



Queensland

# **Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018**

**Act No. 9 of 2018**

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**An Act to amend the City of Brisbane Act 2010, the Electoral Act 1992, the Local Government Act 2009 and the Local Government Electoral Act 2011 for particular purposes**

**[Assented to 21 May 2018]**





Queensland

# Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	7
2	Commencement . . . . .	7
<b>Part 2</b>	<b>Amendment of City of Brisbane Act 2010</b>	
3	Act amended . . . . .	7
3A	Amendment of s 6 (Definitions) . . . . .	7
4	Amendment of s 153 (Disqualification for certain offences) . . . . .	7
4A	Amendment of s 158 (Acting as councillor without authority) . . . . .	8
4B	Insertion of new s 158A . . . . .	9
	158A Councillor must give notice of disqualification . . . . .	9
5	Omission of ss 174 and 175 . . . . .	9
6	Insertion of new ch 6, pt 2, div 5A . . . . .	9
	Division 5A Dealing with councillors' personal interests in council matters	
	177A Purpose of division . . . . .	10
	177B Meaning of material personal interest . . . . .	10
	177C Councillor's material personal interest at a meeting . . . . .	11
	177D Meaning of conflict of interest . . . . .	12
	177E Councillor's conflict of interest at a meeting . . . . .	13
	177F Minister's approval for councillor to participate or be present to decide matter . . . . .	16
	177G Duty to report another councillor's material personal interest or conflict of interest at a meeting . . . . .	16
	177H Offence to take retaliatory action . . . . .	17
	177I Offence for councillor with material personal interest or conflict of interest to influence others . . . . .	17

Contents

	177J	Records about material personal interests and conflicts of interests at meetings . . . . .	18
7		Amendment of s 178 (What this division is about) . . . . .	19
7A		Insertion of new ch 6, pt 2, divs 8 and 9 . . . . .	20
	Division 8	Automatic suspension of councillors	
	186B	Automatic suspension for certain offences . . . . .	20
	186C	When a person is charged with disqualifying offence and proceeding is started . . . . .	20
	186D	Obligation to give notice if charged with disqualifying offence . . . . .	21
	186E	Effect of councillor's suspension . . . . .	22
	186F	When suspension of councillor ends . . . . .	22
	Division 9	Criminal history information	
	186G	Criminal history report . . . . .	23
	186H	Confidentiality of criminal history information . . . . .	24
7B		Insertion of new ch 8, pt 9 . . . . .	25
	Part 9	Transitional provisions for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018	
	277	Disqualifying offence committed before commencement	26
	278	Existing charge for disqualifying offence . . . . .	26
	279	Existing conviction for new disqualifying offence . . . . .	27
8		Amendment and renumbering of sch 1 (Dictionary) . . . . .	28
8A		Insertion of new sch 1 . . . . .	28
	Schedule 1	Serious integrity offences and integrity offences	29
<b>Part 3</b>		<b>Amendment of Electoral Act 1992</b>	
9		Act amended . . . . .	35
10		Amendment of s 2 (Definitions) . . . . .	35
11		Amendment of s 197 (Definitions) . . . . .	35
12		Replacement of pt 11, div 8, sdiv 3, hdg (Other gifts and loans) . . . . .	36
13		Insertion of new pt 11, div 8, sdiv 4 . . . . .	36
	Subdivision 4	Political donations from property developers	
	273	Meaning of prohibited donor . . . . .	36
	274	Meaning of political donation . . . . .	40
	275	Political donations by prohibited donors . . . . .	41
	276	Recovery of prohibited donations . . . . .	42
	277	Making of determination that entity is not a prohibited donor	

	.....	43
	278 Revocation of determination .....	44
	279 Register of determinations .....	44
14	Amendment of s 282A (Meaning of electoral expenditure) .....	44
15	Insertion of new ss 307A–307C .....	44
	307A Offence about prohibited donations .....	44
	307B Schemes to circumvent prohibition on particular political donations .....	45
	307C False or misleading information relating to determinations .....	45
16	Amendment of s 308 (Recovery of payments) .....	46
17	Amendment of s 374 (Right of appeal) .....	46
18	Amendment of s 385 (Offences under this part are summary) ..	47
19	Insertion of new s 385A .....	47
	385A Proceedings for indictable offence .....	47
20	Insertion of new pt 13, div 9 .....	48
	Division 9 Transitional provision for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018	
	427 Obligation to repay particular political donations .....	49
<b>Part 4</b>	<b>Amendment of Local Government Act 2009</b>	
<b>Division 1</b>	<b>Preliminary</b>	
21	Act amended .....	50
<b>Division 2</b>	<b>Amendments commencing on assent</b>	
21A	Amendment of s 122 (Removing a councillor) .....	50
21B	Amendment of s 123 (Dissolving a local government) .....	50
22	Amendment of s 153 (Disqualification for certain offences) .....	51
22A	Amendment of s 158 (Acting as councillor without authority) ...	52
22B	Insertion of new s 158A .....	52
	158A Councillor must give notice of disqualification .....	53
23	Omission of ss 172 and 173 .....	53
24	Insertion of new ch 6, pt 2, div 5A .....	53
	Division 5A Dealing with councillors' personal interests in local government matters	
	175A Purpose of division .....	54
	175B Meaning of material personal interest .....	54
	175C Councillor's material personal interest at a meeting .	55

Contents

	175D	Meaning of conflict of interest . . . . .	56
	175E	Councillor’s conflict of interest at a meeting . . . . .	57
	175F	Minister’s approval for councillor to participate or be present to decide matter . . . . .	60
	175G	Duty to report another councillor’s material personal interest or conflict of interest at a meeting . . . . .	60
	175H	Offence to take retaliatory action . . . . .	61
	175I	Offence for councillor with material personal interest or conflict of interest to influence others . . . . .	62
	175J	Records about material personal interests and conflicts of interests at meetings . . . . .	63
25		Amendment of s 176 (What this division is about) . . . . .	64
25A		Insertion of new ch 6, pt 2, divs 7 and 8 . . . . .	64
	Division 7	Automatic suspension of councillors	
	182A	Automatic suspension for certain offences . . . . .	64
	182B	When a person is charged with disqualifying offence and proceeding is started . . . . .	64
	182C	Obligation to give notice if charged with disqualifying offence . . . . .	65
	182D	Effect of councillor’s suspension . . . . .	66
	182E	When suspension of councillor ends . . . . .	67
	Division 8	Criminal history information	
	182F	Criminal history report . . . . .	67
	182G	Confidentiality of criminal history information . . . . .	68
25B		Insertion of new ch 9, pt 13 . . . . .	70
	Part 13	Transitional provisions for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018	
	325	Disqualifying offence committed before commencement	70
	326	Existing charge for disqualifying offence . . . . .	70
	327	Existing conviction for new disqualifying offence . . . . .	71
25C		Insertion of new sch 1 . . . . .	72
	Schedule 1	Serious integrity offences and integrity offences	73
26		Amendment of sch 4 (Dictionary) . . . . .	79
	<b>Division 3</b>	<b>Amendments commencing on proclamation</b>	
26A		Amendment of s 150L (What is misconduct) . . . . .	79
26B		Amendment of s 150AY (Functions of investigators) . . . . .	79
26C		Amendment of s 175G (Duty to report another councillor’s material	

	personal interest or conflict of interest at a meeting) . . . . .	80
<b>Part 5</b>	<b>Amendment of Local Government Electoral Act 2011</b>	
27	Act amended . . . . .	80
28	Replacement of s 3 (Purpose of this Act) . . . . .	80
	3 Purposes of Act . . . . .	80
29	Amendment of s 106 (Definitions for part) . . . . .	81
30	Insertion of new pt 6, div 1A . . . . .	82
	Division 1A Political donations from property developers	
	113 Meaning of prohibited donor . . . . .	82
	113A Meaning of political donation . . . . .	85
	113B Political donations by prohibited donors . . . . .	87
	113C Recovery of prohibited donations . . . . .	88
	113D Making of determination that entity is not a prohibited donor . . . . .	89
	113E Revocation of determination . . . . .	90
	113F Register of determinations . . . . .	90
	113G Review of decisions . . . . .	91
31	Amendment of s 169 (False or misleading information) . . . . .	91
32	Insertion of new ss 194A–194C . . . . .	91
	194A Offence about prohibited donations . . . . .	91
	194B Schemes to circumvent prohibition on particular political donations . . . . .	91
	194C False or misleading information relating to determinations . . . . .	92
33	Insertion of new s 201A . . . . .	93
	201A Proceedings for particular indictable offences . . . . .	93
34	Insertion of new pt 11, div 3 . . . . .	94
	Division 3 Transitional provision for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018	
	212 Obligation to repay particular political donations . . . . .	95
35	Amendment of schedule (Dictionary) . . . . .	95





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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*.

### **2 Commencement**

Parts 3 and 5, and part 4, division 3, commence on a day to be fixed by proclamation.

## **Part 2 Amendment of City of Brisbane Act 2010**

### **3 Act amended**

This part amends the *City of Brisbane Act 2010*.

### **3A Amendment of s 6 (Definitions)**

Section 6, ‘schedule 1’—

*omit, insert—*

schedule 2

### **4 Amendment of s 153 (Disqualification for certain offences)**

(1) Section 153(1)(c), ‘bribery’—

*omit, insert—*

serious integrity

(2) Section 153(4) and (5)—

*omit, insert—*

(4) A ***serious integrity offence*** is an offence against—

- (a) a provision of a law mentioned in schedule 1, part 1 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence; or
- (b) a provision of a law of another State or the Commonwealth that corresponds to a provision mentioned in paragraph (a).

(5) An ***integrity offence*** is an offence against a provision of a law mentioned in schedule 1, part 2 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence.

(3) Section 153(6), after ‘convicted of’—

*insert—*

any of the following offences (each a ***disqualifying offence***)

(4) Section 153(6)(c)—

*omit, insert—*

(c) a serious integrity offence; or

#### **4A Amendment of s 158 (Acting as councillor without authority)**

Section 158—

*insert—*

(c) the person is suspended as a councillor.

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## **4B Insertion of new s 158A**

Chapter 6, part 2, division 1—

*insert—*

### **158A Councillor must give notice of disqualification**

- (1) This section applies if a councillor becomes aware the councillor is not qualified to be a councillor under this division.
- (2) The councillor must immediately give a written notice that complies with subsection (3) to each of the following, unless the councillor has a reasonable excuse—
  - (a) the Minister;
  - (b) if the councillor is not the mayor—the mayor;
  - (c) the chief executive officer.Maximum penalty—100 penalty units.
- (3) For subsection (2), the notice must state—
  - (a) details about why the councillor is not qualified to be a councillor under this division; and
  - (b) the day the councillor became disqualified.

