

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

Explanatory Notes

Short title

The short title of the Bill is the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017.

Policy objectives and the reasons for them

The policy objective of the Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 (the Bill) is to implement certain recommendations of the Crime and Corruption Commission's (CCC) report *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (the Belcarra Report)¹ to:

1. reinforce integrity and minimise corruption risk that political donations from property developers has potential to cause at both a state and local government level
2. improve transparency and accountability in state and local government
3. strengthen the legislative requirements that regulate how a councillor must deal with a real or perceived conflict of interest or a material personal interest.

Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government

Following the Queensland local government elections on 19 March 2016, the CCC received numerous complaints about the conduct of candidates in the 2016 local government elections for the Gold Coast City Council, Moreton Bay Regional Council, Ipswich City Council and Logan City Council.

In response to these allegations, in September 2016 the CCC initiated Operation Belcarra to determine whether candidates committed offences under the *Local Government Electoral Act 2011* (LGEA) that could constitute corrupt conduct and to examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government, with a view to identifying strategies or reforms to help prevent or decrease corruption risks and increase public confidence.

The terms of reference for the investigation also extended to an examination of issues and practices associated with a number of related matters, including the management of councillor conflicts of interest.

¹ *Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government*. A copy of the report is available at:
<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T1861.pdf>

On 4 October 2017, the Speaker caused the Belcarra Report to be tabled in the Legislative Assembly. The report contains 31 recommendations for change to reduce the risk of corruption and to provide for increased transparency, integrity and accountability in local government.

On 10 October 2017, the Premier and Minister for the Arts tabled the Government response to the Belcarra Report, that supports or supports in principle the recommendations.

The following recommendations are considered significant to require urgent legislative change:

- banning donations from property developers for candidates, third parties, political parties and councillors. This is extended to Members of State Parliament.
- strengthening the process associated with the declaration of councillor conflicts of interest, the management of conflicts of interest and material personal interests within council meetings and penalties for non-compliance.

Any further legislative changes required to implement the Government's response to the recommendations will be considered at a later date.

Achievement of policy objectives

To achieve the policy objectives, the Bill amends the *Electoral Act 1992* (EA) and the LGEA to prohibit the making of political donations by property developers to candidates, groups of candidates, third parties, political parties, councillors and Members of State Parliament. The Bill makes unlawful:

- the making and acceptance of political donations made by or on behalf of prohibited donors and
- for prohibited donors (or others on their behalf) to solicit other persons to make political donations.

The Bill adopts the New South Wales scheme provisions in this area.

To support the policy objectives of the Bill, the LGEA is amended to provide that the purpose of the LGEA is to ensure and reinforce integrity in Queensland's local governments, including minimising the risk of corruption in relation to the election of councillors and the good governance of, and by, local government. As the EA does not include a purpose provision, no amendment is being made in this regard to the EA.

To achieve the policy objectives, the Bill also amends the *Local Government Act 2009* (LGA) the *City of Brisbane Act 2010* (COBA) to:

- strengthen requirements for how a councillor must deal with a real or perceived conflict of interest or a material personal interest to:
 - o require that after a councillor has informed the meeting of the councillor's conflict of interest other councillors must vote at a meeting to decide whether the councillor has a real or perceived conflict and whether the councillor must leave the place at which the meeting is being held or may stay and participate in the meeting
 - o prescribe additional information to be provided by a councillor when informing a meeting of a conflict of interest or a material personal interest
 - o require any councillor at a meeting who believes or suspects on reasonable grounds that another councillor at the meeting has a conflict of interest or a material personal interest

- to inform the person who is presiding at the meeting of the councillor's belief of suspicion
- o strengthen penalties for councillors who fail to comply with their obligations
- o provide that it is an offence for a councillor who has a material personal interest or a conflict of interest in a 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
- provide for appropriate transitional arrangements.

Prohibition on donations from property developers

Recommendation 20 of the Belcarra Report recommended that *'the Local Government Electoral Act, the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers. This prohibition should reflect the New South Wales provisions as far as possible, including in defining a property developer (s. 96GB, Election Funding, Expenditure and Disclosures Act 1981), making a range of donations unlawful, including a person making a donation on behalf of a prohibited donor and a prohibited donor soliciting another person to make a donation (s. 96GA), and making it an offence for a person to circumvent or attempt to circumvent the legislation (s. 96HB). Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors.'*²

The Belcarra Report identified there is a risk of corruption when donations are made with the expectation that the recipient will, in return, make decisions that deliver a benefit to the donor. The risk is heightened when donors have business interests that are affected by government decisions. At the local government level, this risk is particularly associated with property developers.³

The foreword from the Belcarra Report also identified that *'many of the issues under investigation had been previously examined by this agency or its predecessor. In 1991, the then Criminal Justice Commission (CJC) examined property developer donations and conflicts of interest on the Gold Coast. In 2006, the then Crime and Misconduct Commission (CMC) examined property developer donations and undeclared groups of candidates, again on the Gold Coast, and in 2015, the CCC examined the practices relating to the receipt, management and disclosure of electoral donations by the former mayor of Ipswich City Council. The recurring nature of these issues, despite increased regulation and oversight of local government elections and political donations over time, highlights the inherent potential to cause concerns about corruption and adversely affect public perceptions of, and confidence in, the transparency and integrity of local government.'*⁴

There is also a real risk of corruption when donations are made by property developers at a state government level where the State has a significant role in Queensland's planning framework – administering the entire planning framework; mandating the powers that can be exercised by the Planning Minister, including approving planning schemes and other local planning instruments, sometimes deciding on a development application when council is the

² Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government, page 78.

³ Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government, page 76.

⁴ Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government, page viii.

assessment manager; mandating the role and responsibilities of local governments; and assessing and advising on applications that trigger a state planning matter. Corruption in relation to donations from property developers at both local government and state government levels has been investigated and reported on in New South Wales by the Independent Commission Against Corruption (ICAC).

The CCC itself acknowledged that the Government may consider it appropriate to also adopt the recommendations at the state level. Given the State's significant role in Queensland's planning framework as outlined above, the risk of corruption and undue influence similarly apply in respect of donations by property developers at the state level. Therefore, consistent with the approach adopted in New South Wales following a number of ICAC investigations, and to address the risk of corruption and undue influence that political donations from property developers has the potential to cause at a local government and a state government level, the Bill applies at a local and state government level.

Consideration has been given to the effect of the amendments on affected persons' freedom to participate in the political process both at a local and state level, both generally and as regarding the treatment of fundraising contributions. However, the provisions are justified given, as the CCC noted, allegations of the nature of those made in the Operation Belcarra investigations have been repeatedly examined in major inquiries in Queensland and other Australian jurisdictions over the last 25 years; highlighting the inherent potential of donations to lead to perceptions of corruption. The High Court has found the New South Wales *Election Funding, Expenditure and Disclosure Act 1981* provisions, upon which the Bill's provisions are based in accordance with the CCC's recommendation, to be valid.⁵

To implement recommendation 20 of the Belcarra Report, the Bill provides that it is unlawful for:

- a prohibited donor to make a political donation
- a person to make a political donation on behalf of a prohibited donor
- a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor
- a prohibited donor to solicit a person to make a political donation
- a person to solicit, on behalf of a prohibited donor, another person to make a political donation.

The Bill defines a prohibited donor as a property developer or an industry representative organisation a majority of whose members are property developers, but does not include an entity which the Electoral Commissioner (commissioner) has determined is not a prohibited donor.

The maximum penalty for doing an act that is unlawful, if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful, is 400 penalty units or 2 years' imprisonment. It is also an offence for a person to knowingly participate, directly or indirectly in a scheme to circumvent a prohibition about political donations. The maximum penalty that may be imposed for this offence is 1500 penalty units or 10 years' imprisonment.

Managing councillor conflicts of interest and material personal interests

⁵ McCloy v New South Wales [2015] 257 CLR 178

The Belcarra Report recommended a series of changes to strengthen the requirements around how councillors deal with a real or perceived conflict of interest. Where appropriate these changes have also been applied to how councillors deal with a material personal interest.

Councillors to vote to determine whether another councillor has a real or perceived conflict of interest and whether a councillor should leave the meeting

Recommendation 23 of the Belcarra Report recommended that ‘*section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor’s conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:*

- a) *whether the councillor has a real or perceived conflict of interest in the matter*
- b) *whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.*

The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting.’⁶

To implement recommendation 23, the Bill provides that if a councillor has informed a meeting about the councillor’s personal interests in a matter and the councillor does not decide to leave the meeting, other councillors who are entitled to vote at the meeting must decide:

- whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and
- if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter whether the councillor:
 - o must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or
 - o may participate in the meeting in relation to the matter, including by voting on the matter.

