

# OSCAR feedback re CCC's Operation Belcarra recommendations

## Recommendation 1

That an appropriate Parliamentary Committee review the feasibility of introducing expenditure caps for Queensland local government elections. Without limiting the scope of the review, the review should consider:

- (a) expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities
- (b) the merit of having different expenditure caps for incumbent versus new candidates
- (c) practices in other jurisdictions.

<b>Government's initial response</b>	Support in principle
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	<p>Agree in principle with expenditure caps. Believe the caps suggested by the LGAQ are excessive however. Candidates for LG elections should be conducting grass-roots campaigns which do not require excessive expenditure.</p> <p>LGAQ suggested maximum caps for Councillor be set at \$50,000 and \$200,000 for Mayor; OSCAR believes figures of \$12,500/\$50,000 might be more realistic but concedes there might need to be higher cap for Mayoral candidates in large LGAs.</p> <p>We also note that Noosa councillors have informally indicated to OSCAR that an amount of \$10,000 to \$12,500 was realistic given their expenditure in 2016 (and Noosa is a non-divisional council).</p>

## Recommendation 2

That the Local Government Electoral Act be amended to require real-time disclosure of electoral expenditure by candidates, groups of candidates, political parties and associated entities at local government elections. The disclosure scheme should ensure that:

- (a) all expenditure, including that currently required to be disclosed by third parties, is disclosed within seven business days of the date the expenditure is incurred, or immediately if the expenditure is incurred within the seven business days before polling day
- (b) all expenditure disclosures are made publicly available by the ECQ as soon as practicable, or immediately if the disclosure is provided within the seven business days before polling day.

<b>Government's initial response</b>	Support in principle
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	<p>Absolutely support this recommendation.</p> <p>An expenditure portal on the ECQ site, similar to the EDS (Electronic Disclosure System) for donations, would be ideal.</p>

## Recommendation 3

That the Local Government Electoral Act be amended to:

- (a) require all candidates, as part of their nomination, to provide to the ECQ a declaration of interests containing the same financial and non-financial particulars mentioned in Schedule

5 of the Local Government Regulation 2012 and Schedule 3 of the City of Brisbane Regulation 2012, and also:

- for candidates who are currently members of a political party, body or association, and/or trade or professional organisation — the date from which the candidate has been a member
- for candidates who were previously members of a political party, body or association, and/or trade or professional organisation — the name and address of the entity and the dates between which the candidate was a member.

Failure to do so would mean that a person is not properly nominated as a candidate. For the purposes of this requirement, Schedule 5, section 17 of the Local Government Regulation and Schedule 3, section 17 of the City of Brisbane Regulation should apply to the candidate as if they are an elected councillor.

- (b) require candidates to advise the ECQ of any new interest or change to an existing interest within seven business days, or immediately if the new interest or change to an existing interest occurs within the seven business days before polling day.
- (c) make it an offence for a candidate to fail to declare an interest or to fail to notify the ECQ of a change to an interest within the required time frame, with prosecutions able to be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns. A suitable penalty should apply, including possible removal from office.

<b>Government's initial response</b>	Support in principle
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	Absolutely support all aspects of this recommendation.

## Recommendation 4

That the ECQ:

- (a) publish all declarations of interests on the ECQ website as soon as practicable after the close of nominations for an election
- (b) ensure that any changes to a candidate's declaration of interests are published as soon as practicable after being notified, or immediately if advised within the seven business days before polling day.