## **5 Omission of ss 174 and 175**

Sections 174 and 175—

*omit.*

## **6 Insertion of new ch 6, pt 2, div 5A**

Chapter 6, part 2—

*insert—*

## **Division 5A      Dealing with councillors’ personal interests in council matters**

### **177A Purpose of division**

The purpose of this division is to ensure the personal interests of councillors are dealt with in an accountable and transparent way that meets community expectations, if the interests relate to matters to be considered—

- (a) at a meeting of the council or any of its committees; or
- (b) by a council employee or contractor of the council authorised to deal with the matter.

### **177B Meaning of *material personal interest***

- (1) A councillor has a *material personal interest* in a matter if any of the following stand to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of consideration of the matter—
  - (a) the councillor;
  - (b) a spouse of the councillor;
  - (c) a parent, child or sibling of the councillor;
  - (d) a person who is in a partnership with the councillor;
  - (e) an employer, other than a government entity, of the councillor;
  - (f) an entity, other than a government entity, of which the councillor is a member;
  - (g) another entity prescribed by regulation.
- (2) However, a councillor does not have a material

personal interest in the matter if the councillor, or another person or entity mentioned in subsection (1), stands to gain a benefit or suffer a loss that is no greater than that of other persons in Brisbane.

- (3) Subsection (1)(c) only applies to a councillor if the councillor knows, or ought reasonably to know, that the councillor's parent, child or sibling stands to gain a benefit or suffer a loss.

### **177C Councillor's material personal interest at a meeting**

- (1) This section applies if—
- (a) a matter is to be discussed at a meeting of the council or any of its committees; and
  - (b) the matter is not an ordinary business matter; and
  - (c) a councillor has a material personal interest in the matter.
- (2) The councillor must—
- (a) inform the meeting of the councillor's material personal interest in the matter, including the following particulars about the interest—
    - (i) the name of the person or other entity who stands to gain a benefit, or suffer a loss, depending on the outcome of the consideration of the matter at the meeting;
    - (ii) how the person or other entity stands to gain the benefit or suffer the loss;
    - (iii) if the person or other entity who stands to gain the benefit or suffer the loss is not the councillor—the nature of the councillor's relationship to the person or entity; and

- (b) leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on.

Maximum penalty—

- (a) if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or another person or entity—200 penalty units or 2 years imprisonment; or
  - (b) otherwise—85 penalty units.
- (3) If a majority of the councillors at a meeting of the council inform the meeting about a material personal interest in a matter under subsection (2)(a), the council must delegate deciding the matter under section 238, unless deciding the matter can not be delegated under that section.
- (4) A councillor does not contravene subsection (2) by participating in the meeting, or being present while the matter is discussed and voted on, if the councillor's participation or presence—
- (a) is for the purpose of delegating deciding the matter under subsection (3); or
  - (b) is approved under section 177F and the councillor complies with the conditions of the approval.

### **177D Meaning of *conflict of interest***

- (1) A *conflict of interest* is a conflict that—
- (a) is between—
    - (i) a councillor's personal interests; and
    - (ii) the public interest; and
  - (b) might lead to a decision that is contrary to the public interest.

- (2) However, a councillor does not have a conflict of interest in a matter—
- (a) merely because of—
    - (i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in the councillor's capacity as a councillor; or
    - (ii) membership of a political party; or
    - (iii) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or
    - (iv) the councillor's religious beliefs; or
    - (v) the councillor having been a student of a particular school or the councillor's involvement with a school as a parent of a student at the school; or
  - (b) if the councillor has no greater personal interest in the matter than that of other persons in Brisbane.
- (3) Also, a councillor who is nominated by the council to be a member of a board of a corporation or other association does not have a personal interest in matters relating to the corporation or association merely because of the nomination or appointment as a member.

### **177E Councillor's conflict of interest at a meeting**

- (1) This section applies if—
- (a) a matter is to be discussed at a meeting of the council or any of its committees; and
  - (b) the matter is not an ordinary business matter; and

- (c) a councillor at the meeting—
  - (i) has a conflict of interest in the matter (a *real conflict of interest*); or
  - (ii) could reasonably be taken to have a conflict of interest in the matter (a *perceived conflict of interest*).
- (2) The councillor must inform the meeting about the councillor's personal interests in the matter, including the following particulars about the interests—
  - (a) the nature of the interests;
  - (b) if the councillor's personal interests arise because of the councillor's relationship with, or receipt of a gift from, another person—
    - (i) the name of the other person; and
    - (ii) the nature of the relationship or value and date of receipt of the gift; and
    - (iii) the nature of the other person's interests in the matter.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) Subsection (4) applies if—
  - (a) the other councillors who are entitled to vote at the meeting are informed about a councillor's personal interests in a matter by the councillor or another person; and
  - (b) the councillor has not voluntarily left, and stayed away from, the place where the meeting is being held while the matter is discussed and voted on.
- (4) Subject to subsection (6), the other councillors must decide—



- (a) whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and
  - (b) if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor—
    - (i) must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or
    - (ii) may participate in the meeting in relation to the matter, including by voting on the matter.
- (5) The councillor must comply with a decision under subsection (4) that the councillor must leave and stay away from the place.
- Maximum penalty—100 penalty units or 1 year’s imprisonment.
- (6) If a majority of the councillors at a meeting of the council inform the meeting about personal interests in the matter under subsection (2), the council must delegate deciding the matter under section 238, unless deciding the matter can not be delegated under that section.
- (7) A councillor does not contravene subsection (5) by participating in the meeting, or being present while the matter is discussed and voted on, if the councillor’s participation or presence—
- (a) is for the purpose of delegating deciding the matter under subsection (6); or
  - (b) is approved under section 177F and the councillor complies with the conditions of the approval.

(8) In this section—

*gift* means a gift that is required, under a regulation, to be recorded in a register of interests.

### **177F Minister's approval for councillor to participate or be present to decide matter**

- (1) The Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting, or being present while a matter is discussed and voted on, if—
  - (a) the matter could not otherwise be decided at the meeting because of—
    - (i) the number of councillors subject to the obligation under section 177C(2)(b); or
    - (ii) section 177E(6); and
  - (b) deciding the matter can not be delegated under section 238.
- (2) The Minister may give the approval subject to conditions stated in the notice.

### **177G Duty to report another councillor's material personal interest or conflict of interest at a meeting**

- (1) This section applies if—
  - (a) a matter is to be discussed at a meeting of the council or any of its committees; and
  - (b) the matter is not an ordinary business matter; and
  - (c) a councillor at the meeting believes, or suspects, on reasonable grounds that another councillor at the meeting has a material personal interest, real conflict of interest or perceived conflict of interest in the matter; and

- 
- (d) the other councillor has not informed the meeting about the interest under section 177C(2) or 177E(2).
- (2) The councillor who has the belief or suspicion must, as soon as practicable, inform the person who is presiding at the meeting about—
- (a) the belief or suspicion; and
  - (b) the facts and circumstances that form the basis of the belief or suspicion.

*Note—*

Contravention of subsection (2) is misconduct that could result in disciplinary action being taken against a councillor. See sections 178(3)(c) and 183.

### **177H Offence to take retaliatory action**

A person must not, because a councillor complied with section 177G(2)—

- (a) prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or
- (b) intimidate or harass, or threaten to intimidate or harass, the councillor or another person; or
- (c) take any action that is, or is likely to be, detrimental to the councillor or another person.

Maximum penalty—167 penalty units or 2 years imprisonment.

### **177I Offence for councillor with material personal interest or conflict of interest to influence others**

- (1) This section applies to a councillor who has a material personal interest, real conflict of interest

or perceived conflict of interest in a matter, other than an ordinary business matter.

- (2) The councillor must not influence, or attempt to influence, another councillor to vote on the matter in a particular way at a meeting of the council or any of its committees.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) The councillor must not influence, or attempt to influence, a council employee or a contractor of the council who is authorised to decide or otherwise deal with the matter to do so in a particular way.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) A councillor does not commit an offence against subsection (2) or (3) merely by participating in a meeting of the council or any of its committees about the matter, including by voting on the matter, if the participation is authorised under—

(a) a decision mentioned in section 177E(4)(b)(ii); or

(b) an approval under section 177F.

### **177J Records about material personal interests and conflicts of interests at meetings**

- (1) If section 177C applies to a matter to be discussed at a meeting of the council or any of its committees, the following information must be recorded in the minutes of the meeting and on the council's website—

(a) the name of the councillor who has a material personal interest in the matter;

- 
- (b) the material personal interest, including the particulars mentioned in section 177C(2)(a) as described by the councillor;
  - (c) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F.
- (2) If section 177E applies to a matter to be discussed at a meeting of the council or any of its committees, the following must be recorded in the minutes of the meeting and on the council's website—
- (a) the name of the councillor who has a real conflict of interest or perceived conflict of interest in the matter;
  - (b) the councillor's personal interests in the matter, including the particulars mentioned in section 177E(2) as described by the councillor;
  - (c) the decisions made under section 177E(4) and the reasons for the decisions;
  - (d) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 177F;
  - (e) if the councillor voted on the matter—how the councillor voted on the matter;
  - (f) how the majority of councillors who were entitled to vote at the meeting voted on the matter.

## **7 Amendment of s 178 (What this division is about)**

Section 178(3)(c), '175(4)'—

*omit, insert—*

177G(2)

## **7A Insertion of new ch 6, pt 2, divs 8 and 9**

Chapter 6, part 2—

*insert—*

### **Division 8                      Automatic suspension of councillors**

#### **186B Automatic suspension for certain offences**

- (1) A person is automatically suspended as a councillor when the person is charged with a disqualifying offence.
- (2) Subsection (3) applies if, when a person is appointed or elected as a councillor, a proceeding for a disqualifying offence against the person has been started but has not ended.
- (3) The person is automatically suspended as a councillor when the person's term as councillor starts.

#### **186C When a person is charged with disqualifying offence and proceeding is started**

For this division and division 9—

- (a) a person is charged with a disqualifying offence when—
  - (i) a police officer arrests and charges the person for the offence; or
  - (ii) the person is served with a notice to appear for the offence; or
  - (iii) the person is served with a complaint for the offence under the *Justices Act 1886*; or
  - (iv) a charge for the offence is made against the person in a proceeding without a

complaint under the *Justices Act 1886*;  
or

- (v) an *ex officio* indictment against the person for the offence is presented to the Supreme Court or the District Court; and
- (b) a proceeding for a disqualifying offence is started against a person when the person is charged with the offence.

### **186D Obligation to give notice if charged with disqualifying offence**

- (1) This section applies if—
  - (a) a councillor is charged with a disqualifying offence; or
  - (b) a proceeding for a disqualifying offence has been started, but has not ended, against a councillor when the councillor is appointed or elected.
- (2) The councillor must immediately give a written notice that complies with subsection (3) to each of the following, unless the councillor has a reasonable excuse—
  - (a) the Minister;
  - (b) if the councillor is not the mayor—the mayor;
  - (c) the chief executive officer.Maximum penalty—100 penalty units.
- (3) For subsection (2), the notice must state—
  - (a) the provision of the law against which the councillor is charged; and
  - (b) the day the councillor was charged.

