Crime and Corruption Commission
QUEENSLAND

October 2017

Operation Belcarra

A blueprint for integrity and addressing corruption risk in local government

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ISBN 978-1-876986-85-8

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Crime and Corruption Commission

QUEENSLAND

October 2017

The Honourable Peter Wellington MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with Section 69 of the *Crime and Corruption Act 2001*, the Crime and Corruption Commission hereby furnishes to you its report, *Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government*.

The Commission has adopted the report.

Yours sincerely

Alan MacSporran QC
Chairperson

Contents

Foreword

The Crime and Corruption Commission (CCC) commenced Operation Belcarra in response to complaints about the conduct of candidates contesting the 2016 Queensland local government elections. Operation Belcarra centred on allegations that candidates had operated as undeclared groups, lodged electoral funding disclosure returns that contained false information, and failed to operate a dedicated bank account during their disclosure period. Some matters relating to these activities remain under investigation.

As Operation Belcarra progressed, it became apparent that many of the issues under investigation had been previously examined by this agency or its predecessor. In 1991, the then Criminal Justice Commission (CJC) examined property developer donations and conflicts of interest on the Gold Coast. In 2006, the then Crime and Misconduct Commission (CMC) examined property developer donations and undeclared groups of candidates, again on the Gold Coast, and in 2015, the CCC examined the practices relating to the receipt, management and disclosure of electoral donations by the former mayor at Ipswich City Council.

The recurring nature of these issues, despite increased regulation and oversight of local government, elections and political donations over time, highlights their inherent potential to cause concerns about corruption and adversely affect public perceptions of, and confidence in, the transparency and integrity of local government. Indeed, in the event that media reporting reflects public sentiment, it would appear that the Queensland community is calling for local government to be held to higher standards.

Reflecting this, it was important that we not only investigate the allegations, but also identify the deficiencies of the current system and strategies to decrease corruption risks and increase public confidence in local government. We found widespread non-compliance with the legislative framework. In the Commission's view, this non-compliance is largely caused by a deficient legislative and regulatory framework.

The Commission has recommended an extensive package of reform that addresses these deficiencies and will improve equity, transparency, integrity and accountability in council elections and decision-making. Each of the 31 recommendations addresses a deficiency in the current system, but their impact is consolidated and amplified by the implementation of the other recommendations. For this reason, the Commission encourages the government to implement the whole package of reform.

Alan MacSporran QC
Chairperson

Abbreviations

ACCC	Australia–China Chamber of CEO Inc.
ALP	Australian Labor Party
CC Act	*Crime and Corruption Act 2001*
CCC	Crime and Corruption Commission
CFMEU	Construction, Forestry, Mining and Energy Union
CMC	Crime and Misconduct Commission
Cr	Councillor
DILGP	Department of Infrastructure, Local Government and Planning
ECQ	Electoral Commission Queensland
EDS	Electronic Disclosure System
GCCC	Gold Coast City Council
ICAC	Independent Commission Against Corruption (New South Wales)
ICC	Ipswich City Council
LCC	Logan City Council
LG Act	*Local Government Act 2009*
LGA	local government area
LGAQ	Local Government Association of Queensland
LGE Act	*Local Government Electoral Act 2011*
LNP	Liberal National Party
MBRC	Moreton Bay Regional Council
MFT	Moreton Futures Trust
MP	Member of Parliament
s.	section
ss.	sections

Glossary

Associated entity	Broadly speaking, an entity controlled by or operated for the benefit of one or more political parties. An associated entity can be an individual.
Candidate	A person who has announced their intention to be a candidate in an election or who has nominated for election.
Conflict of interest	A conflict between a councillor's personal interests and the public interest that might lead to a decision that is contrary to the public interest. Conflicts of interest may be real or perceived.
Donation	Broadly speaking, the transfer of property or services for less than market value, or payments towards fundraising activity, for use related to elections. A donation does not include the transfer of property under a will or services provided by voluntary labour. Donations may also be referred to as "political donations" or "gifts".
Donor	An individual or entity that makes a donation to a political party, associated entity, third party or candidate.
Group agent	An adult appointed by a group of candidates in an election to perform obligations imposed by the *Local Government Electoral Act 2011*.
Group of candidates	According to the *Local Government Electoral Act 2011*, a group of individuals, each of whom is a candidate for the election, if the group was formed to promote the election of the candidates or to share in the benefits of fundraising to promote the election of the candidates. A group of candidates does not include a political party or an associated entity.
Political party	An organisation with an objective or activity of promoting candidates for election.
Third party	Broadly speaking, an entity other than a political party, an associated entity, a candidate, or a member of the election campaign committee for a candidate or a group of candidates. A third party can be an individual. Typically, third parties make donations to candidates or political parties or conduct some type of campaigning activity.

Summary and recommendations

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).

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.

Part 1:
Background to Operation Belcarra

1 Introduction

Background

Following the Queensland local government elections on 19 March 2016, the Crime and Corruption Commission (CCC) received more than 30 complaints about the conduct of candidates for several councils. In general terms, allegations were made that some Gold Coast, Ipswich, Moreton Bay and Logan candidates (some of whom were elected or re-elected to council):

- had purported to be independents but were in fact part of an undeclared group of candidates that shared campaign resources and funding sources
- had failed to properly declare donations they had received
- had misled voters by publicly denying they had received funding from certain sources
- had real or perceived conflicts of interest because they had received donations from property developers with business interests subject to council consideration.

The CCC commenced Operation Belcarra in September 2016 to investigate these and other allegations.

CCC jurisdiction

Under the C*rime and Corruption Act 2001* ("the CC Act"), the CCC has a responsibility to investigate corruption, and also to prevent corruption and promote integrity. These key responsibilities guided the focus of Operation Belcarra, and are explained further below.

Investigating corruption

The CCC has the responsibility to investigate corrupt conduct under section 5(3) of the CC Act. The CC Act defines corrupt conduct as conduct by a person that:

- adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
  - a unit of public administration;[1] or
  - a person holding an appointment;[2] and
- results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned above in a way that—
  - is not honest or is not impartial; or
  - involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
  - involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
- is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- would, if proved, be a criminal offence; or a dismissible disciplinary breach.[3]

1 Units of public administration include Queensland state government departments and statutory bodies, the Queensland Police Service, government-owned corporations, local governments, universities and courts.

2 A person holds an appointment in a unit of public administration if they hold any office, place or position in that unit, whether the appointment is by way of election or selection (s. 21, CC Act).

3 Section 15, CC Act.

Limitations on the CCC's jurisdiction

Councillors

Local government councillors hold appointments in a unit of public administration. Most of the candidates who were the subject of allegations investigated in Operation Belcarra were either already sitting councillors, or new candidates who were successful at the 2016 election.

The CCC's jurisdiction in relation to local government councillors is, however, limited in certain respects. As there is no disciplinary standard prescribed by the *Local Government Act 2009* ("the LG Act") for the dismissal of a councillor, a decision about the termination of a councillor's services for a disciplinary breach is entirely a discretionary matter for the Minister and Governor in Council.[4] Hence, councillor disciplinary breaches do not fall within the definition of corrupt conduct under the CC Act. The jurisdiction of the CCC to investigate suspected corrupt conduct by local government councillors is therefore limited to circumstances where the alleged conduct would, if proved, amount to a criminal offence. The term "criminal offence" includes simple offences such as breaches of the offence provisions of the *Local Government Electoral Act 2011* ("the LGE Act"; for example, a group of candidates advertising or fundraising for an election without advising the returning officer)[5] or the LG Act (for example, failing to disclose an interest).

Unsuccessful candidates

Other candidates about whom allegations were made to the CCC were not already sitting councillors and were also not successful at the 2016 election. The CCC's jurisdiction to investigate the conduct of unsuccessful local government candidates is limited because they do not hold an appointment in a unit of public administration as defined in the CC Act. For allegations made about unsuccessful candidates, the CCC's jurisdiction is constrained to considering issues relevant to how candidates' alleged criminal conduct could compromise public sector probity, or issues that involve the CCC's corruption prevention function.

Preventing corruption and promoting integrity

The CCC has a function to help prevent corruption under section 23 of the CC Act. It also has a corruption function to raise standards of integrity and conduct in units of public administration, including local councils,[6] and "an overriding responsibility to promote public confidence in the integrity of units of public administration".[7]

Operation Belcarra

Aims

Consistent with these above responsibilities, Operation Belcarra had two key aims:

(1) To determine whether candidates in the Gold Coast, Moreton Bay, Ipswich or Logan 2016 local government elections committed any offences under the LGE Act that could constitute corrupt conduct. These especially included:
   - advertising or fundraising for the election as an undeclared group of candidates[8]

4 Section 122, LG Act.

5 Returning officers are appointed by the ECQ and must comply with directions given by the ECQ for the proper conduct of the election (s. 9, LGE Act)

6 Section 33, CC Act.

7 Section 34(d), CC Act.

8 Section 183, LGE Act. This section specifically makes it an offence for a member of a group to advertise or fundraise for the election unless sections 41 (requirement to give a record of the membership of the group to the returning officer) and 42 (requirement to appoint an agent for the group and give documentation about this to the returning officer) of the LGE Act have been complied with. This report sometimes refers to "undeclared groups of candidates" and "candidates who had not registered as a group" in discussing relevant allegations.

- providing an electoral funding and financial disclosure return that was false or misleading in a material particular[9]
- failing to operate a dedicated bank account during the candidate's disclosure period to receive and/or pay funds related to the candidate's election campaign.[10]

(2) To examine practices in relation to the conduct of candidates and third parties at local government elections 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.

Activities

To achieve these aims, the CCC undertook a range of standard investigative activities, including 115 interviews with complainants, subject officers and witnesses, and financial analyses of campaign funds, disclosure returns and bank accounts. These investigative activities confirmed 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. In an effort to produce a useful report in a timely manner, the CCC narrowed the focus of Operation Belcarra to those allegations with sufficient evidence to permit a meaningful investigation.

On 21 March 2017, the CCC announced it would hold a public hearing in relation to Operation Belcarra.[11] The purpose of the public hearing was to gather information about possible criminal offences, and canvass broader issues related to corruption and integrity in local government (see the Terms of Reference in Appendix 1). In coming to this decision, the CCC considered the necessary impact of issues to be canvassed at the hearing relating to exposing the inadequacies of the current system and promoting the need to reform the legislation to provide more transparency and accountability. These issues fall within the CCC's corruption function to raise standards of integrity and conduct in units of public administration and ensure that corruption is dealt with in an appropriate way, and for the CCC to report its recommendations. In dealing with these issues the CCC has an overriding responsibility to promote public confidence. These functions and responsibilities could not be achieved by private hearings. The CCC considered that closing the hearing would be contrary to the public interest.

In total, 40 witnesses gave evidence at the public hearing, which was held on 18–21 and 26–28 April 2017, and 13 and 14 June 2017. Witnesses included:

- 15 candidates, including 12 sitting councillors, from the Gold Coast, Ipswich, Moreton Bay and Logan
- 14 donors or people associated with donors
- the Queensland Electoral Commissioner, Mr Walter van der Merwe
- the Local Government Association of Queensland (LGAQ)
- the then Queensland Integrity Commissioner, Mr Richard Bingham
- three academics with expertise in relevant areas, including political donations and planning and development (see Appendix 2 for a full list of witnesses).

As part of the public hearing process, key stakeholders and expert witnesses also provided detailed written submissions.[12]

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9 Section 195(2), LGE Act.

10 Section 126, LGE Act.

11 Under the CC Act (s. 177), the CCC has the authority to hold public hearings in relation to any matter relevant to the performance of its functions, if it considers that closing the hearing to the public would be contrary to the public interest.

12 The CCC invited written submissions from a range of key stakeholders, including the Department of Infrastructure, Local Government and Planning (DILGP) and each of Queensland's eight registered political parties, and 16 academic experts. Submissions were subsequently received from the LGAQ, the Queensland Integrity Commissioner, the Queensland Greens, Professor Anthony Gray (School of Law and Justice, University of Southern Queensland), Dr Cameron Murray (economist, The University of Queensland) and Professor Graeme Orr (TC Beirne School of Law, The University of Queensland).

To identify practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government, and to identify possible reforms, the CCC analysed information from the following sources:

- interviews of complainants, subject officers and witnesses
- evidence given by witnesses at the public hearing
- written submissions from key stakeholders and expert witnesses
- donation disclosure data for candidates and third parties at the 2016 local government elections
- information provided by the ECQ about 2016 candidates' donation disclosure returns
- electoral and other relevant legislation in Queensland and other Australian and international jurisdictions
- reports from previous inquiries in Queensland and interstate into local government, elections and political donations
- academic literature relevant to issues such as political donations.

About this report

It is important to note that while this report details information relevant to only a small number of allegations, the CCC assessed all 111 allegations it received in relation to the 2016 local government elections. The investigation of some allegations is still being finalised.

Legitimate complaints, both from officers of units of public administration and members of the public, are vitally important to the prevention and detection of corrupt conduct. The CCC thanks those who took the time to forward complaints about the 2016 local government elections.

Procedural fairness process

The CCC has a statutory duty to act independently, impartially and fairly, in the public interest, having regard to the purposes of the CC Act. Accordingly, for the purpose of procedural fairness, the CCC gave the draft report to people and organisations referred to in it where those references may be viewed as adverse, and invited them to make submissions prior to the CCC determining the final form of the report. Every effort was made to contact these people. The CCC also provided the draft report to key stakeholders to obtain their feedback on the report.

Respondents could provide confidential or non-confidential submissions. The CCC indicated to respondents that non-confidential submissions may be annexed to the final report, while confidential submissions would be noted as received but not attached to the final report. The CCC also advised the people it invited submissions from that, should no submission be received by the deadline given, this would be recorded in the report. Copies of all non-confidential submissions are included in Appendix 3, which also notes who provided a confidential submission, and who did not provide a submission by the deadline.

Structure of the report

This report is divided into three parts:

- Part 1 provides background and contextual information. It comprises this introductory chapter, and Chapter 2, which 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 provides an investigation summary (Chapter 3) and describes the range of behaviours explored at the public hearing that gave rise to the allegations, grouped by local government:
  - Gold Coast City Council (Chapter 4)
  - Ipswich City Council (Chapter 5)

- Moreton Bay Regional Council (Chapter 6)
- Logan City Council (Chapter 7).

- 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 (see overview in Chapter 8):
  - uneven competition between candidates (Chapter 9)
  - distortion of the concept of independence (Chapter 10)
  - ambiguity about the nature of relationships between candidates (Chapter 11)
  - concealment of relationships between donors and candidates (Chapter 12)
  - perceptions of compromised council processes and decision-making (Chapter 13)
  - limited compliance monitoring and enforcement (Chapter 14).

  These chapters include 31 recommendations that the CCC believes would help to reduce corruption risks and promote integrity and public confidence in future local government elections, and in local government more broadly.

2 Queensland local government and the 2016 elections

To help understand the context of the 2016 local government elections and the CCC's investigation, this chapter outlines the structure of local government in Queensland and describes the key legislative requirements for local government elections. It concludes with some key statistics about the 2016 elections, including information about candidates and results for the four councils examined in Operation Belcarra.

Local government in Queensland

Queensland is divided into 77 local government areas (LGAs) or councils. Each LGA is governed by a local government — an elected body comprising a mayor and a number of councillors. There are currently 77 mayors in Queensland (one for each council) and a total of 502 councillors. Some of these councillors represent an entire LGA (for smaller LGAs referred to as undivided councils), while other councillors represent a smaller part of an LGA called a division (for larger LGAs referred to as divided councils).

Three key pieces of legislation provide the framework for local government in Queensland:

- the *Local Government Act 2009* ("the LG Act"), which sets out the constitution of local governments and the nature and extent of their responsibilities and powers, as well as the *City of Brisbane Act 2010*, which relates specifically to Brisbane City Council
- the *Local Government Electoral Act 2011* ("the LGE Act"), which governs the conduct of local government elections.

The LGE Act is described in further detail below given its relevance to Operation Belcarra.

Key legislative requirements for local government elections

The LGE Act, which aims to "ensure the transparent conduct of elections of councillors of Queensland's local government",[13] assigns responsibility for conducting local government elections to the Electoral Commission Queensland (ECQ)[14] and imposes a number of obligations on voters, candidates and other participants. These include requirements relating to the nomination of candidates, the conduct of election campaigns and the disclosure of gifts (donations), as described below.

Candidate nominations

Under the LGE Act, local government elections in Queensland are held every four years, generally on the last Saturday in March.[15] Each election begins with a call for people to nominate as candidates. Candidates must be nominated for election either by:

- the registered officer of the registered political party that has endorsed the person as a candidate
- at least six electors from the local government area or division where the election is to be held.[16]

Nominations must be made to the returning officer[17] for the election before noon on the nomination day (the cutoff for the nomination of candidates).[18] Nominations are subsequently certified by the returning officer and publicly announced.[19]

13 Section 3, LGE Act.

14 Section 8, LGE Act.

15 Section 23, LGE Act.

16 Section 27(1), LGE Act.

17 A returning officer is a person appointed by the ECQ who is responsible for the proper conduct of the election in a LGA (s. 9, LGE Act).

18 Section 27(2), LGE Act.

19 Sections 27(3) and 32, LGE Act.

Groups of candidates

Candidates in Queensland local government elections can choose to run as part of a group of candidates. Under the LGE Act, a group of candidates means a group of two or more candidates for a particular council formed to promote the election of the candidates, or to share in the benefits of fundraising to promote the election of the candidates. A group of candidates does not, however, include a political party or associated entity.[20]

Groups of candidates have several specific obligations under the LGE Act. In particular, each group must:

- record the membership of the group and give this to the returning officer before the cutoff for the nomination of candidates. The record must state the name of the group and the names of all candidates who are members.[21]
- appoint an agent for the group, and provide relevant documentation about this to the returning officer when they advise of the group's membership.[22]

It is an offence for a candidate who is a member of a group to advertise or fundraise for the election during their disclosure period[23] unless these requirements have been complied with.[24] The maximum penalty is 100 penalty units (a $12 615 fine).

How-to-vote cards

How-to-vote cards are commonly produced for candidates, groups of candidates and political parties in local government elections.[25] Section 178 of the LGE Act requires all how-to-vote cards to contain certain information, including the name and address of the person who authorised the card and:

- the candidate's name and the word "candidate", or
- the name of the group of candidates if the card is for a group or a member of a group, or
- the name of the political party if the card is for a party or a party-endorsed candidate.

This information must be provided in a certain format and font and meet certain other requirements (for example, the address provided must not be a post office box). It is an offence for any person to distribute (or allow or authorise another person to distribute) a how-to-vote card if they know or ought to have known that any of the required particulars are false, with a maximum penalty of 20 penalty units for an individual (a $2523 fine) and 85 penalty units for a corporation (a $10 722.75 fine).

All how-to-vote cards must be given to the ECQ for approval at least seven days before polling day, along with a statutory declaration providing information about any financial contribution received from a political party or other candidate for the production of the how-to-vote card.[26] The ECQ is required to reject a how-to-vote card if it does not meet the requirements outlined above, or if the ECQ believes the card is likely to mislead or deceive an elector in voting.[27] Any person who distributes (or authorises someone to distribute) a how-to-vote card on polling day that has not been provided to the ECQ as required faces a maximum penalty of 20 penalty units (a $2523 fine).[28]

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20 Schedule, LGE Act.

21 Section 41, LGE Act.

22 Section 42, LGE Act.

23 At the time of the 2016 elections, the disclosure period for a group of candidates started 30 days after the polling day for the most recent prior quadrennial elections (i.e. the 2012 elections), and ended 30 days after the polling day for the current election (i.e. the 2016 elections; s. 116, LGE Act).

24 Section 183, LGE Act.

25 A how-to-vote card is defined in the Schedule of the LGE Act.

26 Section 179(1)–(2), LGE Act.

27 Section 179(3), LGE Act.

28 Section 180(1), LGE Act.

Misleading electors

During an election period,[29] candidates and others are prohibited from engaging in specific types of conduct that could mislead electors in voting. Specifically, a person faces a maximum penalty of 40 penalty units (a $5046 fine) if they:

- print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the ways of voting at the election
- knowingly publish a false statement about the personal character or conduct of a candidate for the purpose of affecting the candidate's election
- print, publish, distribute or broadcast anything that appears to be a representation of a ballot paper, if it is likely to induce an elector to vote informally.[30]

Dedicated accounts

All candidates and groups of candidates are required to operate a dedicated bank account during their disclosure period[31] for the election (provided they receive or spend any money for conducting their election campaign).[32] During the candidate's or group's disclosure period:

- All gifts, loans and other amounts received by the candidate or group (or by someone on their behalf) for their election campaign must be placed into the account.
- All election campaign expenses paid by the candidate or group (or by someone on their behalf) must be paid out of the account.
- The account is not to be used for any other transactions.

Candidates who do not take all reasonable steps to comply with these requirements face a maximum penalty of 100 penalty units (a $12 615 fine).[33]

Donation disclosure

At the time of the 2016 elections,[34] all candidates and groups of candidates (specifically, group agents) were required to submit a disclosure return after polling day detailing any donations[35] and loans they had received during their disclosure period. These returns were to include the following information:

- the total value of all donations received
- the total number of donors
- the relevant details[36] for each donation from a donor who gave $200 or more in total to the candidate or group
- the total value of all loans received

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29 The election period starts on the day the notice of the election is published, and ends at the close of polls (Schedule, LGE Act).

30 Section 182, LGE Act.

31 Candidates have different disclosure periods depending on whether or not they have contested a local government election in the previous five years, and groups of candidates have different disclosures period again. These are all detailed in Appendix 4.

32 Sections 126 and 127, LGE Act.

33 As of 17 May 2017, any money remaining in a dedicated account at the end of the candidate's or group's disclosure period can be kept in the account for another election campaign, paid to a political party (if the candidate or each group member was a member of the party during the disclosure period) or paid to a charity (ss. 126 and 127, LGE Act).

34 "Real-time" donation disclosure for local government was introduced in July 2017 by amendments to the Local Government Electoral Regulation 2012 enabled by the May 2017 passing of the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2017.* The new disclosure requirements are discussed further in Chapter 12.

35 The LGE Act refers to donations as "gifts".

36 Relevant details are defined in section 109 of the LGE Act and include the value of the donation, when the donation was made and the donor's name and residential or business address. See Appendix 4 for further information.

- the total number of people from whom loans were received
- details about each loan of $200 or more.[37]

Some third parties[38] involved in local government elections were also required to submit post-election disclosure returns detailing the donations they had received and their expenditure for political activity. Specifically:

- Third parties who spent $200 or more on political activities during the disclosure period were required to give a return including information about the value, date and purpose of their expenditure. This included donors to candidates and groups of candidates.[39]
- Third parties who received a donation of $1000 or more and subsequently spent this on political activity relating to the election were required to give a return providing the relevant details for each donation.[40]

The ECQ was required to give written reminder notices to candidates and agents for groups of candidates within 10 weeks after polling day if no return had yet been received,[41] and all returns (including for third parties) were required to be submitted to the ECQ within 15 weeks after polling day.[42] Returns for candidates who were successful at the election were to be forwarded by the ECQ to the Chief Executive Officer of the relevant council.[43]

Section 195 of the LGE Act sets out several offences relating to disclosure returns. Specifically, it is an offence for a person to:

- fail to give a return within the required time (maximum penalty of 20 penalty units/a $2523 fine)[44]
- give a return containing information that the person knows is false or misleading in a material particular (maximum penalty of 100 penalty units/a $12 615 fine for candidates, and 50 penalty units/a $6307.50 for others)[45]
- give another person who is required to submit a return information that the first person knows is false or misleading in a material particular (maximum penalty of 20 penalty units/a $2523 fine).[46]

Political parties and associated entities,[47] who may also be involved in local government elections, have separate donation disclosure obligations under the *Electoral Act 1992* (which governs the conduct of state elections). These obligations are not described in detail here as they are less relevant to the elections examined in Operation Belcarra. However, they are noted in Appendix 4, which provides further information about the complex donation disclosure framework for Queensland local government elections.

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37 Sections 117, 118 and 120, LGE Act.

38 Under the LGE Act, a third party is any entity other than a political party, an associated entity, a candidate, or a member of the election campaign committee for a candidate or a group of candidates (s. 123). Typically, third parties make donations to candidates or political parties or conduct some type of campaigning activity. A third party can be an individual.

39 Section 124, LGE Act.

40 Section 125, LGE Act.

41 Section 122, LGE Act.

42 Section 116A, LGE Act.

43 Sections 117(4) and 118(5), LGE Act.

44 Section 195(1), LGE Act.

45 Section 195(2), LGE Act. See also section 195(3) relating to a candidate who is a member of a group who allows the group's agent to give a return containing information that the candidate knows is false or misleading in a material particular.

46 Section 195(4), LGE Act.

47 Broadly speaking, an associated entity is an entity controlled by or operated for the benefit of one or more political parties. An associated entity can be an individual.

The 2016 elections

The 2016 local government elections were held on Saturday 19 March. These involved 1767 candidates (271 mayoral and 1496 councillor candidates) in 349 separate elections (ECQ 2017a).[48]

Key dates for the 2016 local government elections	
Notice of election	Saturday 6 February 2016
Close of nominations	Tuesday 16 February 2016
Ballot draw	Wednesday 17 February 2016
Cutoff for lodgement of how-to-vote cards	Friday 11 March 2016
Polling day	Saturday 19 March 2016
End of disclosure period for third party expenditure	Saturday 19 March 2016
End of disclosure period for donations received by candidates and third parties	Monday 18 April 2016
Disclosure returns due to ECQ	Monday 4 July 2016

In the four councils examined in Operation Belcarra, 187 candidates contested 52 positions:

- On the Gold Coast, there were 6 mayoral candidates and 53 councillor candidates across the 14 divisions.
- In Ipswich, there were 3 mayoral candidates and 35 councillor candidates across the 10 divisions
- In Moreton Bay, there were 6 mayoral candidates and 40 councillor candidates across the 12 divisions.
- In Logan, there were 5 mayoral candidates and 39 councillor candidates across the 12 divisions.

Very few of these candidates were nominated by a political party, and there was only one group of candidates across the four councils (Your Community First in Moreton Bay). Most races were contested by multiple candidates, most often including the sitting councillor. Across all four councils, all but three incumbent councillors who contested the 2016 elections were re-elected. Full details about candidates and results for each of the four councils are provided in Appendixes 5 to 8.

48 The 349 elections represent one for each mayoral race, one for the election of councillors in each undivided council, and one for the election of councillors in each division of a divided council.

Part 2:
Investigation outcomes

3 Investigation summary

Action taken by the CCC in relation to allegations identified during Operation Belcarra

The CCC can take a variety of actions in relation to allegations that it investigates. Specifically, the CCC can:

- take no further action or discontinue action[49]
- refer the allegation to a unit of public administration to complete the investigation[50]
- refer the allegation to a prosecuting authority for the purposes of any prosecution proceedings the authority considers warranted.[51]

In some instances in relation to Operation Belcarra, despite the fact that there may be a prima facie case that a person committed an offence, the CCC determined to take no further action for reasons of equality and fairness. The CCC's investigation focused on a small number of candidates at the 2016 local government elections. The investigation identified that other candidates may well have committed the same or similar offences.[52] All candidates who failed to comply with the LGE Act, whether they were involved in Operation Belcarra or not, should be treated equally. Further, the CCC is of the view that deficiencies in the regulatory framework (discussed in Part 3) may have contributed to non-compliance.

Some allegations have been referred back to the ECQ for it to consider whether, in the circumstances, it is appropriate to commence a criminal proceeding for an offence against the LGE Act. The referral of these matters does not mean that the ECQ must commence a prosecution. The ECQ may, for example, consider it appropriate to request that the person rectifies the alleged breach of the Act rather than commence a prosecution.

In referring allegations to the ECQ to deal with, the CCC notes recent criticisms of the ECQ by the Independent Panel that reviewed the conduct of the 2016 local government elections (Soorley et al. 2017). The panel identified "many problems" that require the ECQ to "overhaul its management, communication and accountability systems and processes" (p. 7). These findings are consistent with many of the CCC's own observations with regards to significant deficiencies in the ECQ's monitoring and enforcement activities, as detailed in Chapter 14. It is essential that these continue to be rectified if the ECQ is to deal effectively and appropriately with the allegations the CCC has referred to it.

Allegations identified during Operation Belcarra

Operation Belcarra focused on 55 allegations in relation to the 2016 local government elections for the Gold Coast, Ipswich, Moreton Bay and Logan. These allegations involved perceptions that:

- candidates advertised or fundraised as a group without advising the returning officer[53] (specifically, that candidates had campaigned as an independent when working as part of a group of candidates)

49 Section 46(2)(g), CC Act.

50 Section 46(2)(b) and (c), CC Act.

51 Section 49(2)(a), CC Act.

52 Based on reviews of compliance with disclosure requirements.

53 As noted on page 8, section 183 of the LGE Act makes it an offence for a member of a group to advertise or fundraise for the election unless sections 41 (requirement to give a record of the membership of the group to the returning officer) and 42 (requirement to appoint an agent for the group and give documentation about this to the returning officer) have been complied with.

- candidates failed to give a disclosure return within the required time[54] or provided a disclosure return containing information that they knew was false or misleading in a material particular[55]
- candidates failed to operate a dedicated bank account during their disclosure period.[56]
- councillors unlawfully influenced the outcome of council decisions on development applications.

The CCC also noted that the disclosure returns of many candidates failed to comply with Part 6 of the LGE Act because candidates had not properly recorded the relevant details as required by section 109. For example, some candidates recorded a post office box as the donor's address, which does not comply with the section, and other candidates recorded gifts received from trusts or unincorporated associations, but did not include the names and addresses of the trustees or members respectively. This was identified as a systemic issue and is not discussed each time it was identified.

The investigation conclusions provided in this chapter relate to the allegations canvassed at the public hearing. However, these conclusions draw on information obtained from the full range of investigative activities the CCC used throughout Operation Belcarra. A small number of investigations are still being finalised.

Advertising or fundraising as a group without advising the returning officer

In relation to allegations that candidates had breached section 183 of the LGE Act, the CCC concluded that, in most cases, there was insufficient evidence to warrant referral to a prosecuting authority. For an offence under section 183 of the LGE Act, it must be shown that, firstly, a group was formed and, secondly, the group was formed to (a) promote the election of the candidates or (b) share in the benefits of fundraising to promote the election of the candidates. In most cases, the CCC identified behaviours that gave rise to perceptions that candidates were coordinating their activities, but there was no evidence to indicate that the behaviour had occurred for either of these purposes.

However, the CCC formed the view that some other conduct observed during the 2016 elections can be considered conduct that promoted the election of the candidates and, as such, would require those candidates to register as a group. This specifically included the cross-promotion of other candidates on how-to-vote cards in instances where the candidates agreed to the use of their name and image, the use of joint billboards and the mail out of letters of endorsement. In the CCC's view, this conduct is sufficient to conclude that a group had formed to promote the election of the candidates involved. Notwithstanding, the CCC determined that commencing a prosecution for an offence against section 183 of the LGE Act was not in the public interest in these circumstances because:

- The how-to-vote cards were approved by the ECQ, which knew or ought to have known that the candidates had not registered as a group. The candidates are likely to have inferred from the ECQ's approval that their conduct was not contrary to the LGE Act.
- This type of conduct has occurred in a number of prior elections and has not been subject to any censure by the ECQ or other authority.
- The current definition of a group of candidates is broad and ambiguous, and is likely to capture conduct that was not intended to be captured (see further discussion in Chapter 11).

In any event, a prosecution for an offence against this section must be commenced within 12 months from when the offence occurred (i.e. any prosecution must have been commenced by 20 March 2017).

54 Section 195(1), LGE Act.

55 Section 195(2), LGE Act. See also section 195(3) relating to a candidate who is a member of a group who allows the group's agent to give a return containing information that the candidate knows is false or misleading in a material particular.

56 Section 126, LGE Act.

Failing to give a disclosure return within the required time or knowingly providing false or misleading information

In relation to allegations that candidates had failed to give a compliant disclosure return within the required time,[57] the CCC found widespread non-compliance. Candidates who failed to disclose donations [s. 195(1)] were referred to the ECQ.

In relation to allegations that candidates had provided a disclosure return containing information that they knew was false or misleading, the CCC concluded that there was insufficient evidence to warrant referral to a prosecuting authority in most instances (other allegations are still being finalised). For an offence under section 195(2) of the LGE Act, it must be shown that the candidate personally knew that the relevant particular in the return was false or misleading; it is not enough to prove that the return was false or misleading. Proof that a candidate knew information in their return was false or misleading must focus on the candidate's knowledge when giving the return. The circumstances surrounding the candidate's knowledge at the time the donation was received may be insufficient.

A prosecution for an offence against this section must be commenced within four years from when the offence occurred.

Failing to operate a dedicated bank account

In relation to allegations that candidates had failed to operate a dedicated bank account during their disclosure period, the CCC once again found widespread non-compliance. Given the systemic nature of this issue and the ECQ's apparent lack of a proactive strategy to audit compliance with this requirement, the CCC determined to not recommend to any prosecuting authority the commencement of criminal proceedings for this issue. The CCC has, however, made some recommendations for reform (see Chapter 12).

A prosecution for an offence against this section must be commenced within 12 months from when the offence occurred.

Unlawfully influencing the outcome of council decisions

At the time of writing this report, allegations that councillors had unlawfully influenced the outcome of council decisions on development applications were still being finalised by the CCC and it would be premature to draw any conclusions about these. Offences relating to this conduct are likely to be indictable offences and not subject to any time limitation within which a prosecution can be commenced.

The following chapters demonstrate the range of behaviours explored at the public hearing that gave rise to the allegations discussed above.

57 A return submitted by a candidate for an election needs to comply with a number of provisions in Part 6 of the LGE Act.

4 Gold Coast City Council election

Focus of the public hearing

Operation Belcarra focused on 17 allegations in relation to the 2016 local government election on the Gold Coast. These allegations involved perceptions that candidates had advertised or fundraised as a group without advising the returning officer,[58] failed to give a disclosure return within the required time [59] or provided a disclosure return containing information that they knew was false or misleading,[60] and failed to operate a dedicated bank account during their disclosure period.[61]

The CCC required the following people to attend the public hearing:

- Cr Tom Tate, Mayor of the Gold Coast City Council (GCCC)
- Cr Donna Gates, Division 1, GCCC
- Cr Cameron Caldwell, Division 3, GCCC
- Cr Kristyn Boulton, Division 4, GCCC
- Ms Felicity Stevenson, unsuccessful candidate for Division 5, GCCC
- Ms Penny Toland, unsuccessful mayoral candidate
- Ms Simone Holzapfel, Managing Director of Shac Communications
- The Hon. Stuart Robert MP, Federal Member for Fadden
- Mr Michael Ravbar, State Secretary, Construction, Forestry, Mining and Energy Union (CFMEU) Qld/NT Branch
- Mr Andrew Sutherland, Assistant State Secretary, CFMEU Qld/NT Branch.

Allegations about candidates advertising or fundraising as a group without advising the returning officer

It was alleged that a number of Liberal National Party (LNP)-aligned candidates had advertised or fundraised as a group during the election campaign without advising the returning officer. Three behaviours gave rise to perceptions that candidates were operating as an undeclared group:

- the use of Shac Communications by a number of candidates during the Gold Coast election
- the funding of independent candidates by the LNP (through the "Fadden Forum" established by Federal Member for Fadden Mr Robert)
- the use of LNP members as volunteers handing out how-to-vote cards for candidates on polling day.

An explanation of these behaviours helps to understand the CCC's conclusions in relation to the allegations.

Shac Communications

Shac Communications was engaged to provide marketing services to Cr Tate, Cr Boulton and Ms Stevenson (and other candidates) during the Gold Coast election. It was contended that these (and other) candidates had acted as a group because they all engaged Shac Communications and the material

58 Section 183, LGE Act.

59 Section 195(1), LGE Act.

60 Section 195(2), LGE Act. See also section 195(3) relating to a candidate who is a member of a group who allows the group's agent to give a return containing information that the candidate knows is false or misleading in a material particular.

61 Section 126, LGE Act.

produced by Shac for some candidates bore a number of similarities. Some of the material examined by the CCC included candidates' how-to-vote cards.

While it is possible to identify some broad similarities in appearance across some of these how-to-vote cards, in the CCC's view, the similarities are not so striking that a reasonable person would conclude that the relevant candidates were acting as a group as that term is defined in the LGE Act. Further, the CCC found no evidence to suggest that these candidates engaged Shac Communications with the intention of promoting the election of a group of candidates. There was no evidence that Shac coordinated campaign strategies or that Shac shared information about campaign strategies between candidates. Nor was there any evidence that the alleged group of candidates had shared the benefits of fundraising to promote the election of the candidates.

LNP funding of independent candidates via the Fadden Forum

The Fadden Forum is a networking group and the name given to a segment of an LNP bank account where Mr Robert, the Federal Member for Fadden, banks money obtained from fundraising activities. Mr Robert gave evidence at the public hearing that the Fadden Forum has now been renamed "The Forum" as its fundraising efforts are not limited to the electorate of Fadden.[62] Mr Robert stated that membership to this costs between $10 000 and $50 000 per year. According to Mr Robert, for this contribution members get to attend functions and network with other business people on the Gold Coast.

At the public hearing, Mr Robert described the Fadden Forum in the following way:

> ...It's not a business. It's simply a name. Actually, the Fadden Forum is the Liberal National Party. All funds are banked in the Liberal National Party… (Evidence given by Stuart Robert MP, p. 7)

Cr Boulton and Ms Stevenson received financial gifts ($30 000 each) from Mr Robert to assist with their campaigns. This fact gave rise to a perception that Cr Boulton and Ms Stevenson were operating as a group of candidates and that, by financially supporting their campaigns, Mr Robert aided, counselled or procured Cr Boulton and Ms Stevenson to commit such an offence. The CCC's investigation confirmed that the donations made to both Ms Stevenson and Cr Boulton came from the LNP. At the public hearing, Mr Robert gave evidence about the LNP approval processes necessary to donate the funds, the factors that prompted the donations and their timing.

The CCC found that Cr Boulton and Ms Stevenson received funds from the same source and Mr Robert facilitated the provision of those funds. Although they both worked for Mr Robert, both have conservative views and may even be supporters of the LNP, there was no evidence to indicate they had formed a group to promote each other's election, or jointly share in the benefits of fundraising.