The councillor must comply with the decision to leave and stay away from the place where the meeting is being held and the maximum penalty that may be imposed for non-compliance is 100 penalty units or 1 year’s imprisonment.

Declaring a conflict of interest or a material personal interest at a meeting

Community concern surrounds councillors making rudimentary declarations that may not provide sufficient information to determine the conflict of interest nor the precise nature of the conflict of interest.

⁶ *Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government*, page 85.

To address these concerns, the Bill amends the LGA and COBA to require councillors to provide additional specific information about their conflicts of interests and material personal interests.

The Bill provides that if a councillor has a real or perceived conflict of interest in a matter to be discussed at a local government meeting, the councillor must inform the meeting about the councillor's personal interests in the matter, including the following particulars about the interests:

- the nature of the interests
- if the councillor's personal interests in the matter arise because of the councillor's relationship with, or receipt of a gift from, another person:
 - o the name of the other person
 - o the nature of the relationship or value and date of receipt of the gift
 - o the nature of the other person's interests in the matter.

The maximum penalty for failing to inform the meeting about the councillor's personal interests in a matter is 100 penalty units or 1 year's imprisonment.

The Bill also provides that if a councillor has a material personal interest in a matter to be discussed at a local government meeting, the councillor must inform the meeting of the councillor's material personal interest, including the following particulars about the interest:

- the name of the person or other entity who stands to gain a benefit or suffer a loss depending on the outcome of the consideration of the matter at the meeting
- how the person or other entity stands to gain a benefit or suffer the loss
- if the person or entity who stands to gain the benefit or suffer the loss is not the councillor, the nature of the councillor's relationship to the person or entity.

The LGA and COBA currently provide that if a councillor has a material personal interest in a matter the councillor must leave the place at which the meeting is being held while the matter is being discussed and voted on. If a councillor votes on the matter with an intention to gain a benefit or avoid a loss, for the councillor or another person or entity the maximum penalty that may be imposed is 200 penalty units or 2 years' imprisonment, or otherwise 85 penalty units.

Duty to report another councillor's material personal interest or conflict of interest

Recommendation 24 of the Belcarra Report recommended that '*the Local Government Act and the City of Brisbane Act be amended to:*

- a) *require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the Chief Executive Officer of the council*
- b) *require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting.'*⁷

To implement recommendation 24, the Bill provides that if a councillor believes or suspects on reasonable grounds that another councillor has a material personal interest or a conflict of interest in a matter to be discussed at a council meeting the councillor must, as soon as

⁷ *Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government*, page 85.

practicable inform the person who is presiding at the meeting about the councillor's belief or suspicion and the facts and circumstances that form the basis of the belief or suspicion. This provision will not apply if the other councillor has already declared a conflict of interest or a material personal interest.

Failure to comply with this requirement will amount to misconduct by the councillor.

The Bill also provides that it is an offence to take retaliatory action against a councillor or another person because a councillor informed the person presiding at the meeting about the councillor's belief or suspicion. The maximum penalty that may be imposed for this offence is 167 penalty units or 2 years' imprisonment.

Strengthened penalties for non-compliance

Recommendation 25 of the Belcarra Report recommended that '*the Local Government Act and the City of Brisbane Act be amended to provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office.*'⁸

To implement recommendation 25, the Bill provides for a number of strengthened penalties for a councillor failing to comply with their obligations about conflicts of interests. For consistency, these penalties also apply to material personal interests where appropriate. These are discussed in more detail below in the context of fundamental legislative principles.

In addition, the Bill provides that the new offences are integrity offences. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) LGA and section 153(1)(d) COBA).

Offence to influence another councillor

Recommendation 26 of the Belcarra Report recommended that '*the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.*'⁹

To implement the Government's response to recommendation 26, the Bill provides that a councillor who has a material personal interest or conflict of interest in a matter the councillor must not:

- influence or attempt to influence another councillor to vote on the matter in a particular way at a meeting of the council or any of its committees; or
- influence or attempt to influence a council employee or contractor of the council who is authorised to decide or otherwise deal with the matter to do so in a particular way.

⁸ *Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government*, page 85.

⁹ *Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government*, page 85.

The maximum penalty that may be imposed for this offence is 200 penalty units or 2 years' imprisonment. The new offence is also an integrity offence. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) LGA and section 153(1)(d) COBA).

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objectives as the objectives require amendment of existing legislation.

Estimated cost for government implementation

The costs associated with the amendments will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

Potential breaches of the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* (LSA) are addressed below.

The FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals (LSA section 4(2)(a)).

Implied freedom of communication on governmental and political matters

The Belcarra Report identified that there were perceptions of compromised local council processes and decision making, especially where councillors have received campaign funding from donors involved in property development.

As noted above, the state government also plays a critical role in the approval of significant property development through the role and functions of the responsible minister in legislation such as the *Integrated Resort Development Act 1987* and the *Planning Act 2016*. Therefore the risks identified in the Belcarra Report with respect to elected local government members also apply to elected Members of State Parliament.

The provisions prohibiting property developer donations give effect to recommendation 20 of the Belcarra Report to make donations made by or on behalf of property developers unlawful and to create a further offence for persons who engage in schemes to circumvent the donation prohibitions.

These provisions will restrict the source of funds available to candidates, councillors, members and political parties to meet the costs of political communication.

The FLP breach is justified given the role of both local government and the State in planning decisions, and the very real potential for property developer donations to lead to corruption or perceptions of corruption which can damage public confidence in the integrity of both local and state government. As noted above, the High Court has found that the New South provisions, upon which the Bill's provisions are based, to be constitutionally valid.

New offences about managing councillor conflicts of interest and material personal interests

The Bill inserts a number of offences in the LGA and COBA in relation to managing councillor conflicts of interest and material personal interests: section 175E of the LGA and section 177E of COBA (Councillor's conflict of interest at a meeting), section 175H of the LGA and section 177H of COBA (Offence to take retaliatory action), section 175I of the LGA and section 177I of COBA (Offence for councillor with personal interest to influence others). These offences constitute a potential infringement of the FLP that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LSA).

The potential breach of the FLP by creation of these offences is justified to address recommendations 23–26 of the Belcarra Report to improve how councillors manage conflicts of interest and to strengthen penalties that apply if a councillor fails to comply with their obligations about conflicts of interests. The offences will also apply to a councillor's material personal interests (where appropriate) to align with the approach for conflicts of interest.

The new offences will also be prescribed as integrity offences under the LGA and COBA by the amendment to section 153 of the LGA by clause 22 and the amendment to section 153 of COBA by clause 4. A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction (section 153(1)(d) of the LGA and section 153(1)(d) of COBA). The offences in the LGA and COBA of failing to declare a material personal interest in a matter to be discussed at a local government meeting and to leave the meeting room during the discussion (current section 172(5) of the LGA and current section 174(5) of COBA) are already prescribed as integrity offences.

Other integrity offences include a person using information they obtained as a councillor to gain a financial advantage for themselves or someone else or to cause detriment to the local government (section 171 LGA and section 173 COBA) and a person improperly influencing the vote of a person at an election or referendum (section 98E Criminal Code). The new offences to be prescribed as integrity offences are considered to be equivalent in seriousness to the offences currently prescribed as integrity offences.

Conflicts of interest offences

It will be an offence if a councillor does not inform a local government meeting about the councillor's conflict of interest in relation to a matter being discussed at the meeting (new section 175E(2) LGA and new section 177E(2) COBA).

It will also be an offence if a councillor with a conflict of interest in a matter being discussed at a local government meeting does not comply with a decision of the other persons entitled to vote at the meeting that the councillor must leave and stay away from the place where the meeting is being held (new section 175E(5) LGA and new section 177E(5) COBA).

The maximum penalty that will apply for these offences is 100 penalty units or 1 year's imprisonment. This maximum penalty is less than the maximum that applies for failing to inform a meeting of a material personal interest which reflects the relative seriousness of these offences. The maximum penalty for failing to inform a meeting of a material personal interest is 200 penalty units or 2 years' imprisonment if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or another person, or 85 penalty units otherwise.

Taking retaliatory action

New offences will apply if a person takes retaliatory action against a councillor or another person because the councillor complied with the requirement to inform a local government meeting of another councillor's material personal interest or conflict of interest in a matter to be discussed at the meeting (new section 175H LGA and new section 177H COBA). This offence is similar to the offence in section 41 of the *Public Interest Disclosure Act 2010* (PID Act) (Offence of taking reprisal) which protects a person making a public interest disclosure under that Act from reprisals. The proposed maximum penalty for the new offences is 167 penalty units or 2 years' imprisonment which is equivalent to the PID Act offence.

