



Recognising and upholding excellence in local government

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8 January 2020

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

Email: egc@parliament.qld.gov.au

Dear Secretary

Subject: *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Bill 2019 and Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections*

OSCAR (Organisation of Sunshine Coast Association of Residents) is the peak body representing resident and community organisations on the Sunshine Coast. We are a non-partisan and not-for-profit incorporated association.

While this Bill has a number of components (Chapters) this submission focusses on the *Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters* section and on proposed changes to Local government Regulations that will follow.

Please find our responses to these provisions on the following pages. These responses reflect material provided by the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) in its *Information paper* published in November 2019 and the Explanatory Notes in one instance.

We have not taken the opportunity to make comments on **expenditure caps** at this stage. We will make a detailed submission in relation to this matter by the deadline of 20 January 2020 as per the recently released *Issues Paper* from your Committee.

We would appreciate the opportunity to appear before the Committee at the Public Hearing to be held on 20 January 2020. To expedite the Committee's procedures we are happy to be included in a combined community presentation to the Committee that we are aware the SEQ Alliance (SEQA) is requesting on behalf of the broader community as represented by organisations such as OSCAR.

OSCAR wishes the committee well in its deliberations.

Yours sincerely

A handwritten signature in black ink that reads "Melva E Hobson". The signature is written in a cursive, flowing style.

Melva Hobson PSM
President

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

Proposed reform	OSCAR response
Changes to legislation	
<p>Conflicts of interests, ordinary business</p> <p>Planning schemes – ordinary business exemption to apply only to the adoption of new schemes or amendments impacting on the whole of the local government area</p> <p>In more localised planning amendments, councillors with COI to disclose COI and deal with them under existing requirements</p>	<p>Strongly support</p> <p>We have previously argued that the notion of “ordinary business” needs to be removed from the legislation or there needs to be a new and tighter definition of “ordinary business”. We continue to believe it is totally inappropriate that planning scheme matters are regarded as ordinary council business and therefore currently exempt from conflict of interest provisions.</p> <p>Nevertheless we accept the proposal to restrict the ordinary business exemption to only apply to the adoption of new schemes or amendments that impact on the whole LGA as a reasonable compromise and therefore welcome this reform.</p>
<p>Clarification of Conflicts of interest (COI) requirements</p> <p>COI provisions do not apply to ordinary business matters (e.g. rates and charges, planning schemes applying to whole local government area, budgets, remuneration of councillors) or where the COI arises due to a councillor being nominated by the council to a board of a corporation or association. However, a council may voluntarily comply with the provisions for a declarable conflict of interest.</p> <p>Prescribed COIs</p> <p>Councillors with a prescribed COI in a matter are prohibited from participating in a decision on the matter. (Replaces material personal interest provisions).</p> <p>Declarable COIs</p> <p>Declarable COIs are when a councillor has, or could be reasonably presumed to have, a conflict between their or a related party’s interest in a matter and the public interest that could lead to a decision being made that is not in the public interest.</p> <p>A councillor who may participate, or is participating, in a decision about a matter and becomes aware that they have a declarable conflict of interest and, with intent to dishonestly gain a benefit or cause a detriment for the councillor or another person, fails to stop participating in the decision and inform the meeting or the chief executive officer of the interest as required under those subsections commits a serious integrity offence and faces up to two years imprisonment.</p> <p>A councillor who fails to comply with a decision of eligible councillors that they must not participate</p>	<p>Strongly support with suggested amendment</p> <p>We would hope that councils are encouraged to adopt a policy of voluntary compliance.</p> <p>Prescribed COIs</p> <p>Support this reform with one reservation/request for amendment:</p> <p><i>We believe the gift/donation threshold should be \$500 which is consistent with electoral donations reporting threshold; this would remove potential confusion and we believe \$500 is a sufficient amount to give rise to material interest.</i></p> <p>We believe the proposed penalties are appropriate.</p> <p>Declarable COIs</p> <p><i>The proposed reform is too vague due to the failure of the legislation to define what is meant by “public interest”.</i></p> <p>This may be rectified if the Department develops some guidelines and case studies to assist councillors better understand what is in</p>

