

## OSCAR suggestions for further Local Government legislative reform

OSCAR acknowledges that the State Government has enacted local government legislative reform in its present term predominately as a result of the recommendations that came out of the Crime and Corruption Commission's (CCC) *Operation Belcarra* – examples include developer donation bans and more robust Councillor Complaint handling mechanisms (although these are yet to be implemented). The dismissal of the Ipswich Council is also a significant action by the Government and signals a commitment to deal with corrupt or inappropriate behaviour within councils.

We are also aware that the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) is working on further reform based on *Operation Belcarra*; particularly in relation to election expenditure returns and caps, registers of interests for candidates, candidate groups, and details of disclosures as well as non Belcarra related reforms relating to dealing with low integrity risk candidates and voting methodologies. OSCAR has already provided a submission to the Department on these issues.

OSCAR believes however there is a need for further reform of local government activities in Queensland.

We propose the following areas of further reform and, where possible, indicate the legislation which requires amendment in our view:

- **Mandating the minuting of Council meetings** by removing the ability of Councils to seek exemption from doing so in some cases.

*S 272 (6), (7) and (8), Local Government Regulations 2012 – Minutes*

*This regulation should be removed from the Local Government Regulations 2012 so councils cannot seek exemption from preparing and publishing minutes for meetings.*

- Ensuring that the minutes of Council meetings **show how all councillors voted on each motion** without the need for a councillor to ask for a division. Interested members of the community should be able to see how each councillor voted on individual motions.

*S 272 (2) (b), Local Government Regulations 2012 – Minutes*

*This regulation should be amended to remove reference to a division; ie amend to read: 2 (b) “the names of all persons voting on the question and how they voted”.*

- The **timeframe for publishing meeting Agenda** should be codified. It is important that the community can see what is to be discussed at upcoming council meetings in time to examine documentation and contact Councillors prior to the meeting.

*S 277, Local Government Regulations 2012 – Public notice of meetings*

*This regulation should be amended to cover all meetings and specify how many working days prior to a meeting the agenda will be made available – OSCAR would suggest 5 working days. We would suggest the following amendments (and consequent amendments that may be required):*

*(1) A local government must, at least once in each year, publish a notice of the days and times when—  
(a) its ordinary **and committee** meetings will be held; and*

*(5) A list of the items to be discussed at a meeting mentioned in subsection (3) must be available for inspection on the local government's website at the time the agenda for the meeting is made available to councillors but no less than 5 working days prior to the meeting.*

- Provision of **live video streaming** (for real-time community access) and **video** or audio recording (for post-meeting community access) of all public meetings of councils including committee meetings. With modern technology this should not be too expensive, even for small councils. If necessary the cost of this could/should be borne by the State Government for rural, remote or very small councils.
- **Closed/confidential session at meetings** – this is completely out of hand in many councils. The Local Government Regulations are too weak in this area as they allow councils to use this provision

to avoid open and transparent governance which is, of course, totally at odds with the Local Government Principles listed at the beginning of the Local Government Act 2009! We believe there are very few exceptional circumstances that warrant dealing with in closed session and the current legislation provides far too much leeway.

We realise that decisions cannot be made in closed session but the motion that is typically moved once council meetings move back into open session are typically of the form:

*“That Council note the discussions held in the confidential session in relation to the proposed sports development.”*

or

*“That Council delegate authority to the Chief Executive Officer to enter into negotiations, execute and finalise the acquisition of the identified properties at Maleny in accordance with the outcome of discussions in the confidential session.”*

We note that the Sunshine Coast Regional Council (SCRC) has had 172 closed sessions in this term of Local Government (ie since April 2016); this compares with 13 closed sessions for the Noosa Council (NC) in the same timeframe. This disparity cannot be explained simply in terms of the relative sizes of the two LGAs.

***S 275, Local Government Regulations 2012 – Closed meetings***

***This regulation urgently needs reforming and we would welcome the opportunity to have more input into how this might be achieved.***

- **Place limits on the power of Mayors and CEOs** – the advent of large councils, powerful Mayors and CEOs and increasing use of delegated authority to act has removed much of the power and responsibilities of other elected councillors. We would like to see the restoration of the arrangements whereby a Mayor can only direct the CEO to implement Council Policy and nothing else. Mayors should NOT be able to direct senior staff.