<b>Government's initial response</b>	Support
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	<p>Agree and support.</p> <p>We believe this should be done as well as retaining the existing requirement for Councillor Registers' of Interest (RoI) to be published on council websites. This should include the current RoIs and the historical ones for at the very least the current term of each council. We acknowledge that following requests from OSCAR both the SCRC and NC have adopted this practice:</p> <p><a href="https://www.sunshinecoast.qld.gov.au/roi">https://www.sunshinecoast.qld.gov.au/roi</a></p> <p><a href="https://www.noosa.qld.gov.au/councillor-registers-of-interests">https://www.noosa.qld.gov.au/councillor-registers-of-interests</a></p>

## Recommendation 5

That:

- (a) the definition of a group of candidates in the Schedule of the Local Government Electoral Act be amended so that a group of candidates is defined by the behaviours of the group and/or its members rather than the purposes for which the group was formed. For example:

*A group of candidates means a group of individuals, each of whom is a candidate for the election, where the candidates:*

- *receive the majority of their campaign funding from a common or shared source; or*
- *have a common or shared campaign strategy (e.g. shared policies, common slogans and branding); or*
- *use common or shared campaign resources (e.g. campaign workers, signs); or*
- *engage in cooperative campaigning activities, including using shared how-to-vote cards, engaging in joint advertising (e.g. on billboards) or formally endorsing another candidate.*

- (b) consequential amendments be made to the Local Government Electoral Act, including with respect to the recording of membership and agents for groups of candidates (ss. 41–3), to account for the possibility that a group of candidates may be formed at any time before an election, including after the cutoff for candidate nominations.

<b>Government's initial response</b>	Support
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	Agree with this recommendation with the proviso that independent candidates that happen to share similar policies but none of the other attributes of a group listed above, are not deemed to constitute a group.

## Recommendation 6

That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to state that, for a gift derived wholly or in part from a source [other than a person identified by s. 109(b)(iii)] intended to be used for a political purpose related to the local government election, the relevant details required also include the relevant details of each person or entity who was a source of the gift. Section 120(6) regarding loans should be similarly amended to reflect this requirement.

<b>Government's initial response</b>	Support in principle
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	Agree. There must be total transparency about both the recipient and source of a gift.

## Recommendation 7

That the Local Government Electoral Act be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the person or entity required to lodge a return under Part 6 and for the purpose of proving any offence against Part 9, Divisions 5–7.

<b>Government's initial response</b>	Support
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	Agree subject to clarification of exact meaning.

## Recommendation 17

That the ECQ:

- (a) makes the maximum amount of donation disclosure data available on its website
- (b) provides comprehensive search functions and analytical tools to help users identify and examine patterns and trends in donations
- (c) provides information to enhance users' understanding of donation disclosure data and facilitate its interpretation.

<b>Government's initial response</b>	Support
<b>Government action</b>	
<b>OSCAR recommendation/s</b>	<p>Strongly agree.</p> <p>OSCAR has written to the ECQ via email asking for additional information to be made available:</p> <p><i>"I have just had a very useful conversation with Elizabeth from your team re the possibility of adding to the EDS the functionality to sort/filter reports by Recipient Electorate as well as the existing capacity to analyse by Donor Electorate.</i></p> <p><i>Filtering by Recipient is not always the answer, particularly where donations that may be attributable to a particular electorate are made to a political party rather than the individual candidate.</i></p> <p><i>This enhancement would be a useful additional feature to what I believe is a really excellent tool that has been well implemented.</i></p> <p><i>Please feel free to contact me if you would like additional information relating to this request."</i></p>

## Recommendation 18

That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to include:

- (a) for a gift made by an individual, the individual's occupation and employer (if applicable)
- (b) for a gift purportedly made by a company, the names and residential or business addresses of the company's directors (or the directors of the controlling entity), and a description of the nature of the company's business
- (c) for all gifts, a statement as to whether or not the person or other entity making the gift, or a related entity, currently has any business with, or matter or application under consideration by, the relevant council.

Section 120(6) regarding loans should be similarly amended to reflect these requirements.

<b>Government's initial response</b>	Support
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	Totally support.

## Recommendation 19

That section 124(3)(b)(iii) of the Local Government Electoral Act be amended to require the following details to be stated in a third party's return about expenditure, in lieu of the purpose of the expenditure as currently required:

- (a) whether the expenditure was used to benefit/support a particular candidate, group of candidates, political party or issue agenda, or to oppose a particular candidate, group of candidates, political party or issue agenda

- (b) the name of the candidate, group of candidates, political party or issue agenda that the expenditure benefitted/supported or opposed
- (c) the name and residential or business address of the service provider or product supplier to whom the expenditure was paid (if applicable).