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<p>in a decision or must leave a meeting, or any conditions on the participation imposed by the eligible councillors, commits an integrity offence with a penalty up to 100 penalty units or a one-year imprisonment (current penalty).</p> <p>Additional points from the Bill's Explanatory Notes - Chapter 5. Councillor Conflicts of Interest (page 5 & 6):</p> <p>The new process provides that where a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter unless the Minister has approved the councillor's participation in the decision and must inform a local government meeting or the chief executive officer of the interest, including prescribed particulars, as appropriate.</p> <p>The Bill also provides for:</p> <ul style="list-style-type: none"> • an offence where a councillor with a conflict of interest influences another person who is participating in a decision relating to the matter; and • requirements about keeping records about conflicts of interest. 	<p>the public interest.</p> <p>Again, we believe the proposed penalties are appropriate.</p> <p><i>OSCAR values the role of the Minister in this situation, but is very concerned in relation to the situation where a councillor has a Prescribed COI, for example, where a mayor or councillor is a paid director of a public fund and that fund has a significant investment in, and major contract with the Council in relation to a multi-million dollar Council asset.</i></p> <p><i>OSCAR supports the provision of an offence where a councillor with a COI and we presume a Prescribed COI, influences another person participating in a decision relating to the matter. We seek clarification in relation to the definition of "influences". Is the Councillor (Mayor) with the COI or Prescribed COI able to have private discussions with other councillors who will be making decisions re the matter on which the COI has been declared? Is the councillor/mayor with the COI able to participate in discussions during, for example an adjournment of the meeting or informal discussions prior or post the meeting?</i></p>
<p>Registers of interests</p> <p>Within 30 days of their election councillors must submit new register of interests for themselves and any specified related persons, or they will cease to be a councillor</p> <p>Councillors must notify of any changes to their interests within 30 days</p> <p>Councillors must provide an update to their register within 30 days of end of financial year</p> <p>A councillor, with intent to dishonestly gain a benefit for the councillor or another person, commits a serious integrity offence and could face up to two years imprisonment (indictable offence under the Criminal Code) if they:</p> <ul style="list-style-type: none"> • knowingly fail to inform the chief executive officer, in the approved form, of the particulars of the new interest or change of interest within 30 days after the interest arises or the change happens, or 	<p>Strongly support</p> <p>OSCAR has always advocate for consistency across local and state jurisdictions where appropriate and the Bill achieves this by introducing new obligations on councillors in relation to registers of interests to align with State MPs statements of interests, including appropriate offences and penalties for non-compliance.</p>

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<ul style="list-style-type: none"> knowingly fail to inform the chief executive officer, in the approved form, whether a register of interests for the councillor or a person related to the councillor is correct or the particulars of an interest to be recorded in the register of interests give the chief executive officer a register of interests or information relating to a register of interests that the councillor knew to be false or misleading in a material particular. <p>NOTE: where there is no intent to gain a benefit or no knowledge element, the conduct is prescribed as misconduct.</p>	
<p>Political and support staff for councillors</p> <p>New code of conduct for political and support staff to be made by the Minister for Local Government</p> <p>Councillors can direct administrative assistants consistent with guidelines about administrative assistance</p> <p>Councils must make a resolution to create political staffer positions</p> <p>Political staff are appointed by contract for the councillor’s term, and cease if councillor ceases to be a councillor, unless re-appointed by new councillor</p> <p>Political staff required to submit a register of interests</p> <p>Political staff subject to offences about dishonesty matters and about the use of information obtained in their role</p> <p>Costs of political staffers to be reported (e.g. in annual report)</p>	<p><i>Support with reservations noted</i></p> <p><i>We do not believe that councils should be appointing political staff and would favour a total ban on such appointments.</i></p> <p>If political staff appointments are to continue to be made however, we would offer the following recommendations:</p> <ul style="list-style-type: none"> That the code of conduct for such staff be developed as a matter of urgency once this legislation is passed. Resolutions to create political staff positions and appoint or reappoint political staffers must be by resolution of full council in open sessions. Reporting of costs associated with political staff must be available to the public. We agree that the Annual Report would be a good mechanism for doing this but feel this should also be included in each council’s Budget. <p>We would also like clarification as to whether political staff can represent their Mayor or Councillor and whether they can attend informal meetings. In our view they should not be able to do either; we see the role of a political advisor as being limited to purely providing advice to their Mayor/Councillor.</p> <p><i>OSCAR would support the inclusion of the provision that “where a councillor or mayor declares a Prescribed COI in relation to a council matter under discussion” that their associated political adviser (under whatever guise or name they function) have the</i></p>