***S 12, Local Government Act 2009 – Responsibilities of councillors***

***We would suggest the following amendment (and consequent amendments that may be required):***  
***(d) directing the chief executive officer ~~and senior executive employees~~, in accordance with the local government’s policies;***

***S 170, Local Government Act 2009 – Giving directions to local government staff***

***(1) The mayor may give a direction to the chief executive officer ~~or senior executive employees~~.***

- **Reform of delegations.** Councillors must vote on delegations, it should not be a given. It may be possible to limit the amount that council can delegate to CEOs and require that all tenders must be signed off by a motion of council.

***We would welcome the opportunity to address this area of reform in a future representation to the Department.***

We also believe all registers such as the Register of Delegations should be available on council’s websites as well as being available at council public offices.

***We would suggest the following amendments (and consequent amendments that may be required):***

***S 260, Local Government Act 2009 – Local government delegations register***

***(3) The public may inspect the register of delegations-***

***(a) at the local government’s public office; or***

***(b) on the local government’s website.***

- Changes to **prevent councils establishing separate business enterprises (or controlled entities)**, to undertake projects; this results in council activities, typically funded by ratepayers, being taken out of the public domain and therefore not subject to open scrutiny. Without such scrutiny how can ratepayers assess whether these activities represent good business practice and provide the best return on investment – particularly when these business entities are funded via significant borrowings in many councils?

*OSCAR endorses Recommendation 3 from the CCC's Operation Windage:*

*That the Department of Local Government Racing and Multicultural Affairs:*

- *Examine the need for councils to continue to utilise controlled entities; and*
- *Review the beneficial enterprise provisions in the Local Government Act 2009 and City of Brisbane Act 2010 including whether further controls and regulation should be introduced to ensure that controlled entities do not expose the council to greater risks of corruption.*
- *That councils' controlled entities should be deemed to be units of public administration, bringing these entities within the oversight of the CCC and also subjecting them to the Right to Information Act 2009.*

- **Prohibit use of private email accounts** by councillors and council employees when conducting council business.

*OSCAR endorses Recommendation 4 from the CCC's Operation Windage:*

*That the Local Government Advisory Group include a prohibition on the use of private email accounts when conducting official business in the councillors' code of conduct.*

*That individual councils should also introduce a local law supported by appropriate policy and procedure which applies to councillors and employees to prohibit the use of private email accounts for the purpose of conducting official business.*

- Introduction of **mandatory, high-quality and practical post-election training** for all elected members following each council election. This should be provided by the DLGRMA but other bodies may be involved in joint training activities – eg Local Government Association of Queensland (LGAQ), Local Government Managers Australia (Queensland) (LGMA).

*OSCAR endorses Recommendation 1 from the CCC's Operation Windage:*

*That all councillors across Queensland ensure that they are sufficiently informed of their council's policies and procedures, particularly in relation to financial controls and its compliance with these policies and procedures.*

*That the Department of Local Government Racing and Multicultural Affairs provide information and/or training to inform councillors of their rights and responsibilities as councillors, including in areas such as governance and financial literacy.*

- Establishment of some form of **Local Government Community Advisory Group** (or similar) to provide input to the Local Government Minister and Department in relation to reforms in local government. This would provide a regular ratepayer/community perspective when the government is seeking stakeholder input and would balance the input and influence of the LGAQ.
- Further reform of **Conflict of Interest** provisions is also needed.

We note the position of the LGAQ (perhaps adopted from OSCAR's position put to the Parliamentary Economics and Governance Committee when considering the first round of Belcarra related legislation amendments) which it is now advocating in its "Beyond Belcarra" report's 10 point plan.

*We would argue that any donation or gift, irrespective of its value, would mandate that councillors had to leave the room where a donation or gift had been received that could be seen as representing a Conflict of Interest in relation to the matter being discussed and voted on.*

*(See Appendix 1 for OSCAR's responses the LGAQ's Beyond Belcarra 10 point plan)*

- The need for **meaningful consequences for inappropriate behaviours** of councillors that fall outside the criminal code but contravene the letter or spirit of Local Government laws and regulations. For example how many times does a councillor need to be “reprimanded” for inappropriate conduct, before action is taken by the Department?