Use of common volunteers

A number of candidates used the same volunteers. It was contended that this behaviour, particularly when those volunteers were aligned to a political party, gave rise to perceptions that the candidates were acting as an undeclared group. The evidence provided by a number of candidates indicated that where the candidate had some connection with a political party, including being a member of a political party, the candidate was able to draw on the assistance of other members of that party. However, there was no evidence that the assistance was being driven by the political party; rather, candidates' political party memberships provided a network of friends and like-minded associates who were willing to offer their time to help the candidate. Cr Tate's evidence in relation to volunteers handing out or arranging to hand out how-to-vote cards on his behalf illustrates the common view:

62 Evidence given by Stuart Robert MP, p. 12.

> …But when a volunteer and the like hands out for me, I'm grateful, very grateful. And if they decide to hand out for another candidate, well, that's their freedom of choice. I don't go, "It's me or nobody"... (Evidence given by Thomas Tate, p. 7)

As to the 800 plus volunteers who handed out cards on polling day or during pre-poll, Cr Tate noted that he "ran a pretty good high-profile Facebook" where he had posted a request for help.[63] In addition, he contacted volunteers from the 2012 campaign to request their assistance and the majority offered their services to support his campaign.

Conclusions

The CCC concluded that, based on the conduct outlined above, there was insufficient evidence to warrant referral of any allegations relating to candidates advertising or fundraising as a group without advising the returning officer to a prosecuting authority. Consequently, as there is no evidence of an offence committed by Cr Boulton and Ms Stevenson, it would not be possible to prove that Mr Robert aided, counselled or procured either of them to commit such an offence.

Allegations about candidates failing to comply with funding and disclosure obligations

It was alleged that several candidates who appeared before the public hearing had failed to appropriately disclose donations or operate a dedicated bank account. Three groups of allegations were examined at the public hearing:

- Cr Boulton's and Ms Stevenson's disclosure of donations from the LNP
- Ms Toland's failure to disclose CFMEU donations
- Cr Tate's failure to operate a dedicated bank account.

Cr Boulton's and Ms Stevenson's disclosure of donations from the LNP

Mr Robert and the Fadden Forum

Cr Boulton and Ms Stevenson reported that they had received financial gifts ($30 000 each) from the Fadden Forum. However, evidence indicated that the money did not come from the Fadden Forum, but from the LNP. This was confirmed by the evidence of Mr Robert and the CCC's examination of bank records and the LNP's half yearly disclosure return (Exhibit 17).[64] The LNP return submitted to the ECQ in accordance with section 290 of the *Electoral Act 1992* shows three payments made to both Cr Boulton and Ms Stevenson during the period in question (1 January 2016 to 30 June 2016). These payments, totalling $30 000 each, along with the dates they were made, align with the donations originally disclosed by both Cr Boulton and Ms Stevenson as having been made by the Fadden Forum.

Mr Robert gave evidence that both Cr Boulton and Ms Stevenson had worked in his electorate office for over nine years.[65] Mr Robert stated that, during that time, the Fadden Forum had come up in a number of discussions and that "… it would be hard to be in my office for such a long time and not understand how we raise money for the LNP".[66] Mr Robert also stated that when asked, he had initially told Cr Boulton she should list the Fadden Forum as the entity that donated funds to her campaign, based on advice he had received from the LNP.[67] He noted:

63 Evidence given by Thomas Tate, p. 7.

64 All exhibits from the public hearing are available on the CCC website.

65 Evidence given by Stuart Robert MP, p. 3.

66 Evidence given by Stuart Robert MP, p. 7.

67 Evidence given by Stuart Robert MP, p. 18.

> …in defending the LNP here a little, people were unsure what to put down, so the advice was to put the "Fadden Forum", and then I think subsequent legal advice came back saying, actually, no, you've got to list all of the officer-bearers of the party and there's a set way of doing it… (Evidence given by Stuart Robert MP, p. 18)

Cr Boulton

Cr Boulton's initial disclosure return, which recorded the Fadden Forum as the donor, was submitted to the ECQ, dated 16 May 2016 (Exhibit 13). It was alleged that, in listing the donor as the Fadden Forum instead of the LNP, Cr Boulton had knowingly submitted particulars that were false or misleading. At the public hearing, Cr Boulton gave evidence explaining why she recorded the $30 000 in donations as coming from the Fadden Forum and not the LNP. Cr Boulton stated that she had, up until the time of the election, been under the impression that the donations had come from Mr Robert, or the Fadden Forum.[68] It was not until she perused her bank statement after the election that she noticed the donations recorded in her bank statement as coming from the LNP.[69] Cr Boulton also admitted during her evidence to having checked the LNP disclosure return for the 2016 election and seeing her name listed as having received a total of $30 000 from the LNP — the amount listed on her return as coming from the Fadden Forum.[70]

The CCC formed the view that the correct donor to record on the disclosure return for Cr Boulton was the LNP, not the Fadden Forum. The LGE Act further required that the relevant details to be included in the return were the names and residential or business addresses of the members of the LNP executive committee. The CCC determined there was sufficient evidence to refer this matter to the ECQ for consideration of any prosecution proceedings it considers warranted for an offence against section 195(1) of the LGE Act, but noted that Cr Boulton has lodged an amended disclosure return with the ECQ since the public hearing. The CCC determined it would not be in the public interest in those circumstances to take any further action. The CCC determined there was insufficient evidence to commence a prosecution against Cr Boulton for an offence against section 195(2).

Ms Stevenson

Ms Stevenson gave evidence that Mr Robert had offered to help provide financial support for her campaign.[71] Ms Stevenson stated in evidence that she had sought advice from Mr Robert about the source of the donations and how she should list them on her disclosure return. She stated that his response was to list the donations as having been made by the Fadden Forum.[72] Based on her employment as an electorate officer for Mr Robert, Ms Stevenson indicated that she understood the Fadden Forum to be a fundraising entity for the LNP.[73]

Ms Stevenson's original disclosure return, which recorded the Fadden Forum as the donor, was submitted to the ECQ, dated 20 May 2016 (Exhibit 75). After being contacted by the CCC in relation to Operation Belcarra, on 17 February 2017 Ms Stevenson lodged an amended disclosure return that listed the LNP as the donor (Exhibit 76). When asked at the public hearing why she had done this, Ms Stevenson replied, "I sought legal advice, and the advice was that the return needed to be amended".[74]

The CCC formed the view that the correct donor to record on the disclosure return for Ms Stevenson was the LNP. The LGE Act further required that the relevant details to be included in the return were the names and residential or business addresses of the members of the LNP executive committee. The CCC

68 Evidence given by Kristyn Boulton, p. 21.

69 Evidence given by Kristyn Boulton, pp. 24–5.

70 Evidence given by Kristyn Boulton, pp. 36–7.

71 Evidence given by Felicity Stevenson, pp. 7–8.

72 Evidence given by Felicity Stevenson, pp. 21–3.

73 Evidence given by Felicity Stevenson, p. 16.

74 Evidence given by Felicity Stevenson, p. 24.

determined there was sufficient evidence to refer this matter to the ECQ for consideration of any prosecution proceedings it considers warranted for an offence against section 195(1) of the LGE Act, but noted that Ms Stevenson had lodged an amended disclosure return with the ECQ before the public hearing. The CCC determined it would not be in the public interest in those circumstances to take any further action. The CCC determined there was insufficient evidence to commence a prosecution against Ms Stevenson for an offence against section 195(2).

Ms Toland's disclosure of CFMEU donations

The CFMEU

Prior to the 2016 local government elections, the CFMEU had not financially assisted candidates contesting local government elections. At the public hearing, the CFMEU State Secretary, Mr Michael Ravbar, stated that the 2013 introduction of specific workplace laws relating to the local government sector prompted the CFMEU's interest in the 2016 local government elections.[75] Mr Ravbar indicated that the CFMEU determined to advocate against those laws by assisting the campaigns of like-minded candidates. Mr Ravbar stated that it was "canvassed quite widely that we were interested in campaigning in local government" and he would generally meet with prospective candidates to understand their reasons for running for council and "what can they do for the community, what's their drive, what's their passion…".[76] On some occasions, prospective candidates would make specific requests in relation to the types of fundraising activities that they would like the CFMEU to support.[77] Meetings were generally concluded with Mr Ravbar stating that a member of the CFMEU would get in touch with the candidate if the CFMEU decided to financially support the candidate.[78] In the event that the CFMEU supported a candidate, Mr Ravbar would approve campaign expenditure made on behalf of a candidate.[79]

The CFMEU determined to support unsuccessful mayoral candidate Ms Penny Toland and directly purchased, among other things, t-shirts supporting Ms Toland and bus advertising that bore Ms Toland's image. The CFMEU submitted a third party disclosure return to the ECQ for the period 7 February 2016 to 19 March 2016 (Exhibit 131). This return lists gifts and gifts in-kind made to a number of candidates and shows that, between 16 February 2016 and 28 April 2016, the CFMEU spent a total of $38 241 in support of Ms Toland (in 11 amounts).

Mr Ravbar and Mr Andrew Sutherland, CFMEU Assistant State Secretary, both gave evidence at the public hearing in relation to the CFMEU's support of Ms Toland. Mr Ravbar stated that, as far as he was aware, any expenses incurred by the CFMEU as part of Ms Toland's campaign were done so at "her initiative", although he acknowledged that this was an assumption as he had not had detailed discussions with Ms Toland himself.[80] When asked whether the CFMEU would have undertaken any campaigning or expenditure without the particular candidate knowing what campaigning activities were to be undertaken, Mr Ravbar replied, "Not that I know… if there's going to be any expenditure from the organisation, we've got to know what's going on".[81] When questioned on this issue a second time, Mr Ravbar replied:

> I can't recall — to the best of my knowledge, I don't know any of that… To the best of my knowledge, there was a lot of interaction with the candidates and they pretty much ran their own campaigns. (Evidence given by Michael Ravbar, p. 14)

75 Evidence given by Michael Ravbar, p. 4.

76 Evidence given by Michael Ravbar, pp. 6–7.

77 Evidence given by Michael Ravbar, p. 8.

78 Evidence given by Michael Ravbar, p. 8.

79 Evidence given by Michael Ravbar, p. 10.

80 Evidence given by Michael Ravbar, p. 9.

81 Evidence given by Michael Ravbar, p. 10.

At the conclusion of Counsel Assisting's examination, Mr Ravbar's counsel asked him if the union would ever engage in any form of campaigning on behalf of a candidate without first consulting with that candidate, or a member of the candidate's team. Mr Ravbar responded, "We always consult with the candidate and the candidate's team before we do anything".[82]

Mr Sutherland was asked on several occasions whether he or any CFMEU member would have apprised Ms Toland of campaign activities or expenditure being undertaken on her behalf. In each instance, Mr Sutherland stated that Ms Toland would have been advised of the expenditure. In relation to the bus advertising, Mr Sutherland gave evidence that he had initially been contacted by the advertisers, who had been given his details by individuals who had been members of Ms Toland's campaign team (Exhibit 133). Upon considering the idea, he then approached Mr Ravbar to seek approval to go ahead.[83] Mr Sutherland also stated:

Counsel Assisting	Well, what would your reaction be to the proposition that Ms Toland wasn't told anything about the bus advertising campaign until after the event, that is to say, until it was done and the buses were driving around?
Andrew Sutherland	I would say to you that prior to buses driving around, I would have confirmed that we were going to supply the artwork on the back of buses… I would have had a conversation saying, "Hey, I've received this stuff about the artwork on the buses. We're prepared to do this for your campaign", and that would have been before they were on the bus… (Evidence given by Andrew Sutherland, p. 12)

In relation to the shirts, Mr Sutherland gave the following evidence:

Counsel Assisting	Was she [Ms Toland] informed that these [hi-vis] shirts were being ordered; do you have any recollection of that?
Andrew Sutherland	I would have told her that I was getting the shirts.
Counsel Assisting	Why do you say that you would have told her that? What makes you say that?
Andrew Sutherland	I'm providing a bunch of shirts for her campaign. I'm going to let her know that they're coming, yes… (Evidence given by Andrew Sutherland, p. 13)

Ms Toland

Ms Toland submitted a disclosure return to the ECQ on 1 July 2016 (Exhibit 124). This disclosure return did not include any donations or gifts in-kind provided by the CFMEU. When questioned about her failure to list any such donations, Ms Toland replied that after re-reading the ECQ's Local Government Disclosure Handbook (Exhibit 2),[84] she had formed the view that she only needed to "disclose things that were gifted in kind or donated financially" to her.[85] This is notwithstanding her receipt of an email from the CFMEU containing an annexure of all gifts in-kind made to her by the CFMEU (Exhibit 125).

82 Evidence given by Michael Ravbar, p. 16.

83 Evidence given by Andrew Sutherland, p. 9.

84 The February 2016 version of the Local Government Disclosure Handbook states on page 7 that "a gift may take the form of money, property or the provision of a service". In the case of the provision of a service, "the value of the gift is the amount that would be reasonably charged for the service if it was provided on a commercial basis". In relation to a candidate's obligation to disclose a gift, the handbook states on page 3 that gifts totalling $200 or more from a single source to a candidate or a group of candidates must be reported to the ECQ within 15 weeks after polling day.

85 Evidence given by Penny Toland, p. 23.

Ms Toland consistently gave evidence that the assistance provided by the CFMEU had not been discussed with her, nor had her approval been sought — instead, in many cases, she had only found out about certain activities (such as bus advertising) after the event.[86] Ms Toland maintained that although she had met with Mr Ravbar and Mr Sutherland to seek support for her mayoral campaign, she and the CFMEU had run two separate, parallel campaigns, albeit both beneficial to her.[87] Ms Toland characterised her knowledge of the CFMEU's involvement in her campaign in the following manner: "I'm aware that they ran a campaign that was supportive of me, but that was outside my campaign".[88]

Based on the evidence, Ms Toland's evidence that she was unaware of the expenditure and activities the CFMEU was conducting on her behalf does not seem credible. Irrespective of whether or not she was aware during her campaign, it is clear that Ms Toland was made aware of the donations either at the same time as she had submitted her disclosure return, or shortly after.

The CCC formed the view that the CFMEU had donated $38 241 as gifts in-kind to Ms Toland's campaign and these should have been disclosed in Ms Toland's return. The CCC determined there was sufficient evidence to refer this matter to the ECQ for consideration of any prosecution proceedings it considers warranted for an offence against section 195(1) of the LGE Act. Some matters remain under investigation.

Cr Tate's failure to operate a dedicated bank account

Section 126 of the LGE Act requires all candidates to operate a dedicated bank account for the receipt and payment of all amounts related to their election campaign. In addition, candidates are required to ensure that this account is not used for any other purpose. The CCC's investigation found low compliance with these requirements. Of the 59 candidates who contested the Gold Coast election, the CCC found just under 20 per cent did not have a dedicated account at all, and some of the candidates who did have a dedicated account were non-compliant because they did not use it correctly (e.g. they paid expenses from other accounts, including using credit cards). This issue is discussed further in Chapter 12.

Cr Tate established a dedicated account ("Tom Tate Mayoral Account"), but paid campaign expenses from multiple personal accounts. In his evidence, Cr Tate advised that the mayoral account was set up for any donations he may receive from third parties and, at the time, he was of the view that moving money from his personal accounts into the mayoral account for expenditure purposes "didn't serve any additional transparency".[89] However, Cr Tate acknowledged at the public hearing that he should have operated a dedicated account, even though he received no donations from third parties and his campaign was entirely self-funded.[90]

The CCC determined there was sufficient evidence to refer this matter to the ECQ for consideration of any prosecution proceedings it considers warranted for an offence against section 126 of the LGE Act. However, given the systemic nature of this issue, the CCC determined to take no further action. In any event, a prosecution for an offence against section 126 of the LGE Act must be commenced within 12 months from when the offence occurred (20 April 2016).

86 See, for example, evidence given by Penny Toland, p. 18.

87 Evidence given by Penny Toland, p. 28.

88 Evidence given by Penny Toland, p. 10.

89 Evidence given by Thomas Tate, pp. 11–2.

90 Evidence given by Thomas Tate, p. 12.

5 Ipswich City Council election

Focus of the public hearing

Operation Belcarra focused on 15 allegations in relation to the 2016 local government election in Ipswich. These allegations involved perceptions that candidates had advertised or fundraised as a group without advising the returning officer,[91] provided a disclosure return containing information that they knew was false or misleading,[92] and failed to operate a dedicated bank account during their disclosure period.[93]

The CCC required the following people to attend the public hearing:

- Mr Paul Pisasale, then Mayor of the Ipswich City Council (ICC)
- Cr Paul Tully, Division 2, ICC
- Cr Kerry Silver, Division 3, ICC
- Cr Kylie Stoneman, Division 4, ICC
- The Hon. Shayne Neumann MP, Federal Member for Blair
- Mr Robert Sharpless, Deputy Chairman of Springfield Land Corporation.

Allegations about candidates advertising or fundraising as a group without advising the returning officer

It was alleged that a number of Australian Labor Party (ALP)-aligned candidates had advertised or fundraised as a group during the election campaign without advising the returning officer. Three behaviours gave rise to perceptions that candidates were operating as an undeclared group:

- the use of joint how-to-vote cards with other candidates
- the funding of independent candidates by Federal ALP Member for Blair Mr Shayne Neumann
- the use of ALP members as volunteers handing out how-to-vote cards for candidates on polling day.

An explanation of these behaviours helps to understand the CCC's conclusions in relation to the allegations.

Use of joint how-to-vote cards

A large number of Ipswich candidates used joint how-to-vote cards in their 2016 election campaigns. In particular, many candidates used joint how-to-vote cards with Mr Pisasale, who was at the time running for re-election as mayor. These candidates included:

- Cr Paul Tully (Exhibit 20; see Appendix 9)
- Cr Kerry Silver (Exhibit 21; see Appendix 9)
- Cr Kylie Stoneman (Exhibit 62; see Appendix 9).

When questioned at the public hearing about the purpose of having joint how-to-vote cards with Mr Pisasale, Cr Silver stated she was expressing support for Mr Pisasale as preferred mayor.[94] Cr Stoneman stated she chose to use Mr Pisasale's image on her how-to-vote cards to negate any perceived

91 Section 183, LGE Act.

92 Section 195(2), LGE Act. See also section 195(3) relating to a candidate who is a member of a group who allows the group's agent to give a return containing information that the candidate knows is false or misleading in a material particular.

93 Section 126, LGE Act.

94 Evidence given by Kerry Silver, p. 10.

advantage that her main competitor, an incumbent, may have had from also having a joint how-to-vote card with the mayor.[95]

Mr Pisasale stated at the public hearing that he was aware that, in a number of divisions, several candidates used his name and image on their how-to-vote cards.[96] Some candidates contacted Mr Pisasale for his permission to do this, while others did it unilaterally. Mr Pisasale stated that a request for the ECQ to advise him when other candidates used his image on their how-to-vote cards went unanswered, but that he welcomed all candidates who supported him to do so on their how-to-vote card. Though several candidates used joint how-to-vote cards with Mr Pisasale, there was no cost sharing arrangement (i.e. he did not pay for or contribute to the cost of any joint how-to-vote card).[97]

Besides candidates having joint how-to-vote cards with the mayor, some candidates also had joint how-to-vote cards with other candidates. For example, Cr Tully had a joint how-to-vote card with Cr Silver (and Mr Pisasale; Exhibit 27 — see Appendix 9). Cr Tully stated at the public hearing that the use of these joint how-to-vote cards was largely for pragmatic reasons and stemmed from the practice of having joint polling booths at local government elections.[98] In meeting the cost of producing joint how-to-vote cards, Cr Tully stated that he shared the cost with the other candidates.[99] Cr Silver stated that although Cr Tully had agreed to share the cost equally, at the time of the public hearing she had not been paid by him.[100]

Common funding from a Federal ALP MP

A number of candidates received campaign donations from Mr Shayne Neumann, the Federal Member for Blair. As listed in Mr Neumann's third party disclosure return (available on the ECQ website), he provided financial support to a number of candidates including Cr Kylie Stoneman ($820) and Cr Kerry Silver ($357) in the context of these candidates' campaign launches. These donations were all made from Mr Neumann's personal bank account and there was no indication that these donations were from, or coordinated by, the ALP.

Mr Neumann explained at the public hearing that his electorate of Blair takes in a number of divisions of the ICC, with approximately 70 per cent of the population of Ipswich in Blair.[101] Mr Neumann gave evidence that he provided support, including financial support, to a number of friends who were candidates at the local government election, all of whom were members of the ALP:

Counsel Assisting	…you mentioned that your focus throughout the 2016 election was on your responsibilities as a federal MP, and yet you're lending your profile, are you not, to the support of local government candidates?
Mr Neumann	I supported people who were my friends, who I'd met through the Labor Party, some of whom I'd known for decades. (Evidence given by Shayne Neumann MP, p. 5)

95 Evidence given by Kylie Stoneman, p. 8.

96 Evidence given by Paul Pisasale, p. 6.

97 Evidence given by Paul Pisasale, pp. 6–8.

98 Evidence given by Paul Tully, pp. 9–10.

99 Evidence given by Paul Tully, pp. 11 and 22.

100 Evidence given by Kerry Silver, p. 17.

101 Evidence given by Shayne Neumann MP, p. 3.

Use of common volunteers

A number of candidates used the same volunteers. For example, Mr Neumann stated at the public hearing that he handed out how-to-vote cards for a number of candidates who were all members of the ALP, including Cr Silver and Cr Stoneman.[102] It was contended that this behaviour, particularly when volunteers were aligned with a political party, gave rise to perceptions that candidates were acting as an undeclared group.

The evidence provided by a number of candidates indicated that where the candidate had some connection with a political party, including being a member of a political party, the candidate was able to draw on the assistance of other members of that party. However, there was no evidence that the assistance was being driven by the political party; rather, candidates' political party memberships provided a network of friends and like-minded associates who were willing to offer their time to help the candidate.

Cr Stoneman explained in her evidence how she sourced her volunteers:

Counsel Assisting	So what was the criteria — the fact that they were Labor Party members who could be expected to make themselves available to you, or were they personally known to you?
Cr Stoneman	Personally known I would say was the criteria, yes. (Evidence given by Kylie Stoneman, p. 7)

Likewise, Mr Neumann stated that he provided assistance on polling day to the candidates named above because they were his personal friends.[103]

Conclusions

Based on the joint how-to-vote cards, the CCC concluded there was evidence that a number of candidates were part of a group of individuals, each being a candidate for the election, promoting the election of the candidates. However, the CCC determined to take no further action in relation to these allegations for the following reasons:

- This was a systemic issue across a number of Ipswich candidates, and this type of conduct has occurred in a number of prior elections and has not been subject to any censure by the ECQ or other authority.
- In some instances the former mayor had not specifically authorised candidates to use his image on their how-to-vote cards.
- The how-to-vote cards were approved by the ECQ, which knew or ought to have known that the candidates had not registered as a group. The candidates are likely to have inferred from the ECQ's approval that their conduct was not contrary to the LGE Act.
- The current definition of a group of candidates is broad and ambiguous, and is likely to capture conduct that was not intended to be captured (see further discussion in Chapter 11).

In any event, a prosecution for an offence against section 183 of the LGE Act must be commenced within 12 months from when the offence occurred (i.e. any prosecution must have been commenced by 20 March 2017).

The CCC did not find any evidence to indicate that candidates receiving money from Mr Neumann or using common volunteers had occurred for either of the purposes stated in the definition of a group under the LGE Act.

102 Evidence given by Shayne Neumann MP, p. 6.

103 Evidence given by Shayne Neumann MP, pp. 6–7.

Allegations about candidates failing to comply with funding and disclosure obligations

Cr Tully's disclosure of donations from the Goodna Community Fund and his management of campaign funds was examined at the public hearing.

Cr Tully's disclosure of donations from the Goodna Community Fund

Cr Tully was asked at the public hearing about a bank account in the name of "PG and LS Tully Goodna Community Fund". Cr Tully explained that the Goodna Community Fund was an account initially set up in 2008 by Cr Tully and his wife to raise funds for a family affected by a house fire in Goodna. Cr Tully gave evidence that the account had been used on two other occasions — to raise funds following another house fire and to enable an anonymous donation to a Goodna resident.[104]

Bank statements for the Goodna Community Fund showed that, between January 2016 and March 2016, three deposits of $2000 each were made into the fund (Exhibit 32). These were declared accordingly in the Goodna Community Fund's third party disclosure return (Exhibit 35).

The bank statements and third party disclosure return for the Goodna Community Fund also revealed that four separate amounts totalling $3585.16 were paid out of the account:

- Three payments totalling $3319.25 (on 22 and 26 February 2016 and 14 March 2016) for products provided by McLeans Print,[105] two of which contained "Tully" in the transaction description.
- One payment of $265.91 (on 10 May 2016) that contained "Tully election" in the transaction description.

Cr Tully admitted during the hearing that he was the ultimate recipient of money deposited into the Goodna Community Fund account between January and March 2016, some of which he used for the purpose of his election campaign.[106] The CCC does not suggest that Cr Tully used any money in the Goodna Community Fund for an improper purpose.

Cr Tully's initial candidate disclosure return for the 2016 election showed a single donation of $1188 made by Falvey Investments Pty Ltd (Exhibit 34). There was no record of a donation from the Goodna Community Fund in Cr Tully's candidate disclosure return.

The CCC formed the view that Cr Tully should have disclosed the gifts he had received from the three donors that were attributed to the Goodna Community Fund in his disclosure return. The CCC determined there was sufficient evidence to refer this matter to the ECQ for consideration of any prosecution proceedings it considers warranted for an offence against section 195(1) of the LGE Act, but noted that Cr Tully has lodged an amended disclosure return with the ECQ after receiving the draft report for the purpose of procedural fairness. The CCC determined it would not be in the public interest in those circumstances to take any further action. The CCC determined there was insufficient evidence to commence a prosecution against Cr Tully for an offence against section 195(2).

Cr Tully's management of campaign funds

The payment of some of Cr Tully's campaign expenses from the Goodna Community Fund account suggested that Cr Tully had not complied with his obligation to operate a dedicated bank account. When questioned at the public hearing about whether the money deposited into the Goodna Community Fund account were donations for his campaign, Cr Tully's answers appeared contradictory:

Counsel Assisting	So that's a deposit by him of $2,000; correct?
Cr Tully	Yes, yes.

104 Evidence given by Paul Tully, pp. 14–15.

105 Listed as "McLean Images Pty Ltd" on the Goodna Community Fund disclosure return.

106 Evidence given by Paul Tully, p. 16.

Counsel Assisting	Is that a donation?
Cr Tully	Oh, yes, it was.
Counsel Assisting	But not to the Goodna Community Fund, can I suggest; it was a campaign donation to you, wasn't it?
Cr Tully	No, it went directly into the Goodna Community Fund.
Counsel Assisting	To be applied to what purpose?
Cr Tully	Applied to my campaign.
Counsel Assisting	Did you understand that to be a donation by that gentleman to your election campaign?
Cr Tully	No.
Counsel Assisting	Well, what was it?
Cr Tully	It was a donation to the Goodna Community Fund… (Evidence given by Paul Tully, pp. 15–6)

Following this exchange, Cr Tully stated that he and his wife had decided to use the Goodna Community Fund account consistent with advice Cr Tully says was given by the Local Government Ethics and Integrity Advisor at a 2015 LGAQ conference. Cr Tully stated that this advice was to the effect that candidates should maintain a distance from "the day-to-day receipt or expenditure for the campaign".[107]

Whatever the original intention behind the Goodna Community Fund account, it is clear that by January 2016 Cr Tully was using both this account and his dedicated campaign account to receive deposits and pay for campaign expenses.[108] This is clearly inconsistent with the requirement for candidates to operate a dedicated account, as Cr Tully conceded at the public hearing:

Counsel Assisting	…Would you accept, looking back on it now, that those receipts and expenditures to McLeans really ought to have been in your dedicated campaign account?
Cr Tully	Yes, on reflection, yes, I accept that. It's something that would have been smarter, would have been better. It would have been a cleaner way of doing it… (Evidence given by Paul Tully, p. 21)

The CCC formed the view that Cr Tully failed to operate a dedicated bank account in compliance with section 126 of the LGE Act and determined there was sufficient evidence to refer this matter to the ECQ for consideration of any prosecution proceedings it considers warranted. However, given the systemic nature of this issue, the CCC determined to take no further action. In any event, a prosecution for an offence against section 126 of the LGE Act must be commenced within 12 months from when the offence occurred (20 April 2016).

107 Evidence given by Paul Tully, p. 16.

108 Transactions made to and from Cr Tully's dedicated bank account related to nomination fees, a bond for removal of campaign material post-election, and payment of money for "personal" how-to-vote cards (see Exhibit 31). The three deposits into Cr Tully's dedicated campaign account were deposited by Cr Tully himself.

6 Moreton Bay Regional Council election

Focus of the public hearing

Operation Belcarra focused on 18 allegations in relation to the 2016 local government election in Moreton Bay. These allegations involved perceptions that candidates had advertised or fundraised as a group without advising the returning officer,[109] and failed to give a disclosure return within the required time[110] or provided a disclosure return containing information that they knew was false or misleading.[111]

The CCC required the following people to attend the public hearing:

- Cr Allan Sutherland, Mayor of the Moreton Bay Regional Council (MBRC)
- Cr Peter Flannery, Division 2, MBRC
- Cr Mike Charlton, Division 9, MBRC
- Ms Kimberly James, unsuccessful candidate for Division 3, MBRC
- Mr Tim Connolly, settlor of Moreton Futures Trust (MFT)
- Dr John Ryan, a trustee of MFT
- Mr Kirby Leeke, a trustee MFT
- Mr Robert Comiskey, donor to MFT
- Mr David Trask, donor to MFT and Cr Allan Sutherland
- Mr Michael Ravbar, State Secretary, CFMEU Qld/NT Branch
- Mr Trent Dixon, adviser to Cr Allan Sutherland.

Allegations about candidates advertising or fundraising as a group without advising the returning officer

It was alleged that a number of candidates, all sitting councillors, had advertised or fundraised as a group during the election campaign without advising the returning officer. Four behaviours gave rise to perceptions that candidates were operating as an undeclared group:

- the use of joint how-to-vote cards
- the use of joint billboards
- candidates receiving letters of endorsement from each other
- the payment of advertising expenses from a common source, namely Cr Allan Sutherland and MFT.

An explanation of these behaviours helps to understand the CCC's conclusions in relation to the allegations.

Joint how-to-vote cards

Mayor Allan Sutherland and a number of sitting councillors used joint how-to-vote cards in their 2016 election campaigns. For example, Cr Sutherland had joint how-to-vote cards with Cr Peter Flannery (Exhibit 64; see Appendix 9) and Cr Charlton (Exhibit 37; see Appendix 9). A number of how-to-vote cards had a similar design and featured the slogan, "For a bright future". This was a slogan that had

109 Section 183, LGE Act.

110 Section 195(1), LGE Act.

111 Section 195(2), LGE Act. See also section 195(3) relating to a candidate who is a member of a group who allows the group's agent to give a return containing information that the candidate knows is false or misleading in a material particular.

previously been used by the council to promote the Petrie University site,[112] also known as The Mill Priority Development Area.

The use of joint how-to-vote cards was an initiative of Cr Sutherland. He stated at the public hearing that he asked several individual councillors whether they would like to share a how-to-vote card with him, largely as "a logistical decision" for himself.[113] Some councillors declined. Among those councillors who accepted, some offered to pay for half of the costs involved, including Cr Charlton.[114] Cr Sutherland nevertheless maintained that he would pay in full, but emphasised that his contribution must be disclosed as a donation to the other councillors' campaigns.[115]

Joint billboards

Several of the sitting councillors who had joint how-to-vote cards with the mayor also shared joint billboards. One billboard featured Crs Sutherland and Flannery, while others featured Cr Sutherland with various other councillors (for example, Exhibits 38 and 40). Again, these billboards were all initiated by Cr Sutherland and the costs were paid for in full by him.[116] The other councillors involved nevertheless agreed to the production and use of the billboards, and Cr Charlton was listed as a contact on the invoice for his joint billboard (Exhibit 41).

Letters of endorsement

Four of the sitting councillors who had joint-how-to-vote cards with the mayor also received letters of endorsement from Cr Sutherland. These letters were again offered to councillors by the mayor. In them, Cr Sutherland endorsed the councillor's efforts, noting major projects they had helped to deliver for their divisions, and stated that he supported their re-election to council. The cost of mailing out these letters to electors was again paid for in full by either Cr Sutherland or MFT.[117]

A common funding source

As noted above, Cr Sutherland offered to, and did, either pay or arrange for MFT to pay in full for all of the joint advertising and promotional materials he arranged with other councillors. Notably, 63 per cent of Cr Sutherland's own campaign funding ($118 587.05) came from MFT (see Exhibit 72). In summary:

- MFT paid for expenses relating to Cr Flannery ($3677), Cr Houghton ($2873) and Cr Greer ($2488.35; see Exhibit 49). Each of these amounts represents the councillor's share of the joint advertising and promotional materials they received.
- Cr Sutherland paid directly for expenses relating to Cr Charlton ($2501), Cr Houghton ($855) and Cr Winchester ($855).[118] Each of these amounts represents the councillor's share of the joint advertising and promotional materials they received.

Conclusions

Candidates who engaged in the above activities were of the view that they had not formed a group of candidates as defined in the LGE Act. For example, Cr Sutherland stated in the hearing:

> …I'd adopt the attitude that most people looking at that by arrangement would see that as the sitting council, not a group. They would see Mick Gillam and Allan Sutherland. They know Mick Gillam is their sitting councillor and Allan Sutherland is their Mayor. I wouldn't suggest it's a

112 Evidence given by Peter Flannery, p. 8.

113 Evidence given by Allan Sutherland, p. 9.

114 Evidence given by Michael Charlton, p. 9.

115 Evidence given by Allan Sutherland, p. 10.

116 Evidence given by Allan Sutherland, p. 14.

117 Evidence given by Allan Sutherland, p. 13.

118 As per Cr Sutherland's third party disclosure return available on the ECQ website.

> group as such but more as a council. They're the sitting councillors. (Evidence given by Allan Sutherland, p. 12)

Despite such claims, the CCC formed the view that Cr Sutherland having and paying for joint how-to-vote cards, joint billboards and the mail out of letters of endorsement for a number of other councillors can be considered conduct that promoted the election of the candidates, and that those candidates should have registered as groups. However, the CCC determined that commencing a prosecution for an offence against section 183 of the LGE Act was not in the public interest in these circumstances because:

- The how-to-vote cards were approved by the ECQ, which knew or ought to have known that the candidates had not registered as a group. The candidates are likely to have inferred from the ECQ's approval that their conduct was not contrary to the LGE Act.
- This type of conduct has occurred in a number of prior elections and has not been subject to any censure by the ECQ or other authority.
- The current definition of a group of candidates is broad and ambiguous, and is likely to capture conduct that was not intended to be captured (see further discussion in Chapter 11).
- The activities discussed above were largely transparent in that joint how-to-vote cards, joint billboards and letters of endorsement would have clearly conveyed to anyone who saw them that the candidates were supportive of each other. Further, contributions for advertising were declared by the candidates in their disclosure returns.

In any event, a prosecution for an offence against section 183 of the LGE Act must be commenced within 12 months from when the offence occurred (i.e. any prosecution must have been commenced by 20 March 2017).

Allegations about candidates failing to comply with disclosure obligations

It was alleged that some of the Moreton Bay candidates who appeared before the public hearing had failed to disclose donations. Two groups of allegations were examined at the public hearing:

- Cr Sutherland's and Cr Flannery's disclosure of donations from MFT
- Ms Kimberly James's failure to lodge a disclosure return by the due date.

Cr Sutherland's and Cr Flannery's disclosure of donations from Moreton Futures Trust

Moreton Futures Trust

As noted above, a number of Moreton Bay candidates had expenses paid for by a third party entity known as Moreton Futures Trust (MFT). MFT was established in 2010. A deed dated 7 April of that year proposed to establish MFT "to support the election campaigns of certain candidates in the Moreton regional Council area" (Exhibit 45). Evidence was given at the public hearing that MFT had evolved from an earlier group called Friends of Pine Rivers. This was established in the early 2000s to help fund candidates for the Pine Rivers Shire Council, which was subsequently merged with several other local government areas to form the MBRC.[119]

MFT has supported MBRC candidates in both the 2012 and 2016 elections. In relation to the 2012 election, one of MFT's trustees,[120] Mr Kirby Leeke, stated at the public hearing that the trustees had decided that MFT would support Mayor Allan Sutherland.[121] MFT's disclosure return for 2012 indicated

119 Evidence given by Dr John Ryan, p. 4.

120 The original trustees were Mr Bryan Galvin, former Deputy Mayor of the Pine Rivers Shire Council, and Dr John Ryan. Mr Galvin was replaced as trustee by Mr Leeke in November 2011 (Exhibit 51).

121 Evidence given by Kirby Leeke, pp. 8–9.

that it received $132 695 in donations and donated $60 000 of this to Cr Sutherland for his campaign.[122] In relation to the 2016 election, Mr Leeke gave evidence that MFT's trustees had again determined to support Cr Sutherland, and only Cr Sutherland.[123] MFT's disclosure return for 2016 indicated that it received $137 000 in donations and made payments of $127 625.40 (Exhibit 49). As identified on page 29, the majority of this expenditure was indeed for the benefit of Cr Sutherland ($118 587.05), although three other councillors, including Cr Peter Flannery, also disclosed donations from MFT for their share of joint advertising.

In examining how funds were raised by MFT, the CCC determined that Mr David Trask, a property developer, appeared to be the only person actively soliciting funds for the trust. According to Mr Trask, he knew that MFT was supporting Cr Sutherland in the election campaign and he advised donors that they could donate either directly to Cr Sutherland or to MFT.[124] MFT's disclosure return shows that the majority of its funds came from donors who were involved in property development and construction (see further discussion in Chapter 12).

According to Mr Trask, the benefit of donations being directed to MFT was that someone else would take care of the administration of money on behalf of Cr Sutherland.[125] In contrast to 2012, where MFT gave money directly to Cr Sutherland, Cr Sutherland arranged for his wife to send invoices for his 2016 campaign expenses to one of the trustees for payment.[126] Mr Leeke stated that he would decide whether to pay particular invoices that were sent to him by Cr Sutherland's wife. Some invoices he approved and paid and some he rejected.[127]

Crs Sutherland and Flannery

The CCC examined disclosure returns and bank accounts for Crs Sutherland and Flannery and found that both councillors had recorded all of the gifts they had received from MFT (and other donors) in their returns. However, the details about MFT that the councillors recorded in their return did not comply with section 109 of the LGE Act. Specifically, the returns did not state the names and residential or business addresses of MFT's trustees as required.

The CCC does not suggest that this omission was done dishonestly or as a deliberate attempt to hide details about MFT. At the public hearing, Cr Sutherland stated that he had only become aware of the requirement that week.[128] Cr Flannery similarly gave evidence that the requirement was not clear to him, and that he had simply done as Cr Sutherland had in his 2012 return.[129] The CCC identified that many candidates failed to provide these and other "relevant details" as defined in section 109, and this is discussed further in Chapter 12.

The CCC formed the view that Cr Sutherland and Cr Flannery should both have recorded additional details about MFT's trustees in their disclosure returns. Nevertheless, the CCC determined that the systemic nature of this issue and the fact that the ECQ has not taken action about previous non-compliant returns meant that it was not in the public interest to refer these matters to the ECQ for consideration of any prosecution proceedings it considers warranted for offences against section 195(1) of the LGE Act. The CCC determined there was insufficient evidence to commence a prosecution against Cr Sutherland or Cr Flannery for an offence against section 195(2).