### **186E Effect of councillor's suspension**

- (1) This section applies while a councillor is suspended as a councillor.
- (2) The councillor must not act as a councillor.
- (3) If the councillor is the mayor or deputy mayor, the councillor is also suspended as mayor or deputy mayor.
- (4) The councillor's obligations under division 5 are not affected.
- (5) The councillor is entitled to be paid remuneration as a councillor.
- (6) In this section—

*remuneration*, as a councillor, does not include an amount payable to a councillor for performing a particular responsibility, including, for example, attending a meeting of the local government or any of its committees.

### **186F When suspension of councillor ends**

If a councillor is suspended under section 186B, the suspension ends when the earliest of the following happens—

- (a) for each disqualifying offence to which the suspension relates—
  - (i) if the councillor is convicted of the offence and appeals the conviction—the conviction is set aside or quashed on appeal; or
  - (ii) if the councillor is convicted of the offence and does not appeal the conviction—the time within which an appeal must by law be started ends; or
  - (iii) the proceeding for the offence otherwise ends;



*Note—*

If the councillor is convicted of a disqualifying offence, the councillor's office becomes vacant. See section 162.

- (b) the councillor's term ends under section 160;
- (c) the councillor's office becomes vacant under section 162.

## **Division 9            Criminal history    information**

### **186G Criminal history report**

- (1) This section applies if the Minister—
  - (a) receives a notice from a councillor—
    - (i) under section 158A in relation to the conviction of the councillor for a disqualifying offence; or
    - (ii) under section 186D; or
  - (b) reasonably suspects a councillor has been charged with, or convicted of, a disqualifying offence.
- (2) The Minister may ask the police commissioner for a written report about the criminal history of the councillor that includes a brief description of the circumstances of a conviction or charge mentioned in the criminal history.
- (3) The police commissioner must comply with the request.
- (4) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access.

- (5) In this section—
- criminal history*, of a councillor, includes—
- (a) spent convictions; and
  - (b) every charge made against the councillor for an offence, in Queensland or elsewhere.

### **186H Confidentiality of criminal history information**

- (1) This section applies to a person who possesses criminal history information because the person—
- (a) is or was an officer, employee or agent of the department; or
  - (b) is or was a councillor, officer, employee or agent of the council.
- (2) The person must not, directly or indirectly, disclose criminal history information to any other person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person is permitted to disclose the criminal history information to another person—
- (a) to the extent necessary to perform the person's functions under this Act; or
  - (b) if the disclosure is authorised under an Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the information relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not identify the person to whom the information relates; or

- 
- (f) if the information is, or has been, lawfully accessible to the public.
- (4) The person must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it is given.
- (5) In this section—
- criminal history information* means the information contained in—
- (a) a report given to the Minister under section 186G; or
- (b) a notice given to the Minister, a councillor or the chief executive officer—
- (i) under section 158A in relation to the conviction of a councillor for a disqualifying offence; or
- (ii) under section 186D.

**7B Insertion of new ch 8, pt 9**

Chapter 8—

*insert—*

**Part 9**

**Transitional provisions  
for Local Government  
Electoral  
(Implementing Stage 1  
of Belcarra) and Other  
Legislation  
Amendment Act 2018**

## **277 Disqualifying offence committed before commencement**

Chapter 6, part 2, as in force after the commencement, applies in relation to a disqualifying offence, whether the act or omission constituting the offence was committed before or after the commencement.

## **278 Existing charge for disqualifying offence**

- (1) This section applies if a proceeding for a disqualifying offence against a councillor had started before the commencement but has not ended.
- (2) The councillor is automatically suspended as a councillor on the commencement.
- (3) Chapter 6, part 2, division 8 applies in relation to the councillor as if the councillor was suspended under section 186B.
- (4) Immediately after the commencement, the councillor must give a written notice that complies with subsection (5) to each of the following, unless the councillor has a reasonable excuse—
  - (a) the Minister;
  - (b) if the councillor is not the mayor—the mayor;
  - (c) the chief executive officer.Maximum penalty—100 penalty units.
- (5) For subsection (4), the notice must state—
  - (a) the provision of the law against which the councillor was charged; and
  - (b) the day the councillor was charged.
- (6) The information contained in the notice is taken to

be criminal history information for section 186H.

### **279 Existing conviction for new disqualifying offence**

- (1) This section applies if—
  - (a) before the commencement, a councillor was convicted of an offence that is a new disqualifying offence; and
  - (b) on the commencement, the disqualifying period for the offence would not have ended.
- (2) The councillor automatically stops being a councillor on the commencement.
- (3) Immediately after the commencement, the councillor must give a written notice that complies with subsection (4) to each of the following, unless the councillor has a reasonable excuse—
  - (a) the Minister;
  - (b) if the councillor is not the mayor—the mayor;
  - (c) the chief executive officer.

Maximum penalty—100 penalty units.
- (4) For subsection (3), the notice must state—
  - (a) the provision of the law against which the councillor was convicted; and
  - (b) the day the councillor was convicted.
- (5) Section 153(7) applies in relation to the offence.
- (6) The information contained in the notice is taken to be criminal history information for section 186H.
- (7) In this section—

**conviction** includes a spent conviction.

***disqualifying period***, for a new disqualifying offence, means the period stated in section 153(1) during which a person convicted of the offence can not be a councillor.

***new disqualifying offence*** means an offence that, under section 153—

- (a) is a disqualifying offence after the commencement; but
- (b) was not a disqualifying offence before the commencement.

## **8 Amendment and renumbering of sch 1 (Dictionary)**

- (1) Schedule 1—

*insert—*

***disqualifying offence*** see section 153(6).

***perceived conflict of interest*** see section 177E(1)(c)(ii).

***real conflict of interest*** see section 177E(1)(c)(i).

- (2) Schedule 1, definition *conflict of interest*, ‘section 175(2)’—

*omit, insert—*

section 177D

- (3) Schedule 1, definition *material personal interest*, ‘section 174(2)’—

*omit, insert—*

section 177B

- (4) Schedule 1, as amended by this section—

*renumber* as schedule 2.

## **8A Insertion of new sch 1**

After section 279, as inserted by this Act—

*insert—*

## **Schedule 1    Serious integrity offences and integrity offences**

section 153

### **Part 1            Serious integrity offences**

#### **Criminal Code**

- 54A(1)            Demands with menaces upon agencies of government
- 57(1)             False evidence before Parliament
- 60(1)             Bribery of member of Parliament
- 87(1) or (1A)   Official corruption
- 92A(1) or (2)   Misconduct in relation to public office
- 98B(1)           False or misleading information
- 98C(1) or (2)   Bribery
- 98D(1) or (2)   Forging or uttering electoral or referendum paper
- 110               Stuffing ballot boxes
- 112(1)           False or misleading information
- 119B(1)          Retaliation against or intimidation of judicial officer,  
juror, witness etc.
- 122(1)           Corruption of jurors
- 123(1)           Perjury
- 126(1)           Fabricating evidence

- 127(1) Corruption of witnesses
- 129 Damaging evidence with intent
- 131(1) Conspiracy to bring false accusation
- 132(1) Conspiring to defeat justice
- 133(1) Compounding an indictable offence  
circumstance—the penalty in subsection (2) applies to the offence
- 140(1) Attempting to pervert justice
- 193(1) False verified statements
- 398(1) Punishment of stealing  
circumstance—a circumstance of aggravation with a maximum penalty of 7 years or more imprisonment applies to the offence
- 399 Fraudulent concealment of particular documents  
circumstance—paragraph (b) of the penalty applies to the offence
- 408C(1) Fraud  
circumstance—a circumstance of aggravation mentioned in subsection (2), (2A) or (2B) applies to the offence
- 408E(1) Computer hacking and misuse  
circumstance—a circumstance of aggravation mentioned in subsection (3) applies to the offence
- 415(1) Extortion
- 430 Fraudulent falsification of records
- 433(1) Receiving tainted property
- 442B Receipt or solicitation of secret commission by an agent
- 442BA Gift or offer of secret commission to an agent



- 
- |        |   |
|--------|---|
| 442D   | False or misleading receipt or account  |
| 442E   | Secret commission for advice given  |
| 442EA  | Offer or solicitation of secret commission in return for advice given or to be given                                |
| 442F   | Secret commission to trustee in return for substituted appointment  |
| 442G   | Liability of director etc. acting without authority   |
| 488(1) | Forgery and uttering<br>circumstance—paragraph (a) or (b) of the penalty applies to the offence                     |
| 541(1) | Conspiracy to commit crime<br>circumstance—a maximum penalty of 7 years imprisonment or more applies to the offence |

### **Crime and Corruption Act**

- |        |  |
|--------|--|
| 198(1) | Contempt of person conducting commission hearing |
|--------|--|

### ***Criminal Proceeds Confiscation Act 2002***

- |        |                  |
|--------|------------------|
| 250(1) | Money laundering |
|--------|------------------|

### **Electoral Act**

- |         |   |
|---------|---|
| 307B(1) | Schemes to circumvent prohibition on particular political donations |
|---------|---|

### **Local Government Electoral Act**

- |               |                                 |
|---------------|---------------------------------|
| 169(1)        | False or misleading information |
| 170(1) or (2) | Bribery                         |

- 175(1) or (2) Forged electoral papers
- 194B(1) Schemes to circumvent prohibition on particular political donations

## Part 2 Integrity offences

### This Act

- 173(1) Use of information by councillors
- 173A(2) or (3) Prohibited conduct by councillor in possession of inside information
- 173B(2) Obligation of councillor to correct register of interests circumstance—paragraph (a) of the penalty applies to the offence
- 177C(2) Councillor’s material personal interest at a meeting
- 177E(2) or (5) Councillor’s conflict of interest at a meeting
- 177H Offence to take retaliatory action
- 177I(2) or (3) Offence for councillor with material personal interest or conflict of interest to influence others
- 215(1) False or misleading information

### Criminal Code

- 54(1) Interference with Governor or Ministers
- 55(1) Interference with the Legislature
- 58(1) Witness refusing to attend, answer question or produce a thing before Legislative Assembly or authorised committee
- 78(1) or (2) Interfering with political liberty

