Act 2010 to provide for councillors charged with certain offences, including serious integrity offences, to be automatically suspended from office, pending the determination of the charges by the courts.

The Local Government Act 2009 and the City of Brisbane Act 2010 currently provide that a person is disqualified from being a councillor in particular circumstances, including on conviction for a prescribed 'treason offence', 'bribery offence', 'electoral offence' or 'integrity offence' and while the person is serving or is liable to serve a period of imprisonment, including a suspended sentence. However, the range of offences is narrow. There are also no provisions in the Local Government Act 2009 or the City of Brisbane Act 2010 that provide for the automatic suspension of a councillor charged with serious offences.

The amendments provide the automatic suspension of a councillor when a councillor is charged with the following: the existing section 153 automatic disqualification offences; new section 153 automatic disqualification offences to be inserted by the Belcarra bill and the councillor complaints bill; specific criminal offences which may constitute corrupt conduct, that is, serious integrity offences; specific criminal offences under the Local Government Electoral Act; and the proposed new offences to be inserted by this bill in the Local Government Electoral Act and the state Electoral Act relating to the prohibition of election donations from property developers.

The amendments refer to these three categories collectively as 'disqualifying offences'. While suspended, a councillor will be entitled to their base remuneration but no additional remuneration or allowances. The amendments outline the circumstances for when the suspension of a councillor ends, including when the councillor's term ends and if the councillor is convicted of the offence and appeals the conviction and the conviction is set aside or quashed on appeal. If a councillor is convicted of a disqualifying offence, the councillor's office becomes vacant and therefore the suspension ends.

It is proposed to amend section 153 of the Local Government Act 2009 and section 153 of the City of Brisbane Act 2010 to provide that, if a councillor is convicted of a serious integrity offence or an integrity offence, the councillor will automatically stop being a councillor and will be disqualified from being a councillor for the following periods: for an integrity offence, for four years after the conviction; and for a serious integrity offence, for seven years after the conviction.

A councillor convicted of a suspension or disqualification offence must, if without reasonable excuse, immediately notify the minister, the chief executive officer and, if the councillor is not the mayor, the mayor of the charge. Failure to notify will attract a maximum penalty of 100 penalty units. These amendments will commence on assent.

The Local Government Act 2009 provides the state with several intervention options when there are concerns regarding the performance of councillors or a council as a whole, including the power to dismiss a local government. These powers rely on a minister's reasonable belief that the council or councillor is either not complying with the local government principles or not capable of performing their responsibilities. However, there may be occasions where a local government or a councillor is not living up to community expectations for its elected representatives. Accordingly, the amendments will allow for dissolution of a local government or the suspension or dismissal of a councillor where it is in the public interest to do so.

What is in the public interest will depend upon individual circumstances. However, it may include considerations such as: complying with the law; carrying out functions reasonably, fairly and impartially; ensuring accountability and transparency; exposing corruption or serious maladministration; community

confidence in a local government and/or its councillors; avoiding or properly managing private interests conflicting with official duties; and complying with the principles of procedural fairness and natural justice.

I acknowledge the work of the CCC, whose recommendations have informed the development of this critical legislation. There will be further reforms to increase transparency and accountability at both levels of government. As the chair of the Economics and Governance Committee has observed, perceptions of our democratic system are vitally important. The community expects and deserves to have confidence in the integrity of their elected officials.

Our record on integrity, transparency and accountability is evident. We have never shied away from our commitment to ensure elected officials are held accountable. The bills before the House are critical components of a suite of measures that we as the Palaszczuk government are progressing. I am working closely with councils, the LGAQ and the community to ensure Queensland has a legislative framework with very clear standards. I can give an ironclad commitment today that the local government legislation will be continually reviewed to ensure it meets community expectations for our elected representatives. In particular, I give my commitment to review today's urgent amendments that give me the power to dismiss or suspend councillors or councils in consultation with the Local Government Association of Queensland. The amendment to enable automatic stand-aside provisions will also be reviewed, and this review will take place within two years.

My department will prepare a range of materials and training courses to assist councils to prepare for the new councillor complaints system and the new requirements for dealing with conflicts of interest and material personal interests. The department will develop best practice guidelines to assist councils in establishing their own complaints processes, including a sample investigations policy and sample standing orders for the conduct of council meetings. The department will provide fact sheets and guidance notes for all councils on new requirements for dealing with material personal interests and conflicts of interest so that local governments can conduct meetings in accordance with the new requirements. The government will work in partnership with councils. We will ensure councils merit the trust that the Queensland community places in them.

I know that so many people in the community do place trust in their councils right across the length and breadth of the state because so many people in councils right across the length and breadth of the state do great work, do very good work on behalf of their communities and in delivering good governance. The matters that are before the House today are, sadly, to deal with the minority. However, those standards must be high and they must be maintained. I commend the bills to the House.