122 MFT third party disclosure return available on the ECQ website.

123 Evidence given by Kirby Leeke, pp. 13–15, 21.

124 Evidence given by David Trask, p. 13.

125 Evidence given by David Trask, p. 13.

126 Evidence given by Allan Sutherland, p. 24–5.

127 Evidence given by Kirby Leeke, p. 20.

128 Evidence given by Allan Sutherland, p. 19.

129 Evidence given by Peter Flannery, p. 10.

Ms Kimberly James's failure to lodge a disclosure return by the due date

At the public hearing, CFMEU State Secretary Mr Michael Ravbar stated that the 2013 introduction of specific workplace laws relating to the local government sector prompted the CFMEU's interest in the 2016 local government elections.[130] Mr Ravbar indicated that the CFMEU determined to advocate against those laws by assisting the campaigns of like-minded candidates.

The CCC was aware from the CFMEU's third party donation disclosure return that one candidate the CFMEU had supported in 2016 was Ms Kimberly James, a Division 3 candidate in Moreton Bay. Mr Ravbar confirmed at the public hearing that the CFMEU had provided financial support to Ms James's election campaign totalling $32 155. The CFMEU submitted a third party disclosure return to the ECQ detailing the gifts it gave to Ms James (Exhibit 131). The CFMEU also gave Ms James a financial statement detailing the amount, dates and type of support it had given Ms James to help her in preparing her own disclosure return (Exhibit 128).

According to information from the ECQ, Ms James had failed to lodge a disclosure return by the due date of 4 July 2016. Ms James was initially interviewed by the CCC on 26 May 2017, and during that interview Ms James admitted that she had failed to lodge a disclosure return in compliance with section 117 of the LGE Act. During her evidence at the public hearing, Ms James again confirmed that she was aware of her obligation to lodge a disclosure return as a candidate and that she had failed to do so.[131] Ms James stated that after her interview with the CCC, she immediately attended to this issue and lodged a return with the ECQ on 29 May 2017.[132] The CCC was subsequently advised by the ECQ that it had received Ms James's disclosure return.

The CCC formed the view that Ms James had failed to submit her disclosure return within the required time. The CCC determined there was sufficient evidence to refer this matter to the ECQ for consideration of any prosecution proceedings it considers warranted for an offence against section 195(1) of the LGE Act, but that it was not in the public interest to do this given Ms James has now submitted her return.

130 Evidence given by Michael Ravbar, p. 4.

131 Evidence given by Kimberly Ann James, p. 14.

132 Evidence given by Kimberly Ann James, pp. 14–5.

7 Logan City Council election

Focus of the public hearing

Operation Belcarra focused on five allegations in relation to the 2016 local government election in Logan. These allegations involved perceptions that Cr Luke Smith, Mayor of the Logan City Council (LCC) had failed to give a disclosure return within the required time[133] or provided a disclosure return containing information that he knew was false or misleading,[134] and had attempted to unlawfully influence council decisions relating to his donors. At the time of writing this report, these allegations were still being finalised by the CCC.

The CCC required the following people to attend the public hearing:

- Cr Luke Smith, Mayor of the LCC
- Ms Rhonda Dore, former Director of Logan Futures Pty Ltd
- Mr Terry Yue, Assistant to Board for Australian SN International Investment Group and Australian Yues International Development Group
- Mr Kassen Issa, involved with AdvanceForm
- Mr Sam Tiong, consultant to SKL Cables Australia Pty Ltd
- Ms Sally Chung, owner of Holiday International Golden Travel.

Allegations about candidates failing to comply with disclosure obligations

It was alleged that Cr Luke Smith had failed to fully disclose donations he received. This allegation was explored at the public hearing.

Logan Futures

Australian Securities and Investments Commission records show Logan Futures Pty Ltd ("Logan Futures") was a registered Australian company limited by shares. It was registered on 20 May 2015 and deregistered on 3 May 2017. Two directors were appointed — namely Ms Rhonda Dore, who was Australia's second female bank manager and had experience as the owner of her own home loan company, and Mr Grant Dearlove, a corporate lawyer and director of international companies.[135]

At the hearing, Cr Smith stated that he had established Logan Futures to handle the large amount of campaign funds — "roughly between $350 000 and $400 000" — that he knew he would need to "run a very decent and professional campaign".[136] He stated that he wanted to keep his campaign funds separate from him and his family, and chose to establish a Pty Ltd company because he believed that this was the most open and transparent way of doing this:

> …we wanted — for me personally and my wife, given the large amount of dollars… that would be coming in, we wanted to ensure it was properly accounted for by people that we trusted and the people that had better ability to handle large amounts of funds than me while I was on the run trying to run an election at the same time." (Evidence given by Timothy Luke Smith, p. 11)

133 Section 195(1), LGE Act.

134 Section 195(2), LGE Act. See also section 195(3) relating to a candidate who is a member of a group who allows the group's agent to give a return containing information that the candidate knows is false or misleading in a material particular.

135 Evidence given by Timothy Luke Smith, pp. 11–2.

136 Evidence given by Timothy Luke Smith, p. 10.

Record keeping practices

According to Ms Dore, she had sole responsibility for managing Logan Futures's financial records and reporting obligations.[137] However, she had no involvement in receiving donations, [138] which came to Logan Futures in various ways. These included:

- electronic transfers to the Logan Futures bank account
- EFTPOS
- cash received at fundraising events including golf days and dinners
- cheques given directly to Cr Smith, who in turn deposited them into the Logan Futures account via an ATM
- cash donations given directly to Cr Smith, who in turn deposited them into the Logan Futures account via an ATM.

A significant weakness in Logan Futures's record keeping was that Ms Dore had no or at least very limited information about its donors. In his evidence, Cr Smith admitted that in relation to the cheques he had received, Ms Dore had no independent record of the date or value of the donation or the identity of the donor because she was not privy to this information and Cr Smith did not make any records of it himself. Cr Smith stated that he mistakenly believed that the identity of the donor would have been recorded on the bank statement.[139] It would have been possible, of course, for Ms Dore to obtain copies of the cheques that were deposited in Logan Futures account, but this was not done. In relation to the cash donations he had received, Cr Smith similarly admitted that he had kept no records about the date or value of the donation or the identity of the donor.[140]

The CCC identified a number of poor governance practices in relation to the operation of Logan Futures, including:

- not keeping records of donors, other than the deposits recorded in the bank statement and duplicated in a spreadsheet kept by Ms Dore. Cr Smith stated at the hearing that some donors asked for and were given invoices,[141] but the CCC did not locate all of these.
- issuing a company debit card in the name of Rhonda Dore to Cr Smith in circumstances where there was no or a limited ability to verify the purpose of the expenditure.
- invoices being issued to some donors by Ms Andrea Smith (Cr Smith's wife) in the name of Logan Futures without the directors' knowledge and without Ms Smith having any legal relationship with the company. In fact, Ms Dore gave evidence during the hearing that the first time she became aware of these invoices is when they were provided to her by Ms Smith upon a request by the CCC.[142] It is not suggested that Ms Smith issued the invoices with any improper intent or motives, but the practice of issuing invoices on behalf of a company without the knowledge or consent of the directors is, for obvious reasons, a poor practice.

The combined effect of these failings meant that when it was necessary to complete the third party disclosure return for Logan Futures, Ms Dore was required to rely upon the memory and integrity of Cr Smith.[143]

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137 Evidence given by Rhonda Joyce Dore, p. 7.

138 Evidence given by Rhonda Joyce Dore, p. 9; evidence given by Timothy Luke Smith, p. 28.

139 Evidence given by Timothy Luke Smith, pp. 30–1.

140 Evidence given by Timothy Luke Smith, pp. 30–1.

141 Evidence given by Timothy Luke Smith, p. 43.

142 Evidence given by Rhonda Joyce Dore, p. 22.

143 It is noted that Logan Futures employed the services of an auditor to check the company's records. In an email in which he was estimating the cost of conducting the audit, the auditor noted that "the audit of donations may be much more difficult as the records were maintained by Luke & Andrea Smith and Rhonda is not sure of the state of these records. There is no audit trail from the cash receipts book to the listing of donations attached to the return. In the cash receipts book, there are various deposits which are not identified. Rhonda did some work to compile the donations listing but has no work papers. She has spoken to Andrea & the latter will make sure the records available as soon as she can. I can already see that this will be very time consuming."

During its investigation, the CCC obtained an email sent from Cr Smith to Mr and Ms Dore on 21 May 2016 (Exhibit 110). When questioned about this email at the public hearing, Cr Smith stated that the purpose of it was to assist Ms Dore in completing the disclosure return as Ms Dore had no records from which she could complete the donors' details herself. Cr Smith stated that he had a copy of Logan Futures' bank statements but otherwise provided this information from his memory.[144] Ms Dore stated that she made no attempt to verify the information that was provided by Cr Smith — "purely because I trust Luke, what he has given me I a hundred per cent believe is the truth."[145]

Errors and omissions in Logan Futures's incomplete return

As part of its investigation, the CCC conducted a financial analysis of the incomplete disclosure return Logan Futures submitted to the ECQ (Exhibit 109)[146] and compared that to other information obtained during the investigation including:

- a copy of the Westpac Bank account statements
- a copy of a spreadsheet produced by Ms Dore detailing donations and expenditure
- invoices purportedly issued by Logan Futures
- vouchers obtained from Westpac Bank in relation to the deposits in the account.

This analysis identified a number of errors in the return and a number of entries that the CCC were unable to verify as being accurate via any other objective evidence.[147] Some examples are provided below.

Australian Yues International Development Group and Australian SN International Investment Group

According to Logan Futures's incomplete disclosure return, $63 300 in donations was received from "Australian Yues International Development Group" between 18 September 2015 and 17 May 2016. Australian Yues International is owned by Mr Liansheng Yue, but the company was not registered until 5 April 2016. As such, it could not have been the donor to Logan Futures prior to that date. The CCC's analysis of financial records in relation to the donations that were attributed to Australian Yues International in the third party disclosure return demonstrates the inherent dangers of not having a proper system to record donations. The correct donors identified by the CCC (where possible) are shown in Table 1.

Table 1. Donors identified by the CCC in financial records for donations attributed to Australian Yues International in Logan Futures's incomplete third party return.

Date	Value	Donor identified by CCC in financial records
18 September 2015	$5 000	Australian Fijian Association (cheque)
29 September 2015	$2 000	Cash donation — unable to confirm donor
29 September 2015[a]	$15 000	Australian SN International (cheque)
5 November 2015	$10 000	Australian SN International (cheque)
19 November 2015[b]	$15 000	Australian SN International (cheque)
25 January 2016	$3 800	Chin Hong Investments (cheque)
12 February 2016	$5 000	Al Aqar (cheque)
17 May 2016	$7 500	Cash donation — unable to confirm donor

Notes: a Recorded as 28 November 2015 in financial records provided to the CCC by Mr Terry Yue.

b Recorded as 10 November 2015 in financial records provided to the CCC by Mr Terry Yue.

144 Evidence given by Timothy Luke Smith, pp. 42–3.

145 Evidence given by Rhonda Joyce Dore, p. 14.

146 The return submitted to the ECQ by Logan Futures was marked as incomplete. Section 131 of the LGE Act permits candidates and others who are unable to obtain particulars required for the preparation of a disclosure return to submit an incomplete return. Under section 132 of the LGE Act, a person who has given a return to the ECQ may at any time apply to amend the return to correct an error or omission. Section 198 of the LGE Act provides a five year time limit on the provision of further information.

147 The report of the auditor employed by Logan Futures, dated 12 April 2017, also identified several variances in the company's cash book, in relation to both donations and payments.

Table 1 shows that three of the donations attributed to Australian Yues International in Logan Futures's incomplete disclosure return were actually made by Australian SN International Investment Group, another company owned by Mr Liansheng Yue. At the hearing, Cr Smith stated that the attribution of these three donations to Australian Yues International was based on advice provided to him by Mr Terry Yue, the son of Mr Liansheng Yue.[148] In explaining the discrepancy between the real source of the donation and what was recorded on the disclosure return, Mr Terry Yue stated in evidence that:

> …during that time, early 2016 — I can't recall the exact date — we decided that we want to shut down SN International Investment and start a JV, joint venture, with another entity which was Yues International. (Evidence given by Terry Yue, p. 18)

Following a number of media articles about donors to Logan Futures and their interests in property development in the Logan area, Mr Dearlove wrote to Mr Terry Yue on 22 September 2016 requesting an explanation as to the name of the correct legal entity to be recorded on the disclosure return given Australian Yues International did not exist at the date of the recorded donations (Exhibit 119). The ECQ has advised the CCC that the disclosure return for Logan Futures has not been amended in relation to this issue.

The CCC's analysis also identified another deposit recorded in the Logan Futures bank statement as coming from Australian SN International ("Australia SN Internation" [sic]; $20 000 on 8 July 2015). However, this transaction was recorded on Logan Futures's incomplete disclosure return as a $40 000 donation from Chin Hong Investments Corp. This was one of the few transactions that was clearly identifiable from information in the possession of by Cr Smith and Ms Dore, yet it was still recorded incorrectly in the disclosure return.

Ohreg (Qld) Pty Ltd

Logan Futures's incomplete disclosure return recorded the following donation:

> Ohreg (Qld) Pty Ltd Breakfast fundraiser unknown 22/01/16 1,500.00

When asked about donors with unknown details at the public hearing, Ms Dore stated in relation to this donation that:

> …we looked up who it might have been. I went to Google. I tried to find who it might be, and I couldn't do that, and I didn't have anywhere else to ask… (Evidence given by Rhonda Joyce Dore, p. 20).

However, an invoice in the materials provided by Ms Dore to the CCC listed the full details of Oliver Hume Real Estate Group (QLD) Pty Ltd. There appears to have been a breakdown in the communication of information between Mr and Ms Smith and Ms Dore that resulted in the disclosure return being incomplete in this regard.

AdvanceForm

According to Logan Futures's incomplete disclosure return, $28 000 in donations was received from "Advance Form" between 1 February 2016 and 7 March 2016.

Mr Kassen Issa, who has an interest in AdvanceForm and who is known to Cr Smith as Isaac, was called to give evidence about AdvanceForm's donations at the public hearing. Mr Issa's recollection of the donations was that he couldn't be certain on how many occasions he gave money to Cr Smith, but thought that he could have donated three or four times to the total value of between $25 000 and $28 000. Mr Issa stated that most of the money came from AdvanceForm, but some of it may have

148 Evidence given by Timothy Luke Smith, p. 55.

come from his personal bank account.[149] Mr Issa stated that the money he gave Cr Smith was cash in an envelope. Mr Issa's motivation for providing the donation to Cr Smith as cash was that he likes dealing in cash.[150]

Cr Smith stated that he was introduced to Mr Issa as a person who may be interested in supporting his campaign.[151] Cr Smith stated that he received cash donations, on four occasions from Mr Issa. According to Cr Smith those four cash donations were banked into the Logan Futures account over three transactions.[152] Cr Smith also reiterated that he kept no record and issued no receipt for the cash donations he received. In his explanation for how he was able to account for the value of the donations without having kept a record, Cr Smith stated:

> There were very few cash donations we received. So outside of golf days and raffles that people may have bought, which I had nothing to do with those… Isaac was the only one who donated completely — large amounts in cash, and we received two of those from the Yue family as well. So they were the only ones — it was easy to identify the cash donations, because there were only two people that donated that way. (Evidence given by Timothy Luke Smith, p. 53)

Although Logan Futures has recorded donations from AdvanceForm in its disclosure return, there is no objective evidence against which to assess and verify the accuracy of this information.

Summary

The CCC has formed the view that Logan Futures's incomplete disclosure return contained a number of errors, some quite significant. In relation to these errors, Cr Smith has stated:

> …[that] is why we ticked "Incomplete" when we submitted — the directors ticked "Incomplete" when they submitted their report, so that we could address anomalies as they come up over the four-year period. (Evidence given by Timothy Luke Smith, p. 56)

Despite the assurances that Cr Smith stated he received from the directors of Logan Futures to correct any anomalies in the disclosure return, it is known that they have wound the company up. Ms Dore and Mr Dearlove are no longer directors of Logan Futures. The company has ceased to exist and is currently unable to comply with requirements to amend the return.[153]

In relation to Cr Smith stating that Logan Futures was established for reasons of transparency, the CCC's view is that the poor governance of Logan Futures reduced the transparency of the donations received by Cr Smith. Likewise, Cr and Ms Smith's direct involvement in the operation of Logan Futures indicates that the company did not serve Cr Smith's stated purpose of keeping campaign funds separate from him and his family. Rather, the use of Logan Futures created a situation where Cr Smith was not required to record donations in his own disclosure return, despite a number of donations being handed directly to Cr Smith. The use of Logan Futures created an artificial separation between Cr Smith and donors on paper alone, undermining the transparency of significant donations, some of which were made in cash and handed directly to Cr Smith.

As noted previously, the CCC is still finalising relevant allegations.

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149 Evidence given by Kassen Issa, p. 8.

150 Evidence given by Kassen Issa, pp. 8–9.

151 Evidence given by Timothy Luke Smith, p. 52.

152 Evidence given by Timothy Luke Smith, p. 52.

153 Section 601AD *Corporations Act 2001* (Cth). Logan Futures could be re-registered, in which case it would be able to comply with the requirements to amend the return. Despite company deregistration, officers of the company may still be liable for things done before the company was deregistered. However, Logan Futures is the relevant person for sections 124, 125, 131, 195 and 198 of the LGE Act. The company was deregistered in May 2017.

Allegations about councillors attempting to unlawfully influence council decisions

One of the allegations made against Cr Smith was that he attempted to unlawfully influence the outcome of council decisions on development applications that would be beneficial to companies that donated to Logan Futures. At the time of writing this report, the investigation of this allegation was still being finalised and it would be premature to draw any conclusions about whether any council decisions were unlawfully influenced in favour of a donor.

However, the CCC has identified that a number of donors to Logan Futures appeared to have some interest in or relationship to property development in the Logan area. As discussed in Chapter 13, perceptions of corruption can arise in circumstances where donors have business interests that can benefit from council decisions. To provide additional background information to the issues discussed in Chapter 13, the following section outlines key donors to Logan Futures and their stated motivations for contributing to Cr Smith's election campaign, the extent to which they had interests that could be affected by council decisions, and the nature and scope of some of their development applications where relevant.

Donors to Logan Futures

AdvanceForm

According to Logan Futures's incomplete disclosure return, $28 000 was donated to Logan Futures between 1 February 2016 and 7 March 2016 by a company called AdvanceForm, which is subcontracted by building companies such as Hutchinson to do form work for concrete.

As stated previously, Mr Kassen Issa (known to Cr Smith as Isaac) has an interest in AdvanceForm. Cr Smith stated during the hearing that he has known Isaac for a number of years and that he is very close to the Syrian–Lebanese community in Logan.[154] Mr Issa stated that he is good friends with Cr Smith and has been for about two years.[155]

Australian Yues International Development Group and Australian SN International Investment Group

As noted above, $63 300 in donations that were recorded on Logan Futures's incomplete disclosure return as coming from Australian Yues International were actually received from Australian SN International. Both of these businesses are owned by Mr Liansheng Yue.

Both Australian SN International and Australian Yues International are involved in property development in south-east Queensland. One significant development project in Logan is known as The Lakes, located in Carbrook. According to Mr Terry Yue, the son of Liansheng and assistant to the board of the two companies, the land in question is personally owned by his father.[156] An initial development application relating to The Lakes was submitted in 2013 by one of Liansheng's companies. Following the 2016 election, a further application was lodged that sought to significantly increase the number of dwellings that could be built on the lot, from 420 to 1500. Terry Yue stated at the public hearing that the planning for that had commenced towards the end of 2015.[157]

Chin Hong Investments Corp

According to Logan Futures's incomplete disclosure return, $73 800 was donated to Logan Futures between 5 June 2015 and 18 January 2016 by a company called Chin Hong Investments Corp (the CCC's

154 Evidence given by Timothy Luke Smith, p. 52.

155 Evidence given by Kassen Issa, p. 5.

156 Evidence given by Terry Yue, p. 4.

157 Evidence given by Terry Yue, p. 15.

investigation identified a donation was incorrectly recorded as $40 000 on the return, meaning the total value would actually be $33 800).

Chin Hong Investments owns a number of shopping centres in Logan, including the Springwood Shopping Centre known as Centro. No current development applications were identified in relation to Chin Hong Investments.

Holiday International Golden Travel

According to Logan Futures's incomplete disclosure return, $35 000 was donated to Logan Futures on 10 March 2016 by Holiday International Golden Travel, a travel agency located on the Gold Coast. The joint owner of the business is Ms Sally Chung.

Ms Chung is also the Vice Chairman of the Australia–China Chamber of CEO Inc. (ACCC). According to Ms Chung, the purpose of the ACCC is to facilitate cultural and business exchanges between China and Australia.[158] According to Cr Smith, Ms Chung, in her position with the ACCC, has facilitated a number of meetings between Chinese delegates and the LCC.[159] Ms Chung also stated that she has provided travel agency services for the LCC on two occasions.[160]

Ms Chung stated that she first met Cr Smith in person at a Christmas function held by the ACCC.[161] Ms Chung stated that she was encouraged to support Cr Smith by Ms Vicky Yu, who holds an executive position within the ACCC. According to Ms Chung, Ms Yu had told her that supporting Cr Smith's campaign would be a benefit for everyone, including the government and both countries.[162]

SKL Cables

According to Logan Futures's incomplete disclosure return, $40 500 was donated to Logan Futures on 29 December 2015 ($35 000) and 8 March 2016 ($5500) by an Australian company called "Cable S.K.I." The CCC investigation identified that the correct name of this company is SKL Cables, whose main business is the importation and resale of domestic electrical cables to wholesalers.

Mr Sam Tiong, a consultant to SKL Cables who appeared at the public hearing, began working for the company in February 2014. Before this, Mr Tiong worked as a transport planner with the LCC. Part of Mr Tiong's role involved assessing development applications with respect to the impact they might have on traffic and other infrastructure.[163] Mr Tiong stated at the public hearing that he began working with SKL Cables because the company's owners were wanting to move into the property market, but the owners did not speak English well and were seeking to draw on Mr Tiong's experience in assessing development applications.[164]

Mr Tiong gave evidence that SKL Cables currently owns properties that include a block of land at 22 Carol Avenue, Springwood. A development application in relation to this property was received by the LCC on 17 November 2015. That application was to build a 15 storey building, with the proposal described in the application as "Proposed short-term accommodation (51 units), indoor sport and recreation and food and drink outlet".

158 Evidence given by Hylie Sally Wai Chung, p. 4.

159 Evidence given by Timothy Luke Smith, pp. 54–5.

160 Evidence given by Hylie Sally Wai Chung, pp. 6–7.

161 Evidence given by Hylie Sally Wai Chung, p. 9.

162 Evidence given by Hylie Sally Wai Chung, p. 10.

163 Evidence given by Kuo Sing (Sam) Tiong, pp. 5–6.

164 Evidence given by Kuo Sing (Sam) Tiong, p. 5.

Part 3:
Discussion of key issues

8 Principles of good government

As noted in Chapter 1, the CCC undertook a detailed analysis of information collected through the investigation and from other sources to identify key issues that may give rise to corruption risks or undermine public confidence in the integrity of Queensland local government. In doing this, the CCC gave consideration to principles of good government.

Four key principles of good government

Information from the sources identified on page 5 was analysed with reference to what the CCC considers to be four key principles of good government — equity, transparency, integrity and accountability.

- **Equity.** Good government requires elections to be contested on a level playing field, where everyone is able to participate equally in the democratic process.
- **Transparency.** Good government requires complete transparency about who candidates are, the interests and affiliations they have, their relationships with other candidates and the sources of their campaign funding. Council processes and decisions must also be open and transparent.
- **Integrity.** Good government requires that corruption risks are minimised and decision-making is fair, impartial and done in the public interest; importantly, it also needs to be perceived to be so.
- **Accountability.** Good government requires candidates, councillors and others to be held to account for their actions and inactions. In particular, mechanisms in place to ensure equity, transparency and integrity in elections and local government more broadly are meaningless if they are not enforced.

In the CCC's view, the public can only have confidence in local government and the integrity of its operations when these four principles are met.

Key issues identified

Using the above framework, the CCC identified six key issues that have the potential to undermine public confidence in Queensland local government:

- 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 registering 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.

Each of these issues is discussed in detail in the following chapters.

9 Uneven competition between candidates

Equity in elections is a fundamental principle of Australia's democratic system of government. This is highlighted particularly through the tenet of "one vote, one value", which drives laws governing the distribution of electoral boundaries to ensure that all voters have an equal voice. Despite the focus on equity in this regard, the regulation of local government elections in Queensland does little to promote a level playing field between the other key participants in the election process — candidates. This is especially true in relation to the regulation of political financing, including donations, with relatively few restrictions on election campaign funding directed at promoting equity. This was reflected in the 2016 elections, where there was considerably uneven financial competition between candidates. This is discussed in detail below.

As a result of Operation Belcarra, the CCC also identified some other forms of uneven competition between candidates in local government elections. This particularly included the significant gap between incumbents and new candidates in terms of the resources they require to effectively promote themselves to the electorate, as well as the double advantages enjoyed by candidates who promoted themselves as independent while receiving campaign support from political parties and their members, or from other candidates. These forms of uneven competition are also discussed further below.

Uneven financial competition

Candidates contesting local government elections in Queensland do not receive any public funding for their election campaigns — that is, they are funded entirely from private sources.[165] The 2016 local government elections highlighted that this private funding is not equally distributed among candidates. Some candidates are able to direct significantly more money than others into running their campaigns and promoting themselves to voters, meaning that elections are contested on an uneven playing field.

There are two key concerns that arise from candidates having unequal access to campaign funds. The first is that prospective candidates can be deterred from running for council in the first instance and well-funded candidates can dominate. This can limit the diversity and quality of candidates who contest local government elections. This was a concern raised by a number of people spoken to as part of Operation Belcarra, especially in relation to mayoral elections, as illustrated in this comment made during an interview with CCC investigators:

> I think that the scenario we have at the moment is you can only run for the mayoralty if you've got a bucket of money, because you can't afford to run against someone who's got virtually unlimited funds. That's why we're not getting the candidates that we should get.

The second concern with unequal funding is that, even if a person does contest the election, they are often unable to properly compete with well-funded candidates. Previous inquiries into local government have found that even relatively modest amounts of funding can allow candidates to swamp their opponents in terms of media exposure and other promotional activities (Crime and Misconduct Commission 2006; Tweed Shire Public Inquiry 2005a, 2005b). Consistent with this, an analysis of 2016 donation disclosure data by the CCC showed that, for candidates in the Gold Coast, Ipswich, Moreton Bay and Logan councils, the total amount of money they received was one statistically significant predictor of whether or not they were successful at the election (the other being incumbency, as

165 This is in contrast to Queensland state elections and federal elections, where eligible candidates are entitled to receive some public funding.

discussed on pages 48 and 49).[166] In these councils, every extra $10 000 that a candidate received increased their chance of being elected by 51 to 56 per cent, all else being equal.[167] Given some candidates outspend their rivals by tens and even hundreds of thousands of dollars, money can clearly have considerable effects on local government elections.

Uneven financial competition in local government elections can arise from the involvement of two main types of candidates. The first type are wealthy self-funded candidates. Some candidates have significant personal wealth that they can draw on to pay for their election campaigns. A prominent example of this is Gold Coast Mayor Tom Tate, who indicated at the public hearing that he spent over $182 000 of his own money on his 2016 campaign.[168] It is difficult to know exactly how many candidates contribute significant amounts of money to their own campaigns given that this information does not need to be disclosed. It appears, however, that candidates spending such large amounts of their own money is relatively rare, at least in the four councils examined in the CCC's investigation.

The second and arguably more common type of candidate that raises concerns about uneven financial competition are those candidates who receive significant funding from donors. An analysis of donation disclosure data from the 2016 local government elections showed that donations were dramatically skewed towards certain councils and certain candidates.[169] Specifically, the CCC identified that:

- Some council elections involved much larger sums of money than others. In 2016, candidates across all 77 Queensland councils reported receiving about $4.3 million in donations. Over $2 million of this — about half — was received by candidates in the four councils that were the focus of Operation Belcarra. In contrast, there were 29 councils (38%) where no donations were reported at all.
- Some candidates attracted significantly more donations than others. In 2016, most candidates across Queensland (approximately 80%) did not report receiving any donations. In contrast, the top six candidates (according to total donation value) together received over $1.2 million, or 25 per cent of all donations. These candidates included Moreton Bay Mayor Allan Sutherland ($188 087),[170] former Ipswich Mayor Paul Pisasale ($221 081)[171] and Logan Mayor Luke Smith, who received $377 833. The amount received by Cr Smith was the most money received by any single candidate or group of candidates in the state, and was over three times the donations received by each of the other four mayoral candidates.[172, 173]

These figures highlight how uneven financial competition between candidates can be, which is significant given the important influence of donations on election success.

Concerns about uneven financial competition may arise from any donor who contributes large sums of money to a candidate's campaign. However, particular types of donors more frequently featured in the concerns raised during the CCC's interviews and at the public hearing. Among candidates the CCC spoke

166 The CCC notes that it would have been preferable to also examine the effect of the total amount of money actually spent on a candidate's campaign, but the data required to do this was not available (because candidates do not have to disclose their electoral expenditure).

167 These findings are based on a series of statistical analyses (logistic regressions) conducted by the CCC using election results data and donation disclosure data provided by the ECQ. These analyses controlled for the influence of several other factors that may be related to a candidate's success at an election, namely whether they were an incumbent, whether they were running against an incumbent, the total number of candidates they ran against, whether they were running for mayor or councillor, the size of the council (according to the number of councillors) and the council type (e.g. city council, regional shire council). The range of results provided reflects that the CCC performed analyses both including and excluding election events where no candidates reported receiving donations.

168 Evidence given by Thomas Tate, p. 6.

169 Data provided to the CCC by the ECQ on 16 February 2017.

170 The other five mayoral candidates received between $0 and $990.

171 One other mayoral candidates received no donations, and the other has not yet submitted a disclosure return.

172 Amounts as per donation disclosure returns available on the ECQ website. The other three candidates were unsuccessful Logan mayoral candidate Brett Raguse ($111 000), Gold Coast Cr Donna Gates ($173 973) and Sunshine Coast Regional Council Mayor Mark Jamieson ($179 353).

173 The four other mayoral candidates received between $0 and $111 000.

to, concerns about inequity in donations were often associated with donations from large businesses, especially property developers. As one candidate stated to investigators, "I can never compete with anyone backed by developers and big business." The example of Moreton Bay Mayor Allan Sutherland is consistent with this. Cr Sutherland, whose nearest rival reported receiving only $990 in donations, received about 95 per cent of his funds (including those received through Moreton Futures Trust) from companies involved in the property and construction sector.

On the other side of the coin, some candidates raised concerns about their ability to compete with candidates who received funding from a political party or trade union. Cr Sutherland himself commented on this at the public hearing, stating "it's very hard raising funds, particularly when you haven't got a political party behind you or a union behind you".[174] Particular concerns arose from political parties donating to candidates who had not been nominated by the party, with donations from political parties having the second largest average value of all donor types. This reflected the $60 000 raised for federal political purposes that was directed by the LNP to Gold Coast Councillor Kristyn Boulton and unsuccessful candidate Felicity Stevenson.

Although the above discussion highlights how unequally donations are distributed among Queensland local government candidates, and although it illustrates the significant influence this can have on election results, whether this is necessarily a problem has been debated. On the one hand, it has been argued that a candidate's "ability to attract donations can be seen to be an expression of the democratic will".[175] Professor Anthony Gray noted in his submission that a candidate attracting large amounts of funding can reflect the fact that they are electorally popular. From this perspective, it is appropriate that donations are not equally distributed between candidates.

> I believe, in a liberal democracy, that citizens should have the right to engage in the democratic conversation and, as part of that engagement, they should have the right to give money if they wish to a party or to an individual who espouses the kinds of views that they support and would like to be articulated. So I support the principle that someone should be able to freely donate without limit. (Evidence given by Anthony Gray, p. 5)

On the other hand, concerns have been raised that donations carry the potential for "wealth to buy an unequal share of political influence and voice" (Orr 2013, p. 1). As illustrated in the 2016 elections, this wealth is typically directed towards those who are in power or who are most likely to gain it, benefitting some candidates at the expense of others and creating a situation where not everyone is able to participate to the same extent in the democratic process. This runs counter to the principle of equity. Where this principle is undermined, and where wealth can be seen to be used to buy power and influence, public confidence in the electoral system and local government itself can be compromised. This is explored further in Chapter 13.

Many jurisdictions have recognised these concerns and therefore seek to promote more even financial competition in elections. Some jurisdictions have done this by implementing donation caps — limits on the size of donations that candidates and others can receive. In June 2016, New South Wales became the first Australian jurisdiction to introduce donation caps for local government. Donation caps are also in place in New South Wales for state government, and in Canada and the United States. In Queensland, donations to political parties, associated entities, candidates and third parties at the state government level were previously limited,[176] but these caps were removed in 2014 as "unnecessarily restricting participation in the political process".[177] Similar views were put forward during the Operation Belcarra public hearing by Professor Gray, consistent with his comments above. Other arguments made against donation caps include that they:

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174 Evidence given by Allan Sutherland, p. 27.

175 Professor Anthony Gray, Submission, p. 3.

176 The caps were indexed annually and initially set to $5000 per donor per year for political parties and associated entities, and to $2000 per donor per for candidates and third parties (Department of Justice and Attorney-General 2013).

177 Explanatory Notes to the Electoral Reform Amendment Bill 2013, p. 1.

- do not guarantee equity, and may in fact exacerbate inequity. For example, donation caps do not prevent wealthy candidates from self-funding expensive campaigns, and may further advantage them by preventing their opponents from receiving sufficient donations to overcome the disparities and mount more competitive campaigns.
- can reduce but do not eliminate the risk of actual or perceived corruption. Some have argued that "even small amounts of money, especially when donated regularly, cannot help but oblige a politician to the donor" (McMeniman 2014, p. 2).
- can be circumvented, and are difficult to enforce because donations occur in private.

Given the potential limitations of donation caps, an alternative approach that some jurisdictions have taken is to cap electoral expenditure. Jurisdictions that currently limit electoral expenditure include Tasmania (for local government elections), New South Wales (for state government elections), the Australian Capital Territory, New Zealand, Canada, the United Kingdom and the United States. A key benefit of expenditure caps compared with donation caps is that, because electoral expenditure largely occurs in public, expenditure caps are easier to enforce.[178] Compared with donation caps, expenditure caps also better level the playing field by limiting the financial advantages of wealthy self-funded candidates — by restricting everyone's spending to the same amount, even less well-resourced candidates can mount competitive campaigns. This is arguably critical to good local government, as Professor Graeme Orr noted at the public hearing: "…if the ideal of local politics is encouraging all sorts of citizens to be able to stand, then there is a very good argument [for] expenditure limits".[179] Similar arguments have recently been advanced by the LGAQ, which wrote to the Queensland Government and Queensland Opposition in September 2017 to propose expenditure caps for local government elections.[180]

Nevertheless, arguments have also been made against expenditure caps. As with donation caps, previous expenditure caps at the state government level in Queensland[181] were removed in 2014 on the basis that they unnecessarily restricted participation in the political process.[182] In the context of the CCC's analysis, a more significant drawback is that although expenditure caps can improve equity, and have advantages over donations caps in this regard, they do not guarantee even financial competition and can embed advantages enjoyed by certain candidates. For example, incumbent candidates typically need to spend less money promoting their election because they are already known to voters (see further discussion on pages 48 and 49 below). This is an advantage that new candidates do not have, and expenditure caps may exacerbate their disadvantage by preventing them from spending the money required to raise their public profile and increase their chances of success. Related to this issue, one final barrier to the implementation of expenditure caps is that they can be difficult to formulate. Schemes to cap electoral expenditure involve a range of considerations, including:

- how expenditure should be defined
- whether expenditure caps should apply to third parties as well as candidates

178 Professor Graeme Orr spoke to this at the public hearing, stating that "to be effective in a political campaigning sense, your expenditure largely has to be public. Some of it is private… But to the extent you are focusing on public advertising, campaigning and so on, rival parties, candidates and the media can keep some track of that" (Evidence given by Professor Graeme Orr, p. 15).

179 Evidence given by Professor Graeme Orr, p. 14.

180 The LGAQ has proposed an expenditure cap of $2 per voter for mayoral candidates and $1 per voter for councillor candidates, and a total cap of $200 000 for mayoral candidates and $50 000 for councillor candidates. The LGAQ has stated: "We believe this would help prevent corruption and undue influence as it would deal with the demand for campaign funds that drive fund-raising practices… Such a system would also reduce or contain the costs of elections, which would make them more competitive and fairer to all who want to run for their local council" (LGAQ 2017).

181 As of January 2013, electoral expenditure was capped at $52 500 for party-endorsed candidates, $78 800 for independent candidates, $84 000 per seat contested for registered political parties, $524 800 in total (across Queensland) or $78 800 per electorate for registered third parties, and $10 600 in total (across Queensland) or $2200 per electorate for unregistered third parties (Department of Justice and Attorney-General 2013).

182 Explanatory Notes to the Electoral Reform Amendment Bill 2013, p. 1.

- the types of expenditure that should be capped
- the appropriate level for a cap, and whether different caps should apply to different types of candidates to take account of advantages that certain candidates (e.g. incumbents) may have
- how compliance with expenditure caps can be effectively monitored and enforced.

None of these issues are necessarily simple to resolve.

Clearly, there are diverse views about whether donation and expenditure caps are appropriate, useful and practical ways of promoting equity in elections. In the context of Queensland local government, the CCC is not persuaded that there is a sufficient justification to recommend the introduction of donation caps. However, the CCC believes there would be value in capping expenditure in future local government elections, consistent with the recent calls from the LGAQ. The CCC notes that the previous Queensland Government removed expenditure caps at the state government level and that the current government has not moved to reinstate them, and acknowledges that there may therefore be limited political support for expenditure caps in local government. Nevertheless, the CCC remains of the view that the uneven financial competition observed in the 2016 local government elections means further consideration of expenditure caps at this level of government is warranted. As Professor Graeme Orr noted at the public hearing, "free and fair elections involve questions of relative equality of arms",[183] and the CCC considers that these need to be examined.

Given the various arguments for and against capping expenditure and the complex considerations involved in formulating caps, the CCC recommends that the feasibility of expenditure caps for local government be examined by an appropriate Parliamentary Committee (Recommendation 1). This review should consider the practical issues identified above, including who expenditure caps should apply to and whether it is appropriate for there to be different caps for different types of candidates (e.g. incumbents compared with new candidates). It should also have regard for capping provisions in other jurisdictions. Appendix 10 includes a summary of electoral expenditure regulation for local government elections in other Australian jurisdictions that may assist with this.