85	Disclosure of official secrets
98E(1)	Influencing voting
98F	Providing money for illegal payments
98G	Voting if not entitled
99(1), (2), (3), (4) or (5)	Voting if not entitled
100(1) or (2)	Hindering or interfering with voting conduct
101(1) or (2)	Bribery
102	Publishing false information about a candidate
113(2), (3), (4) or (5)	Interfering with secrecy at elections
128	Deceiving witnesses
130	Preventing witnesses from attending
133(1)	Compounding an indictable offence circumstance—the penalty in subsection (3) applies to the offence
194(1)	False declarations
204(1)	Disobedience to statute law
398(1)	Punishment of stealing circumstance—no circumstance of aggravation applies to the offence
399	Fraudulent concealment of particular documents circumstance—paragraph (a) of the penalty applies to the offence

- 408C            Fraud  
                  circumstance—the circumstance of aggravation  
                  mentioned in subsection (2), (2A) or (2B) does not apply  
                  to the offence
- 408D(1) or    Obtaining or dealing with identification information  
(1A)
- 408E            Computer hacking and misuse  
                  circumstance—no circumstance of aggravation, or the  
                  circumstance of aggravation mentioned in subsection (2),  
                  applies to the offence
- 414            Demanding property with menaces with intent to steal
- 488(1)        Forgery and uttering  
                  circumstance—paragraph (c) of the penalty applies to the  
                  offence
- 541(1)        Conspiracy to commit crime  
                  circumstance—the maximum penalty for the crime in  
                  question is less than 7 years imprisonment

### **Electoral Act**

- 307A(1)       Offence about prohibited donations
- 307C(1)       False or misleading information relating to  
                  determinations
- 427(2)        Obligation to repay particular political donations

### **Local Government Electoral Act**

- 171            Assisting illegal payments
- 186            Influencing voting by violence or intimidation
- 189            Voting if not entitled

- 
- |         |  |
|---------|--|
| 194A(1) | Offence about prohibited donations                         |
| 194C(1) | False or misleading information relating to determinations |
| 212(2)  | Obligation to repay particular political donations         |

## Part 3                      Amendment of Electoral Act 1992

### 9            Act amended

This part amends the *Electoral Act 1992*.

### 10          Amendment of s 2 (Definitions)

Section 2—

*insert—*

*political donation*, for part 11, division 8, subdivision 4, see section 274.

*prohibited donor*, for part 11, division 8, subdivision 4, see section 273.

### 11          Amendment of s 197 (Definitions)

(1) Section 197, definition *electoral expenditure*—  
*omit.*

(2) Section 197—

*insert—*

*electoral expenditure*—

(a) for division 4—see section 222; or

(b) for division 8, subdivision 4—means expenditure incurred for the purposes of a campaign for an election, whether or not the

expenditure is incurred during the election period for the election; or

(c) for division 10—see section 282A.

***political donation***, for division 8, subdivision 4, see section 274.

***prohibited donor***, for division 8, subdivision 4, see section 273.

**12 Replacement of pt 11, div 8, sdiv 3, hdg (Other gifts and loans)**

Part 11, division 8, subdivision 3, heading—

*omit, insert—*

**Subdivision 3 Loans from entities other than financial institutions**

**13 Insertion of new pt 11, div 8, sdiv 4**

Part 11, division 8—

*insert—*

**Subdivision 4 Political donations from property developers**

**273 Meaning of *prohibited donor***

(1) For this subdivision, ***prohibited donor***—

(a) means—

(i) a property developer; or

(ii) an industry representative organisation, a majority of whose members are property developers; but

(b) does not include an entity for whom a determination is in effect under section 277.

---

*Note—*

See section 307C(4) in relation to the non-effect of a determination in particular circumstances.

- (2) For subsection (1)(a), each of the following persons is a ***property developer***—
- (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation—
    - (i) in connection with the residential or commercial development of land; and
    - (ii) with the ultimate purpose of the sale or lease of the land for profit;
  - (b) a close associate of a corporation mentioned in paragraph (a).
- (3) For deciding whether a corporation is a corporation mentioned in subsection (2)(a), any activity engaged in by the corporation for the dominant purpose of providing commercial premises at which the corporation, or a related body corporate of the corporation, will carry on business is to be disregarded, unless the business involves the sale or leasing of a substantial part of the premises.
- (4) Section 205 does not apply for this section.
- (5) In this section—
- close associate***, of a corporation, means any of the following persons—
- (a) a related body corporate of the corporation;
  - (b) a director or other officer of the corporation;
  - (c) a person with more than 20% of the voting power in the corporation or a related body corporate of the corporation;

- (d) a spouse of an individual mentioned in paragraph (b) or (c);
- (e) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security;
- (f) if the corporation is a trustee, manager or responsible entity in relation to a unit trust—a person who holds more than 20% of the units in the trust;
- (g) if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust—a beneficiary of the trust.

**director**, of a corporation, see the Corporations Act, section 9.

**officer**, of a corporation, see the Corporations Act, section 9.

**related body corporate**, of a corporation, see the Corporations Act, section 9.

**relevant planning application** means—

- (a) an application for, or to change, a development approval under the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009*; or
- (b) a request to the Minister administering the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009* or a local government about the making or amendment of a planning instrument or designation under either Act; or
- (c) an application for, or to change, an SDA approval under the *State Development and Public Works Organisation Act 1971*; or



- 
- (d) a request or application to the Minister who administers the *State Development and Public Works Organisation Act 1971* or the Coordinator-General about the following under that Act—
- (i) the declaration or variation of a coordinated project, prescribed development, prescribed project or State development area;
  - (ii) the imposition of, or change to, conditions on a coordinated project;
  - (iii) the preparation or variation of a development scheme; or
- (e) an application for, or to change, a PDA development approval under the *Economic Development Act 2012*; or
- (f) a request to the Minister who administers the *Economic Development Act 2012* or the MEDQ about the making, declaration or amendment of any of the following under that Act—
- (i) a priority development area or provisional priority development area;
  - (ii) a development scheme, interim land use plan, or PDA-associated development for a priority development area;
  - (iii) a provisional land use plan or PDA-associated development for a provisional priority development area; or
- (g) an application or request of a type prescribed by regulation to be a relevant planning application.

*stapled entity*—

- (a) means an entity the interests in which are traded along with the interests in another entity as stapled securities; and
- (b) for an entity mentioned in paragraph (a) that is a trust, includes any trustee, manager or responsible entity in relation to the trust.

**voting power** see the Corporations Act, section 610.

### **274 Meaning of *political donation***

- (1) For this subdivision, each of the following is a ***political donation***—
  - (a) a gift made to or for the benefit of—
    - (i) a political party; or
    - (ii) an elected member; or
    - (iii) a candidate in an election;
  - (b) a gift made to or for the benefit of another entity—
    - (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or
    - (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure;
  - (c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).
- (2) If a gift is made by a person in a private capacity to an individual (the ***recipient***) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose—

- 
- (a) the gift is not a political donation when it is made; but
  - (b) if any part of the gift is used for an electoral purpose, then, for the purposes of section 275(3)—
    - (i) that part of the gift is a political donation; and
    - (ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.
- (3) A reference in subsection (2) to using a gift for an *electoral purpose* is a reference to using the gift to incur electoral expenditure or for the recipient's duties as an elected member.
- (4) Despite section 201(4)(a) and (b), a reference in this section to a gift includes a fundraising contribution, to the extent the amount of the contribution forms part of the proceeds of the fundraising venture or function to which the contribution relates.
- (5) Despite section 201(4)(d), a reference in this section to a gift includes any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—
- (a) an amount paid as a subscription for a person's membership of the party;
  - (b) an amount paid for a person's affiliation with the party.

### **275 Political donations by prohibited donors**

- (1) It is unlawful for a prohibited donor to make a political donation.
- (2) It is unlawful for a person to make a political

donation on behalf of a prohibited donor.

- (3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor.
- (4) It is unlawful for a prohibited donor to solicit a person to make a political donation.
- (5) It is unlawful for a person to solicit, on behalf of a prohibited donor, another person to make a political donation.

## **276 Recovery of prohibited donations**

- (1) If a person accepts a prohibited donation, the following amount is payable by the person to the State—
  - (a) if the person knew it was unlawful to accept the prohibited donation—an amount equal to twice the amount or value of the prohibited donation;
  - (b) otherwise—an amount equal to the amount or value of the prohibited donation.
- (2) The amount may be recovered by the State as a debt due to the State from—
  - (a) if the recipient is a registered political party that is not a corporation—the party’s agent; or
  - (b) if the recipient is a candidate—the candidate or the candidate’s agent; or
  - (c) otherwise—the recipient.
- (3) The imposition of liability to pay an amount to the State under this section—
  - (a) is not a punishment or sentence for an offence against section 307A or any other offence; and

(b) is not a matter to which a court may have regard in sentencing an offender for an offence against section 307A or any other offence.

(4) In this section—

*prohibited donation* means a political donation that was unlawfully made or accepted under section 275.

*recipient* means the entity to whom, or for the benefit of whom, the prohibited donation was made.

### **277 Making of determination that entity is not a prohibited donor**

- (1) A person may apply to the commissioner for a determination that the person, or another entity, is not an entity mentioned in section 273(1)(a)(i) or (ii).
- (2) The application must be written and supported by enough information to enable the commissioner to decide the application.
- (3) If the commissioner is satisfied the entity to whom the application relates is not an entity mentioned in section 273(1)(a)(i) or (ii), the commissioner must make the determination sought by the applicant.
- (4) Otherwise, the commissioner must—
  - (a) decide not to make the determination; and
  - (b) give the applicant an information notice about the decision.
- (5) A determination has effect for 1 year unless it is earlier revoked.

### **278 Revocation of determination**

- (1) If, at any time, the commissioner ceases to be satisfied the entity to whom a determination relates is not an entity mentioned in section 273(1)(a)(i) or (ii), the commissioner may revoke the determination by giving a written notice of revocation to the entity and, if the entity was not the applicant for the determination, the applicant.
- (2) The notice of revocation given to the entity must include, or be accompanied by, an information notice about the decision to revoke the determination.

### **279 Register of determinations**

- (1) The commissioner must keep a register of determinations made under section 277.
- (2) The register must include any revocations made under section 278.
- (3) The commissioner must make the register available for public inspection without fee.

## **14 Amendment of s 282A (Meaning of *electoral expenditure*)**

Section 282A, ‘this part’—

*omit, insert—*

this division

## **15 Insertion of new ss 307A–307C**

After section 307—

*insert—*

### **307A Offence about prohibited donations**

- (1) A person must not do an act or make an omission that is unlawful under section 275 if the person

knows or ought reasonably to know of the facts that result in the act or omission being unlawful under that section.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) An offence against subsection (1) is a misdemeanour.

### **307B Schemes to circumvent prohibition on particular political donations**

- (1) A person must not knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition under division 8, subdivision 4 about political donations.

Maximum penalty—1,500 penalty units or 10 years imprisonment.

