



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

## **Frequently Asked Questions**

### **Managing Councillor conflicts of interest and material personal interests**

#### **1. Why are ordinary business matters not covered by the conflict of interest provisions in the Amendment Act?**

The Amendment Act does not change the existing provisions about how a Councillor must deal with a material personal interest or conflict of interest in relation to ordinary business matters.

The exclusion recognises that there are certain matters which must be dealt with by Councils in which all Councillors have a similar interest.

Ordinary business matters include levying of rates or charges, the remuneration of Councillors or members of Local Government committees, the adoption of the Local Government budget and a planning scheme, or amendment of a planning scheme, for the Local Government area.

Development applications are not ordinary business matters. Councillors will be required to inform a meeting of the Local Government or any of its committees of any material personal interest or conflict of interest they have in relation to development applications to be discussed at the meeting.

There is nothing in the Amendment Act that prevents a Councillor from declaring that they may have a material personal interest or a conflict of interest in relation to an ordinary business matter and then electing to withdraw from the deliberation and decision on that matter.

Further, the *Local Government Act 2009* and the *City of Brisbane Act 2010* provide that, to ensure the system of Local Government is accountable, effective, efficient and sustainable, Councillors must perform their responsibilities under those Acts in accordance with the Local Government principles.



## 2. Why do the provisions not apply outside Council meetings, for example in workshops and other meetings beforehand?

Under the existing provisions of the *Local Government Act 2009 (LGA)* and the *City of Brisbane Act 2010 (COBA)* a Councillor must inform a meeting of the Local Government or any of its committees if the Councillor has a material personal interest or conflict of interest in a matter, other than an ordinary business matter, to be discussed at the meeting.

The recommendations of the Belcarra Report did not propose to extend the scope of these requirements to apply outside meetings of the Local Government or any of its committees.

However, other provisions apply to Councillor conduct outside meetings:

- Councillors are required to perform their responsibilities under the *Local Government Act 2009* and the *City of Brisbane Act 2010* in accordance with the Local Government principles
- conduct of a Councillor that is not honest or impartial or that involves a breach of trust is misconduct. Disciplinary action for misconduct includes suspension or removal from office
- conduct of a Councillor that involves performing or failing to perform a function of office with an intent to dishonestly gain a benefit or cause a detriment may amount to corrupt conduct
- the Amendment Act inserts new offences that provide that a Councillor with a material personal interest or conflict of interest in a matter must not influence, or attempt to influence another Councillor or a Council employee or contractor to vote or deal with the matter in a particular way (new section 177I of the COBA and new section 175I of the LGA). The application of these offences is not limited to Council meetings. The maximum penalty for these new offences is 200 penalty units or 2 years imprisonment.



### 3. What happens if a Councillor does not agree with a decision made in a meeting about their personal interests in a matter?

As all Mayors and Councillors are designated persons under section 12(1)(h) of the *Integrity Act 2009*, they are able to seek the advice of the Integrity Commissioner on conflict of interest and material personal interest issues.

A Councillor who disagrees with a decision made by the other Councillors could seek the advice of the Integrity Commissioner and then subsequently provide that advice at a subsequent Council meeting. Alternatively, a Councillor could act proactively and seek the Integrity Commissioner's advice before a matter is considered by the Council and furnish the advice at the Council meeting when the Councillor declares his or her interest.

Where a Councillor does not agree with the decision of the other Councillors in relation to the Councillor's conflict of interest, or with another Councillor's reporting of a Councillor's personal interest, the Councillor may ask for a review under the Council's administrative action complaints process.

Under the *Local Government Act 2009* (section 268) and the *City of Brisbane Act 2010* (section 250) Local Governments must adopt a process for dealing with complaints made by affected persons about decisions of the Local Government.

Also, if an affected person remains dissatisfied with the Local Government's response, the person may seek the assistance of the Queensland Ombudsman or seek legal advice to resolve their issue.

Pursuant to section 175E(2) of the *Local Government Act 2009*, a Councillor must inform the meeting about the councillor's personal interests in the matter and specific particulars noted in section 175E(2). As part of this, the legislation does not prohibit a Councillor from informing the meeting about why they believe they do or do not have a conflict of interest.



