

# Summary and recommendations

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## Summary

Local governments are responsible for the good governance of local and regional communities. In performing this role, local governments execute a range of functions, including planning and monitoring, service delivery, and lawmaking and enforcement. They also play an important advocacy role, representing the interests of their community in negotiations with state and federal governments and the non-government sector. Those charged with this responsibility, elected mayors and councillors, must comply with relevant laws and adhere to the key principles of good government — equity, transparency, integrity and accountability — to secure the confidence of the communities they serve. Communities are rightly outraged when the behaviour of their elected representatives falls below these basic standards.

Following the Queensland local government elections on 19 March 2016, the Crime and Corruption Commission (CCC) received numerous complaints about the conduct of candidates for several councils, including Gold Coast, Ipswich, Moreton Bay and Logan. Consistent with the CCC's responsibilities to investigate corruption, and prevent corruption and promote integrity, the CCC commenced Operation Belcarra to:

- determine whether candidates committed offences under the *Local Government Electoral Act 2011* that could constitute corrupt conduct
- 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.

To achieve these aims, the CCC undertook a range of investigative activities and concluded that the allegations centred on the issues of undeclared groups of candidates, misleading electoral funding and financial disclosure returns, and failing to operate a dedicated bank account. The CCC conducted a public hearing to gather information about a number of possible criminal offences and canvass broader issues related to corruption and integrity in local government. The investigation of some allegations is still being finalised. The CCC formed the view that the publication of this report, which highlights the inadequacies of the current system and proposes reforms to address them, should occur as a matter of priority and not be delayed on account of a small number of outstanding investigations.

This report is divided into three parts:

- Part 1 provides background to Operation Belcarra, outlines the nature of local government in Queensland, describes key legislative obligations on candidates and others at local government elections, and notes a few key facts about the 2016 elections.
- Part 2 describes the investigation outcomes for the allegations canvassed at the public hearing, grouped by local government.
- Part 3 discusses six key issues identified by the CCC as arising from the 2016 elections that can adversely affect equity, transparency, integrity and accountability in council elections and decision-making. The CCC found:
  - There is uneven competition between candidates in Queensland council elections, particularly with respect to campaign funding. This carries the potential for wealth to be seen to buy power and influence in local government.
  - There is a distortion of the concept of an independent candidate, with many candidates using the independent label despite being closely affiliated with a political party or having other interests that may be seen to affect their independence in the eyes of voters.

- There is ambiguity about the nature of relationships between candidates, with some candidates engaging in cooperative campaigning and receiving funds from common sources but not declaring themselves as a group of candidates.
- The existence and nature of relationships between donors and candidates is being obscured by some candidates receiving campaign donations via third party entities. The transparency of financial relationships is also reduced by significant levels of non-compliance with disclosure requirements, and the lack of a best practice disclosure scheme.
- There are perceptions of compromised council processes and decision-making, especially where councillors have received campaign funding from donors involved in the property and construction industries. These perceptions are compounded by the failure of many councillors to adequately deal with their conflicts of interest.
- There are considerable deficiencies in the compliance and enforcement framework for local government elections in Queensland.

## Recommendations

The CCC makes the following recommendations to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making. To remove any doubt, these recommendations are intended to apply to all Queensland councils.

The CCC appreciates that a number of these recommendations create a disparity in the obligations relevant to state and local government. The CCC is of the view that the systemic issues identified through Operation Belcarra, and other reviews before it, justify the implementation of a more stringent regulatory framework to improve equity, transparency, integrity and accountability in local government elections and decision-making. The Queensland Government may consider it appropriate to also adopt these recommendations at the state government level.

The CCC will publish the government response to these recommendations and any progress reports on their implementation on the CCC website ([www.ccc.qld.gov.au](http://www.ccc.qld.gov.au)).

### Recommendation 1 (p. 47)

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.

### Recommendation 2 (p. 48)

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.

### **Recommendation 3** (p. 55)

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.

### **Recommendation 4** (p. 56)

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.

### **Recommendation 5** (p. 61)

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.

**Recommendation 6** (p. 65)

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.

**Recommendation 7** (p. 65)

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.