Influencing a decision

A new offence will apply if a councillor with a material personal interest or a conflict of interest in a matter influences or attempts to influence another councillor or a local government employee or contractor on the outcome of the matter (new section 175I(1) and (2) LGA and new section 177I(1) and (2) COBA). The maximum penalty that will apply is 200 penalty units or 2 years' imprisonment. This is a significant penalty which reflects that this offence protects against a situation where a councillor seeks to circumvent the requirements of the LGA and COBA relating to material personal interest and conflicts of interest.

The creation of these offences and the penalties that apply are significant but are considered reasonable and proportionate to address the issues relating to the perceived integrity of local government operations raised in the Belcarra Report and to ensure that local governments fulfil public expectations. The offences and penalties are also reflective of, the local government principles, that decision-making is in the public interest and supported by transparent and effective processes.

New offences about prohibited donations

The Bill proposes the creation of new offences in the EA and the LGEA about prohibited donations: proposed new section 307A of the EA and new section 194A of the LGEA (Offence about prohibited donations) punishable by a maximum penalty of 400 penalty units or 2 years' imprisonment; and proposed new section 307B of the EA and new section 194B of the LGEA (Schemes to circumvent prohibition on particular political donations) punishable by a maximum penalty of 1500 penalty units or 10 years' imprisonment. Both new offences are indictable offences. These offences constitute a potential infringement of the FLP that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LSA).

The potential breach of the FLP by creation of these offences is justified because the offences address issues identified by the Belcarra Report. The Belcarra Report identified that there were perceptions of compromised local council processes and decision making, especially where councillors have received campaign funding from donors involved in property development. The State government plays a critical role in the approval of significant property development through the role of the responsible minister in legislation such as the *Planning Act 2016* and therefore the risks identified in the Belcarra Report with respect to elected local government members apply equally to members or persons seeking election to become Members of State Parliament. Significantly, the two offences give effect to recommendation 20 of the Belcarra Report to make donations made on behalf of property developers unlawful and to create further offences for persons who engage in schemes to circumvent the donation prohibitions.

The Belcarra Report recommended legislation based on provisions contained in the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) and the penalties in the Bill are consistent with the penalties provided for the offences in the New South Wales legislation. In addition, the maximum penalty for the proposed new offence in section 307B of the EA and section 194B of the LGEA (Schemes to circumvent prohibition on political donations) provides for a financial penalty of 1500 penalty units. This is consistent with maximum penalty units provided for similar financial crimes in the Queensland statute book, for example, section 250 (Money Laundering) in the *Criminal Proceeds Confiscation Act 2002*.

When considering the impact on rights and liberties it is important to note that the defences and excuses in Chapter 5 of Queensland's Criminal Code will be available to a person charged with either of these two offences, including the excuse at section 24 (Mistake of Fact).

Recovery of prohibited donations as a debt to the State

The Bill provides that if a person receives a prohibited donation the amount of the donation may be recovered as a debt due to the State. The Bill further provides that debt due to the State will be doubled in circumstances where the person knew it was unlawful to receive the prohibited donation. The recovery of the amount of prohibited donation is justified because it is necessary to address both the risk of corruption and perception of corruption that can occur when prohibited donations are made. By ensuring that the full amount of the prohibited donation (or double the amount) is paid to the State the public can feel more confident that decisions will not be in favour of a prohibited donor because of a prohibited donation.

New offences about providing false and misleading information relating to determinations

The Bill proposes the creation of new offences at section 307C of the EA and section 194C of the LGEA (False or misleading information relating to determinations) which provide that a person cannot give to the commissioner information in an application for a determination about a donor under section 277 of the EA or section 113D of the LGEA that they know is false and misleading in a material particular. The offence is a misdemeanour and therefore is an indictable offence. The maximum penalty for the offence is 400 penalty units or 2 years' imprisonment. This offence constitutes a potential infringement of the FLP that legislation has sufficient regard to the rights and liberties of individuals (section 4(2) (a) of the LSA).

The creation of this offence is justified in order to ensure the integrity of the process for the commissioner to determine whether an entity is a prohibited donor under proposed new section 277 of the EA and section 113D of the LGEA (Making of determination that entity is not a prohibited donor) in the Bill. The maximum penalty for this offence is consistent with the penalty for the analogous offence under the *Election Funding, Expenditure and Disclosure Act 1981* (NSW).

Retrospectivity

Relevant to whether legislation has sufficient regard to rights and liberties of individuals is whether it adversely affects rights and liberties, or imposes obligations, retrospectively.

Transitional provisions for the property developer donations prohibition in section 427 the EA and section 212 of the LGEA (Obligation to repay particular political donations) apply from

the date the Bill was introduced into the Legislative Assembly such that any payments that are unlawful under those provisions and the payments are made on or after the date of introduction will, on commencement, need to be repaid to the donor within 30 days of the commencement or paid to the Electoral Commission of Queensland (commission) if they cannot be repaid. There is no offence committed in respect of donations made or received between the date of introduction and commencement, with the only offence being the failure to repay (which will only become operational following commencement). In this way, the provisions operate prospectively rather than retrospectively.

Consultation

No consultation with the community has been undertaken in the preparation of the Bill.

Operation Belcarra was initiated by the CCC following receipt of more than 30 complaints about the conduct of candidates for several councils in the 2016 local government elections. The CCC conducted nine days of public hearings, and took evidence from 40 witnesses, including candidates, donors, the commissioner and the Local Government Association of Queensland (LGAQ). In addition, the CCC invited written submissions from a range of key stakeholders including registered political parties, the LGAQ and academic experts. Six written submissions were received.

Consistency with legislation of other jurisdictions

The Bill is modelled on the New South Wales legislation that prohibits political donations from property developers for state and local governments. Recommendation 20 of the Belcarra Report recommended that the prohibition on developer donations should reflect the New South Wales system as far as possible, including in defining a property developer, making a range of donations unlawful and making it an offence for a person to circumvent the legislation.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that when enacted, the Bill will be cited as the *Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Act 2017*.

Clause 2 Commencement

Clause 2 provides that Parts 3 and 5 commence on a day to be fixed by proclamation.

Part 2 Amendment of City of Brisbane Act 2010

Clause 3 Act Amended

Clause 3 states that this part amends the *City of Brisbane Act 2010*.

Clause 4 Amendment of s 153 (Disqualification for certain offences)

The Belcarra Report recommendation 25 states that ‘*the Local Government Act and the City of Brisbane Act be amended to provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office*’.

To implement the Belcarra Report recommendation 25, *clause 4* amends section 153 to provide that an integrity offence is an offence against the following sections:

- Section 177C(2)— it is an integrity offence for a councillor to fail to inform a meeting of the council or any of its committees of the councillor’s material personal interest in a matter to be discussed at the meeting and to fail to leave the meeting while the matter is being discussed and voted on..
- Section 177E(2)— it is an integrity offence for a councillor to fail to inform a meeting of the council or any of its committees of the councillor’s personal interest in a matter to be discussed at the meeting including failing to inform the meeting of prescribed particulars about the interest in the matter.
- Section 177E(5)—it is an integrity offence for a councillor to fail to comply with a decision of the other councillors at the meeting for the councillor to leave the meeting.
- Section 177H—it is an integrity offence for a person to take retaliatory action because a councillor complied with section 177G(2) (duty to report another councillor’s material personal interest or conflict of interest at a meeting).
- Section 177I(1)—it is an integrity offence for a councillor who has a material personal interest or a conflict of interest in a matter to influence, or attempt to influence, another councillor to vote on the matter in a particular way at a meeting of the council.
- Section 177I(2)—it is an integrity offence for a councillor who has a material personal interest or a conflict of interest in a matter to influence, or attempt to influence, a council employee or a contractor of the council who is authorised to decide or otherwise deal with the matter, in a particular way.

A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *City of Brisbane Act 2010*).

Clause 5 Omission of ss 174 and 175

Clause 5 omits sections 174 and 175.

Clause 6 Insertion of new ch 6, pt 2, div 5A

Clause 6 inserts in chapter 6, part 2 the following:

Division 5A Dealing with councillors' personal interests in council matters

Section 177A Purpose of division

Section 177A establishes that the purpose of division 5A is to ensure the personal interests of councillors are dealt with in an accountable and transparent way that meets community expectations, if the interests relate to matters to be considered—

- at a meeting of the council or any of its committees; or
- by a council employee or contractor of the council authorised to deal with the matter.

Section 177B Meaning of *material personal interest*

Section 177B provides for the meaning of *material personal interest* in a stand-alone section. Section 177B generally aligns with the current section 174(2)-(4). New section 177C provides for how a councillor must deal with the material personal interest if a councillor has a material personal interest in a matter to be discussed at a meeting of the council or any of its committees, and the matter is not an ordinary business matter.