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.

The CCC believes that, while further consideration needs to be given to the feasibility of expenditure caps for local government elections, there is a clear need for increased transparency of electoral expenditure. Currently, voters have very little visibility of how much money local government candidates spend on their election campaigns, or of what they spend it on. This means that:

- Voters are unable to fully consider issues of financial inequity when casting their votes. Some voters may choose not to vote for candidates who they see as using wealth to buy political influence and power. Under the current system, voters are only able to assess this according to the donations a candidate receives, but as noted above, some candidates may run very expensive campaigns using their own funds.
- There is no simple way for voters to know that donations disclosed by candidates are actually spent on their election campaigns. This creates opportunities for donations to be given or perceived to be given to candidates for their own personal use in exchange for influencing decision-making.

183 Evidence given by Professor Graeme Orr, p. 14.

Although the requirement for candidates to operate a dedicated bank account is intended to help ensure accountability in this regard, this intent is being seriously undermined by widespread non-compliance with these requirements as identified by the CCC in Operation Belcarra.

In the CCC's view, it is a significant limitation of the current regulatory framework for there to be transparency of one aspect of campaign finance (income) but not the other (expenditure).

To address this, the CCC recommends, as it did in 2015,[184] that candidates and other participants in local government elections be required to disclose their expenditure (Recommendation 2; see Appendix 10 for requirements in other Australian jurisdictions). This would provide a complete picture of election finance, helping to reveal any inequity between candidates and ensuring that candidates' campaign expenses are able to be reconciled with their campaign income. Consistent with this, the CCC considers that expenditure disclosure requirements are essential regardless of whether expenditure caps are ultimately introduced — without caps, expenditure disclosure at least makes uneven financial competition between candidates transparent to voters, helping to inform their decisions on polling day if they choose; with caps, expenditure disclosure becomes an essential part of monitoring and enforcing compliance with expenditure limits.

In making this recommendation, the CCC notes that the state government did not endorse its 2015 recommendation to require candidates to lodge an expenditure disclosure return, stating that "the administrative burden of [the] requirement outweighs any additional public benefit given the vast majority of candidates spend minimal amounts, mainly on advertising" (Queensland Government 2016, p. 4). The CCC contends that, if the vast majority of candidates spend minimal amounts, the administrative burden on candidates created by expenditure disclosure obligations is also likely to be minimal. The process is likely to be even less onerous now that electronic disclosure is in place.

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.

Other forms of uneven competition

Although having an even financial playing field is important, there are factors beyond campaign funding that can create inequity between local government candidates. Arguably the most significant of these is incumbency. It is inevitable that many elections will involve a sitting councillor seeking to regain their position against a number of new candidates. New candidates are disadvantaged in these circumstances, with incumbents able (if they choose) to spend less time and money promoting themselves during their campaign because they are already widely known in the community. Simone Holzapfel, whose company Shac Communications provided services for the campaigns of several Gold Coast candidates, spoke to this issue at the public hearing:

Counsel Assisting	How would you go about putting together a budget for a candidate?
Ms Holzapfel	It depends on the candidate.

184 The CCC recommended "that the Government expand the regulation of donations to include the expenditure of donations…", specifically to require candidates to submit a return in relation to their expenditure (see Recommendation 5, CCC 2015).

Counsel Assisting	In what sense, financial or in what way?
Ms Holzapfel	No, it depends on the candidate, whether the candidate is an incumbent, whether the candidate has an incumbent running against them, or whether they are a person that's relatively unknown to an electorate. It really depends on what their profile is and what their experience is with local government as to what they would be looking for in terms of a campaign. (Evidence given by Simone Holzapfel, p. 8)

Ms Holzapfel further noted that "name recognition and incumbency are the two most important things in local government" (p. 8). This was supported by the CCC's analyses referred to above — whether or not a candidate was an incumbent, and whether or not a candidate ran against an incumbent, were the strongest predictors of success at the 2016 elections examined in Operation Belcarra. All else being equal, incumbent candidates were 33 to 44 times more likely to be elected than non-incumbent candidates, and candidates who did not run against an incumbent candidate were 7 to 9 times more likely to be elected than those who did. Clearly, incumbency is a significant contributor to uneven competition between candidates. This is at least partly because it is difficult for new candidates to achieve the same level of voter recognition as councillors with at least four years of media coverage and official duties behind them.

One other form of uneven competition between candidates in the 2016 elections arose as a result of some candidates receiving support or assistance from political parties and their members, or from other candidates, despite promoting themselves as independents. This included candidates who used political party members as volunteers on polling day (for example, Ipswich Councillor Kylie Stoneman; see page 51), and candidates who worked with other candidates to produce shared how-to-vote cards and other advertising materials (for example, the Moreton Bay councillors referred to in Chapter 6). This issue is discussed in detail in the following chapters given the adverse effects these types of practices can have on transparency. They can also undermine equity, however, by allowing candidates to enjoy the best of both worlds — candidates are not only able to capitalise on the fact that independence is highly valued by voters (see page 50), but they are also able to draw on practical campaign support and resources that are not available to candidates who are truly independent. This is particularly true for candidates who have links to political parties and may be able to access large pools of volunteers, for example. In this way, some candidates can develop a considerable advantage over others.

The CCC believes that these forms of uneven competition are sufficiently dealt with so as long as they are transparent to voters before polling day. The CCC's recommendations in Chapters 10 (Recommendation 3, page 55) and 11 (Recommendation 5, page 61) will help to ensure this.

10 Distortion of the concept of independence

Independence in Queensland local government is highly regarded by voters, candidates and councillors. Throughout Operation Belcarra, candidates and councillors highlighted that there was a strong perception that voters want their local council to be made up of independent community representatives who are not beholden to any particular interest group, especially not a political party. Candidates and councillors also spoke of the value they place on independence. Not only is it seen as an "electoral virtue"[185] that can greatly increase a candidate's chance of success, but candidates personally value having "no political master".[186] An emphasis on the importance of independence has been a persistent feature of local government in Queensland where, generally speaking, formal party politics do not play a role.[187]

Despite the importance of independence in local government, there is no legislative definition or universal understanding of what an independent candidate is.[188] As Professor Graeme Orr noted in his submission, the current law in Queensland (the LGE Act) appears to assume that independent candidates are "the unspoken norm" (p. 3), and the category of independent is not an explicit one. Candidates are therefore free to self-define independence and self-apply the independent label in promoting their election. This has led to the concept of independence in Queensland local government being distorted, as illustrated in the 2016 elections.

Claims of independence in the 2016 elections

In the 2016 elections examined by the CCC, a number of candidates promoted themselves as independents despite having direct and identifiable affiliations to a political party. As illustrated by the examples shown in Table 2, this included candidates who:

- were current members of a political party, or had previously been members of a political party
- received campaign donations from a political party or one of its branches
- received campaign donations from state or federal Members of Parliament (MPs)
- received assistance with their campaign from political party members
- had been endorsed and nominated by a political party at a previous election
- had previously worked as a political staffer in the office of an MP.

Other candidates more overtly mixed the independent label with political party branding during their campaign, for example, using the words "Independent Labor" on their how-to-vote cards.

185 Professor Graeme Orr, Submission, p. 1.

186 Evidence given by Allan Sutherland, p. 3.

187 The exception to this is the Brisbane City Council where, in 2016, almost all mayoral and councillor candidates (81 of 89) were endorsed and nominated by the LNP, the ALP or The Greens. One other mayoral candidate ran for the minor Consumer Rights & No-Tolls Party.

188 The ECQ's *Guide for candidates handbook: local government elections & by-elections* refers to an independent candidate as one who is not endorsed by a registered political party (ECQ 2017b, pp. 12–3).

Table 2. Examples of 2016 candidates who promoted themselves as independents and have political party affiliations.

Candidate	Party member	Donation from party	Donation from MP	Assistance from party members	Previous political party candidate	Prior employment in MP's office
Kylie Stoneman (Ipswich)[a]	ALP		$820 in kind from Shayne Neumann (Federal ALP MP) and another	Federal MP Shayne Neumann; volunteers who were ALP members		Worked for Shayne Neumann for 8 years
Kristyn Boulton (Gold Coast)[b]	*Former LNP member (2006–08)*	$30 000 from LNP (Fadden Forum)				Worked for Stuart Robert (Federal LNP MP) for 9 years
Kerry Silver (Ipswich)[b]	ALP		$356 in kind from Shayne Neumann (Federal ALP MP)	Federal MP Shayne Neumann; volunteers who were ALP members		
Tom Tate (Gold Coast)[b]	LNP (life member)				LNP Gold Coast mayoral candidate in 2008	

Notes: a Claim of independence made at CCC interview.

b Claim of independence made at public hearing.

Differing views about what it means to be independent

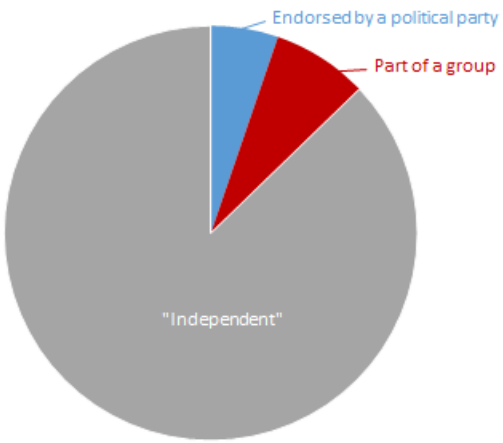
The apparent contradiction between claims of independence on the one hand and links to a political party on the other appeared to reflect the fact that, to many candidates, being independent simply means not being endorsed by a political party (and not being part of a registered group of candidates; see Chapter 11).[189] Ipswich Councillor Paul Tully spoke to this at the public hearing:

> A lot of people will call themselves independent, which is technically correct if they're not endorsed by a particular political party. (Evidence given by Paul Tully, p. 5)

This view is consistent with references to independent candidates in the ECQ's *Guide for candidates handbook* (ECQ 2017b). It is also consistent with Orr's observation that independents have historically been considered "the natural local government candidate".[190] Many candidates therefore appear to see the independent label not so much as one that is earned but as one that is worn by default unless forfeited by party endorsement.

In this sense, the vast majority of Queensland local government candidates could be considered independent (see Figure 1 below). However, concerns raised with the CCC during its investigation show that at least some people will expect that truly independent candidates do not have close affiliations with a political party. As the Queensland Greens noted in its submission, circumstances such as being a member of a political party or having previously worked as a political staffer for a party member might represent "to potentially quite a few people… a clear partisan choice" (p. 4). To these people, being independent means more than a lack of formal party endorsement.

Figure 1. 2016 local government elections — mayoral and councillor candidates who were endorsed and nominated by a registered political party, who were part of a group of candidates and who were "independent".



Note: In total, there were 95 candidates who were endorsed and nominated by a registered political party (5 of these were mayoral candidates); 119 candidates who were part of a group (14 mayoral candidates); and 1588 "independent" candidates (267 mayoral candidates).

Source: ECQ 2016 local government elections information, <http://results.ecq.qld.gov.au/elections/local/LG2016/groupIndex.html>.

189 People the CCC spoke to appeared to use the term "endorsed" to mean "nominated". In the CCC's view, however, endorsed could be interpreted more broadly than this — for example, a candidate receiving significant campaign funding from a political party could be considered a form of endorsement. If this is not endorsement, any donation by a political party to a local government candidate not nominated by the party should be disclosed according to the LGE Act's third party disclosure requirements.

190 Professor Graeme Orr, Submission, p. 3.

This broader interpretation of independence appeared to be recognised by some councillors who gave evidence at the public hearing. For example, Cr Tully stated that he does not describe himself as an independent candidate and indicated that, given that his membership of the ALP is so well known, promoting himself as an independent may raise questions among voters.[191] Likewise, Gold Coast Councillor Cameron Caldwell indicated that he avoided using the term independent when speaking with voters, instead preferring to say that he was a member of the LNP but not an endorsed candidate.[192] In both cases, the councillor's approach suggests an awareness that being affiliated with a political party (in this case, by virtue of party membership) could be perceived to be at odds with any claim of independence.

These views contrast with the actions of the 2016 candidates who publicly proclaimed their independence despite having clear links to a political party. The CCC sensed that, among these candidates, there was often a failure to recognise that the practices they engaged in may give rise to perceptions of a lack of independence among voters. Comments from several candidates suggested that, in adopting the independent label, they do not necessarily turn their minds to how their claims might be viewed by voters. This was illustrated in comments from Gold Coast Councillor Kristyn Boulton when questioned about this issue at the public hearing:

Counsel Assisting	In your mind, did you feel that your independence was in any sense being compromised by having such large donations from Liberal members?
Cr Boulton	No.
Counsel Assisting	Members of parliament?
Cr Boulton	No.
Counsel Assisting	It doesn't affect your independence at all?
Cr Boulton	I didn't feel it did, no. These are people—
Counsel Assisting	Do you feel any sense of that now, looking back?
Cr Boulton	No, because these are people I knew. (Evidence given by Kristyn Boulton, pp. 32–3)[193]

Cr Boulton was later asked by the presiding officer whether she could understand there may be a perception in the community that her independence was compromised by the large donations she received from the LNP. She responded:

> I've had a lot of time to think about this and reflect, and I certainly will be paying more attention in future, definitely, to perceived public perceptions. And, yes, looking back in hindsight, I've had a long time to think about it, a lot of water under the bridge, a lot of press reports and indeed, yes, I concur that I can see that now. (Evidence given by Kristyn Boulton, p. 33)

Alternatively, several councillors and candidates indicated that they genuinely believed in their independence despite their affiliations, emphasising that they make decisions based on the best interests of the community. Gold Coast Mayor Tom Tate gave the following evidence at the public hearing:

> …even though I nail my colours to the mast and I will not stray away from that — my beliefs is a conservative person. You can't just change your belief system there. But "independent" is

191 Evidence given by Paul Tully, p. 5.

192 Evidence given by Cameron Caldwell, p. 4.

193 See also evidence given by Kylie Stoneman (p. 7), for example.

> independent from any influence from party politics, that is, you put the Gold Coast first, and that's what I put to the Gold Coast people. (Evidence given by Thomas Tate, p. 5)

Despite these types of claims, there may nevertheless be concerns that councillors are misleading the public to gain a political advantage over their opponents, as discussed in Chapter 9. In particular, councillors leave themselves open to suspicions that they know what independence means to voters, but adopt a narrow definition so that they can capitalise on the independent label while still enjoying the benefits of their party connections.

The above discussion highlights that, for the most part, a candidate's independence is usually considered in terms of their independence from the influence of political parties. For some people, however, it is also relevant to consider whether a candidate might be beholden to any other interest group. Consistent with this, some concerns identified in Operation Belcarra about candidates' independence arose from their links to trade unions. For example, Moreton Bay Mayor Allan Sutherland raised concerns about some candidates who received donations from unions including the CFMEU.[194] Cr Sutherland disputed their claims of independence, especially given his view that "is the CFMEU not an arm of the Labor Party and one of its major funders?"[195] Perceptions of compromised independence can also arise when a candidate is funded by donors with certain business interests, especially in property development, or when they are perceived to be aligned with other candidates as a result of cooperative campaigning or the use of common funding sources (see discussion in the following chapter). This was clearly highlighted in previous inquiries into both the 2004 Gold Coast City Council election and the 2004 Tweed Heads Shire Council election (see Crime and Misconduct Commission 2006; Tweed Shire Council Public Inquiry 2005a, 2005b).

Limited obligations to disclose affiliations and interests

Distortion of the concept of independence as demonstrated in the 2016 elections is exacerbated by the fact that there are limited obligations on candidates to disclose their affiliations and interests as part of the election process. Although sitting councillors are required to disclose some relevant information on their registers of interests — including details about their membership of political parties and trade unions, and information about donations they have received[196] — there are no such requirements for new candidates. This means there is generally very little information formally available to voters about candidates' affiliations and interests.

The fact that candidates' political and other affiliations can remain unknown before polling day prevents voters from drawing their own conclusions about a candidate's claims of independence and casting an informed vote. If voters feel misled by some candidates' claims of independence, their perceptions of the integrity and transparency of local government elections may be adversely affected. This can in turn undermine their confidence in the integrity of the resulting council.

The CCC considered whether these problems could be usefully addressed by defining independence in the LGE Act and regulating candidates' use of the term "independent candidate" in election campaigns. However, the CCC considered that, given different people have different views about what independence means, it would be very difficult to satisfactorily define it. Further, any definition may only serve to provide loopholes for candidates to exploit — for example, if independence was defined with reference to a candidate not being a member of a political party, a candidate may simply resign from the party prior to their campaign and re-join after being elected. For these reasons, the CCC decided against

194 Evidence given by Allan Sutherland, p. 4.

195 CCC interview, 2 March 2017.

196 The Local Government Regulation 2012 requires the Chief Executive Officer (CEO) of a council to maintain a register of interests for all councillors (and others; s. 290). Each councillor's register of interests must contain a variety of financial and non-financial particulars as detailed in Schedule 5 of the Regulation (s. 291).

defining and regulating independence, preferring mechanisms to promote transparency and accountability instead.

The CCC's view is that the concept of independence would be less susceptible to distortion if detailed information about all candidates' interests and affiliations was disclosed to voters before polling day. This could be achieved in several ways, but the CCC's preferred approach is to require all candidates to submit a declaration of interests as part of their nomination (Recommendation 3), and for this to be made publicly available to voters (Recommendation 4).[197] This would essentially replicate the register of interests obligations currently imposed on councillors under the LG Act and Local Government Regulation 2012 (and equivalent legislation for the Brisbane City Council),[198] although some additional details would also be required to be disclosed to ensure that voters had access to more complete information about candidates' links to political parties. Further obligations would need to be imposed on candidates to ensure that any changes or additions to their interests were made known to voters before polling day. To encourage compliance, any failure to disclose an interest should be an offence that attracts a significant penalty, including possible removal from office for candidates who are subsequently elected to council.

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.

197 Several witnesses who gave evidence at the public hearing were supportive of this type of proposal, including Moreton Bay Mayor Allan Sutherland (written submission received 27 June 2017), the then Queensland Integrity Commissioner (Evidence given by Richard Bingham, p. 6), the Queensland Greens (Evidence given by Andrew Bartlett and Anthony Pink, p. 6) and the LGAQ (Evidence given by Greg Hallam, p. 10). The LGAQ has previously lobbied the Queensland Government for this type of change, as detailed in its written submission.

198 Section 171B, LG Act; Chapter 8, Part 5, Local Government Regulation 2012.

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.

11 Ambiguity about the nature of relationships between candidates

Candidates contesting local government elections in Queensland have the option of campaigning as an individual, as a nominated candidate of a registered political party, or as part of a group of candidates. As previously noted, under the LGE Act, a group of candidates means a group of two or more candidates for a council formed to promote the election of the candidates, or to share in the benefits of fundraising to promote the election of the candidates. A group of candidates does not, however, include a political party or associated entity.[199]

To help ensure that political and financial relationships between candidates are transparent, groups of candidates have several specific obligations under the LGE Act. Each group must provide a record of the group's name and members to the returning officer before the cutoff for nominations, and appoint an agent for the group who is responsible for the group's compliance.[200] It is an offence for a candidate who is a member of a group to advertise or fundraise for the election unless these requirements have been complied with, with a maximum penalty of 100 penalty units (currently a $12 615 fine).[201] In addition, any how-to-vote card authorised for a group or one of its members must state the group's name.[202] Groups of candidates are also required to operate a dedicated account for all money received and all expenses paid by the group for its election campaign,[203] and to disclose donations received by the group or any of its members.[204, 205]

These requirements are consistent with the overall objective of the LGE Act to maintain integrity and transparency in local government elections. As discussed in the first part of this report, however, a number of candidates in the 2016 elections engaged in practices that either breached the group provisions of the LGE Act, or led to strong perceptions of such breaches that can in turn have adverse effects on public confidence. As discussed below, these practices particularly included candidates who received campaign funding from common sources, engaged in cooperative campaigning activities or had common links with other candidates. At best, these circumstances make it difficult for voters to understand the true nature of relationships between candidates, and at worst, they may reflect deliberate attempts to deceive voters.

Group-like practices in the 2016 elections

In the 2016 elections examined in Operation Belcarra, a number of candidates engaged in conduct that could be considered as falling within the LGE Act definition of a group, despite not formally registering as part of a group of candidates. As highlighted in Part 2 of the report, this included candidates who:

- received campaign donations from a common source
- used joint how-to-vote cards
- advertised alongside each other (on billboards, for example)
- provided other candidates with letters of endorsement

199 Schedule, LGE Act.

200 Sections 41 and 42, LGE Act.

201 Section 183, LGE Act.

202 Section 178(3)(b), LGE Act.

203 Section 127, LGE Act.

204 Section 118, LGE Act.

205 These requirements are consistent with those for individual candidates, as discussed on pages 9 and 10. Like individual candidates, groups of candidates are also prohibited from receiving anonymous donations over $200 (s. 119 LGE Act).

- shared campaign resources or used the same service providers or the same volunteers
- were affiliated with the same political party or had other close personal or professional relationships.

Some of the above circumstances are almost inevitable and, especially in isolation, they do not necessarily give rise to a group of candidates as defined in the LGE Act. For example, it is unavoidable that some candidates will have common links and share the same political affiliations, candidates largely have limited control over whether their volunteers also choose to handout how-to-vote cards in support of other candidates, and using the same company to help run a campaign is not unreasonable where there are limited options available. However, considering that common funding, cooperative campaigning and common links will also be expected to be features of registered groups of candidates, it is unsurprising that concerns about candidates failing to declare themselves as a group would arise in the above circumstances.

Candidates who were alleged to have been part of an undeclared group during the 2016 election routinely failed to recognise how the practices they engaged in could lead others to believe they were campaigning as a group. This was particularly true of candidates who had cooperated with other candidates in relation to their advertising, with those candidates providing two key reasons for engaging in these types of practices. First, many candidates argued that there were simple logistical considerations behind their actions, especially in terms of savings costs and streamlining processes at joint polling booths. Ipswich Councillor Kerry Silver spoke to this latter point at the public hearing:

Counsel Assisting	What's the utility, then, could you explain, of having this joint how-to-vote card [with Cr Paul Tully]?
Cr Silver	For efficiency.
Counsel Assisting	In what sense?
Cr Silver	In the sense that you're handing out one card. There's a number of people coming from different divisions not aware of perhaps where they're going to be, so you're just handing them, you know, there's a [Division] 2 and a [Division] 3 [how-to-vote card].
Counsel Assisting	Did you consider, when you were arranging with Councillor Tully to have such a card, that an arrangement of that kind involves some cross-promotion of your interests and his interests also?
Cr Silver	No. I thought of it as an efficient — it was something that had previously been utilised to help the process of getting people into the booth to do their voting. (Evidence given by Kerry Silver, p. 7)

Of course, the same outcome would have been achieved had Cr Silver had a joint how-to-vote card with any of the other Division 2 candidates. The fact that candidates specifically chose to share how-to-vote cards with certain other candidates arguably contributes to the perception that groups had been formed (especially where a single candidate authorised one card, as in Ipswich). The same holds true for Moreton Bay Mayor Allan Sutherland and the Moreton Bay councillors who chose, among other things, to share how-to-vote cards and advertise on billboards together.

The other key argument made by some candidates who engaged in these types of cooperative or affiliated campaigning was that their actions, rather than making them a group, merely showed their support for other candidates and indicated to voters that they were prepared to work together as councillors. Cr Sutherland emphasised this point during his interviews with the CCC and at the public hearing when explaining his reasons for having joint how-to-vote cards and billboards with certain councillors and for writing them letters of endorsement:

Counsel Assisting	Billboards are a bit like the how-to-vote cards, aren't they? They involve a representation that you support each other for the purpose of election?
Cr Sutherland	…I would suggest it could be taken as support, yes, but it certainly — if you're on the same billboard together, it's support. But it's not — I wouldn't suggest it's a group as such. (Evidence given by Allan Sutherland, p. 14)

Similar views were also put forward by Ipswich candidates who had joint how to-vote-cards with former Mayor Paul Pisasale, including Cr Kerry Silver:

Counsel Assisting	So what was the purpose of it [having a joint how-to-vote card with Pisasale]?
Cr Silver	I wanted to support — he was my preferred person as the Mayor.
Counsel Assisting	You wanted to make that known to people, who you were supporting?
Cr Silver	That I thought he was the best person as the Mayor. (Evidence given by Kerry Silver, p. 10)[206]

Mr Pisasale himself stated:

> I've told all candidates that I was very happy to support all candidates, and if they want to support me as Mayor, I had a philosophy that the people of Ipswich need to know not only who they were voting for as a councillor, but who they were supporting as the Mayor of the city as well. (Evidence given by Paul Pisasale, p. 7)

Again, the conscious choice of candidates to publicly show their support for some candidates over others can undoubtedly strengthen perceptions that they are part of an undeclared group.

On this point, some people the CCC spoke to suggested that the group provisions in the LGE Act were never intended to capture these kinds of practices. One particular argument made by Moreton Bay Councillor Michael Charlton was that if the intent of the provisions was to ensure transparency about who was supporting who, the very public nature of the activities he and other Moreton Bay councillors had engaged in in 2016 meant that this intent had not been undermined:

Counsel Assisting	Having had an arrangement with him [Mayor Allan Sutherland] for the use of a joint how-to-vote card, did you pause at any time to consider whether that might give rise to at least a perception that you and he were a group of candidates?
Cr Charlton	No. No, I did not, and in fact my understanding of both the intent and the definition of a group of candidates — I believed we didn't fall into that category. And if the intent of the disclosure of a group is so that the electors can see who is supporting who, I would say that that how-to-vote card, by your own statement, clearly shows that I was supporting the Mayor as the mayoral candidate, but not as a group. (Evidence given by Michael Charlton, p. 10)

The CCC agrees with these arguments to a point. Certainly, joint how-to-vote cards and advertising openly show some kind of affiliation between candidates. The CCC's view, however, is that voters are entitled to have as clear and unambiguous understanding as possible of the financial and political relationships between candidates.

206 See also evidence given by Paul Tully (p. 12) and evidence given by Kylie Stoneman (p. 9).

In the CCC's view, candidates and councillors' failure to recognise how these practices could give rise to perceptions that they were campaigning as a group may, at least in part, reflect their poor understanding of what a group is. Some believed that a group required candidates to have common policies and shared values, but this is not reflected in the LGE Act definition:

> Well, we had no group platform, as such. There were no policies. There were no common policies. In fact, some of the policies argue against each other, and a couple of the things I platformed on my colleagues didn't agree with. That was one. There was no election platform, as such. There were no common policies. There was no lead-out… I didn't go to anybody else's campaign meetings, and from what I know, they didn't interface with each other's campaign meetings. In every way, in fundraising, in the development of policy platforms, there was nothing that we had that represented a group, nor did we want to be a group. No-one wanted to be beholden to each other. (Evidence given by Allan Sutherland, p. 43)

> They [candidates in a group] have common values and common policies and run as a team. (Evidence given by Paul Pisasale, p. 9)

> To me, having an arrangement like a team or a group of candidates is more in relation to policy or joint fundraising. (Evidence given by Paul Tully, p. 10)

Imprecision in the legislative definition of a group

A number of people the CCC spoke to during Operation Belcarra expressed uncertainty about the meaning of a group of candidates, stating that they found the legislative definition vague, unclear and ambiguous. LGAQ Chief Executive Officer (CEO) Greg Hallam spoke to the difficulties candidates have with this in his evidence at the public hearing:

Counsel Assisting	[The current definition of a group of candidates] is very broad, do you agree?
Mr Hallam	It is, Mr Rice.
Counsel Assisting	Do you think the breadth of it is appreciated by councillors and by candidates?
Mr Hallam	No, I don't. I think we all struggle with the complexities of the electoral law… (Evidence given by Greg Hallam, p. 14)

Likewise, some of the academic experts consulted by the CCC commented on the difficulty of regulating groups of candidates. Professor Graeme Orr, for example, noted that "the notion of a 'group' is inherently fuzzy", which inevitably leads to "laws of imperfect enforceability" (submission, pp. 2 and 3). Professor Anthony Gray argued more specifically that Queensland's current legislative definition makes regulation difficult because it defines groups in terms of the purposes for which they were formed rather than in terms of what they do:

Professor Gray	…I don't really like the idea of defining an organisation in terms of the purposes for which it was formed, because different people may have different views of the purpose or purposes for which it was formed. If someone wants to avoid being seen to be a group of candidates, they can always say that they had a purpose different from what the two purposes referred to are in the current definition. As I say, this is a very difficult area to regulate, as I indicated earlier, but I don't think the definition should hang on that the association was formed for a particular purpose.

Counsel Assisting	Where the definition focuses on the purpose for which a group was formed, it rather requires that, by some means, there be evidence of that purpose. Is that the difficulty that you're alluding to?
Professor Gray	That's part of the difficulty — proving what the purpose was. Different people will have different views… it may be in their interest to fall outside that definition. (Evidence given by Anthony Gray, p. 10)

The CCC agrees that there is considerable imprecision in the current definition of a group in the LGE Act. This not only makes enforcement difficult, but leaves room for candidates to breach the group provisions, intentionally or unwittingly.

To give candidates and others greater clarity and certainty about what constitutes a group of candidates, the CCC recommends that the LGE Act definition of a group of candidates be amended so that groups are defined by the specific behaviours that the group and its members engage in (Recommendation 5, part a). Compared with the current requirements, where groups of candidates must be formed and recorded at the time of candidate nominations, defining groups of candidates by their behaviour would make it possible for groups to emerge at any point in the lead up to polling day, including after the close of nominations. To account for this, and to promote transparency in such situations, consequential amendments to the LGE Act would be required (Recommendation 5, part b).

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.

12 Obscuring of relationships between donors and candidates

As noted previously, the primary purpose of the LGE Act is to ensure transparency in local government elections.[207] Given the involvement of private funding, a key aspect of this is transparency in the financial relationships between donors and candidates. To this end, the LGE Act establishes a donation disclosure scheme. Briefly, candidates at the 2016 elections (including groups of candidates) and donors to candidates or political parties were required to submit post-election disclosure returns to the ECQ providing details of all donations of $200 or more. Third parties were also required to submit post-election returns if they received donations of $1000 or more from a single donor and used that money for political purposes (which includes making donations).[208] To help ensure candidates kept discrete and detailed information about all money they received and spent on their election, candidates were also required to operate a dedicated account for their campaign.[209]

Despite these legislative provisions, three key factors worked against transparency in the 2016 elections, resulting in the financial relationships between donors and candidates not always being readily apparent. These three factors — donations to candidates via third party entities, non-compliance with funding and disclosure obligations and the lack of a best practice donation disclosure scheme — are discussed in detail below.

Donations to candidates via third party entities

Some candidates received money from donors via third party entities that were specifically established to collect campaign donations. One example of this was Moreton Futures Trust (MFT), which received $137 000 for the 2016 election from donors who were mainly involved in property and construction (see Table 3 below). MFT in turn supported the election campaign of Moreton Bay Mayor Allan Sutherland, who was the primary beneficiary of MFT funds (receiving over $118 000), as well as the campaigns of several other sitting Moreton Bay councillors.[210] Similarly, donations to Logan Mayor Luke Smith were made via Logan Futures, a registered company Cr Smith had set up to manage his campaign funds. Donors to Logan Futures, including businesses in the property and construction sector, together contributed over $377 000 to Cr Smith's campaign.

207 Section 3, LGE Act.

208 A third party is any entity other than a political party, an associated entity, a candidate or a member of the election campaign committee for a candidate or a group of candidates (s. 123, LGE Act). Typically, third parties make donations to candidates or political parties or conduct some type of campaigning activity. A third party can be an individual.

209 Section 126, LGE Act. See also the Explanatory Notes to the Local Government Electoral Bill 2011, p. 42.

210 Crs Peter Flannery (Division 2, $3677), Julie Greer (Division 4, $2488) and James Houghton (Division 5, $2873) also declared donations from MFT.

Table 3. Donors to Moreton Futures Trust.

Donor	Donation value	Description of donor's business
Hardev Property ME Harrison Investments PDM Property Developments[a]	$22 000 $11 000 $11 000	Property development in south-east Queensland (residential, commercial and mixed use schemes)
Impact Homes	$3000	Supplier of residential land and house packages
Newcombe Holdings	$20 000	Operates businesses in the automotive industry, including Village Motors, Brisbane Isuzu and Peninsula Auto Zone
Open Corp Project Management	$20 000	Property investment and development projects
Philip Usher Constructions	$10 000	Townhouse development, high-rise construction and residential and industrial building in south-east Queensland
Rio Vista Securities	$20 000	Owner of child-care centres; some property development[b]
Sunvista Homes	$20 000	Home building

Notes: a The same address was provided for Hardev Property (listed as "Properties" on the MFT return), ME Harrison Investments and PDM Property Developments. The Hardev Property website states that the company previously traded as "M. E. Harrison Investments Pty Ltd".

b Evidence given by Robert Comiskey, p. 7.

Source: Moreton Futures Trust disclosure return, <http://www.ecq.qld.gov.au/__data/assets/pdf_file/0003/62706/Moreton-Futures-Trust.pdf>; information about donors taken from business websites.

In interviews with the CCC and at the public hearing, those involved in MFT and Logan Futures gave a number of reasons for using third party entities to direct donations to candidates. In the case of Logan Futures, Cr Smith indicated that he was primarily concerned with ensuring that campaign funds were transparent and kept separate from his family's personal finances:

> There's a large amount of money that we believed would be coming in during the campaign. I did not want that money anywhere near me or my family home. I wanted it to be open and transparent through a Pty Ltd company… My understanding from the advice I got… was that the Pty Ltd company was the most stringent in corporate law and is also the most transparent as a company. (Evidence given by Timothy Luke Smith, p. 11)

In this context, Cr Smith also noted the value of having a dedicated person to oversee the accounts and do the book-keeping.

Receiving campaign donations via a third party can reduce the transparency of relationships between donors and candidates by making it more difficult to identify the true source of campaign funding. When a donation is made by an individual or business directly to a candidate, the trail of money is readily apparent from both parties' election disclosure returns — the candidate discloses the donation and the donor's details, and this can easily be crosschecked against the disclosure made by the donor.[211] The source of a candidate's campaign funding is therefore clear and easily identifiable (notwithstanding some limitations to current disclosure requirements, as discussed on page 72). This is not the case when donors contribute funds to a candidate's election campaign via a third party company or trust. Although examining third party disclosure returns can help to identify the original source of the entity's funds, specific information about which donors have funded a candidate's campaign is at best, harder to discern (given identifying the original donors requires more than one disclosure return to be consulted, as in the case of Logan Futures),[212] and at worst, is not able to be discerned at all (if, for example, the entity donates to more than one candidate, as in the case of MFT). Moreton Bay Councillor Peter Flannery reflected on this point at the public hearing:

211 Although as discussed on page 66, a considerable number of donors at the 2016 elections did not submit third party returns as required by the LGE Act, undermining transparency.

212 Logan Futures's amended return identifies that it is to be read with Cr Smith's return and Cr Smith's return identifies that he received a donation from Logan Futures.

> It's been given to a trust where who knows what's been given until after return, but who knows what portions of that particular business funding has gone to that candidate?" (Evidence given by Peter Flannery, p. 14)

Identifying the relationships between donors and candidates is made even more difficult when the third party's record-keeping is poor and prevents it from properly disclosing the donations it received, as with Logan Futures. This and other examples of third party non-compliance is discussed in detail on page 66.

In the case of MFT, it appeared that some of the candidates who benefitted from its funds saw the reduced transparency associated with trusts as a way to help avoid concerns about conflicts of interests. Mayor Allan Sutherland's position was that, where money was given to and controlled by MFT, he did not know who the original donors were, which protected him from having any conflicts of interest with respect to matters brought before council by donors to MFT.[213] As he stated at the public hearing, "it's hard to have a conflict when you don't know who's there [as a donor to the trust]".[214] Similarly, Cr Peter Flannery stated that:

> …the advice we've been given is that it's set up as a third party at arm's distance from the councillor. So the Moreton Futures Trust are not making an application, so there is no need to declare an interest… (Evidence given by Peter Flannery, p. 14)[215]

These arguments are similar to those made by councillors investigated by the then Crime and Misconduct Commission (CMC) in relation to the 2004 Gold Coast City Council election.[216]

As the CMC noted then, the argument that receiving donations via a third party entity helps to avoid conflicts of interest is seriously flawed. The obligation on third parties to disclose donations they receive mean that the true donors' identities cannot lawfully be hidden forever — eventually candidates will know, or will at least be in a position to find out, who has (or might have) contributed to their campaign. Significantly, so will members of the public. Even where a councillor is content to remain blind to the entities that ultimately helped support their campaign, as Cr Sutherland claimed to be, this does nothing to prevent perceived conflicts of interest. This was a key point made during the inquiry into the 2004 Tweed Heads Shire Council election, which noted that councillors' "acceptance of funds that came from developers would hopelessly compromise their position in the eyes of many in the community", even though the funds came via a third party (Tweed Shire Council Public Inquiry 2005a, p. 270). Certainly, concerns raised with the CCC suggest that the use of funding models involving third party entities such as trusts may often be perceived as an act of smoke and mirrors, only serving to heighten public mistrust and concerns about the nature of relationships between donors and councillors. How these issues can adversely affect the integrity of local government is explored further in Chapter 13.

Given the adverse consequences the use of third party entities can have on the transparency of donations and the perceived integrity of councillors, the CCC considered whether it would be desirable to prohibit candidates from receiving donations via third party entities, or at least via particularly problematic entities like trusts. The CCC ultimately decided that it could be difficult to implement such a ban without unreasonably interfering with the rights of certain entities to make political donations.

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213 Cr Sutherland stated at the public hearing that the first time he had looked at MFT's disclosure return was during the course of the CCC's investigation, after being interviewed (Evidence given by Allan Sutherland, p. 37).

214 Evidence given by Allan Sutherland, p. 37.

215 The advice referred to by Cr Flannery was advice reportedly given at the 2015 LGAQ conference by Local Government Ethics and Integrity Advisor Joan Sheldon. Several other councillors, including Moreton Bay Mayor Allan Sutherland and Ipswich Councillor Paul Tully, also referred to this advice, which they interpreted as recommending that they use a trust or other third party entity to receive campaign donations. Joan Sheldon's comments at the LGAQ conference, as per the conference proceedings, referred not to candidates setting up trusts or using separate third parties to receive campaign funds, but rather candidates using a campaign committee to handle their campaign funds. Ms Sheldon indicated that doing this separates candidates from the money given to them (LGAQ 2015).

216 In that investigation, it was argued that a trust established by two sitting councillors to benefit certain candidates helped ensure that the candidates "were not in a position to know the true identity of donors, and this would protect them from being influenced by having received funds from these donors" (CMC 2006, p. 151).