- (2) For subsection (1), it does not matter whether the person also participates in the scheme for other purposes.
- (3) An offence against subsection (1) is a crime.
- (4) In this section—

*participate in*, a scheme, includes—

- (a) enable, aid or facilitate entry into, or the carrying out of, a scheme; and
- (b) organise or control a scheme.

*scheme* includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied.

### **307C False or misleading information relating to determinations**

- (1) A person must not give the commissioner information under section 277 that the person

knows is false or misleading in a material particular.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the commissioner, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) An offence against subsection (1) is a misdemeanour.
- (4) In a proceeding against a person for an offence under section 307A, a determination made under section 277 is taken to be of no effect if the person knew, or ought reasonably to have known, at the time of the relevant act or omission that information given to, or used by, the commissioner under section 277 was false or misleading in a material particular.

## **16 Amendment of s 308 (Recovery of payments)**

Section 308(1), 'section 236(3) or 271(7)'—

*omit, insert—*

section 236(3), 271(6) or 276

## **17 Amendment of s 374 (Right of appeal)**

Section 374, note, after 'sections'—

*insert—*

277(4)(b), 278(2),



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**18 Amendment of s 385 (Offences under this part are summary)**

- (1) Section 385, heading, ‘Offences’—

*omit, insert—*

**Particular offences**

- (2) Section 385(1), after ‘part’—

*insert—*

, other than sections 307A to 307C,

- (3) Section 385(2), ‘an offence’—

*omit, insert—*

a summary offence

**19 Insertion of new s 385A**

After section 385—

*insert—*

**385A Proceedings for indictable offence**

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
- (a) by way of summary proceeding under the *Justices Act 1886*; or
- (b) on indictment.
- (2) However, a magistrate must not hear an indictable offence against section 307B summarily if—
- (a) the magistrate is satisfied, at any stage of the hearing and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be

- adequately punished on summary conviction; or
- (b) the magistrate is satisfied, on an application made by the defence, that because of exceptional circumstances the offence should not be heard and decided summarily.
- (3) If subsection (2) applies—
- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 3 years imprisonment.

## 20 Insertion of new pt 13, div 9

Part 13—

*insert—*

### **Division 9**

### **Transitional provision for Local Government Electoral (Implementing Stage 1 of Belcarra) and**

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## Other Legislation Amendment Act 2018

### 427 Obligation to repay particular political donations

- (1) This section applies if—
- (a) a donation was made to a person (the *recipient*) on or after 12 October 2017 and before the commencement; and

*Note—*

The Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 was introduced into the Legislative Assembly on 12 October 2017.

- (b) under section 275(3), it would have been unlawful for the recipient to accept the donation if it had been made immediately after the commencement.
- (2) The recipient must pay an amount equal to the amount or value of the donation to the person who made the donation within 30 days after the commencement.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (3) An offence against subsection (2) is a misdemeanour.
- (4) Section 276 applies in relation to a contravention of subsection (2) as if—
- (a) a reference in section 276 to accepting a prohibited donation were a reference to contravening subsection (2); and
- (b) a reference in section 276 to the amount or value of a prohibited donation were a

reference to the amount that was not paid  
under subsection (2).

## **Part 4                      Amendment of Local Government Act 2009**

### **Division 1                Preliminary**

#### **21      Act amended**

This part amends the *Local Government Act 2009*.

### **Division 2                Amendments commencing on assent**

#### **21A    Amendment of s 122 (Removing a councillor)**

(1) Section 122(1)—

*insert—*

(d) the Minister reasonably believes it is  
otherwise in the public interest that a  
councillor be suspended or dismissed.

(2) Section 122(2)(c), before ‘—suspend’—

*insert—*

or dissolve the local government

#### **21B    Amendment of s 123 (Dissolving a local government)**

(1) Section 123, heading, ‘Dissolving’—

*omit, insert—*

**Suspending or dissolving**

(2) Section 123(1)—

*insert—*

- (d) the Minister reasonably believes it is otherwise in the public interest that every councillor be suspended or dismissed.

(3) Section 123—

*insert—*

- (1A) If the proposal in the Minister’s notice under section 120 was to suspend every councillor for a stated period, the Minister may recommend that the Governor in Council—

- (a) suspend every councillor for a period that is no longer than the stated period; and
- (b) appoint an interim administrator to act in place of the councillors until the stated period ends.

(4) Section 123(2), ‘The’—

*omit, insert—*

Also, the

(5) Section 123(4), ‘The regulation’—

*omit, insert—*

A regulation dissolving a local government

(6) Section 123(1A) to (5)—

*renumber* as section 123(2) to (6).

## **22 Amendment of s 153 (Disqualification for certain offences)**

(1) Section 153(1)(c), ‘bribery’—

*omit, insert—*

serious integrity

(2) Section 153(4) and (5)—

*omit, insert—*

(4) A *serious integrity offence* is an offence against—

(a) a provision of a law mentioned in schedule 1, part 1 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence; or

(b) a provision of a law of another State or the Commonwealth that corresponds to a provision mentioned in paragraph (a).

(5) An *integrity offence* is an offence against a provision of a law mentioned in schedule 1, part 2 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence.

(3) Section 153(6), after ‘convicted of’—

*insert—*

any of the following offences (each a *disqualifying offence*)

(4) Section 153(6)(c)—

*omit, insert—*

(c) a serious integrity offence; or

## **22A Amendment of s 158 (Acting as councillor without authority)**

Section 158—

*insert—*

(c) the person is suspended as a councillor.

## **22B Insertion of new s 158A**

Chapter 6, part 2, division 1—

---

*insert—*

**158A Councillor must give notice of disqualification**

- (1) This section applies if a councillor becomes aware the councillor is not qualified to be a councillor under this division.
- (2) The councillor must immediately give a notice that complies with subsection (3) to each of the following, unless the councillor has a reasonable excuse—
  - (a) the Minister;
  - (b) if the councillor is not the mayor of the local government—the mayor;
  - (c) the chief executive officer of the local government.

Maximum penalty—100 penalty units.

- (3) For subsection (2), the notice must state—
  - (a) details about why the councillor is not qualified to be a councillor under this division; and
  - (b) the day the councillor became disqualified.

**23 Omission of ss 172 and 173**

Sections 172 and 173—

*omit.*

**24 Insertion of new ch 6, pt 2, div 5A**

Chapter 6, part 2—

*insert—*

## **Division 5A      Dealing with councillors’ personal interests in local government matters**

### **175A Purpose of division**

The purpose of this division is to ensure the personal interests of councillors are dealt with in an accountable and transparent way that meets community expectations, if the interests relate to matters to be considered—

- (a) at a meeting of the local government or any of its committees; or
- (b) by a local government employee or contractor of the local government authorised to deal with the matter.

### **175B Meaning of *material personal interest***

(1) A councillor has a *material personal interest* in a matter if any of the following stand to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of consideration of the matter—

- (a) the councillor;
- (b) a spouse of the councillor;
- (c) a parent, child or sibling of the councillor;
- (d) a person who is in a partnership with the councillor;
- (e) an employer, other than a government entity, of the councillor;
- (f) an entity, other than a government entity, of which the councillor is a member;
- (g) another entity prescribed by regulation.



- 
- (2) However, a councillor does not have a material personal interest in the matter if the councillor, or another person or entity mentioned in subsection (1), stands to gain a benefit or suffer a loss that is no greater than that of other persons in the local government area.
  - (3) Subsection (1)(c) only applies to a councillor if the councillor knows, or ought reasonably to know, that the councillor's parent, child or sibling stands to gain a benefit or suffer a loss.

### **175C Councillor's material personal interest at a meeting**

- (1) This section applies if—
  - (a) a matter is to be discussed at a meeting of the local government or any of its committees; and
  - (b) the matter is not an ordinary business matter; and
  - (c) a councillor has a material personal interest in the matter.
- (2) The councillor must—
  - (a) inform the meeting of the councillor's material personal interest in the matter, including the following particulars about the interest—
    - (i) the name of the person or other entity who stands to gain a benefit, or suffer a loss, depending on the outcome of the consideration of the matter at the meeting;
    - (ii) how the person or other entity stands to gain the benefit or suffer the loss;
    - (iii) if the person or other entity who stands to gain the benefit or suffer the loss is

not the councillor—the nature of the councillor’s relationship to the person or entity; and

- (b) leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on.

Maximum penalty—

- (a) if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or another person or entity—200 penalty units or 2 years imprisonment; or
  - (b) otherwise—85 penalty units.
- (3) If a majority of the councillors at a meeting of the local government inform the meeting about a material personal interest in a matter under subsection (2)(a), the local government must delegate deciding the matter under section 257, unless deciding the matter can not be delegated under that section.
- (4) A councillor does not contravene subsection (2) by participating in the meeting, or being present while the matter is discussed and voted on, if the councillor’s participation or presence—
- (a) is for the purpose of delegating deciding the matter under subsection (3); or
  - (b) is approved under section 175F and the councillor complies with the conditions of the approval.

### **175D Meaning of *conflict of interest***

- (1) A *conflict of interest* is a conflict that—
  - (a) is between—

- 
- (i) a councillor's personal interests; and
  - (ii) the public interest; and
  - (b) might lead to a decision that is contrary to the public interest.
- (2) However, a councillor does not have a conflict of interest in a matter—
- (a) merely because of—
    - (i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in the councillor's capacity as a councillor; or
    - (ii) membership of a political party; or
    - (iii) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or
    - (iv) the councillor's religious beliefs; or
    - (v) the councillor having been a student of a particular school or the councillor's involvement with a school as a parent of a student at the school; or
  - (b) if the councillor has no greater personal interest in the matter than that of other persons in the local government area.
- (3) Also, a councillor who is nominated by the local government to be a member of a board of a corporation or other association does not have a personal interest in matters relating to the corporation or association merely because of the nomination or appointment as a member.

### **175E Councillor's conflict of interest at a meeting**

- (1) This section applies if—

- (a) a matter is to be discussed at a meeting of the local government or any of its committees; and
  - (b) the matter is not an ordinary business matter; and
  - (c) a councillor at the meeting—
    - (i) has a conflict of interest in the matter (a *real conflict of interest*); or
    - (ii) could reasonably be taken to have a conflict of interest in the matter (a *perceived conflict of interest*).
- (2) The councillor must inform the meeting about the councillor's personal interests in the matter, including the following particulars about the interests—
- (a) the nature of the interests;
  - (b) if the councillor's personal interests arise because of the councillor's relationship with, or receipt of a gift from, another person—
    - (i) the name of the other person; and
    - (ii) the nature of the relationship or value and date of receipt of the gift; and
    - (iii) the nature of the other person's interests in the matter.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) Subsection (4) applies if—
- (a) the other councillors who are entitled to vote at the meeting are informed about a councillor's personal interests in a matter by the councillor or another person; and

- (b) the councillor has not voluntarily left, and stayed away from, the place where the meeting is being held while the matter is discussed and voted on.
- (4) Subject to subsection (6), the other councillors must decide—
  - (a) whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and
  - (b) if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor—
    - (i) must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or
    - (ii) may participate in the meeting in relation to the matter, including by voting on the matter.
- (5) The councillor must comply with a decision under subsection (4) that the councillor must leave and stay away from the place.