To clarify the meaning of 'partner of the councillor' as it appears in the current section 174(2)(d), new section 177B(1)(d) provides that a councillor has a material personal interest in a matter if a person who is in a partnership with the councillor stands to gain a benefit or suffer a loss (either directly or indirectly) depending on the outcome of consideration of the matter.

Section 177C Councillor's material personal interest at a meeting

Section 177C applies if a matter is to be discussed at a meeting of the council or any of its committees, and the matter is not an ordinary business matter, and a councillor has a material personal interest in the matter.

To assist councillors in how to deal with a material personal interest in a transparent and accountable way, section 177C provides that the councillor must inform the meeting of the councillor's material personal interest in the matter, including the following particulars about the interest:

- the name of the person or other entity who stands to gain a benefit, or suffer a loss, depending on the outcome of consideration of the matter at the meeting
- how the person or other entity stands to gain the benefit or suffer the loss
- if the person or other entity who stands to gain the benefit or suffer the loss is not the councillor—the nature of the councillor's relationship to the person or entity.

The councillor must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is being discussed and voted on.

The maximum penalty is:

- if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or another person or entity—200 penalty units or 2 years' imprisonment; or
- otherwise 85 penalty units.

The maximum penalty aligns with the maximum penalty under the current section 174(5). The offence is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *City of Brisbane Act 2010*).

If a majority of the councillors at a meeting of the council inform the meeting about a material personal interest in a matter under section 177C(2)(a), the council must delegate deciding the matter under section 238, unless deciding the matter can not be delegated under that section. Section 238(2) provides that the council must not delegate a power that an Act states must be exercised by resolution.

A councillor does not contravene section 177C(2) by participating in the meeting, or being present while the matter is being discussed and voted on, if the councillor's participation or presence is for the purpose of delegating deciding the matter under subsection (3); or is approved under section 177F and the councillor complies with the conditions of the approval.

Section 177D Meaning of *conflict of interest*

Section 177D provides for the meaning of *conflict of interest* in a stand-alone section. Section 177D aligns with the current section 175(2), (3) and (9) and new section 177E provides for how a councillor must deal with a conflict of interest at a meeting.

Section 177E Councillor's conflict of interest at a meeting

Section 177E applies if a matter is to be discussed at a meeting of the council or any of its committees, and the matter is not an ordinary business matter, and a councillor at the meeting:

- has a conflict of interest in the matter (a *real conflict of interest*); or
- could reasonably be taken to have a conflict of interest in the matter (a *perceived conflict of interest*).

To assist councillors in how to deal with a real conflict of interest or perceived conflict of interest in a transparent and accountable way, section 177E provides that the councillor must inform the meeting of the councillor's personal interests in the matter, including the following particulars about the interests:

- the nature of the councillor's interests;
- if the councillor's personal interests arise because of the councillor's relationship with, or receipt of a gift from, another person—
 - o the name of the other person; and
 - o the nature of the relationship or value and date of receipt of the gift; and
 - o the nature of the other person's interests in the matter.

Section 177E(8) defines gift in this section to mean a gift that is required, under regulation, to be recorded in a register of interests.

The maximum penalty is 100 penalty units or 1 year's imprisonment and the offence is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *City of Brisbane Act 2010*).

The Belcarra Report recommendation 23 states that '*section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:*

- a) *whether the councillor has a real or perceived conflict of interest in the matter*
- b) *whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.*

The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting'.

Section 177E(4) implements the part of the Belcarra Report recommendation 23 in relation to other councillors who are entitled to vote at the meeting, who are informed about a councillor's personal interests in a matter by the councillor or another person, the other councillors must decide—

- whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and
- if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor—
 - o must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or
 - o may participate in the meeting in relation to the matter, including by voting on the matter.

Section 177E(3) provides that section 177E(4) applies if the other councillors who are entitled to vote at the meeting are informed about a councillor's personal interest in a matter by the councillor or another person and the councillor has not voluntarily left, and stayed away from the place where the meeting is being held while the matter is discussed and voted on.

Section 177E(5) provides that the councillor must comply with the decision under section 177E(4) that the councillor must leave and stay away from the place.

The maximum penalty is 100 penalty units or 1 year's imprisonment and it is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *City of Brisbane Act 2010*).

Section 177E(6) provides that if a majority of councillors at the meeting of the council inform the meeting about the personal interests in the matter under section 177E(2) the council must

delegate deciding the matter under section 238 unless deciding the matter can not be delegated under that section.

Section 177E(7) provides that a councillor does not contravene section 177E(5) by participating in the meeting or being present while the matter is being discussed and voted on if the councillor's participation or presence is for the purposes of delegating the matter under section 177E(6) or is approved under section 177F and the councillor complies with the conditions of the approval.

Section 177F Minister's approval for councillor to participate or be present to decide matter

Section 177F provides that the Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting, or being present while a matter is being discussed and voted on, if—

- the matter could not otherwise be decided at the meeting because of the number of councillors subject to the obligation under section 177C(2)(b) (the councillor must leave the meeting while the matter is being discussed) or section 177E(6) (matter to be delegated if a majority of councillors inform a meeting of a conflict of interest); and
- deciding the matter can not be delegated under section 238. Section 238(2) provides that the council must not delegate a power that an Act states must be exercised by resolution.

The Minister may give the approval subject to conditions stated in the notice.

Section 177G Duty to report another councillor's material personal interest or conflict of interest at a meeting

The Belcarra Report recommendation 24 states that *'the Local Government Act and the City of Brisbane Act be amended to:*

- (a) require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the Chief Executive Officer of the council*
- (b) require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting'.*

Section 177G applies if:

- a matter is to be discussed at a meeting of the council or any of its committees; and
- the matter is not an ordinary business matter; and
- a councillor at the meeting 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 in the matter; and
- the other councillor has not informed the meeting about the interest as required under section 177C(2) (the councillor must inform the meeting of the councillor's material personal interest in the matter) or 177E(2) (the councillor must inform the meeting about the councillor's real conflict of interest or perceived conflict of interest).

Section 177G implements the Belcarra Report recommendation 24 by providing that the councillor must, as soon as is practicable, inform the person who is presiding at the meeting

about the councillor's belief or suspicion and the facts and circumstances that form the basis of the belief or suspicion. It is not necessary to include a requirement to report to the chief executive officer as the chief executive officer has no formal role in a council meeting.

Note—Contravention of subsection (2) is misconduct that could result in disciplinary action being taken against a councillor. See the *City of Brisbane Act 2010* sections 178(3)(c) and 183.

Section 177H Offence to take retaliatory action

The Belcarra Report recommendation 26 states that '*the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.*'

Section 177H implements the Belcarra Report recommendation 26 by providing that a person must not, because a councillor has complied with section 177G(2) (duty to report another councillor's material personal interest or conflict of interest at a meeting)—

- prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or
- intimidate or harass, or threaten to intimidate or harass, the councillor or another person; or
- take any action that is, or is likely to be, detrimental to the councillor or another person.

The maximum penalty is 167 penalty units or 2 years' imprisonment and it is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *City of Brisbane Act 2010*).

Section 177I Offence for councillor with personal interest to influence others

The Belcarra Report recommendation 26 states that '*the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.*'

To implement the Belcarra Report recommendation 26, section 177I(1) provides that a councillor who has a material personal interest or a conflict of interest in a matter must not influence, or attempt to influence, another councillor to vote on the matter in a particular way at a meeting of the council or any of its committees.

The maximum penalty is 200 penalty units or 2 years' imprisonment and it is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *City of Brisbane Act 2010*).

Section 177I(2) provides that a councillor who has a material personal interest or a conflict of interest in a matter must not influence, or attempt to influence, a council employee or a contractor of the council who is authorised to decide or otherwise deal with the matter to do so in a particular way.

The maximum penalty is 200 penalty units or 2 years' imprisonment and it is an integrity offence under section 153.

Section 177I(3) provides that a councillor does not commit an offence against section 177I(1) or (2) merely by participating in a meeting of the council or any of its committees about the matter, including by voting on the matter, if the participation is authorised under an approval under section 177F (Minister's approval for councillor to participate or be present to decide matter) or under a decision mentioned in section 177E(4)(b) (decision by councillors about whether a councillor with a real or perceived conflict of interest must leave the meeting or may participate in the meeting).

In section 177I *matter* does not include an ordinary business matter.

Section 177J Records about material personal interests and conflicts of interests at meetings

The Belcarra Report recommendation 23 states that '*section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:*

- (a) whether the councillor has a real or perceived conflict of interest in the matter*
- (b) whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.*

The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting'.

Section 177J implements the part of the Belcarra Report recommendation 23 in relation to recording matters in the minutes of the meeting.

