



Recognising and upholding excellence in local government

Mail: PO Box 105
Coolumb Beach QLD 4573

Email: mail@oscar.org.au

21 March 2018

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

Email: egc@parliament.qld.gov.au

Dear Secretary

Subject: Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018

OSCAR (Organisation of Sunshine Coast Association of Residents) is the peak body representing 40 resident and community organisations on the Sunshine Coast.

OSCAR previously made a submission on this matter to the Legal Affairs and Community Safety Committee last year. I wish to resubmit to your committee although our views remain essentially the same.

We note the Government's response to Operation Belcarra and strongly welcome it for the most part. We believe the proposed Bill (*Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018*) reflects the intention of the CCC, and the desire of the community, for reform in the area of developer donations and handling of Conflict of Interest by councillors.

We do however seek clarification of the **definition of developer**.

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.

For subsection (1) (a), each of the following persons is a property developer— (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation— (i) in connection with the residential or commercial development of land; and (ii) with the ultimate purpose of the sale or lease of the land for profit; (b) a close associate of a corporation mentioned in paragraph (a).

Questions to the committee:

- 1 Does the definition include individuals or companies undertaking development of retirement villages, nursing homes and other specialist housing types?
- 2 Does the definition include individuals or companies undertaking establishment of quarries, sand mines and similar commercial ventures?
- 3 Does the definition include councillors who have a business relationship with a developer but that does not necessarily include donations or gifts, but may include financial transactions?
- 4 What does the term "regularly" mean? How many applications over what period of time would constitute "regularly" (sub section (2) (a) (a))?

OSCAR totally supports the changes proposed in relation to developer donations. We would like to make the following recommendation in relation to the value of previous developer donations:

OSCAR Recommendation

- 1 That all developer gifts or donations to a councillor, prior to the ban being in place in October 2017, regardless of the value, be cumulative from the date of a councillor's initial nomination.
- 2 That all private "business" relationships between a councillor and a developer be included in the Conflict of Interest and Material Personal Interest provisions. These include, for example, renting a premises from a developer for a campaign office, but not declaring the amount of rent paid; making personal/family transactions re property with a developer but not declaring such interests and family members having close personal relationships with siblings or children of developers.
- 3 That the "accumulated" figure be included in any Conflict of Interest or Material Personal Interest declarations.

Councillors may receive gifts or donations on an annual or more frequent basis, for example, free tickets to "Concerts on the Green", Sporting and cultural events which individually may be below the reporting threshold, but when accumulated reach a significant figure, often well over the threshold figure. The accumulated figure should be included in the provisions for declarations of Conflict of Interest and Material Personal Interest.

We would like, however, to propose an amendment in relation to conflict of interest for the consideration of your committee.

To implement Recommendation 23 of the CCC Report, the Bill proposes (*Section 175E (3) (4)*) that if a councillor has informed a meeting about their 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:*
 - *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*
 - *may participate in the meeting in relation to the matter, including by voting on the matter.*

In OSCAR's view the decision as to whether a councillor can remain in the room cannot be made by his/her fellow councillors. Once a conflict of Interest is declared (or reported by a third party), amendments to the LGA and COBA must **mandate** that a councillor can take no part in debate or voting on the matter under consideration and must leave the room.

Requiring fellow councillors to decide whether a councillor has a real conflict of interest or perceived conflict of interest in the matter and then determine, in the cases where they do in fact decide the councillor has a real conflict of interest or perceived conflict of interest in the matter, whether they remain in the room appears to be introducing a level of unnecessary administrative complexity to the conduct of council meetings given the requirements of *Section 175J*.

Much more importantly, however, is that the community would have little faith in a process that requires a councillor's colleagues to decide these matters. Experience of OSCAR members attending meetings of (Noosa Council, Sunshine Coast Regional Council and Redland City Council) is that some councillors would be loath to vote against a colleague who has indicated an intention to remain in the room after declaring a conflict of interest.