However, in lieu of a ban, the CCC believes more needs to be done to increase the transparency of donations made via third parties. Of interest to the CCC in this regard was a legislative requirement introduced after the CMC's inquiry into the 2004 Gold Coast City Council election. To address a specific problem identified in that inquiry, the legislation was changed to require that, if a donation "is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift", the name and residential or business address of the person must be disclosed. This continues to be a requirement under the LGE Act.[217] The CCC considers that a similar requirement should apply to any donation that is made via a third party (Recommendation 6). As an example, in the 2016 elections this would have required Cr Luke Smith, as the recipient of funds from Logan Futures, to disclose the details of the "original" donors as though he had received the donations directly. This would have made the connections between Cr Smith and his donors immediately obvious from his candidate disclosure return (and also his register of interests). Such a requirement would not only increase the transparency of donations for the benefit of voters, but would also ensure that candidates inquire about, and have full knowledge of, the true sources of their campaign funds. The CCC believes this would help to prevent candidates' from taking questionable positions about conflicts of interest in relation to their donors, as highlighted above. A deeming provision is also recommended to facilitate this (Recommendation 7; see also Recommendation 21 in Chapter 13).

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.

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.

Non-compliance with funding and disclosure obligations

Non-compliance with donation disclosure obligations under the LGE Act

As noted earlier, the LGE Act requires donations to be disclosed to the ECQ. In the 2016 elections, however, a considerable number of candidates and third parties failed to comply with their disclosure obligations. The CCC identified two key forms of non-compliance.

The first and most obvious form of non-compliance was failing to submit a disclosure return at all. With respect to candidates, a significant number across the state did not submit a return to the ECQ after the elections. Using information available on the ECQ website, the CCC estimates that 17 per cent of 2016 candidates had not submitted a disclosure return as of 7 July 2017.[218, 219] The percentage of candidates who had failed to comply with their obligations within the required time frame (within 15 weeks after

217 Section 109, LGE Act. A similar requirement is contained in section 120(6) regarding loans received.

218 The CCC arrived at this figure by doing a manual count of disclosure returns published on the ECQ website. Where a return was submitted for a group of candidates, each candidate in the group was regarded as having submitted a return.

219 The CCC requested data from the ECQ on the number of candidates across Queensland who had not submitted a disclosure return. The ECQ initially indicated that 16% of candidates were non-compliant, but later noted that this estimate was inaccurate and that a more accurate estimate for the whole state could not be readily provided.

polling day, 4 July 2016) is almost certainly even greater than this.[220] Non-compliance was relatively low in the south-east Queensland councils examined in Operation Belcarra (around 5%), but much higher in smaller councils in regional areas.[221]

With respect to third parties, this type of non-compliance appeared to be even more widespread. Although the ECQ advised that it could not easily estimate third party non-compliance,[222] the CCC's investigations identified a large number of third parties who had made donations but had not submitted a disclosure return. This was particularly a problem among those individuals and businesses who had contributed to a candidate's campaign via a third party entity. For example, as confirmed by the ECQ, only one of the dozens of donors who gave more than $200 to Luke Smith via Logan Futures submitted a disclosure return as required by the LGE Act (and notably, the amounts disclosed in this return differed from those disclosed on Logan Futures's incomplete return).[223, 224] Similarly, the ECQ advised that disclosure returns were only submitted by two of the nine donors to MFT.[225] This lack of compliance compounds the transparency problems associated with these types of funding models, as discussed above.

The other key form of non-compliance identified by the CCC was candidates and third parties submitting returns that did not contain complete and accurate information as required under the LGE Act. This specifically involved:

- **Submitting a disclosure return that contained omissions.** This included returns where one or more donations was not disclosed, as in the case of unsuccessful Gold Coast mayoral candidate Penny Toland, who failed to declare gifts in-kind made by the CFMEU (see discussion in Chapter 4). It also included returns where relevant details about donors were missing. One example of this was the incomplete return submitted by Logan Futures, where addresses were not provided for 10 donors.[226] Arguably, these donations could constitute donations in breach of section 119 of the LGE Act (when $200 or more). This appeared to be a particular problem for money donated through fundraising events.
- **Submitting a disclosure return that contained inaccuracies.** This typically involved inaccuracies in the names of donors. For example, the disclosure returns for Gold Coast Councillor Kristyn Boulton and unsuccessful candidate Felicity Stevenson both named $30 000 in donations from the LNP as being from the Fadden Forum.[227] Similarly, the disclosure return for Logan Futures incorrectly identified donations totalling over $63 000 as being from Australian Yues International (see Table 1 on page 35).
- **Submitting a disclosure return that was otherwise non-compliant with the requirements of the LGE Act.** A number of the Act's specific requirements regarding "relevant details" to be disclosed about donations were frequently not complied with. For instance, there were numerous examples of candidates and third parties providing postal addresses for donors rather than residential or

220 For example, unsuccessful Moreton Bay candidate Kimberly James only submitted her return in May 2017 (see Chapter 6), while the ECQ advised that other candidates submitted their returns only after follow-up from the ECQ in July 2016.

221 The ECQ provided data on non-compliance by candidates in the four councils examined in Operation Belcarra. This indicated a non-compliance rate of about 6%, although the CCC is not confident that this data is entirely reliable (e.g. one Gold Coast candidate appeared to have been omitted from the data).

222 With paper-based disclosure returns, identifying third party non-compliance requires manual crosschecking of third party returns against candidate returns. Given the large number of returns produced for local government elections, the ECQ audits a sample of candidate returns only. This audit had not been conducted at the time of the CCC's request given the CCC's investigation.

223 East Coast Car Rentals.

224 The disclosure return of another donor, Halcyon Management Unit Trust, listed a $500 donation to Luke Smith. This may have been made via Logan Futures, but, if it was, Logan Futures would not have been required to disclose it as it was under the applicable disclosure threshold ($1000).

225 Rio Vista Securities and Sunvista Homes.

226 Based on candidate and group returns data provided to the CCC by the ECQ on 16 February 2017 and available on the ECQ website. The value of these donations ranged from $1000 to $17 983.

227 Felicity Stevenson submitted an amended disclosure return to the ECQ in February 2017, listing the LNP as the donor.

business addresses as required. Similarly, disclosure returns examined by the CCC failed to include the names of trustees for donations received from trusts, as illustrated for example in the returns of Moreton Bay Mayor Allan Sutherland and Councillor Peter Flannery with respect to donations they received from MFT.

Each of these types of non-compliance further reduces the transparency of relationships between donors and candidates, particularly when they occur together.

The CCC identified three main reasons for candidates and third parties failing to comply with their disclosure obligations based on comments they made in interviews and at the public hearing:

- People were unaware of or unclear about their disclosure obligations.
- ECQ disclosure processes impeded rather than facilitated compliance.
- Non-compliance was facilitated by the ECQ's limited activity to monitor and enforce compliance with the LGE Act.

Each of these is discussed further below.

People unaware of or unclear about their disclosure obligations

Many people seemed to be unaware of or unclear about their disclosure obligations under the LGE Act. This especially seemed to explain the significant number of donors who failed to submit disclosure returns — for example, three donors to Logan Futures all stated at the public hearing that they were unaware they needed to submit a return to the ECQ.[228]

The CCC notes that, in state elections, candidates are required to notify donors of their disclosure obligations as soon as practicable after receiving a donation, with the failure to do so attracting a maximum penalty of 20 penalty units (a $2523 fine).[229] The CCC is of the view that introducing this same requirement for donation recipients in local government elections (Recommendation 8) would markedly increase disclosure by donors. This was in fact illustrated in the 2016 elections, with the CCC aware of two candidates — Gold Coast Division 7 candidate Susie Douglas and former Ipswich Mayor Paul Pisasale — who voluntarily provided assistance to donors to help them fulfil their disclosure obligations, leading to very high rates of compliance among these donors.[230, 231] To help minimise the administrative burden on donation recipients and to ensure the advice they provide to donors is accurate, the CCC also recommends that the ECQ develop a pro-forma letter or information sheet explaining third party disclosure obligations and how these can be fulfilled (Recommendation 9).

Recommendation 8

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

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.

To avoid donors being caused any embarrassment by their donations being disclosed by the candidate (or other recipient), the CCC further recommends that all donation recipients prospectively notify any proposed donor of the recipient's own disclosure obligations (Recommendation 10).

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228 Evidence given by Hylie Sally Wai Chung, p. 17; evidence given by Kassen Issa, pp. 10–1; evidence given by Terry Yue, pp. 16–7.

229 Section 264(9), *Electoral Act 1992*.

230 Logan Futures donor Sally Chung spoke about Ms Douglas's approach at the public hearing, stating that, "Susie came to see me, [and said] 'There's some information I need you to fill in and then sign it'" (Evidence given by Hylie Sally Wai Chung, p. 17).

231 Based on disclosure returns available on the ECQ website, the CCC found that each of Ms Douglas's three listed donors submitted their own returns as required, as did about 90% of Mr Pisasale's listed donors.

Recommendation 10

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.

A lack of awareness of disclosure obligations also seemed to play a role in candidates' non-compliance. This was particularly so with respect to candidates who failed to properly disclose all the relevant details of a donation, as illustrated by the below comments from Ipswich Councillor Kerry Silver and Moreton Bay Mayor Allan Sutherland.

Counsel Assisting	The Act requires the business or residential address of a donor.
Cr Silver	Okay.
Counsel Assisting	You didn't know that until I just mentioned it?
Cr Silver	No. Sorry, I took a PO box to be a business address, like most businesses have a PO box rather than a physical street address. (Evidence given by Kerry Silver, p. 15)[232]
Counsel Assisting	You really ought to have included the names of the trustees on your disclosure, Mr Sutherland, shouldn't you?
Cr Sutherland	I found out that this week. (Evidence given by Allan Sutherland, p. 19)

For a number of candidates, it appeared that some of their own failings had contributed to their lack of awareness. For example, some candidates indicated that they:

- failed to properly acquaint themselves with information provided to them by the ECQ, including the Local Government Disclosure Handbook
- did not consult the LGE Act, often assuming that the information provided by the ECQ was sufficient.[233, 234]

However, candidates also identified problems with the information and advice they received from the ECQ about their disclosure obligations. This included complaints that the ECQ did not provide enough information to help them comply with their obligations, and that the information that was provided by the ECQ was unclear, confusing and difficult to understand. This is consistent with Professor Graeme's Orr observation that, among electoral authorities, there is a tendency "for information directed at political actors to be very formal", arising in part "out of a concern to merely re-state legal obligations" (submission, p. 4). The CCC believes this is a fair assessment of the material provided to candidates by the ECQ. The Local Government Disclosure Handbook, for example, largely repeats the provisions of the LGE Act, with little additional plain English guidance, instructions or clarification. The CCC therefore recommends that the ECQ revise the written materials it gives to candidates, third parties and others to ensure that they clearly communicate relevant legislative obligations (Recommendation 11).

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232 None of the information in relation to Cr Silver's disclosure obligations referred to in the report suggests that she knowingly submitted a return that was false or misleading in a material particular.

233 See, for example, evidence given by Kerry Silver, p. 13.

234 At the public hearing, the Electoral Commissioner referred to an instruction in the Guide for Candidates Handbook that stated the handbook "is not intended to be a complete guide, nor is it meant to be a substitute for reading the law. Please read the guide in conjunction with [the relevant legislation]" (Evidence given by Walter van der Merwe, p. 25). However, the instruction in the Local Government Disclosure Handbook (ECQ 2016, p. 1) was less explicit about the document's limitations, simply stating that "Candidates and Third Parties/Donors have an obligation to familiarise themselves with all relevant legislative provisions. Failure to do so cannot be used as an excuse for failing to comply with any legislative requirement".

Recommendation 11

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.

Another source of information about candidates' obligations is the Department of Infrastructure, Local Government and Planning (DILGP). The DILGP website contains detailed information about local government elections and the roles and responsibilities of mayors and councillors.[235] The DILGP also delivers information sessions to prospective candidates and other interested parties in the lead up to local government elections.[236] These sessions, developed in consultation with the ECQ, cover topics including running an election campaign, candidates' funding and disclosure obligations, and the principles of local government. Attendees are also given the opportunity to ask questions, and are provided with copies of relevant ECQ handbooks if they have not yet received them.

The CCC believes there is scope for these sessions to provide more detailed information on certain topics (e.g. disclosure obligations) to help address some of the concerns raised here. This would require greater involvement from the ECQ to ensure that the sessions better inform prospective candidates about their obligations in conducting an election campaign. The CCC is therefore supportive of the recommendation from the recent independent inquiry into the conduct of the 2016 local government elections, referendum and Toowoomba South by-election that the ECQ sends a representative to the DILGP's sessions to explain guidelines on various election matters (Soorley et al. 2017, Recommendation 16).

The CCC considers that the DILGP sessions can play an important role in helping to ensure that prospective candidates understand their obligations during the election campaign, and also upon election as a councillor, relevant to some of the issues discussed in Chapter 13. In light of this, the CCC recommends that attendance at a DILGP information session be made a mandatory requirement of nomination under the LGE Act (Recommendation 12). The CCC considers this should apply to all candidates given that even some experienced councillors in the 2016 elections were unaware of or uncertain about their obligations. Introducing this requirement would obviously have practical implications for the DILGP and the ECQ, and would therefore need to be supported by appropriate resourcing. Nevertheless, the CCC's view is that this requirement would help to place a greater onus on candidates to understand their obligations, and prevent ignorance from being used as an explanation for non-compliance. More generally, the information the DILGP provides is valuable in promoting transparency and integrity in elections and local government more broadly.

Recommendation 12

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

ECQ disclosure processes that impede compliance

The second factor the CCC identified as contributing to both candidates' and third parties' non-compliance with disclosure obligations was disclosure processes that impede rather than facilitate compliance. One specific example of this were the disclosure return forms provided by the ECQ for the 2016 elections, which did not accurately reflect the requirements of the LGE Act. For example, the forms for candidates did not provide space to list the names and addresses of trustees for donations received from a trust fund, as required by section 109 of the LGE Act. Similarly, the forms for third parties did not prompt them to state the purpose of expenditures over $200 as required by section 124, instead simply including a column labelled "Description". These types of deficiencies were raised by a number of

235 <www.dilgp.qld.gov.au/local-government/local-government-elections.html>.

236 In the lead up to the 2016 elections, the DILGP ran approximately 90 sessions for more than 800 people between September and December 2015. Attendees were primarily prospective candidates, but also included other interested parties such as sitting councillors and journalists.

people interviewed by the CCC. The forms also contained minimal instructions, which further led to some problems with compliance. Ipswich Councillor Kylie Stoneman gave an example of this at the public hearing:

> Counsel Assisting — …Did the information that you received from the Electoral Commission give you enough detail about what kind of information was to be included on that return?
>
> Cr Stoneman — I actually had to send an amended one because I hadn't used full names, so I would tend to say, no, maybe there isn't enough direction on the form. (Evidence given by Kylie Stoneman, p. 11)

Poor compliance with disclosure obligations is inevitable when the mechanisms for disclosure provided by the ECQ do not adequately reflect the requirements of the legislation.

The CCC notes that the ECQ has recently transitioned from paper-based disclosure return forms to an Electronic Disclosure System (see page 73 for more details). However, at least some of the above criticisms apply equally to the submission forms used in the new electronic system — for example, there is currently no capacity for candidates to provide the names and address of trustees for donations received from a trust fund. Furthermore, some disclosers will still be permitted to submit paper-based returns (e.g. if they have an inadequate internet connection or do not have regular access to an email account). To ensure that the problems identified above do not continue to hamper compliance, the CCC recommends that the ECQ reviews and amends its disclosure return processes for local government to ensure they help disclosers as much as possible to fulfil their legislative obligations (Recommendation 13).

Recommendation 13

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.

Limited ECQ activity to monitor and enforce compliance

In addition to the above factors, the CCC believes that poor compliance with disclosure obligations is greatly facilitated by the ECQ's limited activity to monitor and enforce compliance with the LGE Act. This issue is explored in detail in Chapter 14.

Non-compliance with dedicated account requirements

As noted previously, every local government candidate is obliged to operate a dedicated bank account that they use to receive all income for their election campaign, including donations, and pay for all campaign expenses. After requesting information from all 187 Gold Coast, Ipswich, Moreton Bay and Logan candidates about the banking arrangements they used for their campaigns, the CCC identified that a large number of them had failed to comply with the LGE Act's dedicated account requirements. Some candidates advised the CCC that they did not have a dedicated account, while numerous others who advised the CCC that they did have a dedicated account were found to have not used it as required.

Non-compliance among this latter group of candidates particularly arose in the form of candidates paying for expenses out of another account.[237] This often involved using a credit card that was not attached to the dedicated account. In some cases, the candidate used a credit card that was for

237 Ipswich Councillor Paul Tully's use of the Goodna Community Fund (see page 26) was a somewhat unique example of this in the 2016 elections.

campaign expenses only; in other cases, the credit card used was a personal card. In the CCC's view, the current provisions in sections 126 and 127 of the LGE Act are very clear that a candidate or group of candidates must have only one dedicated account that is used to receive all income and pay for all expenses during their disclosure period. On this basis, using a single account with a debit card facility is compliant; using a second account, in any form including a credit card, is not. To increase candidates' compliance with the dedicated account requirements, the CCC recommends that the LGE Act be amended to expressly prohibit the payment of campaign expenses with a credit card rather than out of the dedicated account (Recommendation 14). In making this recommendation, the CCC has also considered that a corruption risk and a lack of transparency may arise where candidates incur campaign expenses that they do not have sufficient funds to cover and may not pay until after the election.

Recommendation 14

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.

Other notable examples of non-compliance with the requirement to operate a dedicated bank account related to candidates whose campaigns were largely self-funded. These candidates were of the mistaken belief that the requirement to operate a dedicated account only applied to donations they received, as Gold Coast Mayor Tom Tate indicated in his evidence at the public hearing:

Counsel Assisting	I'm sorry, Mr Tate, were you not aware that there should have been a dedicated campaign account and that is a requirement under the Act?
Cr Tate	At that time, not until I read later on the disclosure guidelines, which is post the election… and that's when… I went, well, we should have operated one account, even though it's your own money.
Counsel Assisting	Yes.
Cr Tate	So it is a very unique set of circumstances, but I acknowledge, Mr Rice, that it's a better way of doing it, or the correct way of doing it. (Evidence given by Thomas Tate, p. 12)

While all candidates have an obligation to properly acquaint themselves with the requirements of the LGE Act, the CCC did note that the requirement to pay all campaign expenses out of a dedicated account was outlined in the ECQ's Local Government Disclosure Handbook under a heading reading "What must be *deposited into* a dedicated account? [emphasis added]" Given the cursory glance many candidates appeared to take at the handbook, it is possible that this may have misled candidates who paid for expenses with their own funds, contributing to their confusion and lack of awareness about their obligations. Of course, it is also possible that candidates simply did not read the handbook (or the legislation) before conducting their campaign, as indicated by Cr Tate in his evidence. The CCC believes that Recommendations 11 and 12 above should help to address both of these possibilities.

More generally, the ECQ does very little to monitor candidates' compliance in this area. In these circumstances, it is not surprising that many candidates — even those who have significant experience in local government — failed to comply with their legislative obligations. This issue is discussed in detail in Chapter 14 in the context of broader limitations in the ECQ's compliance monitoring and enforcement activities. However, one specific change that would help to ensure candidates operate a dedicated bank account would be to require all candidates to provide the details of their account at the time of nomination (or at the time the record for a group of candidates is submitted; Recommendation 15). This would ensure that new candidates in particular turn their minds to this requirement early on in their campaigns, and ensuring that all candidates have the account set up would likely encourage their compliance with regards to using it.

Recommendation 15

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.

Lack of a best practice donation disclosure scheme

Even where candidates and third parties involved in the 2016 elections complied with their disclosure requirements, the available disclosure data did not always allow patterns in donations and the nature of relationships between donors and candidates to be clearly identified. This is because, at the time of the 2016 elections, the donation disclosure scheme for Queensland local government fell short in each element of best practice (see NSW ICAC 2014, pp. 30–1), and largely continues to do so. Specifically, the scheme is limited in that the resulting disclosure data:

- **Is not timely.** For the 2016 elections, the LGE Act only required donations to be disclosed within 15 weeks after polling day. When disclosure is delayed, sources of political funding cannot be examined by members of the public in a timely manner, and voters are unable to make informed decisions on polling day. The CCC noted that, in some cases, the lack of real-time or continuous disclosure also exacerbated the problems of non-compliance discussed above. For example, Logan Mayor Luke Smith indicated at the public hearing that he had not kept contemporaneous records for all the donations he had received on behalf of Logan Futures, which meant that he subsequently had to rely on his memory to help the Logan Futures directors complete the company's third party return after the election.[238]
- **Is not comprehensive.** Only relatively limited information about donors and donations needs to be disclosed. Examples of information required in best practice disclosure systems that is not required by the LGE Act include a donor's occupation, the type or nature of a donation (e.g. gift versus gift in kind), the specific nature of third party expenditures (e.g. whether they are for or against a particular candidate or agenda) and the names of individuals behind corporate donations (e.g. company directors). This last example creates particular problems for transparency in that the same individual may be behind multiple donations that appear to be from different entities.[239]
- **Is not as accessible, searchable or intelligible as it could be.** The disclosure data published by the ECQ does not allow people to easily identify trends and patterns in donations or examine the relationships between donors and recipients. In particular, the data provided on the ECQ website is limited (e.g. the downloadable Excel dataset for the 2016 elections does not indicate which election a candidate contested, or whether they ran for a political party), manipulating and analysing the data requires considerable effort (especially given the limited data provided), and the ECQ offers none of its own analyses (e.g. charts, graphs, interactive maps, summary reports) to increase public understanding about political donations.

Together, these limitations significantly reduce the transparency of local government campaign funding and the relationships between donors and candidates.

238 Evidence given by Timothy Luke Smith pp. 32–3. The CCC notes that although Cr Smith was involved in receiving donations on behalf of Logan Futures, the legal obligation to record information about the donations was on the directors of Logan Futures (Rhonda Dore and Grant Dearlove).

239 It can also make the potential influence of donations on council decision-making difficult to identify, if say a donation is made in one company's name but an application before council is made in another (see further discussion on pages 80 and 81).

Significantly, the Queensland Government has recently introduced "real-time" donation disclosure for local government elections.[240] This requires candidates and groups of candidates to disclose all donations and loans they receive above the disclosure threshold (now $500) within seven business days,[241] rather than 15 weeks after polling day as was the case in the 2016 elections. Third parties are likewise required to disclose all expenditure and donations above the threshold within seven business days.[242] This change markedly improves the timeliness of disclosure data and increases the transparency of relationships between donors and candidates before polling day.

The move to real-time donation disclosure is a significant step towards ensuring that members of the public have access to timely information about the sources of political funding to help inform their vote. However, the current legislative framework is such that there is the potential for some donations to still remain unknown to voters before polling day. That is, a donation could be made within the last seven business days before polling day, and this would not have to be disclosed until after the election. The CCC sees this as undermining the fundamental goal of timely donation disclosure — ensuring that voters can make informed decisions at the polling booth. To address this loophole and ensure there is complete transparency of donations before votes are cast, the CCC recommends that candidates and others be prohibited from receiving gifts or loans in respect of an election from within seven business days before polling day (Recommendation 16). In making this recommendation, the CCC notes that the *Broadcasting Services Act 1992* (Cth) permits licensed broadcasting of election advertisements until Wednesday midnight before polling day (see s. 3A, Schedule 2). The CCC considers that any law reform proposals to constrain gifts and loans for the purpose of licensed broadcasting of election advertisements may need to take this into account.

Recommendation 16

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].

The recent change to real-time donation disclosure has been accompanied by the introduction of the ECQ's Electronic Disclosure System (EDS).[243] This allows candidates, third parties and others with disclosure obligations to enter their donations returns electronically, and ensures that the public has fast and easy access to information about donations online. This represents another significant improvement to Queensland's donation disclosure scheme. Compared with the previous system of paper-based return forms, the EDS provides disclosure data that is more accessible to and searchable by members of the public and the media, enabling them to better understand the sources of candidates' campaign funds and candidates' relationships with donors. This was demonstrated in the Ipswich City Council Mayoral by-election in August 2017, where media outlets made significant use of disclosure data from the EDS in their election coverage.

240 The Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act was passed in May 2017.

241 Sections 5–7, Local Government Electoral Regulation 2012.

242 Sections 8–9, Local Government Electoral Regulation 2012.

243 See <disclosures.ecq.qld.gov.au/>.

While the EDS is undoubtedly a useful tool for increasing the transparency of donations, the CCC considers there is room for improvement. This is to be expected given the system is in its infancy. Particular aspects of the EDS that are currently limited include its:

- search functions. The EDS's search functions work well for identifying donations received by an individual candidate, for example, but are difficult to use for more "complex" searches such as identifying donations received by all candidates for a particular election or group of elections (e.g. all of the 2016 local government elections).[244]
- available data. Although a wide range of data is entered into the EDS by disclosers, very little of this is made available to the public on the EDS website.[245] Likewise, very few pieces of information are included in the data files generated by the EDS,[246] which makes it difficult to identify meaningful trends and patterns in donations. As an example, the data files downloaded from the EDS for the 2016 elections do not indicate what council or position (i.e. mayor or councillor) a person was a candidate for, nor do they distinguish between donations received by candidates and donations received by others (e.g. third parties).
- analytical tools. The EDS includes a mapping function, but this only maps donations according to the electorate of the donor (not, for example, for all candidates contesting a particular election). No others tools (e.g. interactive charts, graphs) are provided that may help users in exploring and understanding the data.

Together, these limitations mean the EDS is not as effective as it could be in allowing users to understand the nature of campaign funding and the relationships between donors and candidates.

As noted earlier, one of the three key elements of a best practice donation disclosure scheme is disclosure data that is accessible, searchable and easy to understand and interpret. The CCC's view is that future improvements to the EDS should aim to ensure that these standards are met. In particular, the CCC recommends that the ECQ ensures that as much information as possible about donations is available to the public on its website, that comprehensive search functions and analytical tools are available to help users examine donation data, and that sufficient information is given to users to help them understand and interpret disclosure data (Recommendation 17).

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.

Although these recommended improvements are important, the ability of any EDS to shed light on the financial relationships between donors and candidates will only ever be as comprehensive as the data that is entered into it. As noted above, the CCC has identified limitations in the current disclosure scheme in this regard. The CCC considers that requiring more details about donors and their donations

244 It is possible to search for donations for a particular election (e.g. the 2017 Ipswich mayoral by-election), but this also retrieves irrelevant donations received during the same period (e.g. donations received by state MPs and political parties).

245 For example, donation recipients are required to give a description of the donation (e.g. whether it was a gift of money or in another form), donors are required to state whether or not they are passing the donation on for someone else, and third parties reporting expenditure are required to state the description and purpose of the expenditure and give the details of the supplier who was paid. None of this information is displayed to the public, however.

246 Search results from the EDS can be downloaded in both PDF and CSV format. The only information included in these files is the donor's name, the recipient's name, the date the gift was made, the donor's electorate and address and the value of the donation.

to be disclosed would enable the public to develop a clearer and more complete understanding of the nature of campaign funding. It would also help to further align Queensland's scheme with international best practice examples, including the New York City Campaign Finance Board and the United States Federal Election Commission. To this end, the CCC recommends that the LGE Act should be amended to require the following information to be disclosed:

- For donations made by an individual, the individual's occupation and employer (if applicable; Recommendation 18, part a). This is consistent with disclosure requirements for federal elections in the United States and New York City elections, and would allow the public to better understand the types of interests, industries and companies associated with individual donations.
- For donations made by a company, the names and addresses of the company's directors and a description of the nature of the company's business (Recommendation 18, part b). This too would help the public to more readily identify the industries behind donations, as well as increase transparency in situations where the same individual is behind donations from different companies.
- For all donations, a statement as to whether or not the donor or a related entity currently has any business with, or matter or application under consideration by, the relevant council (Recommendation 18, part c). The CCC considers this important for making connections between donors and council decision-making more transparent (see further discussion in Chapter 13).
- For expenditure incurred by a third party (including donations), details about which candidate, party or agenda the expenditure was used to support or oppose, and information about who the expenditure was actually paid to (Recommendation 19). The CCC considers that this would lead to the disclosure of more useful data than the current requirement to disclose "the purpose" of an expenditure, which is vague and open to interpretation.

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.

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).

13 Perceptions of compromised council processes and decision-making

A number of the allegations investigated in Operation Belcarra highlighted that the conduct of candidates during elections can subsequently affect the perceived integrity of local government operations. In particular, concerns were raised that some councillors were making decisions to favour donors in return for having supported their election campaigns. Although the CCC cannot comment further on these specific allegations as they were still being finalised at the time of writing this report, they highlight the inherent potential for donations to adversely affect public confidence in local councils, particularly when donors have private interests that are significantly impacted by council decision-making. In some cases, these adverse effects of donations were further compounded by councillors' failure to appropriately deal with conflicts of interest relating to donors. These issues are examined in detail below.

Adverse effects of donations on the perceived integrity of council operations

One particular concern raised during Operation Belcarra was that the integrity of council processes and decision-making was being compromised as a result of donations received by councillors. More specifically, there was a suspicion that some council decisions were being made not to serve the public interest, but to further the private interests of donors. Relevant allegations received by the CCC following the 2016 elections were still being finalised at the time of writing this report, and it would not be appropriate for the CCC to comment further on these at this time.

The general nature of these allegations is consistent with one of the key concerns about political donations generally — that they increase the risk of corruption. Often donations are seen as being motivated by a desire to purchase influence in government decision-making. There is a real risk of corruption when donations are made with the expectation that the recipient will, in return, make decisions that deliver material benefits to the donor. This risk is heightened when donors have business interests that are affected by government decisions. At the local government level, this risk is particularly associated with property developers. Decisions about zoning, development applications and the like significantly and directly influence the success and profitability of such businesses, and planning and development is one of the few policy areas within the domain of local government. As the Queensland Greens noted in its submission, for these types of donors "decisions made by a… council could be the difference between a wildly profitable venture and a non-starter" (p. 4).

Donors the CCC spoke to as part of Operation Belcarra, including those involved in the property and construction industries, all emphasised that they do not expect any favours as a result of donating to a councillor's election campaign.[247] Rather, donors generally indicated being motivated to support candidates who they believed would help to deliver good outcomes for the community as a whole, especially in terms of economic development and growth.

> I like the vision that he [Logan Mayor Luke Smith] wants to create in this area, which is the Logan area. And after we built that relation, I would like to help him. I would like to see him in that position, to be winning, to show us how the area is going to be changed, which is for our family, for our future. (Evidence given by Kassen Issa, p. 7)

247 See, for example, evidence given by Robert Comiskey, Kassen Issa and Kuo Sing Sam Tiong at the public hearing.

Donors also firmly rejected the proposition that they actually receive any specific benefits in return for their donations. Some donors gave examples of their negative experiences with council to highlight this, including property developer Robert Comiskey:

> Have a look at Eatons Hill, for instance. With the current development we're building… it has taken nine years and we've almost spent $2 million in legal fees against the Moreton Bay Regional Council. So I'd say, yes, it doesn't get me any special favours or any special access, because if you look at that one, we actually went to court almost twice on that, and it was a long, drawn-out process to get any approval there. (Evidence given by Robert Comiskey, p. 11)

Most councillors the CCC spoke to likewise denied that donations lead to donors gaining influence in council decision-making. They particularly argued that council processes relating to planning and development are such that they themselves are involved in very few decisions relating to donors and have a very limited ability to influence outcomes. Ipswich Councillor Paul Tully was one of several people who made this point at the public hearing:

> Most of the applications are done under delegation. The last figures I saw, there were about 900 applications in a preceding year. I'm not sure if that was a calendar year or a financial year. Only about four went to a council meeting. The rest were determined by officers under delegation. (Evidence given by Paul Tully, p. 6)

Consistent with the above claims, there is generally little research evidence to suggest that donations do result in donors receiving preferential treatment by politicians. This was noted by two of the expert witnesses who gave evidence at the public hearing, including Professor Anthony Gray:

> …contrary to what some people might believe without having done research,… there is actually very little evidence of links between money being donated and that particular individual or that particular organisation being given favours. (Evidence given by Professor Anthony Gray, p. 5)[248]

Another major concern about political donations is that, rather than being motivated by a desire to purchase direct influence in government decision-making, they are motivated by a desire to purchase access to the decision-makers. That is, there is a belief that donations can lead to donors getting special opportunities to put their cases forward. This too can be seen as a form of corruption in that some stakeholders are illegitimately gaining an advantage over others who should be but are not afforded the same level of access. There is a further risk of corruption when these "rights of access morph… into the adoption of policies designed to materially benefit those to whom access has been given, rather than to advance the broader public interest" (Accountability Round Table 2014, pp. 2–3).

Again, most donors and councillors the CCC spoke to during Operation Belcarra rejected the notion that donations lead to these kinds of benefits for donors, although others, including some councillors, argued that donations are used by donors to create rapport with councillors and generate a sense of loyalty. This role of donations was particularly discussed in relation to donors such as property developers whose private interests are significantly affected by council decision-making. In this context, Dr Cameron Murray spoke at the public hearing about the importance of donations for establishing relationships of reciprocity with politicians — what he referred to as having "a seat at the table":

> My research suggests that donations are more like a ticket to entry for newcomers to this relationship network. So if you're not already at the table and well entrenched, then you need to work your way towards the centre, and so you would want to donate. What we see in the donations data is that the largest donors these days are, for example, new Chinese developers. They're donating the most, because they're not at the table. They're not in the network. They have to buy their way in. (Evidence given by Dr Cameron Murray, p. 6)

Dr Murray suggests that opportunities for networking and lobbying flow from these connections, and it is these mechanisms that have the greatest influence in allowing people to secure favourable decisions

248 See also evidence given by Dr Cameron Murray.

in relation to land rezoning and similar matters. Donations may therefore not necessarily lead directly to donors receiving special benefits, but they can ensure that donors are better positioned than others to further their business interests.

The close connections between councillors and certain businesses or individuals that donations can help to foster will inevitably lead to some concerns in the community about impropriety in council decision-making. As Moreton Bay Mayor Allan Sutherland acknowledged at the public hearing, there is "extreme suspicion of the public when it comes to donations, particularly [from] developers".[249] This highlights a critical point — regardless of the actual influence of donations on government processes and decision-making, there will always be a perception that donors expect to and do receive something in return for having supported a councillor's election campaign. The fact that allegations of this nature have been repeatedly examined in major inquiries in Queensland and other Australian jurisdictions over the last 25 years highlights the inherent potential of donations to lead to perceptions of corruption. These perceptions alone are enough to damage public confidence in the integrity of local government.

It is notable that concerns about local government corruption in Queensland continue to arise from political donations despite increased transparency of donations and council decision-making over time. In the CCC's view, this is evidence that relying solely on transparency has some limitations. Specifically, the inevitably close connections between property development interests and local government decision-making mean that transparency is insufficient to manage the risks of actual and perceived corruption associated with donations from property developers. The CCC therefore considers that Queensland must follow the lead of New South Wales in banning donations from property developers (Recommendation 20). Although the CCC acknowledges that this too may not be a perfect solution, continued public concern about the influence of property developer donations on council decision-making demands a stronger response than transparency alone. With New South Wales already having strengthened its legislation based on its early experiences, the current New South Wales provisions are an example of good practice on which to model the Queensland provisions. This includes in relation to anti-circumvention measures — for example, it will be necessary to prohibit donations from property developers to political parties or candidates at other levels of government from being used for local government purposes.[250]

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.

The CCC acknowledges that there are other types of donors who, like property developers, have interests that may be influenced by local government decision-making. This includes trade unions, which made considerable donations to a number of candidates in the 2016 elections. However, the CCC's view is that until such time as unions and other types of donors demonstrate the same risk of actual or perceived

249 Evidence given by Allan Sutherland, p. 35.

250 Among other changes, the *Election Funding, Expenditure and Disclosures Amendment Act 2014* created an indictable offence relating to schemes to circumvent prohibitions and restrictions on donations or electoral expenditure, including the ban on donations from property developers. This change addressed deficiencies identified through the NSW ICAC's investigation into payments received by and for the NSW Liberal Party for the 2011 state election (Operation Spicer; NSW ICAC 2016).

corruption in Queensland local government as property developers, a more encompassing ban is not appropriate.[251] The CCC considers that, at this time, the risks associated with these donors are sufficiently addressed by existing transparency mechanisms with the improvements recommended throughout this report (particularly Recommendations 17 to 19).

Poor management of conflicts of interest

The perception problems arising from donations are often compounded by councillors failing to adequately manage their conflicts of interest. Under the *Local Government Act 2009* ("the LG Act"), a conflict of interest is defined as "a conflict between a councillor's personal interests and the public interest that might lead to a decision that is contrary to the public interest".[252] Conflicts of interest may be either real — that is, a councillor actually has a conflict of interest in a matter to be discussed at a council meeting — or perceived — that is, a councillor could reasonably be taken to have a conflict of interest in the matter.[253]

The LG Act requires councillors to deal with all conflicts of interest "in a transparent and accountable way". This includes identifying and declaring the conflict of interest in the meeting, and advising how they intend to deal with the conflict.[254] The LG Act is otherwise not prescriptive about how councillors should deal with conflicts, and there is no requirement for councillors to exclude themselves from participating in discussions about the matter or from voting. While councillors can and sometimes do seek advice about conflict of interest issues from colleagues, the council's Chief Executive Officer and the Local Government Ethics and Integrity Advisor, each individual councillor is ultimately free to decide how they will identify and manage their conflicts of interest.

This approach of self-identification and self-management can lead to allegations that councillors are not dealing with conflicts of interest in the most appropriate and transparent ways. Two key aspects to this were identified in complaints investigated by the CCC during Operation Belcarra:

- councillors failing to declare conflicts of interest
- councillors failing to appropriately deal with declared conflicts of interest.

Councillors failing to declare conflicts of interest

The CCC examined a number of allegations that councillors had failed to declare conflicts of interest in matters related to donors to their 2016 election campaigns. This particularly arose in Moreton Bay Regional Council, where a number of councillors had received donations via Moreton Futures Trust (MFT). In at least three instances, significant donors to MFT have had development matters considered by the Council's Coordination Committee since the election — Hardev Property on 31 May 2016, Impact Homes on 9 August 2016 and Philip Usher Constructions on 8 November 2016. According to the minutes of these meetings, no councillor who disclosed receiving a donation from MFT declared a conflict of interest in any of these matters.