If section 177C (Councillor's material personal interest at a meeting) applies to a matter to be discussed at a meeting of the council or any of its committees, the following information must be recorded in the minutes of the meeting and on the council's website—

- the name of the councillor who has a material personal interest in the matter;
- the material personal interest, including the particulars mentioned in section 177C(2)(a), as described by the councillor;
- whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F.

If section 177E (Councillor's conflict of interest at a meeting) applies to a matter to be discussed at a meeting of the council or any of its committees, the following must be recorded in the minutes of the meeting and on the council's website—

- the name of the councillor who has a conflict of interest in the matter;
- the councillor's personal interests in the matter, including the particulars mentioned in section 177E(2), as described by the councillor;
- the decisions made under section 177E(4) and the reasons for the decision;
- if the councillor voted on the matter—how the councillor voted on the matter;
- whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F;
- how the majority of councillors who were entitled to vote at the meeting voted on the matter.

Clause 7 Amendment of s 178 (What this division is about)

Clause 7 amends section 178(3)(c) to insert the reference to section 177G(2) (Duty to report another councillor's material personal interest or conflict of interest at a meeting) to provide that a contravention of this section is misconduct.

The reference to the current section 175(4) is consequentially omitted.

Clause 8 Amendment of sch 1 (Dictionary)

Clause 8(1) amends schedule 1 to insert the signpost to the meanings of *perceived conflict of interest* (see section 177E(1)(c)(ii)) and *real conflict of interest* (see section 177E(1)(c)(i)).

Clause 8(2) amends the definition of *conflict of interest* to update the reference to section 177D and *clause 8(3)* amends the definition of *material personal interest* to update the reference to section 177B.

Part 3 Amendment of Electoral Act 1992

Clause 9 Act Amended

Clause 9 states that this part amends the *Electoral Act 1992*.

Clause 10 Amendment of s 2 (Definitions)

Clause 10 inserts references to the definitions 'political donation' and 'prohibited donor'.

Clause 11 Amendment of s 197 (Definitions)

Clause 11 amends the definition 'electoral expenditure' as a consequence of the insertion of new part 11, division 8, subdivision 4 (Political donations from property developers) and inserts references to the definitions 'political donation' and 'prohibited donor'.

Clause 12 Replacement of pt 11, div 8, sdiv 3, hdg (Other gifts and loans)

Clause 12 renames the heading for part 11, division 8, subdivision 3.

Clause 13 Insertion of new pt 11, div 8, sdiv 4

Clause 13 inserts new part 11, division 8, subdivision 4 (Political donations from property developers).

New section 273 (Meaning of *prohibited donor*) defines a ‘prohibited donor’ to include property developers and related industry representative organisations and a ‘property developer’ as a stated corporation and close associates of the corporation, as defined.

New section 274 (Meaning of *political donation*) defines ‘political donation’.

New section 275 (Political donations by prohibited donors) makes unlawful the making and acceptance of political donations made by or on behalf of prohibited donors and prohibited donors (or others on their behalf) from soliciting other persons to make political donations.

New section 276 (Recovery of prohibited donations) provides for the recovery of prohibited donations as a debt due to the State. If the person knew it was unlawful to receive the prohibited donation, the amount payable to the State is an amount equal to twice the amount or value of the prohibited donation. Otherwise, the amount is the amount or value of the prohibited donation.

New section 277 (Making of determination that entity is not a prohibited donor) provides that a person may apply to the commissioner for a determination that the person, or another entity, is not a prohibited donor. If the commissioner decides not to make the determination sought by the applicant, the commissioner must give the applicant an information notice about the decision. A determination under the section is effective for 1 year.

New section 278 (Revocation of determination) provides that the commissioner may revoke a determination for an entity under section 277 by written notice to the entity and the applicant for the determination under section 277 (if not the entity) and must give an information notice to the entity about the decision with the notice.

New section 279 (Register of determinations) provides for the commissioner to keep a register of determinations and revocations of determinations.

Clause 14 Amendment of s 282A (Meaning of *electoral expenditure*)

Clause 14 corrects a reference from ‘part’ to ‘division’.

Clause 15 Insertion of new ss 307A—307C

Clause 15 inserts new sections 307A, 307B and 307C into the Act.

New section 307A (Offence about prohibited donations) provides that it is an offence for a person to do an act or make an omission that is unlawful under new section 275, if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful pursuant to new section 275. The maximum penalty for the offence is 400 penalty units or 2 years’ imprisonment. Subsection (2) provides that to remove any doubt, the operation of the

excuse at section 24 (Mistake of fact) of the Criminal Code is not excluded. Subsection (3) provides that the offence is a misdemeanor and therefore an indictable offence.

New section 307B (Schemes to circumvent prohibition on political donations) provides that is an offence for a person to knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition under part 11, division 8, subdivision 4 about political donations. The maximum penalty for the offence is 10 years' imprisonment or 1500 penalty units. Subsection (2) provides that it does not matter whether the person also participates in the scheme for other purposes. Subsection (3) provides that the offence is a crime and therefore an indictable offence. Subsection (4) provides for the meaning of 'participate in' and 'scheme' in this section.

New section 307C (False or misleading information relating to determinations) provides that it is an offence for person to give the commissioner information under new section 277 that the person knows is false or misleading in a material particular. The maximum penalty for the offence is 400 penalty units or 2 years' imprisonment. Subsection (2) provides that the offence in subsection (1) does not apply if the person when giving the information in the documents tells the commissioner, to the best of the person's ability how the document is false or misleading and if the person has or can reasonably obtain the correct information gives the correct information. Subsection (3) provides that the offence is a misdemeanor and therefore an indictable offence. Subsection (4) provides that, in a proceeding against a person for an offence under new section 307A (Offence about prohibited donations), a determination made by the commissioner under new section 277 will have no effect if the person knew or ought reasonably to have known that information given to or used by the commissioner was false or misleading in a material particular.

Clause 16 Amendment of s 308 (Recovery of payments)

Clause 16 amends section 308 (Recovery of payments) by making consequential amendments to section numbers referred to in section 308(1) to take into account new section 276 and reflect a consequential amendment made to section 271 by section 57 of the *Electoral Reform Amendment Act 2014*.

Clause 17 Amendment of s 374 (Right of appeal)

Clause 17 amends section 374 (Right of appeal) as a consequence of the insertion of new sections 277 and 278.

Clause 18 Amendment of s 385 (Offences under this part are summary)

Clause 18 amends section 385 (Offences under this part are summary) to make amendment consequential to the creation of the new indictable offences and new sections 307A, 307B and 307C.

Clause 19 Insertion of new s 385A

Clause 19 creates a new section 385A (Proceedings for indictable offence) which provides for the way in proceeding for indictable offences under the Act may be taken.

Clause 20 Insertion of new pt 13, div 9

Clause 20 inserts new part 13, division 9 into the *Electoral Act 1992*.

New section 427 (Obligations to repay particular political donations) applies if: a donation was made to a person (the recipient) on or after the day on which the amending Bill was introduced into the Legislative Assembly and before the commencement; and under section 275(3,) it would have been unlawful for the recipient to accept the donation if it had been made immediately after the commencement Subsection (2) provides that the recipient must pay an amount equal in value to the person who made the donation within 30 days of the date of commencement. Subsection (3) provides that the offence is a misdemeanour. If a person does not comply with subsection (2), section 276 (Recovery of prohibited donations) applies in relation to the contravention.

Part 4 Amendment of Local Government Act 2009

Clause 21 Act Amended

Clause 21 states that this part amends the *Local Government Act 2009*.

Clause 22 Amendment of s 153 (Disqualification for certain offences)

The Belcarra Report recommendation 25 states that ‘*the Local Government Act and the City of Brisbane Act be amended to provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office*’.

To implement the Belcarra Report recommendation 25, *clause 22* amends section 153 to provide that an integrity offence is an offence against the following sections:

- Section 175C(2)— it is an integrity offence for a councillor to fail to inform a meeting of the local government or any of its committees of the councillor’s material personal interest in a matter to be discussed at the meeting and to fail to leave the meeting while the matter is being discussed and voted on.
- Section 175E(2)— it is an integrity offence for a councillor to fail to inform a meeting of the local government or any of its committees of the councillor’s personal interest in a matter to be discussed at the meeting.
- Section 175E(5)—it is an integrity offence for a councillor to fail to comply with a decision of the other councillors at the meeting for the councillor to leave the meeting.
- Section 175H—it is an integrity offence for a person to take retaliatory action because a councillor complied with section 175G(2) (duty to report another councillor’s material personal interest or conflict of interest at a meeting).
- Section 175I(1)—it is an integrity offence for a councillor who has a material personal interest or a conflict of interest in a matter to influence, or attempt to influence, another councillor to vote on the matter in a particular way at a meeting of the local government.
- Section 175I(2)—it is an integrity offence for a councillor who has a material personal interest or a conflict of interest in a matter to influence, or attempt to influence, a local government employee or a contractor of the local government who is authorised to decide or otherwise deal with the matter, in a particular way.