Maximum penalty—100 penalty units or 1 year’s imprisonment.
- (6) If a majority of the councillors at a meeting of the local government inform the meeting about personal interests in the matter under subsection (2), the local government must delegate deciding the matter under section 257, unless deciding the matter can not be delegated under that section.
- (7) A councillor does not contravene subsection (5) by participating in the meeting, or being present while the matter is discussed and voted on, if the councillor’s participation or presence—

- (a) is for the purpose of delegating deciding the matter under subsection (6); or
  - (b) is approved under section 175F and the councillor complies with the conditions of the approval.
- (8) In this section—
- gift* means a gift that is required, under a regulation, to be recorded in a register of interests.

### **175F Minister's approval for councillor to participate or be present to decide matter**

- (1) The Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting, or being present while a matter is discussed and voted on, if—
- (a) the matter could not otherwise be decided at the meeting because of—
    - (i) the number of councillors subject to the obligation under section 175C(2)(b); or
    - (ii) section 175E(6); and
  - (b) deciding the matter can not be delegated under section 257.
- (2) The Minister may give the approval subject to conditions stated in the notice.

### **175G Duty to report another councillor's material personal interest or conflict of interest at a meeting**

- (1) This section applies if—
- (a) a matter is to be discussed at a meeting of the local government or any of its committees; and

- 
- (b) the matter is not an ordinary business matter; and
  - (c) a councillor at the meeting reasonably believes, or reasonably suspects, that another councillor at the meeting has a material personal interest, real conflict of interest or perceived conflict of interest in the matter; and
  - (d) the other councillor has not informed the meeting about the interest under section 175C(2) or 175E(2).
- (2) The councillor who has the belief or suspicion must, as soon as practicable, inform the person who is presiding at the meeting about—
- (a) the belief or suspicion; and
  - (b) the facts and circumstances that form the basis of the belief or suspicion.

*Note—*

Contravention of subsection (2) is misconduct that could result in disciplinary action being taken against a councillor. See sections 176(3)(d) and 180.

### **175H Offence to take retaliatory action**

A person must not, because a councillor complied with section 175G(2)—

- (a) prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or
- (b) intimidate or harass, or threaten to intimidate or harass, the councillor or another person; or
- (c) take any action that is, or is likely to be, detrimental to the councillor or another person.

Maximum penalty—167 penalty units or 2 years imprisonment.

**175I Offence for councillor with material personal interest or conflict of interest to influence others**

- (1) This section applies to a councillor who has a material personal interest, real conflict of interest or perceived conflict of interest in a matter, other than an ordinary business matter.
- (2) The councillor must not influence, or attempt to influence, another councillor to vote on the matter in a particular way at a meeting of the local government or any of its committees.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) The councillor must not influence, or attempt to influence, a local government employee or a contractor of the local government who is authorised to decide or otherwise deal with the matter to do so in a particular way.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) A councillor does not commit an offence against subsection (2) or (3) merely by participating in a meeting of the local government or any of its committees about the matter, including by voting on the matter, if the participation is authorised under—
  - (a) a decision mentioned in section 175E(4)(b)(ii); or
  - (b) an approval under section 175F.



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### **175J Records about material personal interests and conflicts of interests at meetings**

- (1) If section 175C applies to a matter to be discussed at a meeting of the local government or any of its committees, the following information must be recorded in the minutes of the meeting and on the local government's website—
  - (a) the name of the councillor who has a material personal interest in the matter;
  - (b) the material personal interest, including the particulars mentioned in section 175C(2)(a) as described by the councillor;
  - (c) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 175F.
- (2) If section 175E applies to a matter to be discussed at a meeting of the local government or any of its committees, the following must be recorded in the minutes of the meeting and on the local government's website—
  - (a) the name of the councillor who has a real conflict of interest or perceived conflict of interest in the matter;
  - (b) the councillor's personal interests in the matter, including the particulars mentioned in section 175E(2) as described by the councillor;
  - (c) the decisions made under section 175E(4) and the reasons for the decisions;
  - (d) whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 175F;
  - (e) if the councillor voted on the matter—how the councillor voted on the matter;

- (f) how the majority of councillors who were entitled to vote at the meeting voted on the matter.

**25 Amendment of s 176 (What this division is about)**

Section 176(3)(d), '173(4)'—

*omit, insert—*

175G(2)

**25A Insertion of new ch 6, pt 2, divs 7 and 8**

Chapter 6, part 2—

*insert—*

**Division 7 Automatic suspension of  
councillors**

**182A Automatic suspension for certain offences**

- (1) A person is automatically suspended as a councillor when the person is charged with a disqualifying offence.
- (2) Subsection (3) applies if, when a person is appointed or elected as a councillor, a proceeding for a disqualifying offence against the person has been started but has not ended.
- (3) The person is automatically suspended as a councillor when the person's term as councillor starts.

**182B When a person is charged with disqualifying  
offence and proceeding is started**

For this division and division 8—

- 
- (a) a person is charged with a disqualifying offence when—
    - (i) a police officer arrests and charges the person for the offence; or
    - (ii) the person is served with a notice to appear for the offence; or
    - (iii) the person is served with a complaint for the offence under the *Justices Act 1886*; or
    - (iv) a charge for the offence is made against the person in a proceeding without a complaint under the *Justices Act 1886*; or
    - (v) an ex officio indictment against the person for the offence is presented to the Supreme Court or the District Court; and
  - (b) a proceeding for a disqualifying offence is started against a person when the person is charged with the offence.

### **182C Obligation to give notice if charged with disqualifying offence**

- (1) This section applies if—
  - (a) a councillor is charged with a disqualifying offence; or
  - (b) a proceeding for a disqualifying offence has been started, but has not ended, against a councillor when the councillor is appointed or elected.
- (2) The councillor must immediately give a notice that complies with subsection (3) to each of the following, unless the councillor has a reasonable excuse—

- (a) the Minister;
- (b) if the councillor is not the mayor of the local government—the mayor;
- (c) the chief executive officer of the local government.

Maximum penalty—100 penalty units.

- (3) For subsection (2), the notice must state—
  - (a) the provision of the law against which the councillor is charged; and
  - (b) the day the councillor was charged.

### **182D Effect of councillor’s suspension**

- (1) This section applies while a councillor is suspended as a councillor.
- (2) The councillor must not act as a councillor.
- (3) If the councillor is the mayor or deputy mayor, the councillor is also suspended as mayor or deputy mayor.
- (4) The councillor’s obligations under division 5 are not affected.
- (5) The Minister’s power to exercise a power in relation to the councillor under chapter 5, part 1, division 3 is not affected.
- (6) The councillor is entitled to be paid remuneration as a councillor.
- (7) In this section—

*remuneration*, as a councillor, does not include an amount payable to a councillor for performing a particular responsibility, including, for example, attending a meeting of the local government or any of its committees.

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## **182E When suspension of councillor ends**

If a councillor is suspended under section 182A, the suspension ends when the earliest of the following happens—

- (a) for each disqualifying offence to which the suspension relates—
  - (i) if the councillor is convicted of the offence and appeals the conviction—the conviction is set aside or quashed on appeal; or
  - (ii) if the councillor is convicted of the offence and does not appeal the conviction—the time within which an appeal must by law be started ends; or
  - (iii) the proceeding for the offence otherwise ends;

*Note—*

If the councillor is convicted of a disqualifying offence, the councillor's office becomes vacant. See section 162.

- (b) the councillor's term ends under section 160;
- (c) the councillor's office becomes vacant under section 162.

## **Division 8      Criminal history information**

### **182F Criminal history report**

- (1) This section applies if the Minister—
  - (a) receives a notice from a councillor—

- (i) under section 158A in relation to the conviction of the councillor for a disqualifying offence; or
  - (ii) under section 182C; or
- (b) reasonably suspects a councillor has been charged with, or convicted of, a disqualifying offence.
- (2) The Minister may ask the police commissioner for a written report about the criminal history of the councillor that includes a brief description of the circumstances of a conviction or charge mentioned in the criminal history.
- (3) The police commissioner must comply with the request.
- (4) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (5) In this section—  
*criminal history*, of a councillor, includes—
  - (a) a spent conviction; and
  - (b) every charge made against the councillor for an offence, in Queensland or elsewhere.

### **182G Confidentiality of criminal history information**

- (1) This section applies to a person who possesses criminal history information because the person—
  - (a) is or was an officer, employee or agent of the department; or
  - (b) is or was a councillor, officer, employee or agent of a local government.

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- (2) The person must not, directly or indirectly, disclose criminal history information to any other person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person is permitted to disclose the criminal history information to another person—
- (a) to the extent necessary to perform the person's functions under this Act; or
  - (b) if the disclosure is authorised under an Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the information relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not identify the person to whom the information relates; or
  - (f) if the information is, or has been, lawfully accessible to the public.
- (4) The person must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it is given.

- (5) In this section—

***criminal history information*** means the information contained in—

- (a) a report given to the Minister under section 182F; or
- (b) a notice given to the Minister, a councillor or the chief executive officer of a local government—

- (i) under section 158A in relation to the conviction of a councillor for a disqualifying offence; or
- (ii) under section 182C.

## **25B Insertion of new ch 9, pt 13**

Chapter 9—

*insert—*

### **Part 13 Transitional provisions for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018**

#### **325 Disqualifying offence committed before commencement**

Chapter 6, part 2, as in force after the commencement, applies in relation to a disqualifying offence, whether the act or omission constituting the offence was committed before or after the commencement.

#### **326 Existing charge for disqualifying offence**

- (1) This section applies if a proceeding for a disqualifying offence against a councillor had started before the commencement but has not ended.
- (2) The councillor is automatically suspended as a councillor on the commencement.
- (3) Chapter 6, part 2, division 7 applies in relation to



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the councillor as if the councillor was suspended under section 182A.

- (4) Immediately after the commencement, the councillor must give a notice that complies with subsection (5) to each of the following, unless the councillor has a reasonable excuse—
  - (a) the Minister;
  - (b) if the councillor is not the mayor of the local government—the mayor;
  - (c) the chief executive officer of the local government.

Maximum penalty—100 penalty units.

- (5) For subsection (4), the notice must state—
  - (a) the provision of the law against which the councillor was charged; and
  - (b) the day the councillor was charged.
- (6) The information contained in the notice is taken to be criminal history information for section 182G.