A major reason for councillors failing to declare conflicts of interest in situations such as these appears to be that councillors do not always consider that they have a conflict. As noted in Chapter 12, for example, Mayor Allan Sutherland maintained at the public hearing that he did not have any conflicts of

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251 The implied freedom of political communication imposes constraints on legislation burdening political donations [*Unions New South Wales v New South Wales* (2013) 252 CLR 530 and *McCloy v New South Wales* (2015) 257 CLR 178]. Valid laws need to be supported by evidence to demonstrate the problem to be prevented and how the laws are compatible with our system of government. It is not enough to merely assert that political donations from corporations or industrial organisations may threaten the integrity of representative government (*Unions New South Wales*, per Keane J. p 580 at [144] – [149]). There must be evidence that demonstrates the specific capacity of a business or industry to corrupt or unduly influence government (*McCloy*, per Gageler J. p 250 at [191] – [199]).

252 Section 173(2), LG Act; also section 175(2), *City of Brisbane Act 2010.*

253 Section 173(1), LG Act.

254 Section 173(4)–(10), LG Act.

interest in relation to MFT donors because he did not know who they were. This is difficult to believe given that an email containing the names of MFT donors was sent three days before the election to an email account Cr Sutherland shared with his wife,[255] and that Cr Sutherland had personally received at least one cheque made out to MFT.[256] Even if Cr Sutherland is to be believed, wilful blindness is a questionable approach to take given that Cr Sutherland, like anyone, had the ability to determine who had donated to MFT by at any time consulting the relevant disclosure returns after they had been published by the ECQ. This is even easier with the new real-time electronic disclosure system. Also unconvincing was Cr Peter Flannery's distinction between "direct" and "indirect" donations and their implications for conflicts of interest:

> Counsel Assisting — Do you see that [receiving donations via a trust], then, as a means of relieving any potential conflict of interest?
>
> Cr Flannery — I see it does, yes, because it actually allows the councillor to ignore who gave funding to the trust, because they didn't give the money directly to me. If it was given directly to me, then, yes, it was a direct conflict of interest… (Evidence given by Peter Flannery, p. 14)

The notion that a conflict of interest is somehow washed away by virtue of a donation being made via a third party is completely unreasonable and raises serious questions about the intentions behind using the MFT model.[257] To address this issue, the CCC recommends that the LG Act be amended so that, for the purposes of fulfilling their obligations, including in relation to conflicts of interest, councillors are at all times deemed to know the original source of such gifts (Recommendation 21).

Recommendation 21

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.

Some other councillors the CCC spoke to during Operation Belcarra were of the view that even direct donations do not necessarily give rise to conflicts of interest. This is contrary to the view of the former Queensland Integrity Commissioner that donations "certainly can" lead to real or perceived conflicts of interests for councillors:

> It seems self-evident that a reasonable person would expect that electoral donations are made for a purpose, and that donors will expect that their donations achieve that purpose. Those personal or sectional interests can clearly conflict with the public interest which should be the basis for all public decision-making. (Submission from Richard Bingham, pp. 2–3)

The CCC concurs with this position. It seems to the CCC that some councillors are particularly failing to recognise perceived conflicts of interest arising from donations, having little or no regard for how the donations they receive may be seen by members of the public to compromise the performance of their duties. As noted on page 64, these perceptions can arise even when donations are made to candidates via third parties, and may in fact be exacerbated in these circumstances given the smoke and mirrors appearance of such funding models.

Another reason why conflicts of interest may not be declared is that they can at times be genuinely difficult for councillors or indeed anyone to identify. This is particularly the case when business entities are involved as donors or in matters before council. As noted in Chapter 12, Queensland's current

255 See Exhibit 55 from the public hearing (p. 4).

256 Evidence given by Trent Dixon, p. 14.

257 As noted on page 64, Crs Sutherland and Flannery were among several councillors who referred to advice reportedly given at the 2015 LGAQ conference by Local Government Ethics and Integrity Advisor Joan Sheldon, which they interpreted as recommending that they use a trust or other third party entity to receive campaign donations.

donation disclosure scheme requires only limited information about donors to be recorded, and one consequence of this is that it is difficult to identify the people behind corporate donations. This can in turn make it difficult to identify circumstances where a matter brought before council involves a party associated with a donation. For instance, a person may make a donation in the name of one of their businesses but have an application before council that relates to another, as one donor noted during their interview with the CCC:

> …I can donate money to a political candidate [in the name of one of my companies], but they're not to know… no political candidate is to know that I've got 40 other companies… At the end of the day, are your declarations about the person that's donating the money or the company?

Situations such as this can create significant difficulties for councillors in identifying and dealing with conflicts of interest. Requiring the disclosure of the individuals behind corporate donations (Recommendation 18, page 75) is intended to help address this, but it would be desirable if similar information was also included in planning applications before council, or planning applications that councillors may otherwise have some interest in, so that councillors are able to easily identify matters involving their donors (Recommendation 22, part a). Councillors would be further assisted to identify potential conflicts of interest if applications indicated when the applicant or a related entity had previously made donations or incurred expenditure for elections relating to the council (Recommendation 22, part b).

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.

Finally, a large number of councillors the CCC spoke to during its investigation expressed uncertainty about their obligations in declaring conflicts of interest. Many councillors noted that the relevant legislation is unclear and ambiguous, and that this leads to differing views about what amounts to a conflict of interest and what exactly should be declared. The CCC heard in particular that some councillors take a much broader view of conflicts than others, which other councillors saw as leading to unnecessary and time-consuming "over-declaring". Former Ipswich Mayor Paul Pisasale spoke to this issue at the public hearing:

> …no-one has ever defined what a conflict is, and that makes it very difficult because at council meetings you've got people declaring that they're members of the Boy Scouts, they're Catholic, they've had sandwiches at the Show Society, so a lot of the council meeting is taken up with people declaring conflicts. (Evidence given by Paul Pisasale, p. 20)

Councillors failing to appropriately deal with declared conflicts of interest

The CCC found that, even when councillors declare conflicts of interest, how they subsequently deal with them often raises concerns. A number of people who were spoken to during the investigation especially took issue with councillors who routinely stay in the room to vote after declaring a conflict of interest. Some councillors said that they take this approach because they see not voting as adversely

affecting council decision-making, and potentially the public interest. Councillors who have this view consider that they have been elected by voters to perform a function, and that they cannot do this properly if they are not in the room and participating in council business, even if this relates to one of their donors. Gold Coast Councillor Donna Gates, who received over $173 000 in donations from a total of 110 donors,[258] explained her position at the public hearing:

> …I represent the northern Gold Coast. It's probably the most rapidly growing area in our country, and my knowledge now of the area extends over 20 years. I have felt there's more benefit in my being in the room to represent the community interests than my being outside of the room, where others don't have as significant experience, and so I have firmly maintained my position of being in the room to get the best community outcome. (Evidence given by Donna Gates, p. 10)

Several other councillors made similar comments when speaking to the CCC. These councillors were typically of the view that they were capable of acting in the public interest at all times, and that receiving donations does not affect the decisions they make about matters before council. It is highly doubtful, however, that a councillor believing in their own integrity is enough to counter public suspicions about the nature and influence of political donations. This leaves room for concerns that councillors are not dealing with their conflicts in transparent and accountable ways, despite their chosen course of action being permitted within the law.

Among other councillors the CCC spoke to, there was a diverse range of approaches to dealing with declared conflicts of interest.

- Some councillors took the opposite approach to Cr Gates and routinely left the meeting after declaring a conflict. Moreton Bay Mayor Allan Sutherland and Logan Mayor Luke Smith were two such councillors, although they had differing views about whether this was desirable. Similar to Cr Gates, Cr Sutherland noted at the public hearing that excluding himself from matters has at times led to decisions that he believes would have benefitted from his input.[259] Cr Smith, on the other hand, stated that he saw no tension between his duties as an elected official and receiving donations that preclude him from participating in council deliberations.[260]
- Other councillors indicated that they may take different actions in different circumstances, but few could clearly articulate the criteria they used in making these decisions.
- Other councillors were uncertain about what action they should take after declaring a conflict of interest, or had mistaken beliefs about what was required. For example, some councillors appeared to believe they were obliged to leave the meeting after declaring a conflict of interest, seemingly confusing the requirements for material personal interests.[261]

These varying approaches appeared to stem mainly from councillors having complete discretion in the way that they can deal with conflicts, although a degree of uncertainty and confusion about the requirements of the LG Act also appeared to play a role.

Improving how councillors manage conflicts of interest

The above discussion highlights what the CCC sees as the key problem underlying the failure of some councillors to declare or appropriately deal with real or perceived conflicts of interest — for the most part, the legislative framework does not compel councillors to act in a particular way, but councillors are not in turn given sufficient guidance to help them exercise their discretion. This was particularly

258 As per Cr Gates's disclosure return.

259 Evidence given by Allan Sutherland, p. 40.

260 Evidence given by Timothy Luke Smith, pp. 39–40.

261 Material personal interests arise where a councillor (or a person or entity closely related to them) stands to gain a benefit or suffer a loss (either directly or indirectly) depending on the outcome of the consideration of a matter at a council meeting (s. 172, LG Act). In these circumstances, the LG Act requires councillors to leave the meeting room and stay out of the room while the matter is discussed and voted on [s. 172(5), LG Act].

reflected in the failure of councillors to appreciate situations that could give rise to perceived conflicts of interest and their uncertainty about their obligations in declaring and dealing with conflicts. The concerns raised with the CCC about the appropriateness of some councillors' actions are consistent with what has been noted elsewhere (NSW ICAC 2012) — when government officials have poorly guided discretionary powers, the resulting lack of certainty can lead to perceived corruption and reduced public confidence.

One way to resolve this problem would be to require councillors who declare a conflict of interest in a matter to leave the meeting room and not vote. However, the CCC's view was that eliminating councillors' discretion in this way would have undesirable consequences. For one, such a requirement could substantially disrupt a council's operations if, for instance, multiple councillors had received money from the same donors. More significantly, the CCC did not think that it would be acceptable for a councillor, having received a substantial number of donations from people with interests subject to council consideration, to be routinely excluded from deliberations. Consistent with the responsibilities of councillors[262] and the local government principles underpinning the LG Act,[263] the CCC's view is that councillors are elected to represent the interests of their community, and they cannot do this effectively if they are not participating in council decision-making. The CCC also had regard for the view of former Queensland Integrity Commissioner Richard Bingham, who argued that it is sometimes sufficient for conflicts of interest to be disclosed, with a reliance on full transparency to help protect the public interest when the councillor continues to participate in the decision-making process.[264] Instead of eliminating councillors' discretion, therefore, the CCC determined that what is required are more checks on councillors' discretion and more guidance for councillors about how they should exercise it.

In considering possible ways of achieving this, the CCC recalled previous versions of the LG Act, which contained much more stringent provisions on conflicts of interest. Specifically, when the LG Act was first introduced:

- Other councillors present at a meeting were required to decide whether a councillor had a conflict of interest in a matter (after the councillor in question had informed the meeting in the first instance). If the other councillors decided that the councillor did have a conflict, they were required to direct the councillor to leave the meeting room and stay out while the matter was discussed and voted on. If the councillor failed to comply with this decision, they faced a maximum penalty of 100 penalty units (currently equivalent to a $12 615 fine). A failure to comply was also regarded as an integrity offence, and any councillor convicted of an integrity offence was (and still is)[265] automatically removed from office. These provisions were removed from the LG Act in 2011.
- All councillors had a specific obligation to report other councillors' conflicts of interest (and material personal interests and misconduct) if they knew or reasonably suspected they existed. In addition, it was an offence for any person to engage or threaten to engage in various types of conduct detrimental to a person because this obligation had been complied with. A maximum penalty of 100 penalty units (currently equivalent to a $12 615 fine) or 2 years imprisonment applied. This offence was also regarded as an integrity offence that resulted in a councillor's removal from office upon conviction. These provisions were removed from the LG Act in 2012.
- A councillor who had a conflict of interest in a matter but failed to declare it to the meeting faced a maximum penalty of 100 penalty units (currently equivalent to a $12 615 fine). This too was regarded as an integrity offence that would see any councillor removed from office upon conviction. These provisions were removed from the LG Act in 2011 and a councillor's failure to declare a conflict of interest or deal with a conflict in a transparent and accountable way has since been dealt with as misconduct under standard disciplinary processes.

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262 The responsibilities of councillors and mayors are set out in section 12 of the LG Act. They include "participating in council meetings, policy development, and decision-making, for the benefit of the local government area" [subsection (3c)].

263 Section 4, LG Act. The principles include "decision-making in the public interest" and "democratic representation".

264 Submission from Richard Bingham, p. 3; evidence given by Richard Bingham, p. 10.

265 Section 153, LG Act.

As already stated, the CCC does not believe that all conflicts of interest should require the councillor to leave the room and abstain from voting. However, the CCC considers that there is value in the other aspects of these provisions. In particular:

- Requiring other councillors to decide whether a councillor has a conflict of interest and whether they should stay in the room to vote on a matter ensures that alternative and more independent perspectives are taken into consideration.

  The CCC notes that the rationale for removing the original requirement in 2011 was that it is sometimes possible and appropriate for a councillor to determine that they can make a decision in the public interest, and that other councillors are not necessarily in a better position than the councillor themselves to determine if there is a conflict.[266] The CCC acknowledges that this may sometimes be the case. However, the CCC believes that other councillors can give voice to other perspectives, and may be better able to reflect on the perception of a conflict than the councillor in question. Moreton Bay Mayor Allan Sutherland was one councillor who appeared to favour a return to the previous provisions, stating at the public hearing, "I think it should be a decision of the council, and the council can be the one that can decide whether you should walk from the room or not, not the individual" (p. 35).[267]

- Re-introducing a specific obligation on councillors to report another councillor's conflict of interest would increase councillors' accountability and reinforce the importance of dealing with conflicts of interest in transparent and accountable ways.

  The CCC acknowledges that the previous requirement was removed on the basis that it was "an unnecessary duplication as all councillors are bound by the local government principles", and not disclosing another councillor's conflict of interest would breach these.[268] In the CCC's view, however, relying on the local government principles alone does not reflect the seriousness of undeclared conflicts of interest. Indeed, the Explanatory Notes for the original LG Act note that the specific duty to report was "consistent with the high ethical standards of behaviour expected of councillors".[269] As the then Queensland Integrity Commissioner noted at the public hearing, where a councillor remains silent about another councillor's undeclared conflict of interest, the public interest is not well served.[270] Such concealment of conflicts of interest can significantly undermine public confidence in the integrity of local government, and the legislative obligations on councillors should reflect this.

- Re-introducing specific — and substantial — penalties for councillors who fail to comply with their obligations regarding conflicts of interest would help to ensure that non-compliance is responded to appropriately and councillors are held accountable for their actions and inactions.

  The CCC agrees that it will often be sufficient to treat a councillor's failure to deal with a conflict of interest in a transparent and accountable way as misconduct. In this regard, the CCC notes that the government has recently given its in-principle support to the independent Councillor Complaints Review Panel's recommendation that a range of penalties for misconduct be specified in the LG Act (Recommendation 6.4; Queensland Government 2017). This is valuable. The CCC is nevertheless of the view that the LG Act must also specifically provide for severe penalties for councillors who engage in the most serious breaches of the Act's conflict of interest provisions. This would ensure a sufficient deterrent is in place even if relevant offences were rarely prosecuted, as the Review Panel found in relation to existing offences in the LG Act (Councillor Complaints Review Panel 2017).

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266 Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Paul Lucas MP — Local Government Electoral Bill 2011, pp. 10–11.

267 The then Queensland Integrity Commissioner similarly stated at the public hearing that requiring councillors to express a view about another councillor's conflict of interest was an option worth exploring (Evidence given by Richard Bingham, p. 11).

268 Explanatory Notes to the Local Government and Other Legislation Amendment Bill 2012, p. 52.

269 Explanatory Notes to the Local Government Bill 2009, p. 66.

270 Evidence given by Richard Bingham, p. 11.

Accordingly, the CCC makes the following recommendations. These are likely to be relevant to the government's undertaking to further investigate ways to ensure conflicts of interest are dealt with in transparent and accountable ways (Queensland Government 2017, p. 10).

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.

Recommendation 24

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

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.

The CCC further recommends that it be an offence for a councillor who has a conflict of interest in a matter to influence or attempt to influence any decision-maker in relation to the matter (Recommendation 26). The CCC recommends that this should apply from when the matter appears on an agenda for a council meeting, to prevent councillors from attempting to influence a decision-maker prior to a meeting.

Recommendation 26

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.

Increasing the legislative obligations on councillors will have limited positive effects if councillors remain uncertain about what constitutes a conflict of interest and how conflicts should be dealt with to ensure transparency and accountability. The CCC's view is that councillors need to be better educated about

conflicts of interest and better able to access independent and robust advice to help them manage conflicts of interest. This is consistent with some of the findings of the Councillor Complaints Review Panel, which recommended the establishment of a Local Government Liaison Group to coordinate the provision of information, assistance and training to councillors to help them meet their responsibilities under the LG Act.[271] This recommendation has since been supported by the government (Queensland Government 2017). As one of the agencies the Review Panel recommended be involved in the Liaison Group, the CCC is also supportive of this initiative as a means of promoting legislative compliance and ethical conduct among councillors, and recommends that the Liaison Group be established as soon as practicable (Recommendation 27).

Recommendation 27

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

Although it will be useful to provide better guidance to councillors generally, the CCC believes it's important that councillors are also able to access independent, tailored and confidential advice about specific conflict of interest issues they encounter. One option for achieving this would be to extend the Queensland Integrity Commissioner's advisory and awareness functions to local government councillors (Recommendation 28, option a).[272] This perhaps makes most sense given that the Integrity Commissioner already has some jurisdiction in relation to local government (with respect to lobbyists)[273] and has significant expertise and experience in providing advice on conflict of interest issues to MPs and state government officials. Alternatively, an equivalent but separate statutory body could be established specifically for local government (Recommendation 28, option b).

Recommendation 28

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*.

271 The Review Panel's full recommendation (11.1) was that the DILGP "establish the [Local Government Liaison Group] to coordinate the provision of advice for local government councillors on the interpretation of relevant legislative provisions, and to provide assistance and training in areas such as declarations of interests, declarations of material interests and conflicts of interest. The group should provide advice to the Minister, through the Department, on governance issues such as the proposed Code of Conduct. And it should include the CCC, the Ombudsman, the Auditor-General and the Independent Assessor, together with the LGAQ and the [Local Government Managers Australia (Queensland)]."

272 The Integrity Commissioner has four specific functions under section 7(1) of the *Integrity Act 2009*, including to give written advice to designated people on ethics or integrity issues and to raise public awareness of ethics or integrity issues by contributing to public discussion of these issues.

273 The Integrity Commissioner regulates lobbying activities under Chapter 4 of the Integrity Act. Lobbying activity includes contact with a councillor in an effort to influence local government decision-making [ss. 42(1), 44].

14 Limited compliance monitoring and enforcement

As noted throughout this report, the legislative framework governing Queensland local government elections imposes a number of obligations on candidates, councillors and others. These obligations particularly relate to the disclosure of campaign donations, but also include, for example, the requirement for groups of candidates to register with the ECQ and the requirement for all candidates to operate a dedicated bank account for their campaign. The legislative framework also establishes offences for people who fail to comply with their obligations, and sets out corresponding penalties.

The aim of the overarching legislative framework is to ensure that local government elections are conducted with integrity and transparency.[274] However, legislation alone is not enough — it must be supported by effective monitoring and enforcement to ensure that people are held to account for their conduct, particularly where they fail to meet their legal obligations.

As a result of Operation Belcarra, the CCC has identified that compliance with the requirements of the LGE Act is not being adequately monitored and enforced. In particular, breaches by candidates, councillors and others are often not identified, followed-up or appropriately dealt with. The CCC's analysis suggests that there are two key factors contributing to this lack of accountability:

- The legislative framework itself is limited.
- The ECQ's approach to compliance monitoring and enforcement is narrow, reactive and ineffective.

These factors are examined in the following sections.

Legislative limitations

Operation Belcarra highlighted two key problems with aspects of the current LGE Act:

- Some existing offence provisions are limited.
- Current penalties are inadequate to deter non-compliance.

As discussed below, these problems undermine the effectiveness of the legislative framework in promoting integrity and transparency, and impede efforts to ensure accountability among candidates and others involved in local government elections.

Limited offence provisions

One problem the CCC identified during its investigation was that many offences under the LGE Act have a limitation period (that is, the period of time in which prosecutions can be commenced) of only one year. This includes offences related to dedicated accounts and advertising or fundraising for an election as part of an undeclared group of candidates. Short limitation periods can pose a barrier to effective enforcement by preventing those who fail to comply with their obligations from being prosecuted, particularly where possible breaches are not identified for some time or where investigations are complex and protracted.

Not all offences under the LGE Act have such short limitation periods. Most notably, prosecutions for offences about disclosure returns can be started at any time within four years after the offence was committed. This means that if a candidate was elected to council, a prosecution could be commenced at any point during their four-year term. The CCC's view is that it would be desirable for councillors (and others) to face the same prospect of prosecution for other offences under the LGE Act. For this reason, the CCC has included four-year limitation periods in its recommendations relating to candidates who fail to declare an interest or notify the ECQ of a change of interest and people who accept prohibited

274 Explanatory Notes to the Local Government Electoral Bill 2011, p. 1.

donations from property developers (Recommendations 3 and 20), and recommends that the limitation periods for offences related to dedicated accounts and groups of candidates also be increased (Recommendation 29).

Recommendation 29

> 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.

Another problem highlighted in Operation Belcarra was that the current offence provisions relating to misleading electors are very narrow. Some allegations received by the CCC reflected the complainant's concern that certain candidates had misled voters by publicly denying they had received funding from certain sources, or by campaigning as independent while working as part of an undeclared group of candidates. However, section 182 of the LGE Act does not capture this type of conduct as it is very narrowly framed to focus only on conduct that could mislead or deceive electors in voting. The CMC highlighted this issue in its report on the 2004 Gold Coast City Council election, noting that:

> …the section does not operate in a manner expected by both the general community and many of those directly involved in local government, largely because it does not prohibit as much as it appears to prohibit. For example, it allows one candidate to knowingly misrepresent the policy position of another candidate, or one candidate to falsely claim the support of another candidate. This report has also concluded that it does not preclude candidates lying about their funding sources. (CMC 2006, p. 165)

The narrow framing of these provisions means that, as noted in Professor Anthony Gray's submission, many ways in which electors might be misled during election campaigns are not covered by the existing legislation.

The CCC notes that this situation is likely to be unsatisfactory to some members of the community, as evidenced by the nature of complaints made to the CCC following the 2016 elections. However, the CCC remains of the view put forward by the CMC in 2006 that it would be very difficult to draft a workable legislative provision with any broader scope. Instead, the CCC considers that this issue is most usefully dealt with by increasing transparency in local government elections. The implementation of Recommendation 3 — requiring candidates to disclose their interests and affiliations before polling day, Recommendation 5 — clarifying the definition of a group of candidates and Recommendations 16 to 19 — giving voters access to more timely and comprehensive information about the sources of candidates' campaign funding will be particularly useful in this regard. The CCC also notes the LGAQ's recent decision to establish a Local Government Independent Electoral Monitor to "refute baseless claims and misinformation and enable truthful and informed debate about candidates' visions, values and policy proposals for the 2020 local government elections" (see Hoffman 2017, p. 13).

Inadequate penalties

In Operation Belcarra, the CCC noted that most of the offences its investigation related to attracted only relatively small penalties. For offences relating to disclosure returns, for example, fines range from $2523 (20 penalty units, for failing to submit a return in the required time frame) to $12 615 (100 penalty units, for a candidate knowingly submitting a return that is false or misleading in a material particular). As illustrated in Figure 2 below, these penalties are generally the lowest of all Australian jurisdictions, and are significantly lower than the highest penalties in New South Wales and Western Australia, which both provide for terms of imprisonment.

Figure 2. Typical maximum penalties for disclosure offences in Australian local government.

New South Wales	$22 000–$44 000 and/or 2 years imprisonment
Western Australia	$5000–$10 000 and/or 2 years imprisonment
South Australia	$10 000 or removal from office
Victoria	$9327.60
Queensland	$2523–$12 615

Note: There are no disclosure requirements for local government in Tasmania and the Northern Territory, and the Australia Capital Territory does not have local government.

Source: ss. 96H and 96I(2) of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW); ss. 5.75, 5.76 and 5.89 of the *Local Government Act 1995* (WA), ss. 30B and 30CA(3) of the Local Government (Elections) Regulation 1997 (WA); ss. 85, 86(3) of the *Local Government (Elections) Act 1999* (SA); s. 62(7) *Local Government Act 1989* (Vic); ss. 195(1)–(4) LGE Act (Qld).

It is notable that failing to provide a disclosure return or providing a return containing false or misleading information was previously treated much more seriously in Queensland local government. Until the introduction of the 2009 LG Act, a person who was convicted of either of these offences was automatically removed from office if they were a councillor, and disqualified from becoming a councillor for four years.[275] These changes are similar to those discussed in Chapter 13 regarding conflict of interest provisions.

It is clear to the CCC that the offence and penalty provisions relating to local government and local government elections have been significantly watered down over time. This has the effect of reducing the perceived seriousness of wrongdoing by councillors and others, undermining the effectiveness of the legislative framework in promoting integrity, transparency and accountability. To help ensure that the offence provisions in the LGE Act are a sufficient deterrent to non-compliance and allow breaches to be adequately sanctioned, the CCC recommends increased penalties for LGE Act offences, particularly those related to funding and disclosure (Recommendation 30). For councillors, serious consideration should be given to providing for their removal from office.

Recommendation 30

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.

Deficiencies in the ECQ's monitoring and enforcement activities

Responsibility for administering the LGE Act and conducting local government elections sits with the ECQ. This role involves a wide range of activities, including receiving and processing candidates' nominations, preparing ballot papers, establishing polling booths, counting votes and identifying and taking enforcement actions against non-voters. Relevant to the issues examined in Operation Belcarra, the ECQ's role also involves compliance monitoring and enforcement, particularly in terms of approving how-to-vote cards for publication and ensuring that candidates and others comply with their funding and disclosure obligations under the LGE Act.

Regardless of the limitations to the legislative framework discussed above, the CCC identified significant deficiencies in the way the ECQ undertakes its compliance monitoring and enforcement role. These are reflected in three key observations about the ECQ's approach:

- The ECQ focuses on administering the specific provisions of the LGE Act, and does not give broader consideration to issues of integrity and transparency.

275 Section 222, *Local Government Act 1993*.

- The ECQ's approach to identifying non-compliance is predominantly reactive and reliant on information from external parties, and is limited in its effectiveness.
- The ECQ appears to have no appetite for taking enforcement action against candidates, councillors and third parties who are not compliant with their obligations under the LGE Act.

Each of these observations is discussed in further detail below.

A narrow, administrative focus

One example of this was the ECQ's approval of certain how-to-vote cards which, as discussed previously, was a key issue raised in Operation Belcarra. Both in his interview with the CCC and in his evidence at the public hearing, the Queensland Electoral Commissioner emphasised that when considering how-to-vote cards for approval, the ECQ is only focused on ensuring formal compliance with the relevant provisions of the LGE Act — mainly section 178, which states how a how-to-vote card must be authorised:[276]

> Counsel Assisting — You are looking for formal compliance with section 178?
>
> Mr van der Merwe — Yes.
>
> Counsel Assisting — And then you are looking for the potentially misleading content?
>
> Mr van der Merwe — Potential to mislead [an elector in voting], and if we believe there is a potential, the matter will be addressed with the candidate and they will have an opportunity to lodge a revised how-to-vote card. (Evidence given by Walter van der Merwe, p. 34)[277]

In this process, consideration is not given to broader issues such as whether a how-to-vote card featuring multiple candidates may give rise to a suspicion of an undeclared group, or whether it is appropriate for a how-to-vote card to feature the logo of a registered political party if the candidate has not been endorsed by that party — both key complaints made in relation to the 2016 elections.

The CCC acknowledges that the ECQ has limited legislative authority to act in these circumstances, as explained in the Electoral Commissioner's evidence. However, the CCC noted more generally that the ECQ consistently takes a narrow view of its role. This was reflected in the Electoral Commissioner's reluctance to comment on issues that he saw as policy decisions to be made by government, noting that the role of the ECQ is simply to administer the legislation. When questioned at the public hearing about possible changes to disclosure requirements, for example, Mr van der Merwe stated "I purely administer the system, but that has got to be a policy decision by the government" (p. 20).

The CCC is not questioning this position, and it acknowledges the vital importance of the ECQ being, and being seen to be, non-partisan. At times, however, it appeared to the CCC that this gave rise to a surprising level of disinterest in matters that would seem relevant to the ECQ's functions. At interview, for example, the Electoral Commissioner advised that the ECQ had undertaken no work to identify best practice donation disclosure systems, saying that it was not the ECQ's role.[278] Criticisms of the ECQ by some people the CCC spoke to suggested they too expected the ECQ to play a greater role in promoting integrity and transparency than it actually did. One councillor, for example, stated that they had raised some concerns with the ECQ about another candidate's conduct, and was told that it was not the ECQ's problem.

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276 Section 178(2) of the LGE Act requires a how-to-vote card to include the name and address of the person who authorised the card. This authorisation is required to be in a certain format and font and contain certain particulars [e.g. the address provided must not be a post office box; s. 178(3) to (5)].

277 Section 179(3) of the LGE Act requires the ECQ to reject a how-to-vote card if it does not comply with the authorisation requirements in section 178(2) to (5), or if the ECQ "is satisfied, on reasonable grounds" that the card "is likely to mislead or deceive an elector in voting".

278 CCC interview, 7 April 2017.

The ECQ's approach was somewhat striking to the CCC given that one of the ECQ's key responsibilities is to administer an act that has as its principal purpose ensuring local government elections are conducted transparently. Nevertheless, the ECQ's approach largely reflects its functions as described in legislation.[279] These are squarely focused on the administration of elections, particularly with respect to voting, and do not give the ECQ any specific role to promote integrity and transparency. The CCC found this notable too given the intent of the legislators in making the ECQ responsible for local government elections:

> Giving the ECQ a mandate to oversee and conduct all local government elections will create an independent, central point of coordination for local government elections. This will increase public confidence in the integrity, transparency and outcomes of these elections. (Explanatory Notes to the Local Government Electoral Bill 2011, p. 3)

The issues identified by the CCC in Operation Belcarra suggest that these aims are difficult to achieve with the ECQ focused only on administering the LGE Act as written, and not playing a broader role in promoting transparency and integrity in elections.

A reactive and ineffective approach to monitoring compliance

There were numerous instances in relation to the 2016 elections where non-compliance with the LGE Act or other concerns were not proactively identified by the ECQ, but rather brought to the ECQ's attention by an external party, usually another candidate. At the public hearing, the Electoral Commissioner noted the ECQ's reliance on information from other candidates in the context of how-to-vote cards:

Counsel Assisting	In determining those things which may not be self-evidently misleading, are you reliant on, say, complaints from opposing candidates to determine whether something is misleading or does it just slip by, or how do you deal with it?
Mr van der Merwe	We get a number of complaints from opposing candidates in terms of how-to-vote cards, and every single one is looked at on its merits because if it is misleading, it's not fair to the electors. You are taking away the transparency of the basic existence of why we're running an election. But, yes, we rely on feedback, for want of a better word, from other candidates in terms of the content of their opponents' how-to-vote cards. (Evidence given by Walter van der Merwe, p. 33)

The major instances of non-compliance with donation disclosure obligations investigated in Operation Belcarra were likewise detected outside of the ECQ, particularly by other candidates and the media. This is not necessarily a problem, and indeed one of the main benefits of publicly disclosing donations is that it enables "civil society to oversee political leadership in a way that bureaucratic regulators never could" (given that regulators have limited resources at their disposal; NSW ICAC 2014, p. 24). The CCC also acknowledges that the ECQ usually audits a random sample of candidates' returns to check compliance with the disclosure requirements of the LGE Act, but this has not proceeded as usual for the 2016 local government elections given the CCC's investigation. Overall, however, it appeared to the CCC that the work undertaken by the ECQ to monitor compliance with the LGE Act and identify breaches is limited.

Many candidates and councillors interviewed during Operation Belcarra also expressed this view, and further raised questions about the effectiveness of the monitoring work that is undertaken. Some of the examples of non-compliance identified by the CCC certainly suggest that the ECQ's work in this regard has been inadequate. In relation to disclosure returns, for example, a number of candidates appeared to have repeated errors (either their own or others') that had gone undetected and uncorrected by the

279 Section 8, LGE Act and section 7, *Electoral Act 1992*.

ECQ in previous elections. Moreton Bay Councillor Peter Flannery highlighted an example of this at the public hearing:

Counsel Assisting	…You've disclosed the name of the trust but not the names of any trustee, haven't you?
Cr Flannery	No, that's correct.
Counsel Assisting	Does the guide not make plain that that's what you ought to have done?
Cr Flannery	From recollection, I don't believe it did. I'd looked at the 2012 returns that the Mayor had put in with "Moreton Futures Trust" written down as well, and that seemed to have been accepted and hadn't been rejected at the time, so—
Counsel Assisting	It hadn't been challenged?
Cr Flannery	That's right, so I followed it. (Evidence given by Peter Flannery, p. 10)

Many other candidates and councillors raised instances of non-compliance that had gone unchecked, further suggesting that the ECQ has been ineffective in this regard.

One specific problem that appeared to underlie some of the ECQ's ineffectiveness in compliance monitoring, particularly in relation to donation disclosure, was poor administrative practices. During Operation Belcarra, some concerns raised by candidates and councillors pointed especially to deficiencies in the ECQ's record-keeping. At the public hearing, for example, Ipswich Councillor Paul Tully highlighted one notable error in which a Cairns resident had been recorded as making a $500 donation to the Goodna Community Fund:

Legal Representative	And was any such donation ever received by the community fund or you personally from a Mr Ireland in Cairns?
Cr Tully	No. The name is FRM Ireland, which I think is a company. I then tracked back, you know… how could that possibly show up as a donation to the Goodna Community Fund? There is a declaration by a candidate in the Cairns Council election for an amount of $500, the same amount, on the same day, to an individual candidate by that same donor. So I suspect it was just an error, but I've also — you know, once you get doing a bit of searching, you realise that this donor from Cairns has been a regular donor to the Liberal Party, which is rather embarrassing. That officially even today — and I checked again last night — is on official ECQ records as being a donor to the Goodna Community Fund. (Evidence given by Paul Tully, p. 26)[280]

This type of problem was consistent with the CCC's own experience in seeking information from the ECQ about the number of candidates in the 2016 elections who had not submitted a disclosure return. The CCC had assumed this would be a relatively straightforward request requiring the ECQ to interrogate some kind of database or register. However, as noted on page 65, the ECQ was unable to provide non-compliance estimates for all Queensland councils, and even the data that was provided (for the four councils involved in Operation Belcarra plus Brisbane City Council) appeared to the CCC to contain some inaccuracies. This suggested to the CCC that accurate and comprehensive information pertinent to the ECQ's compliance monitoring role was not being adequately maintained. These issues may in part reflect the significant deficiencies in the ECQ's information and communications technology (ICT)

280 As of 13 September 2017, FRM Ireland was still recorded as a donor to the Goodna Community Fund in the Register of Gifts (an Excel spreadsheet) available for download from the ECQ website (<www.ecq.qld.gov.au/__data/assets/excel_doc/0005/45419/Gift-Register.xls>). The CCC notes that this error appears to have been corrected in the data available through the EDS.

capability highlighted in the independent inquiry into the 2016 local government elections (Soorley et al. 2017). Where processes and systems are such that even basic information like whether a candidate has submitted a return cannot be easily determined, the ECQ's ability to identify and respond to non-compliance will clearly be hampered.

In his evidence at the public hearing, the Electoral Commissioner suggested two other factors that may contribute to deficiencies in the ECQ's monitoring. The first of these is that the ECQ lacks the capacity to effectively monitor compliance. As the Electoral Commissioner stated in relation to the ECQ monitoring third parties' compliance with their donation disclosure obligations, "I don't have a network of investigators out there to find situations or examples where it hasn't taken place".[281] Indeed, this lack of investigative capacity was part of the reason that the ECQ referred the complaints it had received in relation to the 2016 elections to the CCC. The second factor impeding effective compliance monitoring by the ECQ is that, in some cases, checking compliance is simply quite difficult. The Electoral Commissioner spoke to this issue at the public hearing in the context of donation disclosure returns:

Counsel Assisting	How, though, do you ascertain whether all donations are in fact listed?
Mr van der Merwe	It would be very difficult to ascertain that.
Counsel Assisting	Is that reliant on the honesty of the candidate?
Mr van der Merwe	I have to take it on good faith of the candidate and the person submitting the return. (Evidence given by Walter van der Merwe, p. 25)

The CCC can appreciate these difficulties, particularly given the paper-based disclosure scheme in place for the 2016 (and 2012) elections.

As donations are given in private, some of these challenges will always be difficult to overcome and there will always have to be a certain reliance on candidates and others acting with integrity in fulfilling their obligations. In some cases, however, the ECQ simply needs to do more to ensure that the LGE Act is being complied with. This was nowhere better highlighted than in relation to dedicated accounts:

Counsel Assisting	Does the Commission have the means to try to vet or scrutinise whether a candidate is using such an account, at least for the operation of law, it being an offence not to do so?
Mr van der Merwe	There is an assumption that a candidate will have an operating account. And the details of that account, the ingoings and outgoings, you know, we can certainly have a look at that. We can't cover for a candidate who might run two or three accounts. As far as we are concerned, the legislation says you have one and that's what you run with. If you have two or three and you are caught out, you then commit an offence and you will be prosecuted for that. So, again, it is going back to this trust factor… If for whatever reason a candidate chooses not to do that, one would hope they would eventually get caught out…
Counsel Assisting	Tell me, just the last thing on this topic, can the Commission require the provision of that account for scrutiny, or not? Is that ever done?
Mr van der Merwe	The reason I'm hesitating is because I can't remember when it was done, if it is done… (Evidence given by Walter van der Merwe, pp. 28–9)

The Electoral Commissioner subsequently gave written advice to the CCC stating that the ECQ may request that a candidate supplies a copy of their dedicated account statement, but no indication was given that this had ever been done. The considerable level of non-compliance identified by the CCC in

281 Evidence given by Walter van der Merwe, p. 21.

this area shows that, unsurprisingly, relying on trust alone is a wholly inadequate approach to ensuring compliance.

No appetite for enforcement

The ECQ was not able to identify any examples of where it had pursued enforcement action against any person who had failed to comply with their legal obligations in the context of a local government election. One reason for this identified by the Electoral Commissioner during his interview with the CCC was that the ECQ preferred to work with candidates and others to encourage compliance rather than pursue prosecutions. As noted above, however, there is little evidence that this occurs either. This creates an environment where people can ignore or neglect their obligations with virtually no risk of negative consequences. As one councillor commented during their interview with the CCC:

> You don't hand in your… [disclosure return] form, well, what does it matter? If you haven't won you've got nothing to lose. There's just no follow-up and no consistency.

Where these perceptions of limited monitoring and enforcement exist, non-compliance will continue.