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	<p><i>same restrictions apply to them for that particular issue.</i></p> <p><i>We are aware of instances where currently the councillor declares a COI and leaves the meeting but the political adviser remains in the meeting.</i></p>
<p>BCC senior contract employees</p> <p>BCC councillors cannot be involved in the appointment of contract employees except only for CEO and senior executive employees who report directly to the CEO</p>	<p>Support</p>
<p>Dissolution of a local government</p> <p>The term of an administrator may expire at the conclusion of a quadrennial local government election (rather than require an 'election')</p> <p>Provision for short-term absences of an administrator</p> <p>State government can recover the costs of an Interim Management Committee from the local government</p>	<p><i>These reforms seem appropriate and we support in principle.</i></p>
<p>Councillor vacancies</p> <p>Mayors:</p> <ul style="list-style-type: none"> • in first 36 months: by-election • last 12 months: councillors appoint a mayor <p>Councillors:</p> <ul style="list-style-type: none"> • in first 36 months: <ul style="list-style-type: none"> ○ for single-councillor division: by-election ○ for multi-member or undivided council: appoint next candidate • last 12 months: appointment by council • last 3 months: may leave vacant 	<p><i>Support the timeframes indicated</i></p> <p>We agree that in the last 12 months councillors should appoint the Mayor from their number without the need to replace that councillor.</p> <p>In the case of councillor vacancies, there needs to be clarity as to how appointments in the last 12 months will be made. We would like more clarity on the mechanism for making such appointments and what constitutes a "qualified person".</p> <p>We would urge that this process must be transparent; it should involve public advertising of the vacancy and require that any appointment is made by resolution of the full Council in a public session of Council.</p> <p>We accept that in the last 3 months vacancies can be left vacant.</p>
<p>Technical amendments</p> <p>Technical amendments to assist ECQ run elections</p>	<p>Support</p> <p><i>The Part 3 Amendment of Local Government Electoral Act 2011</i></p>

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	clauses appear appropriate.
Changes to regulations	
<p>Registers of interests</p> <p>Any donations made of \$500 or greater must be recorded</p> <p>Gifts between \$500 and \$2000 need only to be recorded for two terms</p> <p>Electoral gifts do not need to be recorded</p> <p>Clarification that being a member of a board of a community organisation needs to be declared but not memberships</p> <p>Clarification of when interests arising from official duties are not included in register</p> <p>Only councillors' current interests to be published on the local government website</p> <p>Councils to keep ROIs for 10 years after councillor's office or officer employment ends</p>	<p>Support</p> <p>We understand, that whatever threshold is legislated, it will be made clear that the amount applies to a single gift or where smaller gifts from the same source cumulatively exceed the threshold.</p> <p>We also understand that the reason electoral gifts do not need to be recorded in registers of interest is because candidates' electoral gifts will be recorded and published on the ECQ's EDS website (in real time) and they will be accessible to the public and need not be duplicated. This provision is therefore acceptable to us on that basis.</p> <p>We believe the all councillor ROIs in a council term should be retained and be publically available on council websites and not just the current RoI.</p>
<p>Agendas</p> <p>Agenda and associated reports and other documents to be published on council website by 5 pm on the day following the day it is made available to councillors</p> <p>Reports to be considered at the meeting provided after the agenda is sent are to be published on council website as soon as practicable after they are made available to councillors</p> <p>Confidential reports or papers exempt from publication on the website</p>	<p>Strongly support</p>
<p>Minutes</p> <p>Committee meetings must have minutes</p> <p>Unless previously made available with the agenda, minutes must include reports and other associated information used in the meeting</p> <p>Unconfirmed minutes to be published five business days after the end of the meeting</p> <p>Confirmed minutes to be published immediately after the meeting at which they are confirmed</p> <p>Clarification that a councillor can confirm the meeting minutes despite having a conflict of interest in</p>	<p>Strongly support</p> <p>We would like to propose the following additional requirements for the Committee's consideration:</p> <p>That the term "committee" meetings also includes workshops, portfolio meetings or a committee meeting by any other name.</p> <p>Mandate that the minutes of all Council meetings show how all councillors voted on each motion without the need for a councillor to request a division (a practice that most councils already do).</p> <p>Interested members of the community should be able to see how</p>