### **327 Existing conviction for new disqualifying offence**

- (1) This section applies if—
  - (a) before the commencement, a councillor was convicted of an offence that is a new disqualifying offence; and
  - (b) on the commencement, the disqualifying period for the offence would not have ended.
- (2) The councillor automatically stops being a councillor on the commencement.
- (3) Immediately after the commencement, the councillor must give a notice that complies with subsection (4) to each of the following, unless the councillor has a reasonable excuse—

- (a) the Minister;
- (b) if the councillor is not the mayor of the local government—the mayor;
- (c) the chief executive officer of the local government.

Maximum penalty—100 penalty units.

- (4) For subsection (3), the notice must state—
  - (a) the provision of the law against which the councillor was convicted; and
  - (b) the day the councillor was convicted.
- (5) Section 153(7) applies in relation to the offence.
- (6) The information contained in the notice is taken to be criminal history information for section 182G.
- (7) In this section—

**conviction** includes a spent conviction.

**disqualifying period**, for a new disqualifying offence, means the period stated in section 153(1) during which a person convicted of the offence can not be a councillor.

**new disqualifying offence** means an offence that, under section 153—

- (a) is a disqualifying offence after the commencement; but
- (b) was not a disqualifying offence before the commencement.

## 25C Insertion of new sch 1

After section 327, as inserted by this Act—

*insert—*

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## **Schedule 1    Serious integrity offences and integrity offences**

section 153

### **Part 1            Serious integrity offences**

#### **Criminal Code**

- 54A(1)            Demands with menaces upon agencies of government
- 57(1)            False evidence before Parliament
- 60(1)            Bribery of member of Parliament
- 87(1) or (1A)   Official corruption
- 92A(1) or (2)   Misconduct in relation to public office
- 98B(1)           False or misleading information
- 98C(1) or (2)   Bribery
- 98D(1) or (2)   Forging or uttering electoral or referendum paper
- 110              Stuffing ballot boxes
- 112(1)           False or misleading information
- 119B(1)          Retaliation against or intimidation of judicial officer,  
juror, witness etc.
- 122(1)           Corruption of jurors
- 123(1)           Perjury
- 126(1)           Fabricating evidence
- 127(1)           Corruption of witnesses

- 129 Damaging evidence with intent
- 131(1) Conspiracy to bring false accusation
- 132(1) Conspiring to defeat justice
- 133(1) Compounding an indictable offence  
circumstance—the penalty in subsection (2) applies to the offence
- 140(1) Attempting to pervert justice
- 193(1) False verified statements
- 398(1) Punishment of stealing  
circumstance—a circumstance of aggravation with a maximum penalty of 7 years or more imprisonment applies to the offence
- 399 Fraudulent concealment of particular documents  
circumstance—paragraph (b) of the penalty applies to the offence
- 408C(1) Fraud  
circumstance—a circumstance of aggravation mentioned in subsection (2), (2A) or (2B) applies to the offence
- 408E(1) Computer hacking and misuse  
circumstance—a circumstance of aggravation mentioned in subsection (3) applies to the offence
- 415(1) Extortion
- 430 Fraudulent falsification of records
- 433(1) Receiving tainted property
- 442B Receipt or solicitation of secret commission by an agent
- 442BA Gift or offer of secret commission to an agent
- 442D False or misleading receipt or account

- 442E Secret commission for advice given
- 442EA Offer or solicitation of secret commission in return for advice given or to be given
- 442F Secret commission to trustee in return for substituted appointment
- 442G Liability of director etc. acting without authority
- 488(1) Forgery and uttering  
circumstance—paragraph (a) or (b) of the penalty applies to the offence
- 541(1) Conspiracy to commit crime  
circumstance—a maximum penalty of 7 years imprisonment or more applies to the offence

***Crime and Corruption Act 2001***

- 198(1) Contempt of person conducting commission hearing

***Criminal Proceeds Confiscation Act 2002***

- 250(1) Money laundering

**Electoral Act**

- 307B(1) Schemes to circumvent prohibition on particular political donations

**Local Government Electoral Act**

- 169(1) False or misleading information
- 170(1) or (2) Bribery
- 175(1) or (2) Forged electoral papers

- 194B(1) Schemes to circumvent prohibition on particular political donations

## Part 2 Integrity offences

### This Act

- 171(1) Use of information by councillors
- 171A(2) or (3) Prohibited conduct by councillor in possession of inside information
- 171B(2) Obligation of councillor to correct register of interests  
circumstance—paragraph (a) of the penalty applies to the offence
- 175C(2) Councillor’s material personal interest at a meeting
- 175E(2) or (5) Councillor’s conflict of interest at a meeting
- 175H Offence to take retaliatory action
- 175I(2) or (3) Offence for councillor with material personal interest or conflict of interest to influence others
- 234(1) False or misleading information

### Criminal Code

- 54(1) Interference with Governor or Ministers
- 55(1) Interference with the Legislature
- 58(1) Witness refusing to attend, answer question or produce a thing before Legislative Assembly or authorised committee
- 78(1) or (2) Interfering with political liberty
- 85 Disclosure of official secrets

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98E(1)	Influencing voting
98F	Providing money for illegal payments
98G	Voting if not entitled
99(1), (2), (3), (4) or (5)	Voting if not entitled
100(1) or (2)	Hindering or interfering with voting conduct
101(1) or (2)	Bribery
102	Publishing false information about a candidate
113(2), (3), (4) or (5)	Interfering with secrecy at elections
128	Deceiving witnesses
130	Preventing witnesses from attending
133(1)	Compounding an indictable offence circumstance—the penalty in subsection (3) applies to the offence
194(1)	False declarations
204(1)	Disobedience to statute law
398(1)	Punishment of stealing circumstance—no circumstance of aggravation applies to the offence
399	Fraudulent concealment of particular documents circumstance—paragraph (a) of the penalty applies to the offence
408C	Fraud circumstance—the circumstance of aggravation mentioned in subsection (2), (2A) or (2B) does not apply to the offence

- 408D(1) or (1A)      Obtaining or dealing with identification information
- 408E            Computer hacking and misuse  
circumstance—no circumstance of aggravation, or the  
circumstance of aggravation mentioned in subsection (2),  
applies to the offence
- 414             Demanding property with menaces with intent to steal
- 488(1)         Forgery and uttering  
circumstance—paragraph (c) of the penalty applies to the  
offence
- 541(1)         Conspiracy to commit crime  
circumstance—the maximum penalty for the crime in  
question is less than 7 years imprisonment

#### **Electoral Act**

- 307A(1)        Offence about prohibited donations
- 307C(1)        False or misleading information relating to  
determinations
- 427(2)         Obligation to repay particular political donations

#### **Local Government Electoral Act**

- 171             Assisting illegal payments
- 186             Influencing voting by violence or intimidation
- 189             Voting if not entitled
- 194A(1)        Offence about prohibited donations
- 194C(1)        False or misleading information relating to  
determinations



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212(2)           Obligation to repay particular political donations

## 26     **Amendment of sch 4 (Dictionary)**

(1) Schedule 4—

*insert—*

*disqualifying offence* see section 153(6).

*perceived conflict of interest* see section 175E(1)(c)(ii).

*real conflict of interest* see section 175E(1)(c)(i).

(2) Schedule 4, definition *conflict of interest*, ‘section 173(2)’—

*omit, insert—*

section 175D

(3) Schedule 4, definition *material personal interest*, ‘section 172(2)’—

*omit, insert—*

section 175B

## Division 3           **Amendments commencing on proclamation**

### 26A     **Amendment of s 150L (What is *misconduct*)**

Section 150L(1)(c)(iv), ‘173(4) or (5)’—

*omit, insert—*

175G

### 26B     **Amendment of s 150AY (Functions of investigators)**

Section 150AY(b), second dot point, ‘or 172(5)’—

*omit, insert—*

175C(2), 175E(2) or (5), 175H or 175I(2) or (3)

**26C Amendment of s 175G (Duty to report another councillor’s material personal interest or conflict of interest at a meeting)**

Section 175G(2), note, ‘176(3)(d) and 180’—

*omit, insert—*

150L(1)(c)(iv), 150AQ and 150AR

## **Part 5 Amendment of Local Government Electoral Act 2011**

**27 Act amended**

This part amends the *Local Government Electoral Act 2011*.

**28 Replacement of s 3 (Purpose of this Act)**

Section 3—

*omit, insert—*

### **3 Purposes of Act**

The purposes of this Act are to—

- (a) ensure the transparent conduct of elections of councillors of Queensland’s local governments; and
- (b) ensure and reinforce integrity in Queensland’s local governments, including, for example, by minimising the risk of corruption in relation to—
  - (i) the election of councillors; and
  - (ii) the good governance of, and by, local government.

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## 29 Amendment of s 106 (Definitions for part)

Section 106—

*insert—*

***electoral expenditure*** means expenditure incurred for the purposes of a campaign for an election, whether or not the expenditure is incurred during the election period for the election.

***information notice***, about a decision, means a notice that states—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may apply to the electoral commissioner for a review of the decision within 20 business days after the person receives the notice; and
- (d) how to apply for a review.

***loan*** means any of the following made other than by use of a credit card—

- (a) an advance of money;
- (b) a provision of credit or another form of financial accommodation;
- (c) a payment of an amount for, on account of, on behalf of or at the request of an entity, if there is an express or implied obligation to repay the amount;
- (d) a transaction (whatever its terms or form) that in substance effects a loan of money.

***political donation***, for division 1A, see section 113A.

***prohibited donor***, for division 1A, see section 113(1).

## 30 Insertion of new pt 6, div 1A

Part 6—

*insert—*

### **Division 1A Political donations from property developers**

#### **113 Meaning of *prohibited donor***

- (1) For this division, *prohibited donor*—
- (a) means—
    - (i) a property developer; or
    - (ii) an industry representative organisation, a majority of whose members are property developers; but
  - (b) does not include an entity for whom a determination is in effect under section 113D.

*Note—*

See section 194C(4) in relation to the non-effect of a determination in particular circumstances.

- (2) For subsection (1)(a), each of the following persons is a *property developer*—
- (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation—
    - (i) in connection with the residential or commercial development of land; and
    - (ii) with the ultimate purpose of the sale or lease of the land for profit;
  - (b) a close associate of a corporation mentioned in paragraph (a).
- (3) For deciding whether a corporation is a

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corporation mentioned in subsection (2)(a), any activity engaged in by the corporation for the dominant purpose of providing commercial premises at which the corporation, or a related body corporate of the corporation, will carry on business is to be disregarded, unless the business involves the sale or leasing of a substantial part of the premises.

(4) In this section—

**close associate**, of a corporation, means any of the following persons—

- (a) a related body corporate of the corporation;
- (b) a director or other officer of the corporation;
- (c) a person with more than 20% of the voting power in the corporation or a related body corporate of the corporation;
- (d) a spouse of an individual mentioned in paragraph (b) or (c);
- (e) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security;
- (f) if the corporation is a trustee, manager or responsible entity in relation to a unit trust—a person who holds more than 20% of the units in the trust;
- (g) if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust—a beneficiary of the trust.