Improving the ECQ's monitoring and enforcement activities

Clearly, significant improvements can be made to the ECQ's monitoring and enforcement activities. The introduction of the EDS as discussed in Chapter 12 will certainly be valuable in this regard, particularly with its potential for more streamlined and automatic auditing of disclosure returns. However, as important as ensuring compliance with donation disclosure requirements is in promoting transparency, it is only one part of this. In the CCC's view, a much broader change to the ECQ's approach to monitoring and enforcement is required.

The CCC considers that the ECQ's fundamental orientation to its role in local government elections needs to be modified. Currently, any role it might be expected to have in promoting transparency and integrity in the conduct of candidates and other election participants is outweighed by its focus on the administrative side of elections. In the CCC's view, a better balance would be achieved if the ECQ was given a specific legislative function to promote integrity and transparency in local government elections (Recommendation 31). Such a function is similar to those of the NSW Electoral Commission[282] and the Victorian Local Government Investigations and Compliance Inspectorate.[283] Under this function, the ECQ should be specifically required to undertake a range of activities focused on promoting and enforcing compliance with the LGE Act — for example, engaging with candidates about their obligations, investigating complaints and offences under the LGE Act and commencing enforcement proceedings (Recommendation 31, part a). In this way, candidates and other participants in local government elections would be subject to much higher levels of scrutiny and accountability than they are currently. The ECQ should itself be held to account by being required to publish post-election reports on its compliance monitoring and enforcement activities (Recommendation 31, part b).[284]

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282 Section 22(2) of the Election Funding, Expenditure and Disclosures Act requires the NSW Electoral Commission "to have regard to the objects of [the] Act in exercising its functions". These objects include establishing a fair and transparent election funding, expenditure and disclosure scheme, and helping to prevent corruption and undue influence in state and local government (s. 4A).

283 The Local Government Investigations and Compliance Inspectorate is the dedicated integrity agency for Victorian local government. It investigates complaints relating to council operations and council elections, including offences under the *Local Government Act 1989*. It also undertakes work to prevent corruption and monitors councils' governance arrangements.

284 The Local Government Investigations and Compliance Inspectorate's report on the 2016 local government elections in Victoria (Local Government Investigations and Compliance Inspectorate 2017) is a good example of this type of report.

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.

The above recommendation represents a significant change in role that would have significant implications for the ECQ. The CCC expects that delivering on this new function would be beyond the resourcing and capability of the ECQ as it currently exists, especially given the problems in "management, communication and accountability systems and processes" identified by the recent independent panel (Soorley et al. 2017, p. 7). This is something that needs to be considered and addressed by the state government (Recommendation 31, part c). Although this may present considerable challenges, the range of allegations investigated by the CCC in Operation Belcarra highlights the importance of a strong and effective electoral commission. Without one, public confidence in the integrity of local government elections and local government more broadly can be seriously undermined.

Appendix 1:
Public hearing terms of reference

Operation Belcarra Inquiry

Terms of Reference

Context

Following the Queensland local government elections on 19 March 2016, the Queensland Crime and Corruption Commission (CCC) received a number of allegations about the conduct of candidates for several councils. These allegations identified a number of possible breaches of the *Local Government Electoral Act 2011* (LGE Act). These allegations also identified practices that give rise to potential corruption risks, or may otherwise undermine transparency, integrity and public confidence not only in the 2016 elections, but in local government more generally. The CCC established Operation Belcarra to investigate the allegations.

Objectives of the public hearing

Pursuant to sections 176 and 177 of the *Crime and Corruption Act 2001*, the Commission authorises and approves the holding of public hearings in relation to Operation Belcarra. The CCC public hearing is:

1) investigating whether candidates in the Gold Coast, Moreton Bay, Ipswich and Logan 2016 local government elections-
   a) advertised or fundraised for the election as an undeclared group of candidates, an offence contrary to section 183 of the LGE Act.
   b) provided an electoral funding and financial disclosure return that was false or misleading in a material particular, an offence contrary to section 195 of the LGE Act.
   c) have not operated a dedicated bank account during the candidates' disclosure period to receive and/or pay funds related to the candidates' election campaign, an offence contrary to section 126 of the LGE Act.
   d) unlawfully influenced a Council decision in relation to a development application in favour of a donor.
2) examining issues or practices that are relevant to the identification of actual or perceived corruption risks in relation to the conduct of candidates and third parties at local government elections, including issues or practices relating to groups of candidates, independence of candidates, election gifts and funding, conflicts of interest or material personal interests by councillors.
3) examining strategies or reforms to prevent or decrease actual or perceived corruption risks in relation to conduct of candidates and third parties at local government elections.

Public report

The CCC will issue a public report on the outcomes of Operation Belcarra.

Alan John MacSporran QC

Appendix 2:
Witnesses who appeared at the CCC's public hearing

Tuesday 18 April 2017	Walter van der Merwe
	Simone Maree Holzapfel
	Kristyn Lee Boulton
	Stuart Robert MP
Wednesday 19 April 2017	Paul John Pisasale
	Kerry Vernessa Silver
	Paul Gregory Tully
	Michael Keith Charlton
Thursday 20 April 2017	Dr John Alexander Ryan
	Timothy Joseph Connolly
	Kirby James Leeke
Friday 21 April 2017	Shayne Kenneth Neumann MP
	Kylie Ann Stoneman
	Peter John Flannery
	Allan Robert Sutherland
Wednesday 26 April 2017	Felicity Stevenson
	Donna Gates
	Cameron MacKenzie Caldwell
	Thomas Richard Tate
Thursday 27 April 2017	Robert Sharpless
	Robert Joel Comiskey
	Greg Hallam
Friday 28 April 2017	Richard Bingham
	Professor Graeme Orr
	Andrew John Bartlett and Anthony James Pink
	Professor Anthony Gray
	Dr Cameron Murray

Tuesday 13 June 2017	Trent Alan Dixon
	Timothy Luke Smith
	Rhonda Joyce Dore
	Kassen Issa
	Terry Yue
	Kuo Sing (Sam) Tiong
Wednesday 14 June 2017	Penny Toland
	Kimberly James
	Michael Ravbar
	Hylie Sally Wai Chung
	David Trask
	Andrew Sutherland

Appendix 3:
Procedural fairness and stakeholder submissions

The CCC provided the following people/organisations with a copy of the draft report and invited them to make submissions prior to the CCC determining the final form of the report. Table A3.1 records whether the person/organisation provided a confidential or non-confidential submission, or whether the CCC did not receive a submission by the deadline. Copies of all non-confidential submissions are included in the following pages.

Table A3.1. Responses to invitations to make a submission on the draft report.

Person/organisation	Response
AdvanceForm	No submission received
Al Aqar	No submission received
Australia–China Chamber of CEO Inc.	No submission received
Australian Labor Party (ALP; State of Queensland)	Confidential submission
Australian Queensland Fijian Association Inc.	No submission received
Australian SN International Investment Group	No submission received
Australian Yues International Development group	No submission received
Mr Richard Bingham (former Queensland Integrity Commissioner)	Non-confidential submission (p. 101)
Cr Kristyn Boulton (Division 4, Gold Coast City Council)	No submission received
Cr Mike Charlton (Division 9, Moreton Bay Regional Council)	No submission received
Chin Hong Investments Corp	No submission received
Ms Hylie Sally Wai Chung	No submission received
Mr Robert Comiskey	No submission received
Mr Grant Dearlove	No submission received
Department of Infrastructure, Local Government and Planning (DILGP)	No submission received
Ms Rhonda Dore	No submission received
Electoral Commission Queensland (ECQ)	Confidential submission
Cr Peter Flannery (Division 2, Moreton Bay Regional Council)	No submission received
Cr Donna Gates (Division 1, Gold Coast City Council)	No submission received
Professor Anthony Gray	No submission received
Cr Julie Greer (Division 4, Moreton Bay Regional Council)	No submission received
Mr Greg Hallam (Chief Executive Officer, LGAQ)	No submission received
Hardev Property	No submission received
Holiday International Golden Travel	No submission received
Ms Simone Holzapfel	No submission received
Cr James Houghton (Division 5, Moreton Bay Regional Council)	No submission received
Impact Homes	No submission received
Mr Kassen Issa	No submission received
Ms Kimberly James (unsuccessful Division 3 candidate, Moreton Bay Regional Council)	No submission received
Mr Kirby Leeke	No submission received
Liberal National Party (LNP) of Queensland	No submission received
Local Government Association of Queensland (LGAQ)	No submission received

Person/organisation	Response
McLeans Print (McLean Images Pty Ltd)	No submission received
ME Harrison Investments	No submission received
Moreton Futures Trust (MFT)	No submission received
Dr Cameron Murray	No submission received
The Hon. Shayne Neumann MP	No submission received
Newcombe Holdings	No submission received
Oliver Hume Real Estate Group (QLD) Pty Ltd	Response provided indicating no submission
Open Corp Project Management	No submission received
Professor Graeme Orr	No submission received
PDM Property Developments	No submission received
Phillip Usher Constructions	No submission received
Mr Paul Pisasale (former mayor, Ipswich City Council)	No submission received
Mr Michael Ravbar	No submission received
The Hon. Stuart Robert MP	No submission received
Cr Kerry Silver (Division 3, Ipswich City Council)	Confidential submission
Ms Andrea Smith	No submission received
Cr Timothy (Luke) Smith (Mayor, Logan City Council)	Non-confidential submission (p. 102)
Dr Nikola Stepanov (Queensland Integrity Commissioner)	Confidential submission
Ms Felicity Stevenson (unsuccessful Division 5 candidate, Gold Coast City Council)	No submission received
Cr Kylie Stoneman (Division 4, Ipswich City Council)	Non-confidential submission (p. 107)
Cr Allan Sutherland (Mayor, Moreton Bay Regional Council)	Non-confidential submission (p. 108)
Mr Andrew Sutherland	No submission received
Cr Tom Tate (Mayor, Gold Coast City Council)	Non-confidential submission (p. 111)
Mr Kuo Sing (Sam) Tiong	No submission received
Ms Penny Toland (unsuccessful mayoral candidate, Gold Coast City Council)	Non-confidential submission (p. 114)
Mr David Trask	No submission received
Cr Paul Tully (Division2, Ipswich City Council)	Confidential submission
Mr Walter van der Merwe (Queensland Electoral Commissioner)	Non-confidential submission (p. 117)
Cr Koliana Winchester (Division 6, Moreton Bay Regional Council)	No submission received
Mr Liansheng Yue	No submission received
Mr Terry Yue	No submission received

Submission from Mr Richard Bingham, former Queensland Integrity Commissioner

INTEGRITY COMMISSION

Our ref 2017/001834
Your ref CO-17-1486 RXD

20 September 2017

Mr Alan MacSporran QC
Chairperson
Crime and Corruption Commission
Queensland

By email Belcarra@ccc.qld.gov.au

Attention Dr Rebecca Denning

Alan

Dear Mr MacSporran

Operation Belcarra – Draft Public Report

Thank you for your letter dated 18 September 2017.

I have read the copy of the draft report that you provided to me, and I agree that it accurately reflects my views.

I have no further comments beyond noting that I think it is a reasoned and well-presented document, and I agree entirely with its proposed recommendations.

Yours sincerely

Richard

Richard Bingham
CHIEF EXECUTIVE OFFICER

Submission from Cr Luke Smith, Mayor, Logan City Council

Crime and Corruption Commission Queensland

Operation Belcarra Draft Report

Submission on behalf of Mayor Luke Smith, Logan City Council

1. Introduction

1.1 Thank you for your letter dated 18 September 2017 inviting Cr Smith to make a submission regarding the Crime and Corruption Commission ("CCC") Draft Report on Operation Belcarra ("Draft Report").

1.2 The CCC's role in investigating and preventing corruption and promoting integrity are of utmost importance and Cr Smith welcomes the opportunity to further assist the CCC in fulfilling this role by providing this submission.

1.3 Cr Smith understands from the Draft Report that the CCC's inquiry into his 2016 Mayoral election campaign remains ongoing[1] - but welcomes the absence of any recommended action against him in the Draft Report.

1.4 In keeping with the CCC's pursuit of transparency, objectivity and the principles of natural justice, Cr Smith equally welcomes the opportunity to provide further submissions should the CCC determine during the course of the ongoing inquiry that further information or recommendations should be published. Cr Smith submits that there is room for confusion and unfortunate misinterpretation and would be pleased to clarify any other matters if that would assist.

2. Public interest issues

2.1 As Mayor of the Logan City Council ("LCC"), and someone who has been active in community service in the Logan area for most of his life and a part of the LCC since 2006, Cr Smith understands and respects the importance of equity, transparency, integrity and accountability and has held himself to these standards throughout his career.

2.2 While elected officials are, and rightly should be, held to a standard of conduct in line with these principles, it is unreasonable to expect them to be beyond unintentional errors. What is important is that all reasonable measures are taken to prevent, identify and resolve any such errors. While individual responsibility is imperative in ensuring that this occurs, it is equally important that the rules and requirements governing the standards of conduct expected of elected officials are clear and that relevant advisory bodies are in the best possible position to provide unambiguous and consistent advice to assist elected officials to meet the standards expected of them. Cr Smith welcomes the discussions in the Draft Report in this regard and the suggested reforms that are apparent from the Draft Report in connection with such clarity and guidance.

Draft Report language and headings

2.3 Cr Smith is conscious of the CCC's comments that the inquiry into his 2016 election campaign remains ongoing. Given this, and the fact that the final report may be published without any final recommendations being made in his regard, Cr Smith has reservations about the language adopted in the Draft Report, in particular the language used in the draft headings.

2.4 Cr Smith understands that the draft headings are intended to reflect the terms of reference, however it would be unfortunate for the phrasing of the headings to inadvertently result in a misunderstanding of the inquiry's findings by alluding to unlawful conduct irrespective of whether, in the CCC's opinion, such conduct occurred. An example of one such heading is "Councillors attempting to unlawfully influence council decisions" on page 37 of the Draft Report. The text that follows makes it clear that the CCC's investigations are ongoing and expressly states that it would

[1] Pages 14, 15, 33, 37 and 74 of the Draft Report.

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be premature to draw any conclusions. It would be unfortunate if conclusions were drawn by the use of headings of this kind.

2.5 Cr Smith respectfully suggests that headings which make reference to the topics in a more neutral way would avoid unfortunate misconceptions in this regard. For example the above heading could be either "Allegations that Councillors attempted to influence council decisions", "Allegations as to Council decisions" or simply "Council decisions" (the latter would seem preferable). Any of these would still reflect the content of the CCC's investigation without inadvertently suggesting conduct which is not referred to in the text that follows. Such headings would also reflect the fact that the inquiry was about allegations rather than findings that had already been made.

3. Candidate disclosure obligations

3.1 Cr Smith's evidence demonstrates that part of the purpose of creating Logan Futures was to comply with ECQ rules and ensure that campaign donations were kept separate from Cr Smith and his family finances to ensure transparency and accountability[2].

3.2 ECQ was consulted prior to Logan Futures being set up for this purpose and there is no suggestion in the Draft Report that the formation and use of Logan Futures for this purpose was contrary to any of the applicable legislative or other applicable requirements. In fact the commentary in section 12 appears to proceed upon the assumption that such an arrangement was permissible (although section 12 is premised upon recommendations that there be reforms in that regard).

3.3 At page 62 of the Draft Report, the CCC states that:

"Despite the stated rationale for Logan Futures, receiving campaign donations via a third party can reduce the transparency of relationships between donors and candidates by making it more difficult to identify the true source of campaign funding."

3.4 Cr Smith respectfully submits that this is not the case in relation to Logan Futures and this sentence should be deleted. The Logan Futures amended return clearly identifies that it is to be read with Cr Smith's return and Cr Smith's return makes it clear that he received a sizeable donation from Logan Futures. In those premises there is clarity and transparency. With respect it is also not difficult to follow the source of the donations – Cr Smith's return expressly directs the reader to the Logan Futures return. Cr Smith suggests that the Draft Report is amended to recognise this fact. Cr Smith suggests that it is not a fair statement to suggest that it is "harder" to "discern"[3] the source of donations in relation to Logan Futures. One had only to read Cr Smith's return and then review the Logan Futures return.

3.5 Further, and in any event, Logan Futures submitted an incomplete third party disclosure return which clearly identified the names, dates and values of individual donations given to the campaign and, in nearly all cases, the addresses of the donors. There were a number of instances where the addresses were not completed in the Logan Futures return but information such as "Unknown" was inserted for the addresses. Cr Smith respectfully submits that, in these premises, where the names of the donors are included there is not an anonymous donation despite the suggestion in the Draft Report to the contrary. Cr Smith respectfully submits that the dictionary definitions of "anonymous" make it clear that it is intended to refer to an absence of a name.

3.6 What is clear from the Draft Report is the CCC's conclusion that the record keeping practices of Logan Futures were insufficiently stringent to ensure (as far as reasonably and humanly possible) there were no errors or omissions in its third party disclosure return[4]. This is accepted by Cr Smith. In fact, this issue had been identified by Cr Smith prior to Logan Futures' the third party return being filed and steps were taken to identify and rectify these errors / omissions as follows:

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[2] Evidence given by Cr Smith at page 11.
[3] As is suggested in the last paragraph on page 62 of the Draft Report.
[4] Pages 34 and 35 of the Draft Report.

(a) Obtaining an Audit report of Logan Futures financial records to determine any inconsistencies[5];

(b) Ticking "incomplete" on Logan Futures' third party return[6].

3.7 Cr Smith respectfully suggests that it would be preferable for the Draft Report to reflect and recognise the sections of the LGEA which permitted the submission of incomplete returns and their subsequent amendment. Pages 33 to 37 of the Draft Report repeatedly refer to the "Logan Futures disclosure return" without, it is respectfully submitted, making it clear that it was expressly said to be an incomplete return and envisaged amendment. Cr Smith suggests that the words "Logan Futures disclosure return" be amended to read "Logan Futures incomplete disclosure return" or words to that effect.

3.8 Sections 131 and 132 of the LGEA expressly permitted Logan Futures to give an incomplete return and to amend that return. Section 198 provides a 5 year time limit on the provision of further information. In this regard it is submitted that there was nothing irregular about the return provided by Logan Futures. It expressly recognised the limitations on the information contained within it and Cr Smith suggests that the Draft Report could and should be amended to recognise that the return for Logan Futures was marked incomplete and that it can still be amended. Suggestions in the Draft Report that the Logan Futures return have not been amended should, in fairness, be qualified by express references that it is still possible to do so. The ability for that to occur is addressed in more detail below.

Obtaining an Audit report of Logan Futures' financial records

3.9 As is recognised in the Draft Report, Cr Smith caused the return of Logan Futures to be audited (see, for example, footnote 78 on page 35). Cr Smith submits that it would be preferable, and fair, to more clearly recognise the steps taken to check the accuracy of the report by way of this audit in the text of the Draft Report.

3.10 Further, at page 33 of the evidence of Cr Smith, he states:

"We recognised that there was human error, which is why the third party return was marked "Incomplete" to the Electoral Commission, because we recognised that we may have overlooked some things and that if - as things came to light, under Electoral Commission law we have four years to amend that so that we could ensure that if there were things we overlooked or there were mistakes that were made, we could still comply with the law."

3.11 As is discussed above, by filing its third party disclosure return with an "incomplete" designation, under the current rules Logan Futures has 5 years in which to amend its third party disclosure (rather than the 4 years Cr Smith refers to above).

3.12 At page 37 of the Draft Report, the CCC states that:

"Despite the assurances that Cr Smith stated he received from the directors of Logan Futures to correct any anomalies in the disclosure return, it is known that they have wound the company up. Ms Dore and Mr Dearlove are no longer directors of Logan Futures. The company has ceased to exist and is unable to comply with requirements to amend the return."

3.13 While it is correct that Logan Futures has been wound up, it is incorrect to state that the company is unable to comply with requirements to amend the return in the premises of the matters that follow.

3.14 Deregistration of Logan Futures does not absolve its directors of their duties of care and diligence[7] or their fiduciary obligations in relation to acts done while the company was registered.

3.15 Further, section 601AH of the *Corporations Act* 2001 (Cth) provides that ASIC or a Court may re-register a company. The section confers wide powers on the Court to make other orders and Cr

[5] Audit report dated 30 June 2016.
[6] Evidence given by Cr Smith at page 33.
[7] See, for example, sections 180, 181 and 601AD(5) of the *Corporations Act* 2001 (Cth).

Smith submits that either the directors or Cr Smith might apply to re-register the Company in order to provide a return which has further information in it. It is not correct to say that the company is unable to comply with requirements to amend the return. It could do so if re-registered.

3.16 Also at page 37 of the Draft Report, the CCC states that:

"…Cr and Ms Smith's direct involvement in the operation of Logan Futures indicates that the company did not serve Cr Smith's stated purpose of keeping campaign funds separate from him and his family. Rather, the use of Logan Futures created an unusual situation where Cr Smith failed to record donations in his own disclosure return, despite a number of donations being handed directly to Cr Smith. The use of Logan Futures created an artificial separation between Cr Smith and donors on paper alone, undermining the transparency of significant donations, some of which were made in cash and handed directly to Cr Smith."

3.17 Cr Smith suggests that there is no evidence to support the use of the word "unusual" in the third line of the quote above. It conveys to the reader a suggestion that some comparison has been done of all such returns to make the judgment conveyed by the use of the word. Cr Smith suggests the word is deleted and the report simply refer to "a situation". In the premises of the matters above (including the express recognition of the monies received from Logan Futures in Cr Smith's return and the information in the Logan Futures return) Cr Smith also respectfully submits that the words "undermining the transparency of significant donations" should be deleted as they are not correct in those premises.

3.18 Further, Cr Smith rejects the suggestion that he "failed" to record donations in his own return. The fact that donations were handed to Cr Smith does not mean that he was not acting as agent of Logan Futures for the receipt of that money. In circumstances where those donations were made to the company they were appropriately recorded in the Company's return. The donations were recorded in the return from Logan Futures and there was still transparency in that return.

3.19 Cr Smith's return made it plain that the donations were received from Logan Futures. The above quoted text is, with respect, inconsistent with the recognition elsewhere in the report that it was and is permissible to have such an arrangement (for example in section 12 of the Draft Report). It is also inconsistent with the ultimate conclusion of the CCC, at the bottom of page 63 of the Draft Report, that it would be impracticable to ban such arrangements. That being the case the criticisms (express and implied) in the text in italics above is, it is respectfully submitted, unfair and unwarranted in its present form.

4. Campaign donors and influence on council decisions

4.1 At page 37 of the Draft Report, the CCC states that:

"…one of the allegations made against Cr Smith was that he attempted to unlawfully influence the outcome of council decisions on development applications that would be beneficial to companies that donated to Logan Futures."

4.2 At page 38 of the Draft Report, the CCC states that:

"…the CCC has identified that a number of donors to Logan Futures appeared to have some interest in or relationship to property development in the Logan area."

4.3 Pages 38 and 39 of the Draft Report then go on to outline "key donors" to Logan Futures and "*the extent to which they had interests that could be affected by council decisions, and the nature and scope of the development applications where relevant."*

4.4 There are several issues in this section that bear correction / expansion as follows:

4.5 First, Advance Form, Australian Yues International, Australia SN International Group Pty Ltd, Chin Hong Investments Corp and Holiday International Golden Travel did not, to the best of Cr Smith's knowledge, have any current development applications before council at the time donations were made.

4.6 In relation to SKL Cables, the Draft Report states that SKL Cables submitted a development application to Council on 17 November 2015 where:

"That application was to build a 15 storey building, with the proposal described in the application as "Proposed short-term accommodation (51 units), indoor sport and recreation and food and drink outlet".

4.7 This development application continues to be subject to the height requirements under the Logan Planning Scheme 2015 and is still under assessment. It has not been approved and has not been before the Council for a vote. Accordingly, Cr Smith has had no influence over the progress of the development application.

5. Conclusion

5.1 The CCC has identified key public interest issues which it has considered in making recommendations about whether further action should be taken against councillors. In most cases, the consideration of these public interest issues have been applied in favour of the CCC recommending that no further action be taken.

5.2 The CCC has also identified that as a matter of fairness, all candidates that failed to comply with the LGE Act should be treated equally[8].

5.3 In the circumstances outlined herein, no further action should be taken in relation to the allegations against Mayor Smith and it is noted that no such action is proposed in the Draft Report.

[8] Page 13 of the Draft Report

Submission from Cr Kylie Stoneman, Division 4, Ipswich City Council

Crime and Corruption Commission Queensland

Operation Belcarra Draft Report

Submission on behalf of Cr Kylie Stoneman, Ipswich City Council

1. Introduction

1.1 Thank you for your letter dated 18 September 2017 inviting Cr Stoneman to make a submission regarding the Crime and Corruption Commission ("CCC") Draft Report on Operation Belcarra ("Draft Report").

1.2 Cr Stoneman is an active member of the Ipswich community and has been involved in public service at Local, State and Federal Government levels since 2008. As such, Cr Stoneman recognises the important role the CCC has in combatting and reducing corruption and promoting accountability and integrity in the public sector.

1.3 Cr Stoneman welcomes the opportunity to provide further assistance to the CCC in fulfilling its role by providing this submission.

2. Groups of candidates

2.1 At page 23 of the Draft Report, the CCC states that Cr Stoneman used a joint how-to-vote card with then Mayor Pisasale who was at the time running for re-election.

2.2 At page 24 of the Draft Report, the CCC states that:

"Besides candidates having joint how-to-vote cards with the mayor, some candidates also had joint how-to-vote cards with other candidates. For example, Cr Tully had joint how-to-vote cards with Cr Stoneman and Cr Silver."

2.3 While it is correct that Cr Stoneman had a joint how-to-vote card with Mr Pisasale, she did not have a joint how-to-vote card with any other candidates, including Cr Tully.

2.4 Cr Stoneman respectfully requests that this statement be corrected.

3. Conclusion

3.1 At page 25 of the Draft Report, the CCC concluded that based on the joint how-to-vote cards, there was evidence that a number of candidates were part of a group of candidates for the purposes of s. 183 *Local Government Electoral Act 2011*.

3.2 Despite this, the CCC determined to take no further action in relation to these allegations for public interest reasons, which included that:

(a) *"This was a systemic issue across a number of candidates and had occurred in a number of prior elections and has not been subject to any censure by the ECQ or other authority."*

(b) *"The how-to-vote cards were approved by the ECQ, which knew or ought to have been aware that the candidates had not registered as a group. The candidates are likely to have inferred from the ECQ's approval that their conduct was not contrary to the LGE Act."*

3.3 Cr Stoneman supports the conclusions of the CCC in making its recommendations in the Draft Report and agrees that in the circumstances it would not be in the public interest for further action to be taken against her.

Submission from Cr Allan Sutherland, Mayor, Moreton Bay Regional Council

[redacted]

The Secretary
Operation Belcarra Inquiry
GPO Box 3123, Brisbane QLD 4001
Via: belcarra@ccc.qld.gov.au

Dear Secretary

I note receipt of a draft copy of the Operation Belcarra report received 18 September 2017.

The draft report examined a number of matters and makes a range of local government electoral reform recommendations, some of which I feel are visible in the draft version I have sighted, and others which are not. I will therefore only comment on those findings and recommendations that are included in the draft report version I have sighted.

In my earlier submission to the Commission, I touched on a number of possible areas of reform including the introduction of a register of interest for all local government election candidates at time of nomination, mandatory attendance at DILGP candidate workshops prior to nomination, ECQ revising their written election materials for candidates including the candidate handbook, and strengthening the definition of a group of candidates. I welcome the recommendation of these matters in the draft report.

Another recommendation that is welcomed is the recording of details of all election donors to a trust or third party on the disclosure return for the candidate. I believe this will act as an important prompt for candidates to familiarise themselves with all donors to a trust or third party that subsequently donated to their campaign, and disclose the names, addresses and relevant details of those donor and that trust on their own candidate return and in the disclosure system. This is a welcome measure.

This is however only a worthwhile exercise where candidates are disclosing their donations through the new system and via returns. The report notes a number of candidates including some in Moreton Bay Regional Council election failed to lodge a return. Any increase to real time monitoring and compliance action against candidates not lodging all their donations is welcomed. For this reason I believe it would be welcomed by Councillors and candidates to see information sessions run across the state by the ECQ regarding the new real-time disclosure system. Requiring all sitting Councillors and candidates prior to the next election to sign a register that they have attended an information session could be a good step.

I note the draft report also makes a recommendation that candidates and other participants in local government elections be required to disclose their election expenditure. This is welcomed, and I believe it is important that expenditure disclosure is considered as a matter of priority. While it is more than two and a half years out from the next local government election, it is already being reported to me that some potential candidates are advising other candidates that they have already placed holds on billboards across the region for the March 2020 local government election. Surely placing a hold on such election materials would require a level of deposit, or in turn if it is being held for free, this could amount to a gift from a donor or billboard company and should be disclosed. Introduction of mandatory real-time report of election expenditure, in addition to any caps on expenditure would possibly address some of these matters.

I believe it is important to also consider restrictions around how candidates are able to acquit their election donations. In an example of Moreton Bay Regional Council, a Councillor received donations towards his

election; however the Councillor was unopposed at the election. In this particular case, while the Councillor was elected unopposed, it has been alleged that his campaign donations went to non-election related expenditure. I believe it is important to consider whether further restrictions should be put in place to restrict campaign donations to only to very specific campaign costs during the election period.

On page 45, it makes a comparison between my donation return and another candidate. Further transparency in this area is welcomed. I believe the introduction of mandatory candidate registers at time of nomination will assist in disclosing candidate's own personal interests including political party memberships and also business and property interests. It is important to note that while some candidates may appear to receive only minimal direct donations, they are well-known business people in the region with property interests I.e. through local real estate businesses.

It is also important to reflect that other local government candidates including the two major parties' candidates for Mayor in Brisbane City Council returned an election disclosure of $0 donations received. This should be a cautionary tale for legislators in this space. While the discussion relating to possible recommendations for donation caps and bans, and caps on campaign expenditure are welcome, it is important to fully consider the consequence that such changes may have on ushering in major political parties further into local government elections and that donations made to political parties are not necessarily disclosed against the candidates, in this case for both major party candidates for Lord Mayor of Brisbane who returned a $0 return for the 2016 election.

This brings me to page 76, where the draft report states that the CCC considers that Queensland must follow the lead of New South Wales in banning donations from property developers. This is welcomed, I believe it is important to have a very clear definition of a property developer. It is also important I believe to consider other candidates such as one of the candidates who ran for Mayor in Moreton Bay who has significant land and property interests through their family's real estate business. While this candidate, Mr Teasdale may have declared $990 in election donations as per page 45, there is no way of telling how much of his campaign was self-funded through his family's real estate business profits. In banning or restricting donations, it is important to consider all categories of candidates, donors and third parties who may have significant land and property interests. Introducing real-time election expenditure requirements I believe would go some way to addressing these issues.

In my earlier submission to the Commission, I touched on consideration of developer donation restrictions also being applied to all state election candidates. While there is potential for conflicts of interest in local government given the nature of development approvals under the Planning Act, it is important to note that conflicts also exist at the state level. All council town plans, amendments to those town plans, and the Planning Act are all approved and passed by the State Government. It is also the State Government who recently released its new South-East Queensland Regional Plan and urban footprint that dictates were urban housing development may occur. It is therefore suggested that any cap or ban on donations be equally applied to state election candidates.

In banning or restricting donations from certain industries and third parties, it is important to fully consider the potential impact this could have on allowing trade unions, third party associations and political parties to channel funds to candidates. Further consideration should be given to the potential impacts that such changes could have on the possible diversion of donations into political parties, unions and other associations, and the possible safeguards that could be put in place.

I also welcome the discussion in the draft report that Councillors need more information about conflicts of interests. The proposal to extend the Queensland Integrity Commissioner's advisory function to local government Councillors is a good idea and provides Councillors with another avenue to seek independent advice. This would certainly be of assistance.

I note there is also some discussion in the draft report regarding process improvements that could give clearer guidance to Councillors in declaring a conflict of interest at a council meeting. The report has considered requiring other Councillors to decide whether a Councillor has a conflict of interest and whether they should stay in the council chamber to vote on a matter. While there are some merits to this type of

inclusive discussion and decision making, it is important to understand the political environment in which councils exist and that such a discussion or vote could be used as a political weapon by a block of Councillors to vote another Councillor out of the room for political reasons. I believe this should be considered further including what necessary safeguards are needed.

There is also some discussion in the report about re-introducing a specific obligation on Councillors to report another Councillor's conflicts of interest. While the intentions of such a move are welcomed, again it is important to reflect on how such a provision would work within a political environment. It is also important, I believe, not to remove the individual Councillor's responsibility for their own actions under the law.

I commend the Commission for its proactive approach to the important issues at hand, and thank you for the opportunity to review the draft Operation Belcarra report and provide comment.

Yours sincerely

ALLAN SUTHERLAND
Mayor

Submission from Cr Tom Tate, Mayor, Gold Coast City Council

City of Gold Coast

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25 September 2017
Our ref: #64454360

Mr Alan MacSporran QC
Chairperson
Crime and Corruption Commission
GPO Box 3123
BRISBANE QLD 4001

Dear Sir

I am pleased to accept your offer to provide feedback on the draft Operation Belcarra report of September 2017. Respectfully, I offer the following observations:

I draw your attention to the single largest third party donation to a candidate in the 2016 City of Gold Coast local government election was from a union to mayoral candidate Ms Penny Toland. That was the CMFEU's $38,000. Two other union donations were made to Ms Toland, making this the highest donor-funded campaign of any candidate contesting the 2016 Gold Coast election.

[redacted] It was subsequently shocking to learn these campaign contributions were not even disclosed on the candidate's post-election return and came to light only when reviewing third party returns. Surely this gives rise to concerns by the CCC?

Given the earlier chapter references to 'uneven competition between candidates' surely it must be fair to also treat unions in the same vein as developers? If developers are to be banned from donating to candidates then surely fairness dictates that union contributions should similarly be banned, given these organisations are frequently operating in the same industry sector as developers.

While a substantial proportion, but not all, developer donations have been provided to conservative and LNP-aligned candidates, union donations have been provided without exception to Labor, Labor-aligned and left-oriented candidates. What is being mooted is one side of the political spectrum being banned from receiving a significant source of donated funds while the other side remains free to access donations from its own traditional source of funding. This would entrench an injustice and skew the democratic process.

Additionally, union representation figures prominently in Council's workforce. Even currently, the very unions who donated to the Penny Toland mayoral campaign are engaged in protracted and vexatious negotiations with my Council over a new Certified Agreement. We have seen the extent of union campaigns and lobbying impacting Brisbane City Council through similar negotiations in recent months.

These negotiations have also spilled over into media campaigns by the unions, and media campaigns, that have targeted Councillors and especially the Mayoralty of both Councils.

Even this month, I had unions who represent Council workers conduct a protest rally in the forecourt of our Council Chambers with a full media circus in tow, with intent to interrupt the Full Council meeting that day by presenting me with a list of demands. I assume the situation is similar with other Councils throughout Queensland.

As documented in the ECQ donations disclosures, and from the CCC's hearings, at least two other Gold Coast divisional candidate campaigns were supported by union member funds and human resources. These contributions were kept secret until the disclosures were revealed many weeks after polling day.

Clearly, union financial support to the Toland mayoral campaign and other divisional campaigns is a possible attempt to gain influence and favourable consideration for those unions and their members.

It beggars belief that an organisation can allocate members' funds and, without a vote membership approval, donate it to a candidate or candidates as the unions' management sees fit. This process was confirmed by the verbal evidence of union leaders appearing as witnesses at the CCC's hearings into this issue.

To ban developer donations and not ban union donations at the same time is a fundamental breach of fairness.

As to the likely recommendations emanating from your draft report in relation to limiting campaign expenditure, I am concerned that this may give rise to a myriad of supposedly independent third party organisations formed to back one or more candidates so as to skirt around the individual campaign expenditure limitations.

The other concern with expenditure limitation proposals is qualifying the range of expenditures and the timing of the 'expenditure period'. For example, a candidate could expend an almost unlimited amount of money promoting his or her 'good policies' and their own profile while professing they are 'not in the race' and then on the last day of nominations decide to run. It would be only at that point when the expenditure 'meter' would switch on.

I do wish to provide feedback that given the Ministerial call-in powers and ministerial powers in regard to strategic regional plans, as well as powers to accept, reject or modify new planning schemes of individual Councils, surely any rules applied to Council candidates should equally be applied to political parties and State candidates. To do otherwise will invite political party domination of local councils throughout the State where they have no domination currently given the potential for uneven treatment of donations in both political systems.

City of Gold Coast

I note the discussion about 'wealth of individual candidates' and that through this wealth it provides an 'unequal share of political influence and voice'. What this alludes to, but is not mentioned, is the influence of, and editorial decisions of, media outlets within various markets that loosely align with electoral districts in Council elections.

For example, on the Gold Coast there is a single daily newspaper, owned by News Corp Australia, which editorially can have a massive influence on an election based on the editorial decisions of its editorial management team.

Everything from new story assignments to which letters to the Editor are to be published, can in itself greatly influence the outcomes of elections. The ability of a candidate to by-pass media bias or editorial decisions to communicate directly with voters is essential for a truly fair and well-informed voting public and this requires funds. However, the proposed expenditure limits will place far greater electoral influence in the hands of a few unelected and largely unseen editorial staff of such media outlets.

I have seen no criminal prosecutions pursued, despite suitable laws being on the statute books, for the heinous lies told about me during 2004, 2012 and 2016 campaigns.

All I had at my disposal, to protect my name and my campaign, was defamation and slander actions which I successfully pursued. However these are only available well after polling day, rendering such slanderous assertions potent leading up to polling day. You may win the battle (defamation / slander action) but lose the war (election campaign). It's not an easy one to address but its over to you.

I trust you will take this feedback in the spirit in which it is intended, that is to continue to strengthen the electoral processes and good governance in Queensland.

Sincerely

TOM TATE
MAYOR

City of Gold Coast

Submission from Ms Penny Toland, unsuccessful mayoral candidate, Gold Coast City Council

nyst
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29 September 2017

By email: mailbox@ccc.qld.gov.au

Attention: Mr Alan MacSporran QC
& Mr Paxton Booth
Crime and Corruption Commission
GPO Box 3123
BRISBANE QLD 4001

Dear Sirs

Operation Belcarra: Penny Toland

You have invited Ms Toland to comment on the contents of your draft report prior to settling upon its final form. We are instructed to advise that Ms Toland vehemently disagrees with the conclusions you purport to have reached, and expects that if, notwithstanding such disagreement by her, you nonetheless elect to publish the report in its current terms, you will at least ensure that her within comments (as expressed by the writer on her behalf) are annexed to the final report for proper balance.