## 4. What happens if Councillors are perceived to be conflicted or biased when voting on another Councillor's conflict of interest at a meeting?

The *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (COBA) require that Councillors perform their responsibilities under those Acts in accordance with the Local Government principles.

The Local Government principles include:

- transparent and effective processes, and decision-making in the public interest
- good governance of, and by, Local Government
- ethical and legal behaviour of Councillors (section 4 of the LGA and section 4 of the COBA).

Under the LGA and COBA conduct of a Councillor that is or involves the performance of the Councillor's responsibilities or exercise of the Councillor's powers in a way that is not honest or impartial is misconduct (section 176(3)(b)(i) of the LGA and section 178(3)(b)(i) of the COBA).

Conduct that is or involves a breach of the trust placed in the Councillor is also misconduct (section 176(3)(b)(ii) of the LGA and section 178(3)(b)(ii) of the COBA).

Disciplinary action for misconduct includes suspension or removal from office (section 180(5)(g) and (h) of the LGA and section 183(2)(f) of the COBA).

Voting improperly on another Councillor's conflict of interest may also amount to corrupt conduct if it involves performing or failing to perform a function of office with an intent to dishonestly gain a benefit for the Councillor or another person or to dishonestly cause a detriment to another person under section 92A of the Criminal Code. Further, a charge under section 92A(1) or (2) of the Criminal Code is a disqualifying offence under section 153 of the LGA and section 153 of COBA resulting in the automatic suspension of a Councillor.

The Amendment Act requires the decision and the reasons for the decision of other Councillors about a Councillor's conflict of interest to be recorded in the minutes of the meeting and on the Council website (new section 175J(2) LGA and new section 177J(2) COBA).



## **5. What is the process for determining if a Councillor has a material personal interest in a matter after another Councillor has raised a belief or suspicion that the Councillor has an undeclared material personal interest?**

The Amendment Act inserts provisions in relation to material personal interests that are similar to the current provisions, but also require the Councillor to inform the meeting of specified particulars of their interest (new sections 175B,175C LGA and new sections 177B,177C COBA).

The same requirements will apply if another Councillor has informed the person presiding at the meeting that they reasonably believe or reasonably suspect the Councillor has an undeclared material personal interest (new section 175G of the LGA and new section 177G of the COBA), that is, if a Councillor has a material personal interest in a matter, the Councillor must inform the meeting and leave while the matter is being voted on.

Accordingly, it is an offence for a Councillor to fail to inform the meeting of their material personal interest. The maximum penalty for this offence is 200 penalty units or 2 years imprisonment 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 and 85 penalty units otherwise (new section 175C(2) of the LGA and new section 177C(2) of the COBA).

The offence is an integrity offence under section 153 LGA and section 153 COBA. An integrity offence is a disqualifying offence and section 182A LGA and section 186B COBA provide that a person is automatically suspended as a Councillor when the person is charged with a disqualifying offence. A Councillor convicted of an integrity offence automatically stops being a Councillor and is disqualified from becoming a Councillor for 4 years.



## **6. How would the duty to report another Councillor's material personal interest or conflict of interest work if:**

### **(a) the Councillor with the undeclared conflict of interest or material personal interest is the person presiding at the meeting?**

A Councillor's duty to report another Councillor's material personal interest or conflict of interest continues to apply if the person with the undeclared conflict of interest or material personal interest is the person presiding at the meeting (sections 177G of the COBA and sections 175G of the LGA).

The person presiding at a meeting of a Local Government or any of its Committees is also a Councillor, so the obligation to report their personal interests applies as it does to all Councillors (sections 177C(2) and 177E(2) of the COBA and sections 175C(2) and 175E(2) of the LGA).

### **(b) the Councillor with the reasonable belief or suspicion about another Councillor's material personal interest or conflict of interest is the person presiding at the meeting?**

The person presiding at a meeting of a Local Government or any of its committees is also a Councillor, so the obligation to report another Councillor's material personal interest or conflict of interest applies to them as it does to all Councillors (sections 177G of the COBA and sections 175G of the LGA).

Practically, the person may discharge this duty by informing the meeting of the person's belief or suspicion and the facts and circumstances that form the basis of the belief or suspicion (section 177G(2) of the COBA and section 175G(2) of the LGA).