**Recommendation 8** (p. 67)

That the Local Government Electoral Act be amended to require all gift recipients, within seven business days of receiving a gift requiring a third party return under section 124 of the LGE Act, to notify the donor of their disclosure obligations. A suitable penalty should apply.

**Recommendation 9** (p. 67)

That the ECQ develop a pro-forma letter or information sheet that gift recipients can give to donors that explains third parties' disclosure obligations and how these can be fulfilled.

**Recommendation 10** (p. 68)

That the Local Government Electoral Act be amended to require candidates, groups of candidates and third parties to prospectively notify any proposed donor of the candidate's, group's or third party's disclosure obligations under section 117, 118 or 125 of the LGE Act.

**Recommendation 11** (p. 69)

That the ECQ revises the handbooks and any other written information it gives candidates, third parties or others about their obligations in local government elections to ensure that these obligations are clearly communicated in plain English.

**Recommendation 12** (p. 69)

That the Local Government Electoral Act be amended to make attendance at a DILGP information session a mandatory requirement of nomination.

**Recommendation 13** (p. 70)

That the ECQ amends a) its paper disclosure return forms and b) the Electronic Disclosure System submission form (as relevant to local government) to ensure they:

- (a) adequately and accurately reflect all relevant requirements in Part 6 of the Local Government Electoral Act
- (b) contain clear and sufficiently detailed instructions to users to facilitate their compliance with these requirements.

**Recommendation 14** (p. 71)

That sections 126 and 127 of the Local Government Electoral Act be amended to expressly prohibit candidates and groups of candidates from using a credit card to pay for campaign expenses. Candidates would be permitted to use debit cards attached to their dedicated account.

**Recommendation 15** (p. 72)

That:

- (a) section 27(2) of the Local Government Electoral Act be amended to require candidates' nominations to also contain the details of the candidate's dedicated account under section 126 of the LGE Act
- (b) section 41(3) of the Local Government Electoral Act be amended to require the record for a group of candidates to also state the details of the group's dedicated account under section 127 of the LGE Act.

**Recommendation 16** (p. 73)

That the Local Government Electoral Act be amended to:

- (a) prohibit candidates, groups of candidates, third parties, political parties and associated entities from receiving gifts or loans in respect of an election within the seven business days before polling day for that election and at any time thereafter
- (b) state that, if a candidate, group of candidates, third party, political party or associated entity receives a gift or loan in contravention of the above, an amount equal to the value of the gift or loan is payable to the State and may be recovered by the State as a debt owing to the local government, consistent with the provisions relating to accepting anonymous donations [s. 119(4), LGE Act] and loans without prescribed records [s. 121(4), LGE Act].

**Recommendation 17** (p. 74)

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.

**Recommendation 18** (p. 75)

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.

#### **Recommendation 19 (p. 75)**

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).

#### **Recommendation 20 (p. 78)**

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.

#### **Recommendation 21 (p. 80)**

That the Local Government Act and the City of Brisbane 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 councillor for the purposes of Chapter 6, Part 2, Divisions 5 and 6.

#### **Recommendation 22 (p. 81)**

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.

**Recommendation 23** (p. 85)

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.

**Recommendation 24** (p. 85)

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.

**Recommendation 25** (p. 85)

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.

**Recommendation 26** (p. 85)

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.

**Recommendation 27** (p. 86)

That the Local Government Liaison Group recommended by the Councillor Complaints Review Panel be established as soon as practicable.

**Recommendation 28** (p. 86)

That:

- (a) the advisory and public awareness functions of the Queensland Integrity Commissioner under the *Integrity Act 2009* be extended to local government councillors

- (b) or alternatively, a separate statutory body be established for local government with advisory and public awareness functions equivalent to those of the Queensland Integrity Commissioner under the *Integrity Act 2009*.

**Recommendation 29** (p. 88)

That the Local Government Electoral Act be amended so that prosecutions for offences related to dedicated accounts (ss. 126 and 127) and groups of candidates (s. 183) may be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns.

**Recommendation 30** (p. 89)

That the penalties in the Local Government Electoral Act for offences including funding and disclosure offences be increased to provide an adequate deterrent to non-compliance. For councillors, removal from office should be considered.

**Recommendation 31** (p. 95)

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.