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<p>a matter discussed or decided in the meeting and regardless of whether they participated in that matter</p> <p>Confidential reports or papers to be exempt from publication on the council website</p>	<p>each councillor voted on individual motions rather than just indicating whether the motion was Carried or Lost.</p> <p>Mandate the introduction of live video steaming (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, indigenous and very small councils.</p> <p>This would allow councils to prepare Hansard-like minutes and would allow voters to make judgements about the performance of their council as a whole, and of individual councillors.</p> <p>The introduction of live streaming in February 2019 at the Noosa Council suggests a perfectly satisfactory quality can be achieved at an affordable cost for even smaller councils.</p>
<p>Closed meetings</p> <p>Tightening of topics that can be discussed in closed session as follows:</p> <p>o remove:</p> <ul style="list-style-type: none"> • appointment, dismissal or discipline of employees other than the CEO • contracts proposed to be made • actions or decisions under the Planning Act 2016 • other business where public discussion may prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage <p>o add:</p> <ul style="list-style-type: none"> • a council's position in a negotiation <p>o retain:</p> <ul style="list-style-type: none"> • legal advice obtained by a council 	<p><i>Strongly support with one reservation</i></p> <p>Use of closed/confidential session at council meetings is completely out of hand in many councils.</p> <p>We strongly support the proposed changes that would mean councils will not be able to discuss or decide in closed session:</p> <ul style="list-style-type: none"> • appointment, dismissal or discipline of employees other than the CEO • contracts proposed to be made • actions or decisions under the Planning Act. <p>The Local Government Regulations are currently 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 <i>Local Government Act 2009</i>! We believe there are very few exceptional circumstances that warrant dealing with in closed</p>

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<ul style="list-style-type: none"> matters that directly affect the health and safety of an individual or group 	<p>session and the current legislation provides far too much leeway.</p> <p>We realise that actual decisions cannot be made in closed session but the motions that are passed once council meetings move back into open session are typically of a meaningless form that provides the community of no real knowledge of the actual decision made in open session and more importantly denies the community an understanding of what informed councillors’ decision making. In most cases this results in ratepayers being denied any knowledge of how their rates are being used and therefore the capacity to determine if decisions made are in fact in their financial or other interests.</p> <p><i>We have significant concern about the addition of “a council’s position in a negotiation” clause. This is too vague and provides the opportunity for a “resourceful” CEO to overuse this clause to counter the removal of the existing clauses referred to above that they have previously relied on to recommend council moves into closed session.</i></p> <p><i>OSCAR recommends that whenever the “negotiation’ clause is applied to “close” a meeting to the public, or move into “confidential” session that a timeframe for release of the associated documents be included in any resolutions made in open session.</i></p> <p><i>We further recommend that where there a number of items to be considered in closed session that each item be subject to a separate motion rather than be dealt with as a single “omnibus” motion. In the council we most closely monitor, councillors have consistently failed to exercise their right to do this which suggests the need for a mandatory regulation to that effect.</i></p>
<p>Informal meetings</p> <p>A councillor who has a declarable COI in a matter to be addressed in an informal meeting or a workshop cannot attend the informal meeting or workshop for that agenda item unless the local government has previously approved their participation in that matter</p>	<p><i>Strongly support</i></p> <p>We would like clarification as to whether political staff can represent their Mayor or councillor or even attend informal meetings.</p> <p><i>A suggested above in the section on Prescribed COIs, OSCAR would</i></p>

Proposed reform	OSCAR response
<p>A councillor who has a prescribed COI cannot attend an informal meeting or a workshop</p> <p>Any new or additional information arising at or from the informal meeting or workshop to be made available as soon as possible after the briefing session or workshop to all councillors and the public</p> <p>Councils to have a policy about informal meetings and are required to publicly notify when and where such meetings will be held and their outcomes</p>	<p><i>support the inclusion of the provision that “where a councillor or mayor declares a Prescribed COI in relation to a council matter under discussion” that their associated political adviser (under whatever guise or name they function) have the same restrictions apply to them for that particular issue in informal meetings.</i></p> <p>We would recommend that councils are required to publicly notify when and where informal meetings will be held and their outcomes <i>and who is in attendance.</i></p>