A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *Local Government Act 2009*).

Clause 23 Omission of ss 172 and 173

Clause 23 omits sections 172 and 173.

Clause 24 Insertion of new ch 6, pt 2, div 5A

Clause 24 inserts in chapter 6, part 2 the following:

Division 5A Dealing with councillors' personal interests in local government matters

Section 175A Purpose of division

Section 175A establishes that the purpose of division 5A is to ensure the personal interests of councillors are dealt with in an accountable and transparent way that meets community expectations, if the interests relate to matters to be considered—

- at a meeting of the council or any of its committees; or
- by a council employee or contractor of the council authorised to deal with the matter.

Section 175B Meaning of *material personal interest*

Section 175B provides for the meaning of *material personal interest* in a stand-alone section. Section 175B generally aligns with the current section 172(2)-(4). New section 175C provides for how a councillor must deal with the material personal interest if a councillor has a material personal interest in the matter to be discussed at a meeting of the local government or any of its committees, and the matter is not an ordinary business matter.

To clarify the meaning of 'partner of the councillor' as it appears in the current section 172(2)(d), new section 175B(1)(d) provides that a councillor has a material personal interest in a matter if a person who is in a partnership with the councillor stands to gain a benefit or suffer a loss (either directly or indirectly) depending on the outcome of consideration of the matter.

Section 175C Councillor's material personal interest at a meeting

Section 175C applies if a matter is to be discussed at a meeting of the local government or any of its committees, and the matter is not an ordinary business matter, and a councillor has a material personal interest in the matter.

To assist councillors in how to deal with a material personal interest in a transparent and accountable way, section 175C provides that the councillor must inform the meeting of the councillor's material personal interest in the matter to be discussed at a meeting, including the following particulars about the interest:

- the name of the person or other entity who stands to gain a benefit, or suffer a loss, depending on the outcome of consideration of the matter at the meeting

- how the person or other entity stands to gain the benefit or suffer the loss
- if the person or other entity who stands to gain the benefit or suffer the loss is not the councillor—the nature of the councillor’s relationship to the person or entity.

The councillor must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is being discussed and voted on.

The maximum penalty is:

- if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or another person or entity—200 penalty units or 2 years’ imprisonment; or
- otherwise 85 penalty units.

The maximum penalty aligns with the maximum penalty under section 172(5). The offence is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *Local Government Act 2009*).

If a majority of the councillors at a meeting of the local government inform the meeting about a material personal interest in a matter under section 175C(2)(a), the local government must delegate deciding the matter to a person or committee under section 257, unless deciding the matter can not be delegated under section 257(2) (the local government must not delegate a power that an Act states must be exercised by resolution).

A councillor is not in contravention of 175C(2) by participating in the meeting, or being present while the matter is being discussed and voted on, if the councillor’s participation or presence is for the purpose of delegating deciding the matter under subsection (3) or is approved under section 175F and the councillor complies with the conditions of the approval.

Section 175D Meaning of *conflict of interest*

Section 175D provides for the meaning of *conflict of interest* in a stand-alone section. Section 175D aligns with the current section 173(2), (3) and (9) and new section 175E provides for how a councillor must deal with a conflict of interest at a meeting.

Section 175E Councillor’s conflict of interest at a meeting

Section 175E applies if a matter is to be discussed at a meeting of the local government or any of its committees, the matter is not an ordinary business matter, and a councillor at the meeting:

- has a conflict of interest in the matter (a *real conflict of interest*); or
- could reasonably be taken to have a conflict of interest in the matter (a *perceived conflict of interest*).

To assist councillors in how to deal with a real conflict of interest or perceived conflict of interest in a transparent and accountable way, section 175E provides that the councillor must inform the meeting of the councillor’s personal interests in the matter, including the following particulars about the interests:

- the nature of the councillor’s interests;

- if the councillor's personal interests arise because of the councillor's relationship with, or receipt of a gift from another person—
 - o the name of the other person; and
 - o the nature of the relationship or value and date of receipt of the gift; and
 - o the nature of the other person's interests in the matter.

Section 175E(8) defines gift in this section to mean a gift that is required, under regulation, to be recorded in a register of interests.

The maximum penalty is 100 penalty units or 1 year's imprisonment and the offence is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *Local Government Act 2009*).

The Belcarra Report recommendation 23 states that '*section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:*

- (a) whether the councillor has a real or perceived conflict of interest in the matter*
- (b) whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.*

The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting'.

Section 175E(4) implements the part of the Belcarra Report recommendation 23 in relation to other councillors, who are entitled to vote at the meeting and who are informed about a councillor's personal interests in a matter by the councillor or another person, the other councillors must decide—

- whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and
- if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor—
 - o must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or
 - o may participate in the meeting in relation to the matter, including by voting on the matter.

Section 175E(3) provides that section 175E(4) applies if the other councillors who are entitled to vote at the meeting are informed about a councillor's personal interest in a matter by the councillor or another person and the councillor has not voluntarily left, and stayed away from the place where the meeting is being held while the matter is discussed and voted on.

Section 175E(5) provides that the councillor must comply with the decision under section 175E(4) that the councillor must leave and stay away from the place.

The maximum penalty is 100 penalty units or 1 year's imprisonment and it is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *Local Government Act 2009*).

Section 175E(6) provides that if a majority of the councillors at a meeting of the local government inform the meeting about personal interests in the matter under section 175E(2), the local government must delegate deciding the matter under section 257, unless deciding the matter can not be delegated under that section.

Section 175E(7) provides that a councillor does not contravene section 175E(5) by participating in the meeting, or being present while the matter is being discussed and voted on, if the councillor's participation or presence—

- is for the purpose of delegating deciding the matter under subsection (6); or
- is approved under section 175F and the councillor complies with the conditions of the approval.

Section 175F Minister's approval for councillor to participate or be present to decide matter

Section 175F provides that the Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting, or being present while a matter is being discussed and voted on, if—

- the matter could not otherwise be decided at the meeting because of the number of councillors subject to the obligation under section 175C(2)(b) (a councillor with a material personal interest must leave the meeting while the matter is being discussed) or section 175E(6) (matter must be delegated if a majority of councillors inform the meeting of a conflict of interest); and
- deciding the matter can not be delegated under section 257(2) (the local government must not delegate a power that an Act states must be exercised by resolution).

The Minister may give the approval subject to conditions stated in the notice.

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

The Belcarra Report recommendation 24 states that '*the Local Government Act and the City of Brisbane Act be amended to:*

- require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the Chief Executive Officer of the council*
- require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting'.*

Section 175G applies if:

- a matter is to be discussed at a meeting of the local government or any of its committees; and

- the matter is not an ordinary business matter; and
- a councillor at the meeting reasonably believes, or reasonably suspects, that another councillor at the meeting has a material personal interest, real conflict of interest or perceived conflict of interest in the matter; and
- the other councillor has not informed the meeting about the interest as required under section 175C(2) (the councillor must inform the meeting of the councillor's material personal interest in the matter) or 175E(2) (the councillor must inform the meeting about the councillor's real conflict of interest or perceived conflict of interest).

Section 175G implements the Belcarra Report recommendation 24 by providing that the councillor must, as soon as is practicable, inform the person who is presiding at the meeting about the councillor's belief or suspicion and the facts and circumstances that form the basis of the belief or suspicion. It is not necessary to include a requirement to report to the chief executive officer as the chief executive officer has no formal role in a local government meeting.

Note—Contravention of this subsection (2) is misconduct that could result in disciplinary action being taken against a councillor. See the *Local Government Act 2009* sections 176(3)(d) and 180.

Section 175H Offence to take retaliatory action

The Belcarra Report recommendation 26 states that '*the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office*'.

Section 175H implements the Belcarra Report recommendation 26 by providing that a person must not, because a councillor has complied with section 175G(2) (duty to report another councillor's material personal interest or conflict of interest at a meeting)—

- prejudice, or threaten to prejudice, the safety or career of the other councillor or another person; or
- intimidate or harass, or threaten to intimidate or harass, the other councillor or another person; or
- take any action that is, or is likely to be, detrimental to the other councillor or another person.

The maximum penalty is 167 penalty units or 2 years' imprisonment and it is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *Local Government Act 2009*).

Section 175I Offence for councillor with personal interest to influence others

The Belcarra Report recommendation 26 states that '*the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision*

by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.'

