

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE
Report No. 43 on the
Local Government Electoral (Transparency and Accountability in Local Government)
and Other Legislation Amendment Bill 2016

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 1 December 2016, the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 (Bill) was introduced into Parliament.

The Bill was referred to the Infrastructure, Planning and Natural Resources Committee (Committee) on 1 December 2016, with a report back date of 7 March 2017.

On 7 March 2017, the Committee tabled in the Legislative Assembly its report (No. 43) on the Bill.

The Queensland Government response to the Committee's Report and recommendations is provided below.

Committee recommendation 1:

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be passed.

Queensland Government response:

The Government thanks the Committee for its thorough consideration of the Bill and notes the Committee's recommendation 1 that the Bill be passed.

Committee recommendation 2:

The committee recommends that clauses 16 and 17 of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to make it clear that candidates are required to lodge a return within the required period irrespective of whether any gifts are received during the disclosure period.

Queensland Government response:

The Government supports recommendation 2 and proposes to amend the Bill during consideration in detail.

The Government considers that recommendation 2 is consistent with the original policy intent of the Bill to continue the requirement for a candidate, member of a group of candidates, or a person acting on behalf of the group to give a return to the Electoral Commission Queensland (ECQ). The policy intent is that the return states the total value of all gifts received (including

gifts below the \$500 threshold), the number of entities that gave the gifts or that no gifts were received by the candidate, or by any member of the group during the disclosure period.

Committee recommendation 3:

The committee recommends that clauses 16 and 17 of the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to specify that the Electoral Commission Queensland is required to provide the chief executive officer of the relevant local government a copy of all returns for candidates who are successful in an election in that local government area.

Queensland Government response:

The Government does not support recommendation 3.

The Government considers that requiring the ECQ to provide the chief executive officer (CEO) of the relevant local government a copy of the summary return in addition to a copy of the returns disclosing gifts with a value equal to or more than the \$500 threshold may create an unnecessary administrative burden and duplication for the ECQ and local government CEOs. Furthermore, as the ECQ will be required under section 129 of the *Local Government Electoral Act 2011* (LGEA) to publish all returns on its website, the summary return will be available for inspection by any CEO if necessary.

Committee recommendation 4:

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to allow entirely self-funded candidates to recover any unspent money from their dedicated campaign account at the end of the disclosure period.

Queensland Government response:

The Government does not support recommendation 4.

This issue was raised in the Crime and Corruption Commission's report titled *Transparency and accountability in local government* (CCC Report). The CCC Report recommendation 5 provides that the Government expands the regulation of donations to include the expenditure of donations and a requirement to account for unspent donations by either only using the funds for campaign purposes or transferring them to a registered charity.

The Government established a Review Panel to assist the Department of Infrastructure, Local Government and Planning (DILGP) to consider the CCC's recommendations and develop options for legislative reform. The Review Panel consisted of representatives of the Local Government Association of Queensland, the ECQ, the Department of the Premier and Cabinet, the Department of Justice and Attorney-General and DILGP.

The Review Panel did not recommend the money be returned to an individual candidate.

Committee recommendation 5:

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to provide an example in section 83(1)(b) of the Building Act 1975 to clarify the intended operation of the provision.

Queensland Government response:

The Government proposes to amend the Bill during consideration in detail to include an example of the type recommended by the Committee.

Committee recommendation 6:

The committee recommends that the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 be amended to create a clearer link between the provision stating that a development permit given by private certifiers does not authorise work unless a relevant preliminary approval is in place, and the provision prohibiting assessable development without a permit.

Queensland Government response:

The Government proposes to amend the Bill during consideration in detail to include a provision clarifying that a development permit given by a private certifier that does not authorise development to start because of the proposed section 245A of the *Sustainable Planning Act 2009* (SPA) is not an 'effective development permit' for section 578 of SPA. Consequently a person starting development under such an approval would be committing a development offence under SPA.

Additional Committee comment:

The committee notes the inconsistency between the Bill and the draft Planning Regulation regarding the requirement for parties to a breakup agreement to publish a copy of the agreement. The committee highlights this inconsistency for consideration by the department in progressing the draft Planning Regulation.

Queensland Government response:

The Government agrees with the Committee that the most appropriate way to address the inconsistency is through appropriate modifications to the draft Planning Regulation prior to its finalisation, and will seek to ensure that the appropriate modifications occur.

Additional Committee comment:

The committee recognises the need to express more clearly the transitional arrangements for conversion applications in relation to development approvals and is satisfied with the department's undertaking to 'amend clause 307A(2) to state that section 139(2) does not apply in relation to an application for conversion of non-trunk infrastructure made after the commencement.'

Queensland Government response:

The Government proposes to amend the Bill during consideration in detail to clarify the operation of section 139(2) of the *Planning Act 2016*, as noted by the Committee.

Committee point of clarification 1:

The committee seeks clarification from the Deputy Premier, Minister for Transport and Minister for Infrastructure and Planning during her second reading speech, regarding the anticipated timeframe within which candidates and third parties would be required to disclose gifts or expenditure with a value over the disclosure threshold.

Queensland Government response:

In response to the CCC Report recommendation 3 that the Government consider amendment to disclosure timeframes to make the disclosure of donations more contemporaneous with the receipt of the donation by the candidate and others required to make a disclosure, the Government accepted recommendation 3 and endorsed that a real-time online system to disclose local government election donations be implemented, consistent with the system that will be adopted for state government elections.

The amendments to the *Electoral Regulation 2013* commenced on 1 March 2017 to prescribe the real-time reporting timeframes for state elections and approve the procedures made by the ECQ under the *Electoral Act 1992* for the electronic lodgement of returns.

The amendments to the *Electoral Regulation 2013* require returns to be given by the seventh business day after the relevant event (that is, the day the gift or loan is made; or the day the gift is used where a gift is received by a third party that incurs expenditure for political purposes).

Subject to passage of the Bill, the provisions in Part 4 that relate to real-time online disclosure will be proposed to commence by proclamation and amendments to the *Local Government Electoral Regulation 2012* will be proposed, consistent where appropriate with the recent amendments for state elections, to prescribe real-time online disclosure timeframes for local government elections.

Committee point of clarification 2:

The committee seeks clarification from the Deputy Premier, Minister for Transport and Minister for Infrastructure and Planning during her second reading speech regarding the rationale for aligning the disclosure threshold at \$500 rather than \$200.

Queensland Government response:

The CCC's Report recommendation 4 provides that the Government consider amendments to disclosure requirements in the LGEA and the *Local Government Act 2009* to align the threshold obligations for reporting, but recommendation 4 did not recommend the amount at which the thresholds should be aligned.

In response to the CCC's Report recommendation 4, the Government accepted the recommendation of the Review Panel. The Review Panel agreed with the CCC that it would be optimal to align the threshold obligations for reporting. The Review Panel considered that a new threshold of \$500, bringing candidate and third party disclosures in line with councillors' gift disclosure requirements, would be appropriate.

In making its recommendation, the Review Panel considered that Queensland's disclosure threshold for local government candidates is one of the lowest in comparison with other jurisdictions. For example, the threshold in New South Wales is \$1000, in Victoria \$500, in South Australia \$500 and in Western Australia \$200. Furthermore, Queensland's disclosure threshold of \$200 was prescribed in 1996 and has not been indexed since then.

Minor drafting errors:

The Committee commented that clauses 25(1) and 26(1) "*contain errors – in both of these instances it would appear that the drafting instruction should be 'insert' rather than 'omit, insert'*".

Queensland Government response:

The Government proposes to amend the Bill during consideration in detail to correct the minor drafting errors.