Within some councils there occur "voting blocs" and/or registered/unregistered "teams" of councillors, often associated with support for or against the Mayor. In such instances the community

does not have faith that councillors/members of the “team” would vote against other team members had they indicated that they intended to stay in room and participate in the debate and subsequent voting.

Even worse is the fact that the proposed process removes the **personal accountability** of a councillor who under the legislation being proposed can claim it was his/her colleagues who determined whether she/he stayed in the room to take part in debate, and vote, on the matter in question. This makes the proposed section of the bill even less likely to result in ethical and consistent behaviour than is the case under the existing legislation. We are certain this is not what the CCC intended, despite the recommendation made on this issue.

The events that led to the establishment of Operation Belcarra, and its subsequent findings, strongly suggest that in the councils investigated, and clearly in other councils in Queensland (such as the Sunshine Coast Regional Council where there is little consistency in how certain councillors act after declaring a conflict of interest), there has been a historical failure by councillors to observe the spirit of previous legislation governing conflict of interest and their **discretionary power in this area must be removed**.

OSCAR believes the intent and recommendations of the Operation Belcarra Report are best served by legislation that treats **conflict of interest in the same way as material personal interest**. Accordingly, conflict of interest should be dealt with in the same way as determined by *Section 175C (2) (b)* which requires that in the case of material personal interest [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*”.

Question to the Committee

OSCAR seeks clarification re *Section 175C (2) (b)*. Where an adjournment of a meeting occurs without a decision being made and vote taken and councillors leave the Chamber and move, for example, to a separate councillor only area does the rule “*stay away from the place while the matter is being discussed and voted on*” include the adjournment period and location?

OSCAR Recommendations

- 1 That Conflicts of Interest be dealt with in the same way as Material Personal Interest.**
- 2 That all Conflicts of Interest or Material Personal Interest declarations be made and resolved in “Open session” of the meeting and recorded in the minutes of the meeting.**
- 3 That making such declarations in a confidential session is unlawful.**
- 4 That the exclusion rules apply during “adjournment periods” and to councillor and/or staff only councillor spaces.**

OSCAR supports the application of penalties and the Penalty Regime outlined in the proposed Bill. OSCAR urges the Government to ensure penalties are applied consistently across the state. We support inclusion of the ‘dismissal’ provision so a clear message is sent that the community no longer will tolerate some of the shady practices and dishonest actions of some councillors and councils in the past.

Councillors must understand that “ignorance of the law” is no defence. The Belcarra report identifies a number of such instances and some concerning large donation amounts. There are examples of where a complaint has been made in relation to non-declaration of donations and the Councillor has been excused arguing he/she was not aware of the details of the donation and the donor. There is strong support from the community for penalties to be applied and consider dismissal as appropriate.

The previous Local Government Electoral Act was quite clear about the recording of donations, over a certain threshold from any source. It was arrogant of councillors to ignore these provisions. OSCAR is very disappointed that the Crime and Corruption Commission and some Regional Disciplinary

Panels have excused councillors who have infringed the law but have not and will not be charged with an offence.

Finally, following the passing of the Bill and subsequent changes to the LGEA, OSCAR makes the following recommendations.

OSCAR Recommendations

- 1 That mandatory training be undertaken by ALL Councillors regardless of their period of incumbency in relation to the amended Act.**
- 2 That mandatory training be undertaken by all Regional Disciplinary Panel Members both in relation to the changes to the Act and the Act in its entirety.**

OSCAR urges the members of the Economics and Governance Committee to consider our request for the changes we have proposed favourably. We believe this would better ensure that the *“stated policy objective of the Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 ... 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.”*

is achieved, resulting in legislation that truly reflects the desire of the broader community for more open and transparent local government which is at the crux of this component of the proposed legislative reform.

OSCAR wishes the committee well in its deliberations.

Yours sincerely

Melva Hobson PSM
Secretary, OSCAR

Email mail@oscar.org.au (NB preferred form of communication)