To implement the Belcarra Report recommendation 26, section 175I(1) provides that a councillor who has a material personal interest or a conflict of interest in a matter must not influence, or attempt to influence, another councillor to vote on the matter in a particular way at a meeting of the local government or any of its committees.

The maximum penalty is 200 penalty units or 2 years' imprisonment and it is an integrity offence under section 153. A person who is convicted of an integrity offence can not be a councillor for 4 years after the person is convicted of an integrity offence (section 153(1)(d) of the *Local Government Act 2009*).

Section 175I(2) provides that a councillor who has a material personal interest or a conflict of interest in a matter must not influence, or attempt to influence, a local government employee or a contractor of the local government who is authorised to decide or otherwise deal with the matter to do so in a particular way.

The maximum penalty is 200 penalty units or 2 years' imprisonment and it is an integrity offence under section 153.

Section 175I(3) provides that a councillor does not commit an offence against section 175I(1) or (2) merely by participating in a meeting of the local government or any of its committees about the matter, including by voting on the matter, if the participation is authorised under an approval under section 175F (Minister's approval for councillor to participate or be present to decide matter) or under a decision mentioned in section 175E(4)(b) (decision by councillors about whether a councillor with a real or perceived conflict of interest must leave the meeting or may participate in the meeting).

In section 175I *matter* does not include an ordinary business matter.

Section 175J Records about material personal interests and conflicts of interests at meetings

The Belcarra Report recommendation 23 states that '*section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:*

- (a) whether the councillor has a real or perceived conflict of interest in the matter*
- (b) whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.*

The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting'.

Section 175J implements the part of the Belcarra Report recommendation 23 in relation to recording matters in the minutes of the meeting.

Section 175J(1) provides that if section 175C (Councillor's material personal interest at a meeting) applies to a matter to be discussed at a meeting of the local government or any of its committees, the following information must be recorded in the minutes of the meeting and on the council's website—

- the name of the councillor who has a material personal interest in the matter;
- the material personal interest mentioned, including the particulars mentioned in section 175C(2)(a), as described by the councillor;
- whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 175F.

Section 175J(2) provides if section 175E (Councillor's conflict of interest at a meeting) applies to a matter to be discussed at a meeting of the local government or any of its committees in relation to the matter, the following must be recorded in the minutes of the meeting and on the local government's website—

- the name of the councillor who has a conflict of interest in the matter;
- the councillor's personal interests in the matter, including the particulars mentioned in section 175E(2), as described by the councillor;
- the decisions made under section 175E(4) and the reasons for the decisions;
- if the councillor voted on the matter—how the councillor voted on the matter;
- whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 175F;
- how the majority of councillors who were entitled to vote at the meeting voted on the matter.

Clause 25 Amendment of s 176 (What this division is about)

Clause 25 amends section 176(3)(d) to insert the reference to section 175G(2) (duty to report another councillor's material personal interest or conflict of interest at a meeting) to provide that a contravention of this section is misconduct.

The reference to the current section 173(4) is consequentially omitted.

Clause 26 Amendment of sch 4 (Dictionary)

Clause 26(1) amends schedule 4 to insert a signpost to the meanings of *perceived conflict of interest* (see section 175E(1)(c)(ii)) and *real conflict of interest* (see section 175E(1)(c)(i)).

Clause 26(2) amends the definition of *conflict of interest* to update the reference to section 175D and *clause 26(3)* amends the definition of *material personal interest* to update the reference to section 175B.

Part 5 Amendment of Local Government Electoral Act 2011

Clause 27 Act Amended

Clause 27 states that this part amends the *Local Government Electoral Act 2011*.

Clause 28 Replacement of s 3 (Purpose of this Act)

Clause 28 replaces section 3 to provide that the purposes of the *Local Government Electoral Act 2011* Act are to—

- ensure the transparent conduct of elections of councillors of Queensland’s local governments; and
- ensure and reinforce integrity in Queensland’s local governments, including, for example, by minimising the risk of corruption in relation to—
 - o the election of councillors; and
 - o the good governance of, and by, local government.

The amendment to section 3 is to reflect the purpose of new division 1A in part 6 to ensure and reinforce integrity in Queensland’s local governments, including, by minimising the risk of corruption in relation the election of councillors and the good governance of, and by, local government.

Clause 29 Amendment of s 106 (Definitions for part)

The Belcarra Report recommendation 20 states that ‘*the Local Government Electoral Act, the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers. This prohibition should reflect the New South Wales provisions as far as possible, including in defining a property developer (s. 96GB, Election Funding, Expenditure and Disclosures Act 1981), making a range of donations unlawful, including a person making a donation on behalf of a prohibited donor and a prohibited donor soliciting another person to make a donation (s. 96GA), and making it an offence for a person to circumvent or attempt to circumvent the legislation (s. 96HB). Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors*’.

Clauses 27-35 implement, where appropriate, the Belcarra Report recommendation 20.

Clause 29 inserts in section 106 the definitions for the part. The definitions are consistent with the definitions in the *Electoral Act 1992* where appropriate.

electoral expenditure means expenditure incurred for the purposes of a campaign for the election, whether or not the expenditure is incurred during the election period for the election.

information notice, about a decision, means a notice that states—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may apply to the electoral commissioner for a review of the decision within 20 business days after the person receives the notice; and
- (d) how to apply for a review.

loan means any of the following made other than by use of a credit card—

- (a) an advance of money;

- (b) a provision of credit or another form of financial accommodation;
- (c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount;
- (d) a transaction (whatever its terms or form) that in substance effects a loan of money.

political donation, for division 1A, see section 113A.

prohibited donor, for division 1A, see section 113(1).

Clause 30 Insertion of new pt 6, div 1A

Clause 30 inserts in part 6 the following:

Division 1A Political donations from property developers

Section 113 Meaning of *prohibited donor*

Section 113 provides that for division 1A, *prohibited donor*—

- means—
 - a property developer; or
 - an industry representative organisation, a majority of whose members are property developers, but
- does not include an entity for whom a determination is in effect under section 113D.

See section 194C(4) in relation to the non-effect of a determination in particular circumstances.

For section 113(1)(a), each of the following persons is a *property developer*—

- a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation—
 - in connection with the residential or commercial development of land; and
 - with the ultimate purpose of the sale or lease of the land for profit;
- a close associate of a corporation mentioned above.

For deciding whether a corporation is a corporation mentioned in section 113(2)(a), any activity engaged in by the corporation for the dominant purpose of providing commercial premises at which the corporation, or a related body corporate of the corporation, will carry on business is to be disregarded, unless the business involves the sale or leasing of a substantial part of the premises.

In section 113—

close associate, of a corporation, means any of the following persons—

- a related body corporate of the corporation;
- a director or other officer of the corporation;
- a person with more than 20% of the voting power in the corporation or a related body corporate of the corporation;
- a spouse of an individual mentioned in section 113(4)(b) or (c);
- if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security;

- if the corporation is a trustee, manager or responsible entity in relation to a unit trust—a person who holds more than 20% of the units in the trust;
- if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust—a beneficiary of the trust.

officer, of a corporation, see the Corporations Act, section 9.

related body corporate, of a corporation, see the Corporations Act, section 9.

relevant planning application means—

- an application for, or to change, a development approval under the *Planning Act 2016* or repealed *Sustainable Planning Act 2009*; or
- a request to the Minister administering the *Planning Act 2016* or repealed *Sustainable Planning Act 2009* or a local government about the making or amendment of a planning instrument or designation under either Act; or
- an application for, or to change, an SDA approval under the *State Development and Public Works Organisation Act 1971*; or
- a request or application to the Minister who administers the *State Development and Public Works Organisation Act 1971* or the Coordinator-General about the following under that Act—
 - the declaration or variation of a coordinated project, prescribed development, prescribed project or State development area;
 - the imposition of, or change to, conditions on a coordinated project;
 - the preparation or variation of a development scheme; or
- an application for, or to change, a PDA development approval under the *Economic Development Act 2012*; or
- a request to the Minister who administers the *Economic Development Act 2012* or the MEDQ about the making, declaration or amendment of—
 - a priority development area or provisional priority development area; or
 - a development scheme, interim land use plan, or PDA-associated development for a priority development area; or
 - a provisional land use plan or PDA-associated development for a provisional priority development area; or
- an application or request of a type prescribed by regulation to be a relevant planning application.

stapled entity—

- means an entity the interests in which are traded along with the interests in another entity as stapled securities; and
- for an entity mentioned above that is a trust, includes any trustee, manager or responsible entity in relation to the trust.

voting power see the Corporations Act 2001, section 9.