## **7. What is the process for determining if a Councillor has a material personal interest following another Councillor raising a belief or suspicion that the Councillor has an undeclared material personal interest?**

The current process for managing material personal interests in the *Local Government Act 2009* and the *City of Brisbane Act 2010* requires a Councillor to inform a meeting of their material personal interest in a matter and to leave the meeting while the matter is being discussed and voted on.

This process is unchanged and the same process will also apply if another Councillor informs the person presiding at the meeting of a Councillor's material personal interest. If the Councillor does not inform the meeting of their personal interest, including the specified particulars, and leave the meeting, the Councillor will commit an offence.



## Suspension and disqualification provisions

### 8. When does the automatic suspension of a Councillor take effect?

Under the *Local Government Act 2009* (LGA) section 182A and the *City of Brisbane Act 2010* (COBA) section 186B, a Councillor is automatically suspended when he or she is charged with a disqualifying offence under the LGA/COBA section 153.

In addition to the offences under the LGA/COBA section 153(2) and section 153(3), **serious integrity offences** and **integrity offences** prescribed in schedule 1 of the LGA/COBA are **disqualifying offences** (section 153(6) LGA/COBA).

The LGA section 182B and COBA section 186C provide for when a person is charged with a disqualifying offence and the LGA section 182D and section 186E of COBA provide for the effect of a Councillor's suspension.

The person is automatically suspended as a Councillor when the person's term as a Councillor starts.





## 9. When does the suspension of a Councillor who is automatically suspended end?

The *Local Government Act 2009* (LGA) section 182E and the *City of Brisbane Act 2010* (COBA) section 186F provide that the suspension of a Councillor ends when the earliest of the following events occur:

- for each disqualifying offence to which the suspension relates—
  - if the Councillor is convicted of the offence and appeals the conviction—the conviction is set aside or quashed on appeal; or
  - 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
  - the proceeding for the offence otherwise ends;

*Note—*

*If the Councillor is convicted of a disqualifying offence, the Councillor's office becomes vacant under section 162*

- the Councillor's term ends under section 160
- the Councillor is dismissed under the new power in the LGA, that will allow the Minister for Local Government to dismiss a Councillor based on the reasonable belief that it is otherwise in the public interest that the Councillor be dismissed
- the Councillor's office otherwise becomes vacant under the existing provisions of the LGA or COBA – the circumstances that would result in a Councillor's office becoming vacant include: dismissal on some other ground; bankruptcy; death
- at the time the Councillor's term of office would normally end – for example, at the conclusion of the next election.
- A suspended Councillor is able to contest a quadrennial local government election. The suspension will end upon the end of the Councillor's term under section 160 of the *Local Government Act 2009*. However, if that Councillor is re-elected at the quadrennial election, the suspension would apply from the commencement of the Councillor's new term.



## 10. What are the automatic suspension offences?

In addition to the offences under the *Local Government Act 2009* (LGA)/*City of Brisbane Act 2010* (COBA) section 153(2) and section 153(3), **serious integrity offences** and **integrity offences** prescribed in schedule 1 of the LGA/COBA are **disqualifying offences** under section 153(6) LGA/COBA.

Under the LGA section 182A and section 186B COBA, a person is automatically suspended as a Councillor when the person is charged with a disqualifying offence.

The LGA section 182B and COBA section 186C provide for when a person is charged with a disqualifying offence and the LGA section 182D and section 186E of COBA provide for the effect of a Councillor's suspension.

The LGA section 182C and COBA section 186D provide that a Councillor charged with a disqualifying offence, or a proceeding for a disqualifying offence has been started, but has not ended (against a Councillor when the Councillor is appointed or elected), must immediately (unless the Councillor has a reasonable excuse) give a written notice to the Minister, if the Councillor is not the Mayor to the Mayor, and the Chief Executive Officer.

The notice must state the provision of the law against which the Councillor is charged and the day the Councillor was charged.



## 11. What are the automatic disqualification offences?

In addition to the offences under the *Local Government Act 2009* (LGA)/*City of Brisbane Act 2010* (COBA) section 153(2) and section 153(3), ***serious integrity offences*** and ***integrity offences*** prescribed in schedule 1 of the LGA/COBA are ***disqualifying offences*** under section 153(6) LGA/COBA.