## **Other areas of reform**

- Although not a LGA issue we also believe there needs to be **changes to RTI legislation** in order for non-profit organisations to be able to pursue legitimate applications without incurring considerable cost. OSCAR's two RTI actions have cost \$640 and \$870 respectively (not trivial sums for us). Ironically the documents we ultimately received in the first instance were not redacted in any way (except for removal of submitter names which was appropriate) confirming our belief that the issue we sought information on never needed to be dealt with confidentially in the first place. In the second, more recent instance, OSCAR has received heavily redacted material that “hides” the information we were seeking.
- OSCAR also believes that when the Government is undertaking **stakeholder engagement** on local government reform it must consult with a wider audience (eg QLGRA, SEQA, individual peak/umbrella groups such as OSCAR, SCEC, GECKO etc, and other organisations such as the LGMA, Queensland Law Society etc) and not limit consultation to the LGAQ alone.
- We believe a **4 year term for local and state governments** remains the best option; this allows stability and the capacity for longer term planning and while it is too long to endure a “bad” council we have faith in other mechanisms for dealing with serious mal-administration at the local government level.
- We favour **full preferential voting (FPV)** for local government elections for both divided and undivided councils; this is essential for consistency across and within jurisdictions and best allows for the fullest expression of a voter's intention re preferred candidate or candidates.

## Appendix 1

### OSCAR response to the LGAQ's 10 point plan

OSCAR agrees with some of what the Local Government Association of Queensland (LGAQ) is proposing in its Beyond Belcarra 10-point plan for local government reform and we would welcome the LGAQ working with peak community groups to bring about the legislative changes needed to achieve these outcomes.

We note the LGAQ Policy Executive has endorsed the following proposals to guide the local government sector's strong commitment to demanding the highest standards of integrity in all aspects of local government operations!

*"Queensland councils are determined to be leaders in transparency and accountability to guarantee public confidence and trust."* [Source: LGAQ website]

#### 10 Point Plan

- Clarification that donations/gifts are to remain on registers of interests for two terms of council (current and previous term).

*OSCAR supports the retention of gifts and donations but for the whole period or periods that an individual is a Mayor or Councillor. This information should be recorded on Registers of Interest and on the ECQ's Electronic Disclosure System (EDS).*

- Mandatory pre-election briefings for new candidates (excluding sitting councillors).

*OSCAR supports this, but for all candidates including sitting councillors – OSCAR's experience would be that most incumbent councillors are not sufficiently aware of LG legislation in general and changes to legislation that occur from time to time (we note the difficulty both the SCRC and the NC have experienced in their handling of the new Conflict of Interest provisions of the Local Government Act for example).*

- Mandatory, high-quality and practical post-election training for all elected members.

*OSCAR strongly supports this; such training should be provided by the DLGRMA. Training would need to be delivered by qualified and effective trainers. We acknowledge that the LGAQ does provide quality training and may well be involved in joint training initiatives.*

- LGAQ-run community awareness campaign on local government planning role.

*OSCAR supports the idea of on-going community awareness programs but these should be conducted by DLGRMA or DSDMIP and not the LGAQ.*

- Introduction of a statutory provision to automatically stand down councillors charged with an indictable offence, at full remuneration until proven guilty.

*OSCAR supports this proposal with the qualification that if found guilty any amount paid during the period of suspension is paid back.*

*Note: OSCAR endorses the action taken by the Parliament in relation to the dismissal of the Ipswich City Council.*

- Compulsory register of interests for candidates seeking election.

*OSCAR supports this proposal.*

- Campaign expenditure limits set at \$2 per enrolled voter for mayoral elections and \$1 per enrolled voter for councillor elections, with upper expenditure limits ("ceilings") of \$200,000 for mayoral elections and \$50,000 for councillor elections and lower expenditure limits ("floors") of \$20,000 for mayoral elections, \$15,000 for councillor elections in undivided councils and \$5,000 for councillor elections in divided councils.

*OSCAR supports this but with lower thresholds – maximum figures of \$50,000 to \$100,000 for Mayoral candidates and \$10,000 to \$12,500 for councillor candidates in divided and small undivided councils with higher figures for larger undivided councils.*

- Donations or gifts above \$500 on a register of interests to be treated the same as a Material Personal Interest.

*OSCAR would prefer a lower threshold but agrees with this in principle. It is essential that the threshold be triggered both for an individual donation or gift in excess of the threshold or once cumulative donations or gifts from a donor exceed the threshold.*

*Our strong preference is for a \$200 reporting threshold for gifts and donations. We believe however that a \$500 limit may be more acceptable to all stakeholders and would reluctantly accept that outcome.*

- Open data and governance innovation initiatives provided by the LGAQ, most particularly Ready, Set, Go benchmarking service being made public from October 2018.

*We need more information on this proposal before we can comment.*

- Better Councils, Better Communities – public education campaign run by the LGAQ.

*OSCAR needs more information on this program but we do not believe the LGAQ should be solely involved in public education activities; this should be the responsibility of the DLGRMA with the option to enter into joint arrangements with the LGAQ where the department deems it appropriate.*