The draft report summarises the evidence given by the CFMEU representatives more fulsomely than it does the evidence given by Ms Toland. In particular, it omits reference to crucial evidence by Ms Toland (at page 15 of the transcript) regarding her initial discussion with the CFMEU, where she testified in clear and unequivocal terms that:

> "*They (the CFMEU) hadn't really cast their eye at the Gold Coast but would - you know, if they were to do anything, they would basically run their own show. That was very forcefully put to me, that anything they do is their business, their decision-making, up to them. And I said okay.*"

When asked whether she associated those firm advices with the conduct of her campaign, she responded, again in clear and unequivocal terms:

> "*Certainly. Like, it was having nothing to do with me. It was very clearly put to me that they're very good at running campaigns, it's what they do, it's their business, and, you know, basically I felt that they were saying, "You just run your campaign, worry about yourself, and we'll do what we do when we want to do it", that type of thing. So I walked out feeling quite discouraged, to be honest.*"

At pages 27 to 28 of the transcript, Ms Toland gave the further following evidence:

> Question: "So were there no parameters of request on your behalf?"
> Answer: *"No."*
> Question: *"So far as the gentlemen from the union were concerned, was there any indication of parameters -"*
> Answer: *"No."*
> Question: *" -that is to say, in what ways they might assist your campaign?"*

> Answer: *"No. They were very - Michael (Ravbar) was very clear in saying that should they make a decision to do activities on the Gold Coast, then that's their business, and I took that as, okay.*

This was all clear, first-hand, unequivocal evidence of what transpired at the meeting with Mr Ravbar. It was not expressed to be in any way conditional, speculative, hedged, uncertain or general in nature. Moreover, we have clear and unequivocal instructions from Ms Toland that such evidence was entirely truthful. It was not intended to, and it did not, suggest that she did not know that the CFMEU might conduct a campaign supportive of her and/or other candidates at the election, or that she did not ultimately become aware of CFMEU activities supporting her in the election. But she was told by Mr Ravbar from the very outset, in clear and certain terms, that the union would be running its own business in that regard and any such activities (supporting her or any other candidate) would be the union's business and concern, and not hers. In such circumstances, she did not consider that what the union spent on its campaign (albeit that such campaign activities were supportive of her and/or any other candidate) was appropriately categorised as a gift to her. That has been her consistent and, in our respectful submission, correct view of the relevant legislative requirements, and her clear, first-hand, and unequivocal evidence at the enquiry was entirely consistent with that history.

As against that evidence, in reaching your conclusions you appear to have relied upon the snippets of evidence by the CFMEU officers Mr Ravbar and Mr Sutherland, quoted in your draft report, when surely it must be clear to the Commission that neither of those witnesses purported to speak conclusively to those issues, but rather gave general evidence of their understanding as to what they thought normally would have or should have occurred.

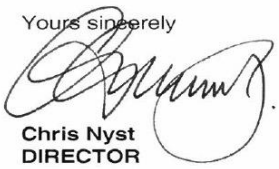
Specifically, having noted that the CFMEU had no prior track record of assisting candidates contesting local government elections but had become interested in such elections only after the 2013 introduction of specific workplace laws relating to the local government sector, which apparently prompted a decision by the union to advocate against those laws by "campaigning in local government" for the first time, (evidence of Mr Ravbar,p.6), you apparently relied on a range of unspecific, speculative, uncertain, general and in some cases apparently hearsay statements about what may have, could have, would have or should have been said or done to conclude that Ms Toland's above evidence "does not seem credible."

For example, you appear to have placed reliance on Mr Ravbar's "assumption"(unsupported by any direct evidence) that expenses incurred by the CFMEU were incurred at the "initiative" of Ms Toland (evidence of Mr Ravbar,p.6) , yet you make no reference to his direct and unequivocal evidence that all the suggestions for expenditure were put forward to him by Andrew Sutherland, and not by Ms Toland (p.9). You rely on his evidence, in response to your question of whether the CFMEU "would have" spent the money without Ms Toland's knowledge, despite the fact his response was in terms of "Not that I know" (p.10),"I can't recall," and "to the best of my knowledge, I don't know any of that" (p.14).

You go on to quote evidence by Mr Sutherland that Ms Toland "would have been advised" of expenditure by the union, that he "would say" that Ms Toland "would have confirmed" the expenditure, that he "would have had a conversation" with her, which "would have been" before the money was expended, and that he "would have told her" about it. To be fair to Mr Sutherland, he did not purport to positively assert that any of those things happened; rather, he spoke of what he assumed would have happened. In fact, notwithstanding your detailed reference to evidence of what "would have" happened or "would have" been said, despite lengthy and persistent examination of all witnesses at the public hearings, there was no evidence that Mr Sutherland or anybody else did in fact say or do any of the things that he speculates someone would have said or done.

Yet it appears that you rely on that evidence to conclude that Ms Toland's clear and unequivocal evidence to the contrary "does not seem credible." In our respectful submission, that is a flawed process of deduction, particularly where an assertion of wrongdoing is concerned, and it should not be permitted to disparage Ms Toland's good name and reputation, as it undoubtedly will if published in the manner proposed.

Yours sincerely



Chris Nyst
DIRECTOR

Contact: Natasha Dawson; (07) 5509 2400; ndawson@nystlegal.com.au
Our reference: NLM:MJJ:2702

Submission from Mr Walter van der Merwe, Queensland Electoral Commissioner

ELECTORAL COMMISSION QUEENSLAND

Your reference: CO-17-1486 (PXB)

28 September 2017

Mr Alan MacSporran QC
Chairperson
Crime and Corruption Commission

Via email alan.macsporran@ccc.qld.gov.au

Dear Mr MacSporran

Thank you for your letter dated 18 September 2017, in relation to Operation Belcarra – Draft Public Report.

Firstly, I would like to commend you and the staff of the Crime and Corruption Commission (CCC) for undertaking such a complex and at times, difficult investigation into the conduct of local government candidates at last year's quadrennial elections, and the examination of practices that may give rise to actual or perceived corruption. I am pleased that the Electoral Commission of Queensland (ECQ) provided assistance, data and advice to CCC investigators, in a timely and helpful manner.

Secondly, any recommendations that support increased transparency and clarity and assist ECQ to deliver, fair and just elections are welcomed and supported. Since my appointment in July 2014 I have led a programme of modernisation at ECQ to support our statutory goals and the changing needs and expectations of Queensland electors. This included changes in management, agency structure and business processes across ECQ since the 2016 quadrennial elections. Noting that ECQ has undergone such significant change, including a renewed Senior Management team, I was disappointed at the inclusion of the quotation from the 'Inquiry Report – A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election'.

Improvements are evident in ECQ's approach to more recent local government by-elections, and its associated project planning and relationship management. For example, registered political parties now have a dedicated 'client manager' in ECQ's Funding and Disclosure unit, and candidates are proactively advised of their disclosure and dedicated bank account obligations immediately following the close of nominations. The Funding and Disclosure unit also proactively monitors and engages with those who have announced their candidacy in an electoral event so there can be no uncertainty regarding their legal obligations.

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Queensland Government

Thirdly, I would like to clarify potential misinterpretations I found in the draft report. It is important to note, ECQ is a small statutory body with limited resources at its disposal. It is crucial that all Commission staff are impartial when administering electoral legislation. There is a theme in the report that ECQ has a '*surprising level of disinterest in matters that would seem relevant to the ECQ's functions*' based on fact that the Commission does not control the legislation it administers. ECQ is reliant on policy makers (who will themselves be subject to electoral laws) to create legislation that empowers the Commission to deal with non-compliance. As I have previously stated, ECQ has never played an active role in public debate on the development of government policy and has only occasionally been asked to play an informational role regarding amendments to electoral legislation. Policy and legislation are matters for the government of the day, and as ECQ must maintain its integrity and independence, I as Commissioner cannot be drawn into discussions that I see as having a political dimension.

In conclusion, it must be remembered the electoral event at the centre of Operation Belcarra was the largest ever conducted by the Commission, with local government elections and a state referendum held simultaneously. To give you a sense of scale, there were 1,787 candidate nominations to fill a total of 579 (77 mayoral and 502 councillor) positions, in addition to the referendum being held across 89 state districts. Approximately nine million ballot papers were issued.

Nevertheless, ECQ will always consider business improvement opportunities to ensure we continue to deliver efficient services to the electors of this State, and maintain the integrity of the electoral process in the face of ever-changing challenges.

Should you require further information regarding this matter, please contact me directly on 303 58028.

I trust this information is of assistance.

Yours sincerely

Walter van der Merwe
Electoral Commissioner

Appendix 4:
Summary of donation disclosure obligations for the 2016 local government elections

Table A4.1. Summary of donation disclosure obligations for candidates, third parties and other participants in the 2016 local government elections.

Person/entity	Disclosure period Start	End	Disclosure threshold[a]	Information required about donations (gifts) received and/or expenditure incurred	Information required about loans received[b]	Disclosure deadline
Candidate who contested a local government election in the five years before the 2016 elections	30 days after polling day for the most recent election contested by the candidate	30 days after polling day for the 2016 elections (i.e. 18 April 2016)	$200	Whether the candidate received any donations during their disclosure period and, if so, the: • total value of all the donations • number of people who made the donations • relevant details for each donation from a donor who gave $200 or more in total to the candidate (see Table A3.2 below)	• Total value of all loans received during the candidate's disclosure period • Number of people who made the loans • Relevant details for each loan of $200 or more (see Table A3.2 below), plus the terms of the loan	15 weeks after polling day for the 2016 elections (i.e. 4 July 2016)
Candidate who did not contest a local government election in the five years before the 2016 elections	Day the candidate announces their candidacy or nominates as a candidate, whichever is earlier	30 days after polling day for the 2016 elections (i.e. 18 April 2016)	$200	Whether the candidate received any donations during their disclosure period and, if so, the: • total value of all the donations	• Total value of all loans received during the candidate's disclosure period • Number of people who made the loans • Relevant details for each loan of $200 or	15 weeks after polling day for the 2016 elections (i.e. 4 July 2016)

Person/entity	Disclosure period Start	End	Disclosure threshold[a]	Information required about donations (gifts) received and/or expenditure incurred	Information required about loans received[b]	Disclosure deadline
				• number of people who made the donations • relevant details for each donation from a donor who gave $200 or more in total to the candidate (see Table A3.2 below)	more (see Table A3.2 below), plus the terms of the loan	
Group of candidates (via the group's agent)	30 days after polling day for the 2012 elections (i.e. 28 May 2012)	30 days after polling day for the 2016 elections (i.e. 18 April 2016)	$200	• Total value of all the donations received by members of the group • Number of people who made the donations • Relevant details for each donation from a donor who gave $200 or more in total to the group (see Table A3.2 below)	• Total value of all loans received during the group's disclosure period • Number of people who made the loans • Relevant details for each loan of $200 or more (see Table A3.2 below), plus the terms of the loan	15 weeks after polling day for the 2016 elections (i.e. 4 July 2016)
Third party who spent $200 or more on political activities (including donors to candidates and groups)	Day after notice of 2016 election published (i.e. 7 February 2016)	6pm on polling day for the 2016 elections (i.e. 19 March 2016)	$200	• Total value of all expenditure and the value, date and purpose of each expenditure of $200 or more	Not required	15 weeks after polling day for the 2016 elections (i.e. 4 July 2016)
Third party who received a donation of $1000 or more and subsequently spent any	30 days after polling day for the 2012 elections (i.e. 28 May 2012)	30 days after polling day for the 2016 elections (i.e. 18 April 2016)	$1000	• Relevant details for each donation from a donor who gave $1000 or more in total	Not required	15 weeks after polling day for the 2016 elections (i.e. 4 July 2016)

Person/entity	Disclosure period Start	End	Disclosure threshold[a]	Information required about donations (gifts) received and/or expenditure incurred	Information required about loans received[b]	Disclosure deadline
part of this on political activity for the election				to the third party (see Table A3.2 below)		

Notes: a The financial threshold at which a disclosure obligation is triggered.

b Excludes loans from financial institutions.

Source: *Local Government Electoral Act 2011*, Part 6.

In addition to these obligations, political parties and associated entities were required under the *Electoral Act 1992* to submit disclosure returns after the end of two reporting periods each year (1 July to 31 December, with returns due 25 February, and 1 January to 30 June, with returns due 25 August). These would have contained the details of any transactions over $1000 relevant to the 2016 local government elections, including donations to political parties and associated entities and payments from political parties and associated entities to local government candidates.

Table A4.2. The meaning of "relevant details" for a donation.

Donation source	Relevant details
A person or entity not listed below	• Value of the donation • When the donation was made • Name and residential or business address of the person who made the donation
An unincorporated association	• Value of the donation • When the donation was made • Name of the association • Names and residential or business addresses of the members of the executive committee of the association (except for registered industrial organisations)
A trust fund or the funds of a foundation	• Value of the donation • When the donation was made • Names and residential or business addresses of the trustees of the fund or other people responsible for the foundation's funds • Title or other description of the trust fund or the name of the foundation
A trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the donation	• Value of the donation • When the donation was made • Names and residential or business addresses of the trustees of the fund or other people responsible for the foundation's funds • Title or other description of the trust fund or the name of the foundation • Name and residential or business address of the person who is in substance the giver of the donation

Source: Section 109, *Local Government Electoral Act 2011*.

Appendix 5:
2016 Gold Coast City Council election results

Table A5.1. Candidates and results for the 2016 Gold Coast City Council election.

Office	Candidates	Vote %	Result
Mayor	John Abbott	2	Tom Tate re-elected
	Brett Lambert	3	
	Andrew Middleton	2	
	Tom Tate (incumbent)	64	
	Penny Toland	20	
	Jim Wilson	9	
Division 1 Councillor	Donna Gates (incumbent)	NA	Donna Gates re-elected unopposed
Division 2 Councillor	William Owen-Jones (incumbent)	NA	William Owen-Jones re-elected unopposed
Division 3 Councillor	Brendan Boyle	9	Cameron Caldwell re-elected
	Cameron Caldwell (incumbent)	48	
	Keith Douglas	10	
	Jim Nicholls	12	
	Fran Ward	20	
Division 4 Councillor	Kristyn Boulton	40	Kristyn Boulton elected
	Amin-Reza Javanmard	3	
	Daniel Kwon (The Greens)	10	
	Eddy Sarroff	32	
	RJ (Santa) Strohfeldt	3	
	Barry Van Peppen	6	
	Courtney Wilson	7	
Division 5 Councillor	Jankin Hay	5	Peter Young elected
	Mark Sceriha	10	
	Stacey Schinnerl	17	
	Felicity Stevenson	20	
	John Szczerbanik	2	
	Mehmet Tavli	7	
	Peter Young	39	
Division 6 Councillor	Dawn Crichlow (incumbent)	53	Dawn Crichlow re-elected
	Susan Gallagher	23	
	Johan Joubert	3	
	Michael Pulford	21	
Division 7 Councillor	Gary Baildon	26	Gary Baildon elected
	Lucy Cole	20	
	Susie Douglas	20	
	George Friend	7	
	Billy James	10	
	Brooke Patterson	17	

Office	Candidates	Vote %	Result
Division 8 Councillor	Elizabeth Burke	25	Bob La Castra re-elected
	Bob La Castra (incumbent)	62	
	Margaret Lynn West (The Greens)	13	
Division 9 Councillor	Ted Shepherd	35	Glenn Tozer re-elected
	Glenn Tozer (incumbent)	65	
Division 10 Councillor	Mona Hecke	28	Paul Taylor re-elected
	David Taylor	25	
	Paul Taylor (incumbent)	47	
Division 11 Councillor	Nic Rone	41	Hermann Vorster elected
	Hermann Vorster	59	
Division 12 Councillor	Greg Betts (incumbent)	39	Pauline Young elected
	John Campbell	14	
	Pauline Young	47	
Division 13 Councillor	Katrina Beikoff	29	Daphne McDonald re-elected
	Kurt Foessel	18	
	Keith Maitland	12	
	Daphne McDonald (incumbent)	42	
Division 14 Councillor	Lee Boggiss	15	Gail O'Neill elected
	Gail O'Neill	34	
	Shawna Trebble	11	
	Ric Wade	14	
	Natalie Wain	26	

Source: Election results data provided to the CCC by the ECQ on 2 June 2017; incumbency information taken from the LGAQ website, <http://qldvotes.lgaq.asn.au/index.html>.

Appendix 6:
2016 Ipswich City Council election results

Table A6.1. Candidates and results for the 2016 Ipswich City Council election.

Office	Candidates	Vote %	Result
Mayor	Gary Duffy	9	Paul Pisasale re-elected
	Peter Luxton	8	
	Paul Pisasale (incumbent)	83	
Division 1 Councillor	David Morrison (incumbent)	79	David Morrison re-elected
	Steven Purcell (The Greens)	21	
Division 2 Councillor	Declan McCallion	18	Paul Tully re-elected
	Paul Gregory Tully (incumbent)	82	
Division 3 Councillor	Jim Dodrill	27	Kerry Silver elected
	Danny Donohue	23	
	Hayley Finocchio	4	
	Patricia Petersen	12	
	Kerry Silver	31	
	Steven Wood	3	
Division 4 Councillor	James Fazl	5	Kylie Stoneman elected
	Paul Rix	24	
	Kylie Stoneman	53	
	Yme Tulleners	19	
Division 5 Councillor	Trisha Boike	11	Wayne Wendt elected
	Michael Jackson	3	
	Peter Robinson	16	
	Barry Ryder	4	
	Brian Scott	8	
	Eve Sirigos	8	
	Anne Webber	17	
	Wayne Wendt	34	
Division 6 Councillor	Cheryl Bromage (incumbent)	69	Cheryl Bromage re-elected
	Cate Carter	31	
Division 7 Councillor	Andrew Antoniolli (incumbent)	69	Andrew Antoniolli re-elected
	Jim McKee	31	
Division 8 Councillor	Charlie Pisasale (incumbent)	76	Charlie Pisasale re-elected
	Bronwyn Scott	14	
	Kevin Thomas	11	
Division 9 Councillor	Darren Baldwin	35	Sheila Ireland re-elected
	Jade Connor	22	
	Sheila Ireland (incumbent)	43	

Office	Candidates	Vote %	Result
Division 10 Councillor	Steve Franklin	31	David Pahlke re-elected
	Anna Neville	12	
	David Pahlke (incumbent)	57	

Source: Election results data provided to the CCC by the ECQ on 2 June 2017; incumbency information taken from the LGAQ website, <http://qldvotes.lgaq.asn.au/index.html>.

Appendix 7:
2016 Moreton Bay Regional Council election results

Table A7.1. Candidates and results for the 2016 Moreton Bay Regional Council election.

Office	Candidates	Vote %	Result
Mayor	Barry Bolton	10	Allan Sutherland re-elected
	Shayne Hogan	6	
	John McNaught	10	
	Allan Sutherland (incumbent)	51	
	Dean Teasdale	18	
	Jason Woodforth	5	
Division 1 Councillor	Daniel Clancy	8	Brooke Savige elected
	Tony Longland (The Greens)	5	
	Brooke Savige	47	
	Jason Snow	5	
	Roz Vicenzino	6	
	Paul Whyte	30	
Division 2 Councillor	Peter Flannery (incumbent)	52	Peter Flannery re-elected
	Rodney Hansen*	29	
	Jesse Kelly	18	
Division 3 Councillor	Jamie Fry (incumbent)	11	Adam Hain elected
	Adam Hain	35	
	Craig Hewlett	16	
	Kimberly James	31	
	Brandt King	8	
Division 4 Councillor	Brant Bravo*	18	Julie Greer re-elected
	Julie Greer (incumbent)	66	
	Samuel Gunsser	16	
Division 5 Councillor	Simon Gregory	10	James Hougton re-elected
	James Houghton (incumbent)	52	
	Arn Pritchard*	37	
Division 6 Councillor	Karen Haddock*	34	Koliana Winchester re-elected
	Koliana Winchester (incumbent)	66	
Division 7 Councillor	Jason Kennedy	22	Denise Sims elected
	Talosaga McMahon	13	
	Belinda Norrie	19	
	Steve O'Shannessy	15	
	Denise Sims	32	
Division 8 Councillor	Mick Gillam (incumbent)	45	Mick Gillam re-elected
	Chris Kelly	41	
	Sue Laird	14	
Division 9 Councillor	Mike Charlton (incumbent)	60	Mike Charlton re-elected
	Elizabeth Dallaston	40	

Office	Candidates	Vote %	Result
Division 10 Councillor	Michael Berkman (The Greens)	10	Matt Constance elected
	Matt Constance	58	
	Geoff McKay*	24	
	Kegan Scherf	8	
Division 11 Councillor	Darren Grimwade	47	Darren Grimwade elected
	Gus Padilha	17	
	Paul Smith	36	
Division 12 Councillor	Adrian Raedel (incumbent)	NA	Adrian Raedel re-elected unopposed

Note: * denotes members of the group of candidates, Your Community First.

Source: Election results data provided to the CCC by the ECQ on 2 June 2017; incumbency information taken from the LGAQ website, <http://qldvotes.lgaq.asn.au/index.html>.

Appendix 8:
2016 Logan City Council election results

Table A8.1. Candidates and results for the 2016 Logan City Council election.

Office	Candidates	Vote %	Result
Mayor	John Freeman	9	Luke Smith elected
	Ken Houliston	7	
	Brett Raguse	31	
	Steve Shoard	5	
	Luke Smith (see note)	47	
Division 1 Councillor	Lisa Bradley (incumbent)	79	Lisa Bradley re-elected
	Ben Trim	21	
Division 2 Councillor	Josephine Aufai	18	Russell Lutton re-elected
	John Dalton	13	
	James Hunter	7	
	Russell Lutton (incumbent)	42	
	Reese Preston-Smith	6	
	Martin Van Rensburg	14	
Division 3 Councillor	Kerry Nielsen	50	Steve Swenson re-elected
	Steve Swenson (incumbent)	50	
Division 4 Councillor	Laurie Koranski	54	Laurie Koranski elected
	Don Petersen (incumbent)	46	
Division 5 Councillor	Dave Beard	29	Jon Raven elected
	Jon Raven	37	
	Mark Tookey	23	
	Jason Topp	11	
Division 6 Councillor	Adrienne Cremin	15	Stacey McIntosh elected
	Mike Latter	28	
	Stacey McIntosh	27	
	Brent Strain	10	
	Shane Thornthwaite	13	
	Nathan Truscott	8	
Division 7 Councillor	Anne Page	40	Laurie Smith re-elected
	Laurie Smith (incumbent)	47	
	Peter Tripp	12	
Division 8 Councillor	Cherie Dalley	NA	Cherie Dalley re-elected unopposed
Division 9 Councillor	Kathleen De Leon	9	Phil Pidgeon re-elected
	Tony Langridge	9	
	Phil Pidgeon (incumbent)	65	
	Surj Samrai	2	
	Richard Toy	14	

Office	Candidates	Vote %	Result
Division 10 Councillor	John Merrick	36	Darren Power re-elected
	Darren Power (incumbent)	64	
Division 11 Councillor	Kelly Cousins	29	Tervina Schwarz re-elected
	Trevina Schwarz (incumbent)	71	
Division 12 Councillor	Jennie Breene (incumbent)	42	Jennie Breene re-elected
	Ray Hackwood	23	
	Maree Robbins	10	
	Michael Rose	25	

Note: Luke Smith was a sitting councillor at the time of the election.

Source: Election results data provided to the CCC by the ECQ on 2 June 2017; incumbency information taken from the LGAQ website, <http://qldvotes.lgaq.asn.au/index.html>.

Appendix 9:
Examples of joint how-to-vote cards

Figure A9.1. How-to-vote card (double-sided) featuring Cr Peter Flannery and Cr Allan Sutherland (Moreton Bay Regional Council; Exhibit 64).

Figure A9.2. How-to-vote card featuring Cr Mike Charlton and Cr Allan Sutherland (Moreton Bay Regional Council; Exhibit 37).

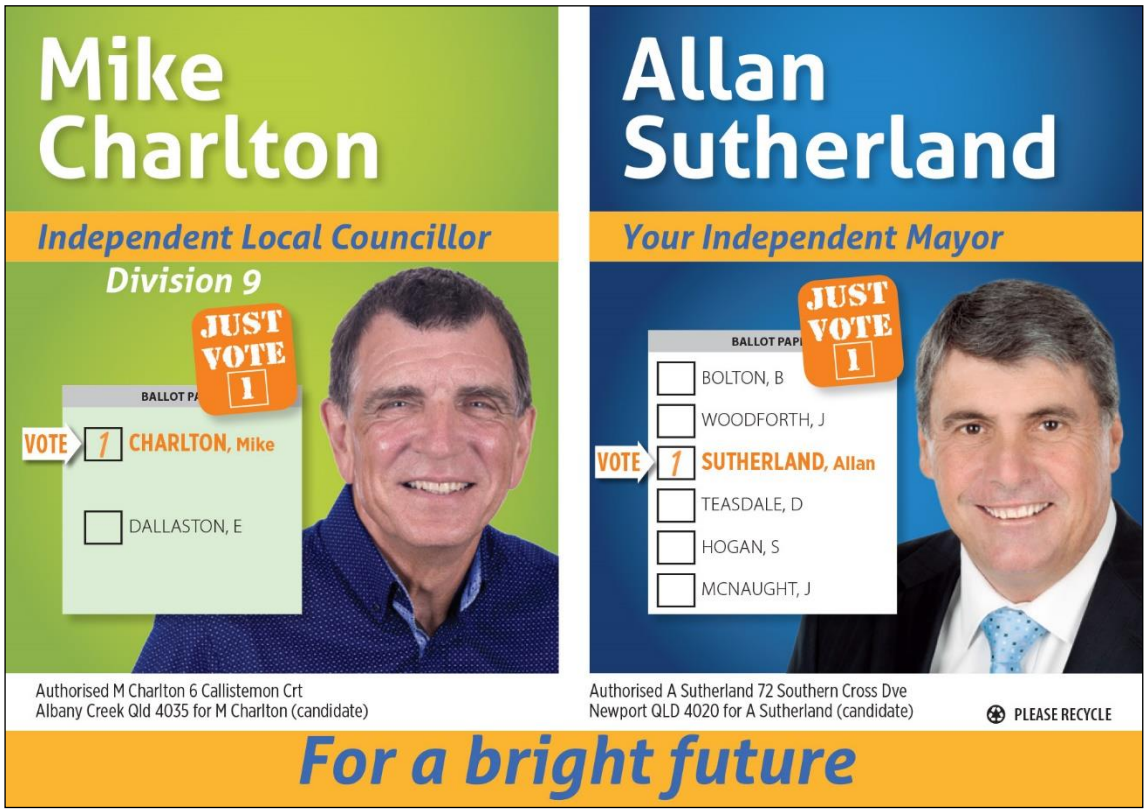


Figure A9.3. How-to-vote card featuring Cr Kylie Stoneman and former Cr Paul Pisasale (Ipswich City Council; Exhibit 62).

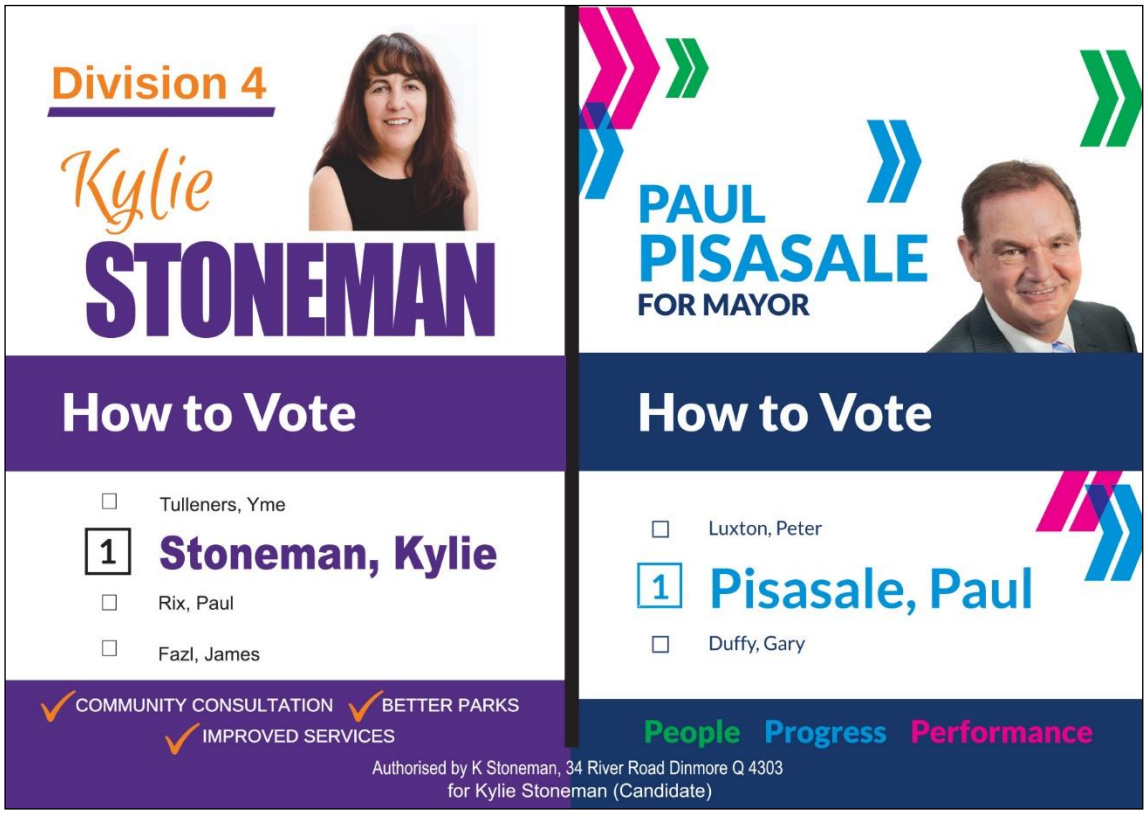
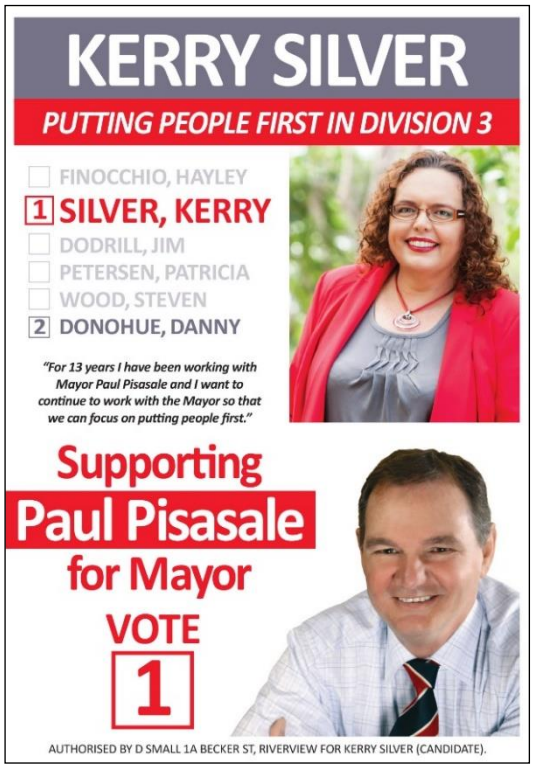
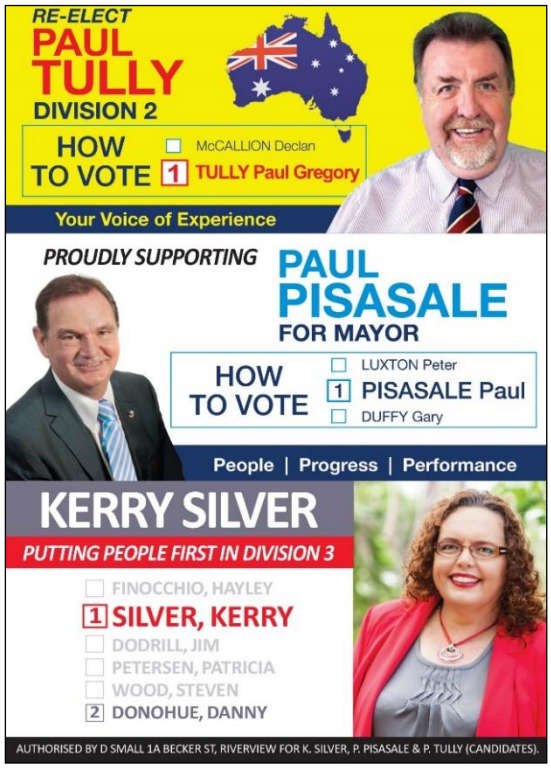


Figure A9.4. How-to-vote card featuring former Cr Paul Pisasale and Cr Paul Tully (Ipswich City Council; Exhibit 20).

Figure A9.5. How-to-vote cards featuring Cr Kerry Silver and former Cr Paul Pisasale (Ipswich City Council; Exhibit 21) and Cr Paul Tully, former Cr Pisasale and Cr Silver (Exhibit 27).





Appendix 10:
Electoral expenditure regulation for local government elections in other Australian jurisdictions

Table A10.1. Summary of electoral expenditure regulation in Australian local government elections.

Feature of regulation	Queensland	New South Wales	South Australia (City of Adelaide only)	Tasmania
Definition of expenditure and other key terms	• Nil for *expenditure* • *Political activity:* publication of election material, public expression of views, gifts to political party or candidate • Nil for *political purpose*	• *Electoral expenditure (EE):* expenditure for: – promoting party or candidate; or – for purpose of influencing election voting • *Electoral communication expenditure (ECE):* EE incurred for certain purposes (e.g. advertisements, election material, employing staff for election campaigns, office accommodation and travel for electoral campaigning)	• *Campaign expenditure:* broadcasting, publishing or displaying electoral advertisements, production of electoral advertisements or material, opinion polls, consultants' and advertising agents' fees relating to the election	• Nil for *expenditure* • *Electoral advertising:* directly or indirectly in respect of campaign for an election by candidate, e.g. notice, pamphlet, how-to-vote card, broadcast

Feature of regulation	Queensland	New South Wales	South Australia (City of Adelaide only)	Tasmania
Expenditure caps	• Nil	• Nil	• Nil	• Applies to candidates • Applies to total expenditure for purchase of advertising time or space – ≤ $5000 (for single election) – ≤ $8000 (for an election for a councillor and an election for a mayor or deputy mayor)
Expenditure returns by candidates	• Nil required	• Annual return (12 month disclosure period ending 30 June) • For all EE incurred during disclosure period • Lodgement period: 12 weeks • Start of disclosure period: – candidates who unsuccessfully contested previous election — 31 days after previous election – other candidates — 12 months prior • Audited returns, with copies of accounts, receipts, advertising material attached • Also applies to groups of candidates	• Post-election return • For campaign expenditure authorised by candidate • Lodgement period: within 30 days after election finalised • "Nil" return allowed where ≤ $500 • Details required: the item or type, the supplier or provider; the amount • Available for inspection with CEO (not before 8 weeks after due date of return)	• Post-election return • For electoral advertising • Lodgement period: within 45 days after election finalised • No threshold • Must be accompanied by an invoice, account or receipt

Feature of regulation	Queensland	New South Wales	South Australia (City of Adelaide only)	Tasmania
Expenditure returns by third parties	• For expenditure for "political activity" where total expenditure is ≥ $500 and for gifts ≥ $500 or more received for a "political purpose" that are applied (in whole or in part) on "political activity" • Lodgement period: – expenditure for political activity — 7 business days after the expenditure is incurred – gifts ≥ $500 or more received for a political purpose — 7 business days after the gift is applied (in whole or in part) on "political activity" • Disclosure period: – expenditure for political activity — day after election notice is published to 6pm polling day – gifts ≥ $500 or more received for a political purpose — 30 days after the last four-yearly election to 30 days after polling day	• Annual return (12 month disclosure period ending 30 June) • For all ECE incurred during the disclosure period[a] • Lodgement period: 12 weeks • Audited returns, with copies of accounts, receipts, relevant advertising material attached	• Nil required	• Nil required

Feature of regulation	Queensland	New South Wales	South Australia (City of Adelaide only)	Tasmania
Expenditure returns by others (political parties, associated entities, elected members, broadcasters and advertisers)	• Nil required[b]	• Annual returns (each 12 month disclosure period ending 30 June) • Political parties[c] and elected members • Includes all EE incurred during disclosure period • Lodgement period: 12 weeks • Audited returns, copies of accounts, receipts, advertising material attached[d]	• Nil required	• Election return • Any person who prints, publishes or broadcasts electoral advertising • No threshold • Lodgement: within 45 days after election finalised
Record keeping requirements	• All persons required to report to retain records relating to information on returns for at least five years	• Political parties to retain accounting records for at least 3 years • Agents of candidates, groups of candidates, elected members and third parties to retain election campaign accounting records for at least 3 years • Agents have additional obligations to facilitate audits	• Candidates to retain all records relevant to return for at least 4 years after return submitted	• Electoral Commissioner may require further information if not satisfied with authenticity, accuracy or completeness of return

Feature of regulation	Queensland	New South Wales	South Australia (City of Adelaide only)	Tasmania
Offences	• Disclosure offences: not on time — max. $2523; false or misleading information — max. $12 615 (candidates), $6307.50 (others) • Record keeping offences: max. $2523 • Dedicated account offences: max. $12 615	• Numerous offences for disclosure, dedicated account and record keeping obligations: max. $44 000 and/or 2 years imprisonment • Record keeping offences: political party — max. $22 000; agent — max. $11 000 • Scheme entered into for the purpose of circumventing EE requirements: max. 10 years imprisonment • Third party incurring > $2000 in ECE during relevant period before registering with the NSW Electoral Commission	• Disclosure offences: (not on time — max $10 000; false and misleading information — max. $10 000 • Record keeping offences: max. $5000	• Failure to lodge return on time: max. $4710 • Intentionally providing false or misleading information or records: max. $1570 fine or 3 months imprisonment • Making a statement knowing it to be false or misleading (including by omission): max. $1570 or 6 months imprisonment • Failing to comply with notice from Electoral Commissioner without reasonable excuse: max. $1570

Notes: a Returns for a disclosure period that includes an election will only include ECE information for the 10-week period leading up to the election because the disclosure obligation for ECE only applies to this period (from 1 July to and including the second Saturday in September of the election year). Returns for other disclosure periods will only contain gift information.

b There is a *Commonwealth Electoral Act 1918* obligation on Commonwealth registered political parties and their state branches to file an annual financial return setting out the total amount paid by or on behalf of the entity for the previous year.

c A political party's disclosure obligation can be satisfied by giving the NSW Electoral Commission a copy of an equivalent return to the Commonwealth Electoral Commission.

d Political party returns must also attach a copy of the party's audited annual financial statement.

The ACT does not have a local government. The Northern Territory, Victoria and Western Australia do not have any expenditure-related regulation for local government elections.

Queensland and New South Wales also require candidates and others to pay campaign expenses out of a dedicated/campaign bank account.

Source: *Local Government Electoral Act 2011* (Qld); *Election Funding, Expenditure and Disclosures Act 1981* (NSW); *City of Adelaide Act 1998* (SA); Local *Government (Elections) Act 1999* (SA); *Local Government Act 1993* (Tas).

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