Under the LGA/COBA section 153(6) a person automatically stops being a Councillor when the person is convicted of a treason offence, or an electoral offence, or a serious integrity offence, or an integrity offence.

There are no changes to the LGA/COBA that disqualify a person from being a Councillor because the person is a prisoner (LGA/COBA section 154), or while the person is a Government member (LGA/COBA section 155), or while a person is a bankrupt (LGA/COBA section 156).

Under the LGA/COBA section 158 a person must not act as a Councillor if the person knows that the person is not qualified to be a Councillor; or the person's office as a Councillor has been vacated.

Under the LGA/COBA section 158A if a Councillor becomes aware the Councillor is not qualified to be a Councillor, the Councillor must immediately (unless the Councillor has a reasonable excuse) give a notice to the Minister, the Mayor (if the Councillor is not the Mayor), and the Chief Executive Officer.

The notice must state details about why the Councillor is not qualified to be a Councillor and the day the Councillor became disqualified.



## 12. What happens if the majority of the Councillors of a Council are charged?

If the majority of the Councillors of a Council are charged with offences that trigger their automatic suspension, it is unlikely the Council would be capable of performing its responsibilities as there would be an insufficient number of Councillors to form a quorum to hold meetings.

Not all matters requiring decisions can be delegated to individual Councillors or the Chief Executive Officer of the Council. Some matters, including the adoption of the budget for example, must be decided by the Councillors at a Council meeting. In this circumstance, the Minister for Local Government would need to consider whether further State intervention is warranted.



### 13. How will a Council know when a Councillor is charged?

The *Local Government Act 2009* section 182C and the *City of Brisbane Act 2010* section 186D provide that a Councillor charged with a disqualifying offence, or where a proceeding for a disqualifying offence has been started, but has not ended (against a Councillor when the Councillor is appointed or elected), must immediately (unless the Councillor has a reasonable excuse) give a written notice to each of the following:

- the Minister
- The Mayor, if the Councillor is not the Mayor
- the Chief Executive Officer.

The notice must state the provision of the law against which the Councillor is charged and the day the Councillor was charged.



## 14. What is the effect of a Councillor's suspension?

If a Councillor is suspended, the Councillor must not act as a Councillor.

Under the *Local Government Act 2009/City of Brisbane Act 2010* section 158, a Councillor must not act as a Councillor if the person knows the person is not qualified to be a councillor; or the person's office as a Councillor has been vacated. The maximum penalty for acting as a Councillor if the person knows that the person is suspended as a Councillor is 85 penalty units.

The Councillor must not undertake any of the duties or responsibilities of a Councillor, such as attending meetings.

The Councillor's office will not become vacant during the period of suspension, so a by-election will not be triggered.

The Councillor will be entitled to be paid remuneration as a Councillor, however, the remuneration 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.

The Councillor is required to fulfil their obligations as a Councillor in respect of transparency and accountability matters, such as the requirement to correct and update their register of interests.

It is the Department's view that assets and equipment issued to Councillors is issued for official purposes and thus should be returned to Council during the period of suspension. In the case of a council-issued vehicle, Council would need to seek its own advice based on whether the car is an allowance or part of a Councillor's base remuneration package (or neither).



## 15. Will the new automatic suspension and expanded automatic disqualification provisions apply to existing Councillors who have been charged with or convicted of these offences?

Yes. Under the *Local Government Act 2009* (LGA) chapter 9 part 13 and *City of Brisbane Act 2010* (COBA) chapter 8 part 9, the new provisions apply in relation to a disqualifying offence whether the act or omission constituting the offence was committed before or after the commencement (21 May 2018).

This means that if a proceeding for a disqualifying offence against a Councillor has started before the commencement (21 May 2018), but has not ended, the Councillor is automatically suspended as a Councillor on the commencement (21 May 2018).

Further, if before the commencement, a Councillor was convicted of an offence that is a new disqualifying offence and on the commencement the disqualifying period (the period stated in LGA/COBA section 153(1)) for the offence would not have ended, the Councillor automatically stops being a Councillor on commencement.

## Do you need further information?

Contact the Department of Local Government, Racing and Multicultural Affairs on (07) 3452 7500.