<b>Government's initial response</b>	Support in principle
<b>Government action</b>	<b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	Totally support. The administrative burden of this recommendation is minor compared with the transparency it provides.

## Recommendation 20

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.

<b>Government's initial response</b>	Support
<b>Government action</b>	Implemented
<b>OSCAR recommendation/s</b>	<p>Strongly supported.</p> <p>In our submission to the Parliamentary Economics and Governance Committee we asked for clarification on the following:</p> <ol style="list-style-type: none"> <li>1 <i>Does the definition include individuals or companies undertaking development of retirement villages, nursing homes and other specialist housing types?</i></li> <li>2 <i>Does the definition include individuals or companies undertaking establishment of quarries, sand mines and similar commercial ventures?</i></li> <li>3 <i>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?</i></li> <li>4 <i>What does the term "regularly" mean? How many applications over what period of time would constitute "regularly" (sub section (2) (a) (a))?</i></li> </ol> <p>We further recommended the following:</p> <ol style="list-style-type: none"> <li>1 <i>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.</i></li> <li>2 <i>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</i></li> </ol>

	<p><i>property with a developer but not declaring such interests and family members having close personal relationships with siblings or children of developers.</i></p> <p>3 <i>That the “accumulated” figure be included in any Conflict of Interest or Material Personal Interest declarations.</i></p>
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## Recommendation 22

That the *Planning Act 2016* be amended to require that any application under Chapters 2 to 5:

- (a) include a statement as to whether or not the applicant or any entity directly or indirectly related to the applicant has previously made a declarable gift or incurred other declarable electoral expenditure relevant to an election for the local government that has an interest in the application
- (b) any application made to council by a company include the names and residential or business addresses of the company’s directors (or the directors of the controlling entity).

A local government has an interest in the application if it or a local government councillor, employee, contractor or approved entity is: an affected owner; an affected entity; an affected party; an assessment manager; a building certifier; a chosen assessment manager; a prescribed assessment manager; a decision-maker; a referral agency; or a responsible entity.

<b>Government’s initial response</b>	Support in principle
<b>Government action</b>	Implemented <b>Feedback from OSCAR sought</b>
<b>OSCAR recommendation/s</b>	Strongly agree and support. This extends the onus of declaration from councillors to also include obligations on applicants in their dealings with councils.

## Recommendation 23

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.

<b>Government’s initial response</b>	Support
<b>Government action</b>	Implemented
<b>OSCAR recommendation/s</b>	OSCAR supported the legislative change but further recommended that: <ol style="list-style-type: none"> <li>1 <i>That Conflicts of Interest be dealt with in the same way as Material Personal Interest.</i></li> <li>2 <i>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.</i></li> </ol>

	<p>3 <i>That making such declarations in a confidential session is unlawful.</i></p> <p>4 <i>That the exclusion rules apply during “adjournment periods” and to councillor and/or staff only councillor spaces.</i></p>
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### Recommendation 31

That the ECQ be given a specific legislative function to help ensure integrity and transparency in local government elections and that:

- (a) how the ECQ is to perform this function be specified in legislation; this should include engaging with participants in local government elections to promote their compliance with the requirements of the Local Government Electoral Act, investigating offences under the Local Government Electoral Act, and taking enforcement actions against candidates, third parties and others who commit offences
- (b) the ECQ be required to publicly report on the activities conducted under this function after each local government quadrennial election, including reporting on the outcomes of its compliance monitoring and enforcement activities
- (c) the ECQ be given adequate resources to perform this function.

<b>Government’s initial response</b>	Support
<b>Government action</b>	
<b>OSCAR recommendation/s</b>	<p>Strongly support.</p> <p>The ECQ must be provided with sufficient resources to perform its existing and expanded role as detailed in these recommendations.</p>