Section 113A Meaning of *political donation*

Section 113A provides that for division 1A, each of the following is a *political donation*—

- a gift made to or for the benefit of—
 - a political party; or

- o a councillor of a local government; or
- o a candidate or group of candidates in an election;
- a gift made to or for the benefit of another entity—
 - o to enable the entity (directly or indirectly) to make a gift mentioned in section 113A(1)(a) or to incur electoral expenditure; or
 - o to reimburse the entity (directly or indirectly) for making a gift mentioned in section 113A(1)(a) or incurring electoral expenditure;
- a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in section 113A(1)(a) or (b);
- any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—
 - o amounts paid as subscriptions for persons' membership of the party;
 - o amounts paid for the affiliation of persons with the party.

Section 113A(2) provides that if a gift is made by a person in a private capacity to an individual (the *recipient*) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose—

- the gift is not a political donation when it is made; but
- if any part of the gift is used for an electoral purpose, then, for the purposes of section 113B(3)—
 - o that part of the gift is a political donation; and
 - o the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.

Section 113A(3) provides that a reference in section 113A(2) to using a gift for an *electoral purpose* is a reference to using the gift to incur electoral expenditure or for the recipient's duties as a councillor of a local government.

Despite section 107(1)(a) of the *Local Government Electoral Act 2011*, a reference in section 113A to a gift includes an amount paid for attendance at or participation in a fundraising activity, to the extent the amount forms part of the proceeds of the fundraising activity to which it relates. Section 107(2) does not apply for the purposes of section 113A.

In section 113A:

gift includes an amount of interest that would have been payable on a loan if—

- the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind; and
- any interest payable had not been waived; and
- any interest payments were not capitalised.

Section 113B Political donations by prohibited donors

Section 113B(1) provides that it is unlawful for a prohibited donor to make a political donation.

Section 113B(2) provides that it is unlawful for a person to make a political donation on behalf of a prohibited donor.

Section 113B(3) provides that it is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor.

Section 113B(4) provides that it is unlawful for a prohibited donor to solicit a person to make a political donation.

Section 113B(5) provides that it is unlawful for a person to solicit, on behalf of a prohibited donor, another person to make a political donation.

See section 113A(6) for the meaning of gift in this section.

Section 113C Recovery of prohibited donations

Section 113C provides that if a person accepts a prohibited donation, the following amount is payable by the person to the State—

- if the person knew it was unlawful to accept the prohibited donation—an amount equal to twice the amount or value of the prohibited donation;
- otherwise—an amount equal to the amount or value of the prohibited donation.

The amount may be recovered by the State as a debt due to the State from—

- if the recipient is a registered political party that is not a corporation—the party’s agent; or
- if the recipient is a group of candidates—the members of the group or the group’s agent; or
- if the recipient is a candidate—the candidate or the candidate’s agent; or
- otherwise—the recipient.

The imposition of liability to pay an amount to the State under section 113C—

- is not a punishment or sentence for an offence against section 194A or any other offence; and
- is not a matter to which a court may have regard in sentencing an offender for an offence against section 194A or any other offence.

Section 113C(4) provides that an action in a court to recover an amount due to the State under this section may be brought in the name of the electoral commission.

Section 113C(5) provides that any process in the action required to be served on the State may be served on the electoral commission.

In section 113C:

prohibited donation means a political donation that was unlawfully made or accepted under section 113B.

recipient means the entity to whom, or for the benefit of whom, the prohibited donation was made.

Section 113D Making of determination that entity is not a prohibited donor

Section 113D(1) provides that a person may apply to the electoral commissioner for a determination that the person, or another entity, is not an entity mentioned in section 113(1)(a)(i) or (ii).

The application must be written and supported by enough information to enable the electoral commissioner to decide the application.

If the electoral commissioner is satisfied the entity to whom the application relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the electoral commissioner must make the determination sought by the applicant.

Otherwise, the electoral commissioner must—

- decide not to make the determination; and
- give the applicant an information notice about the decision.

A determination has effect for 1 year unless it is earlier revoked.

Section 113E Revocation of determination

Section 113E provides that, if, at any time, the electoral commissioner ceases to be satisfied the entity to whom a determination relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the electoral commissioner may revoke the determination by giving a written notice of revocation to the entity and, if the entity was not the applicant for the determination, the applicant.

The notice of revocation given to the entity must include, or be accompanied by, an information notice about the decision to revoke the determination.

Section 113F Register of determinations

Section 113F provides that the electoral commissioner must keep a register of determinations made under section 113D.

The register must include any revocations made under section 113E.

The electoral commissioner must make the register available for public inspection without fee.

Section 113G Review of decisions

Section 113G provides that a person who is given, or is entitled to be given, an information notice about a decision under this division has a right to appeal against the decision under the *Electoral Act 1992*, part 11, division 20, as if the decision were a decision to which section 277(4)(b) or 278(2) of that Act applied.

Clause 31 Amendment of s 169 (False or misleading information)

Section 169(1) provides that a person must not give information under this Act to a returning officer or the electoral commission, including information in a document, that the person knows is false or misleading in a material particular.

Section 169(2) provides that subsection (1) does not apply in particular circumstances.

Clause 31 amends section 169(2) to provide that subsection (1) does not apply to information given to the electoral commissioner under section 113D.

Clause 32 Insertion of new ss 194A-194C

Clause 32 inserts into part 9, division 5 new sections 194A, 194B and 194C.

Section 194A Offence about prohibited donations

Section 194A provides that a person must not do an act or make an omission that is unlawful under section 113B, if the person knows or ought reasonably to know of the facts that result in the act or omission being lawful under that section. The maximum penalty is 400 penalty units or 2 years' imprisonment. An offence against section 194A(1) is a misdemeanour.

Section 194B Schemes to circumvent prohibition on particular political donations

Section 194B provides that a person must not knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition under part 6, division 1A about political donations. The maximum penalty is 1500 penalty units or 10 years' imprisonment. For section 194B(1) it does not matter whether the person also participates in the scheme for other purposes.

In section 194B:

participate in, a scheme, includes—

- enable, aid or facilitate entry into, or the carrying out of, a scheme; and
- organise or control a scheme.

scheme includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied.

Section 194C False or misleading information relating to determinations

Section 194C(1) provides that a person must not give the electoral commissioner information under section 113D that the person knows is false or misleading in a material particular. The maximum penalty is 400 penalty units or 2 years' imprisonment.

Section 194C(1) does not apply to a person if the person, when giving information in a document—

- tells the electoral commissioner, to the best of the person's ability, how the document is false or misleading; and
- if the person has, or can reasonably obtain, the correct information—gives the correct information.

An offence against section 194C(1) is a misdemeanour.

In a proceeding against a person for an offence under section 194A, a determination made under section 113D is taken to be of no effect if the person knew, or ought reasonably to have known, at the time of the relevant act that information given to, or used by, the electoral commissioner under section 113D was false or misleading in a material particular.

Clause 33 Amendment of s 201 (Designated election offences and application of Criminal Code)

Clause 33 amends section 201 to include section 194B as a designated election offence.

Section 201 provides that the Criminal Code, chapter 58A (Indictable offences dealt with summarily) applies to a designated election offence. Without limiting section 201(2), the chapter applies to a designated election offence as if the offence were an offence under chapter 14, division 2 of the code.

Clause 34 Insertion of new pt 11, div 3

Clause 34 inserts into part 11 the following:

Division 3 Transitional provision for Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Act 2017

Section 212 Obligation to repay particular political donations

Section 212 applies if—

- a donation was made to a person (the recipient) on or after the day on which the amending Bill was introduced into the Legislative Assembly and before the commencement; and
- under section 113B(3) it would have been unlawful for the recipient to accept the donation if it had been made immediately after the commencement.

The recipient must pay an amount equal to the amount or value of the donation to the person who made the donation within 30 days after the commencement. The maximum penalty is 400 penalty units or 2 years' imprisonment. An offence against section 212(2) is a misdemeanour.

Section 113C applies in relation to a contravention of section 212(2), as if—

- a reference in section 113C to accepting were a reference to contravening subsection (2); and
- a reference in section 113C to the amount or value of a prohibited donation were a reference to the amount that was not paid under subsection (2).

In this section, *amending Bill* means the Bill for the *Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Act 2017*.

An action in a court to recover an amount due to the State under this section may be brought in the name of the electoral commission.

Any process in the action required to be served on the State may be served on the electoral commission.

Clause 35 Amendment of schedule (Dictionary)

Clause 35 inserts into the dictionary the following:

electoral expenditure, for part 6, see section 106.

information notice, for part 6, see section 106.

loan, for part 6, see section 106.

political donation, for part 6, division 1A, see section 113B.

prohibited donor, for part 6, division 1A, see section 113(1).

property developer, for part 6, division 1A, see section 113(2).

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