**director**, of a corporation, see the Corporations Act, section 9.

**officer**, of a corporation, see the Corporations Act, section 9.

***related body corporate***, of a corporation, see the Corporations Act, section 9.

***relevant planning application*** means—

- (a) an application for, or to change, a development approval under the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009*; or
- (b) a request to the Minister administering the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009* or a local government about the making or amendment of a planning instrument or designation under either Act; or
- (c) an application for, or to change, an SDA approval under the *State Development and Public Works Organisation Act 1971*; or
- (d) a request or application to the Minister who administers the *State Development and Public Works Organisation Act 1971* or the Coordinator-General about any of the following under that Act—
  - (i) the declaration or variation of a coordinated project, prescribed development, prescribed project or State development area;
  - (ii) the imposition of, or change to, conditions on a coordinated project;
  - (iii) the preparation or variation of a development scheme; or
- (e) an application for, or to change, a PDA development approval under the *Economic Development Act 2012*; or
- (f) a request to the Minister who administers the *Economic Development Act 2012* or the MEDQ about the making, declaration or

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amendment of any of the following under that Act—

- (i) a priority development area or provisional priority development area;
  - (ii) a development scheme, interim land use plan, or PDA-associated development for a priority development area;
  - (iii) a provisional land use plan or PDA-associated development for a provisional priority development area; or
- (g) an application or request of a type prescribed by regulation to be a relevant planning application.

***stapled entity***—

- (a) means an entity the interests in which are traded along with the interests in another entity as stapled securities; and
- (b) for an entity mentioned in paragraph (a) that is a trust, includes any trustee, manager or responsible entity in relation to the trust.

***voting power*** see the Corporations Act, section 610.

### **113A Meaning of *political donation***

- (1) For this division, each of the following is a ***political donation***—
- (a) a gift made to or for the benefit of—
    - (i) a political party; or
    - (ii) a councillor of a local government; or
    - (iii) a candidate or group of candidates in an election;

- (b) a gift made to or for the benefit of another entity—
  - (i) to enable the entity (directly or indirectly) to make a gift mentioned in paragraph (a) or to incur electoral expenditure; or
  - (ii) to reimburse the entity (directly or indirectly) for making a gift mentioned in paragraph (a) or incurring electoral expenditure;
- (c) a loan from an entity other than a financial institution that, if the loan were a gift, would be a gift mentioned in paragraph (a) or (b).
- (2) If a gift is made by a person in a private capacity to an individual (the *recipient*) for the recipient's personal use and the recipient does not intend to use the gift for an electoral purpose—
  - (a) the gift is not a political donation when it is made; but
  - (b) if any part of the gift is used for an electoral purpose, then, for the purposes of section 113B(3)—
    - (i) that part of the gift is a political donation; and
    - (ii) the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.
- (3) A reference in subsection (2) to using a gift for an *electoral purpose* is a reference to using the gift to incur electoral expenditure or for the recipient's duties as a councillor of a local government.
- (4) In this section—
  - disposition of property* see section 107(3).
  - gift* means—



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- (a) the disposition of property or the provision of a service, without consideration or for a consideration that is less than the market value, but does not include—
    - (i) transmission of property under a will; or
    - (ii) provision of a service by volunteer labour; or
  - (b) an amount of interest that would have been payable on a loan if—
    - (i) the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind; and
    - (ii) any interest payable had not been waived; and
    - (iii) any interest payments were not capitalised; or
  - (c) an amount paid for attendance at or participation in a fundraising activity, to the extent the amount forms part of the proceeds of the fundraising activity to which it relates; or
  - (d) any of the following amounts paid by a person to a political party, to the extent the total amount of the person's payments in a calendar year exceeds \$1,000—
    - (i) an amount paid as a subscription for a person's membership of the party;
    - (ii) an amount paid for a person's affiliation with the party.

### **113B Political donations by prohibited donors**

- (1) It is unlawful for a prohibited donor to make a

political donation.

- (2) It is unlawful for a person to make a political donation on behalf of a prohibited donor.
- (3) It is unlawful for a person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited donor.
- (4) It is unlawful for a prohibited donor to solicit a person to make a political donation.
- (5) It is unlawful for a person to solicit, on behalf of a prohibited donor, another person to make a political donation.

### **113C Recovery of prohibited donations**

- (1) If a person accepts a prohibited donation, the following amount is payable by the person to the State—
  - (a) if the person knew it was unlawful to accept the prohibited donation—an amount equal to twice the amount or value of the prohibited donation;
  - (b) otherwise—an amount equal to the amount or value of the prohibited donation.
- (2) The amount may be recovered by the State as a debt due to the State from—
  - (a) if the recipient is a registered political party that is not a corporation—the party’s agent;  
or
  - (b) if the recipient is a group of candidates—the members of the group or the group’s agent;  
or
  - (c) if the recipient is a candidate—the candidate or the candidate’s agent; or
  - (d) otherwise—the recipient.

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- (3) The imposition of liability to pay an amount to the State under this section—
- (a) is not a punishment or sentence for an offence against section 194A or any other offence; and
  - (b) is not a matter to which a court may have regard in sentencing an offender for an offence against section 194A or any other offence.
- (4) An action in a court to recover an amount due to the State under this section may be brought in the name of the electoral commission.
- (5) Any process in the action required to be served on the State may be served on the electoral commission.
- (6) In this section—
- prohibited donation* means a political donation that was unlawfully made or accepted under section 113B.
- recipient* means the entity to whom, or for the benefit of whom, the prohibited donation was made.

### **113D Making of determination that entity is not a prohibited donor**

- (1) A person may apply to the electoral commissioner for a determination that the person, or another entity, is not an entity mentioned in section 113(1)(a)(i) or (ii).
- (2) The application must be written and supported by enough information to enable the electoral commissioner to decide the application.
- (3) If the electoral commissioner is satisfied the entity to whom the application relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the

electoral commissioner must make the determination sought by the applicant.

- (4) Otherwise, the electoral commissioner must—
  - (a) decide not to make the determination; and
  - (b) give the applicant an information notice about the decision.
- (5) A determination has effect for 1 year unless it is earlier revoked.

### **113E Revocation of determination**

- (1) If, at any time, the electoral commissioner ceases to be satisfied the entity to whom a determination relates is not an entity mentioned in section 113(1)(a)(i) or (ii), the electoral commissioner may revoke the determination by giving a written notice of revocation to the entity and, if the entity was not the applicant for the determination, the applicant.
- (2) The notice of revocation given to the entity must include, or be accompanied by, an information notice about the decision to revoke the determination.

### **113F Register of determinations**

- (1) The electoral commissioner must keep a register of determinations made under section 113D.
- (2) The register must include any revocations made under section 113E.
- (3) The electoral commissioner must make the register available for public inspection without fee.

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## **113G Review of decisions**

A person who is given, or is entitled to be given, an information notice about a decision under this division has a right to appeal against the decision under the *Electoral Act 1992*, part 11, division 20, as if the decision were a decision to which section 277(4)(b) or 278(2) of that Act applied.

### **31 Amendment of s 169 (False or misleading information)**

Section 169(2)—

*insert—*

- (c) information given to the electoral commissioner under section 113D.

### **32 Insertion of new ss 194A–194C**

Part 9, division 5—

*insert—*

#### **194A Offence about prohibited donations**

- (1) A person must not do an act or make an omission that is unlawful under section 113B if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful under that section.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) An offence against subsection (1) is a misdemeanour.

#### **194B Schemes to circumvent prohibition on particular political donations**

- (1) A person must not knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition under part 6, division 1A about

political donations.

Maximum penalty—1,500 penalty units or 10 years imprisonment.

- (2) For subsection (1), it does not matter whether the person also participates in the scheme for other purposes.
- (3) An offence against subsection (1) is a crime.
- (4) In this section—

*participate in*, a scheme, includes—

- (a) enable, aid or facilitate entry into, or the carrying out of, a scheme; and
- (b) organise or control a scheme.

*scheme* includes arrangement, agreement, understanding, course of conduct, promise or undertaking, whether express or implied.

### **194C False or misleading information relating to determinations**

- (1) A person must not give the electoral commissioner information under section 113D that the person knows is false or misleading in a material particular.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the electoral commissioner, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) An offence against subsection (1) is a

misdemeanour.

- (4) In a proceeding against a person for an offence under section 194A, a determination made under section 113D is taken to be of no effect if the person knew, or ought reasonably to have known, at the time of the relevant act or omission that information given to, or used by, the electoral commissioner under section 113D was false or misleading in a material particular.

### 33 Insertion of new s 201A

After section 201—

*insert—*

#### **201A Proceedings for particular indictable offences**

- (1) Proceedings for an indictable offence against this Act, other than a designated election offence under section 201, may be taken, at the election of the prosecution—
- (a) by way of summary proceeding under the *Justices Act 1886*; or
- (b) on indictment.
- (2) However, a magistrate must not hear an indictable offence against section 194B summarily if—
- (a) the magistrate is satisfied, at any stage of the hearing and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction; or
- (b) the magistrate is satisfied, on an application made by the defence, that because of

exceptional circumstances the offence should not be heard and decided summarily.

- (3) If subsection (2) applies—
- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be discharged; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 3 years imprisonment.

### **34 Insertion of new pt 11, div 3**

Part 11—

*insert—*

### **Division 3 Transitional provision for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018**



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## 212 Obligation to repay particular political donations

- (1) This section applies if—
- (a) a donation was made to a person (the *recipient*) on or after 12 October 2017 and before the commencement; and

*Note—*

The Local Government Electoral (Implementing Belcarra) and Other Legislation Amendment Bill 2017 was introduced into the Legislative Assembly on 12 October 2017.

- (b) under section 113B(3), it would have been unlawful for the recipient to accept the donation if it had been made immediately after the commencement.
- (2) The recipient must pay an amount equal to the amount or value of the donation to the person who made the donation within 30 days after the commencement.

Maximum penalty—400 penalty units or 2 years imprisonment.

- (3) An offence against subsection (2) is a misdemeanour.
- (4) Section 113C applies in relation to a contravention of subsection (2) as if—
- (a) a reference in section 113C to accepting a prohibited donation were a reference to contravening subsection (2); and
- (b) a reference in section 113C to the amount or value of a prohibited donation were a reference to the amount that was not paid under subsection (2).

## 35 Amendment of schedule (Dictionary)

Schedule—

*insert—*

***electoral expenditure***, for part 6, see section 106.

***information notice***, about a decision, for part 6,  
see section 106.

***loan***, for part 6, see section 106.

***political donation***, for part 6, division 1A, see  
section 113A.

***prohibited donor***, for part 6, division 1A, see  
section 113(1).

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