Parliamentary Committees



Electoral Legislation (Political Donations) Amendment Bill 2018

Report No. 21, 56th Parliament
Economics and Governance Committee
November 2018

Economics and Governance Committee

Chair	Mr Linus Power MP, Member for Logan
Deputy Chair	Mr Ray Stevens MP, Member for Mermaid Beach
Members	Ms Nikki Boyd MP, Member for Pine Rivers
	Mr Sam O'Connor MP, Member for Bonney
	Mr Dan Purdie MP, Member for Ninderry
	Ms Kim Richards MP, Member for Redlands

Committee Secretariat	
Telephone	+61 7 3553 6637
Fax	+61 7 3553 6699
Email	egc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/egc

Acknowledgements

The committee acknowledges the assistance provided by the Member for Maiwar, Mr Michael Berkman MP.

Contents

Abbreviations

ACT	Australian Capital Territory
Belcarra Report	Crime and Corruption Commission, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, October 2017
the Belcarra Act	*Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*
the Belcarra Bill	Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018
the Bill	Electoral Legislation (Political Donations) Amendment Bill 2018
CCC	Crime and Corruption Commission
the committee	Economics and Governance Committee
Corporations Act	*Corporations Act 2001* (Cth)
Electoral Act	*Electoral Act 1992*
ECQ	Electoral Commission Queensland
EDO Qld	Environmental Defenders Office Qld
FLPs	fundamental legislative principles
HCA	High Court of Australia
Lange v ABC	*Lange v Australian Broadcasting Corporation* [1997]
LG Act	*Local Government Act 2010*
LGE Act	*Local Government Electoral Act 2011*
LS Act	*Legislative Standards Act 1992*
OQPC	Office of the Queensland Parliamentary Counsel
prohibited donors	a property developer or industry representative organisation where a majority of members are property developers
the select committee	Select Committee into the Political Influence of Donations
Unions NSW v NSW	*Unions New South Wales v New South Wales* [2013]

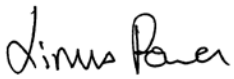
Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Electoral Legislation (Political Donations) Amendment Bill 2018.

The committee's task was to consider the policy outcomes to be achieved by the proposed legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who made written submissions and appeared at the committee's hearing. I also thank our Parliamentary Service staff and Mr Michael Berkman MP for their assistance.

I commend this report to the House.



Linus Power MP
Chair

Recommendations

The committee recommends the Electoral Legislation (Political Donations) Amendment Bill 2018 not be passed.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (the committee) is a portfolio committee of the Legislative Assembly.[1] The committee's areas of portfolio responsibility are:

- Premier and Cabinet, and Trade
- Treasury
- Aboriginal and Torres Strait Islander Partnerships, and
- Local Government, Racing and Multicultural Affairs.[2]

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles.[3]

1.2 Inquiry process

On 16 May 2018 the Member for Maiwar, Mr Michael Berkman MP, introduced the Electoral Legislation (Political Donations) Amendment Bill 2018 (the Bill) as a private member's bill to the Legislative Assembly. The Legislative Assembly referred the Bill to the committee the same day. The committee was required to report to the Legislative Assembly by 16 November 2018.

During its examination of the Bill, the committee:

- invited written submissions from the public, identified stakeholders and subscribers; a list of the 19 submissions received and accepted by the committee is at **Appendix A**
- received a public briefing from Mr Berkman MP on 20 August 2018
- held a public hearing on 20 August 2018; a list of witnesses who appeared is at **Appendix B**.

Copies of the material published in relation to the committee's inquiry, including submissions and transcripts, are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objective of the Bill, as outlined in the accompanying explanatory notes, is to 'eliminate the actual and widely perceived risk of corruption within Queensland's democratic [sic] as a consequence of corporate donations to politicians, candidates and political parties'.[4]

The Bill proposes to build upon the 'restrained reforms' of the government's Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 (the Belcarra Bill)[5], introduced on 6 March 2018 and passed on 17 May 2018, and to 'help restore Queenslanders' confidence in their political system'.[6]

The Bill amends the *Electoral Act 1992* and the *Local Government Electoral Act 2011* to prohibit the making of political donations by for-profit corporations to candidates in state or local government elections, groups of candidates in local government elections, third parties, political parties, councillors and members of state parliament. The Bill also proposes to make it unlawful for a prohibited corporate

---

1 The committee was established on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) section 88 and the Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

2 POQA, s 88; Standing Orders, SO 194, sch 6.

3 POQA, s 93(1).

4 Explanatory notes, p 1.

5 The Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018 was passed the day after Mr Berkman MP introduced the Electoral Legislation (Political Donations) Amendment Bill 2018. The *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* was assented to on 21 May 2018.

6 Explanatory notes, p 1.

donor to solicit a person to make a political donation and for a person to solicit, on behalf of a prohibited corporate donor, another person to make a political donation.[7]

1.4 Consultation on the Bill

The explanatory notes state that Mr Berkman MP developed the Bill based on 'stakeholder and community feedback, and the widespread understanding within the Queensland community that political donations increase both the actual and perceived risk of corruption'.[8]

According to the explanatory notes, submissions and evidence provided to various inquiries at the federal and state level, including the Economics and Governance Committee's inquiry into the Belcarra Bill, also informed the development of the Bill.[9]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by submitters and witnesses, the committee recommends that the Bill not be passed.

Recommendation 1

The committee recommends the Electoral Legislation (Political Donations) Amendment Bill 2018 not be passed.

7 Explanatory notes, p 2.

8 Explanatory notes, p 5.

9 Explanatory notes, p 5.

2 Background to the Bill

2.1 Current electoral law in Queensland

The *Electoral Act 1992* (Electoral Act) and the *Local Government Electoral Act 2011* (LGE Act) govern the conduct of state and local government elections in Queensland, providing for a range of matters such as the distribution of electorates, enrolment and voting, registration of political parties, and election funding and disclosure requirements.[10]

All candidates, registered political parties, associated entities, groups and individuals are required to inform the Electoral Commission of Queensland of any loans, donations and gifts of $1,000 or more given and/or received within seven days of receiving them.[11]

There are no donation caps or caps on electoral expenditure in Queensland.

Gifts of foreign property, anonymous gifts to a political party totalling $1,000 or greater, and anonymous gifts to a candidate totalling $200 or greater are prohibited.[12]

Most recently, the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (the Belcarra Act) amended the Electoral Act and LGE Act to introduce a ban on donations by property developers to political parties, elected members and candidates in a local or state government election. Candidates, groups of candidates, third parties, political parties, associated entities and councillors are prohibited from receiving gifts from a property developer or industry representative organisation where a majority of members are property developers (prohibited donors). It is unlawful for:

- a prohibited donor to make a political donation, or solicit another person to make a political donation
- a person to make a political donation on behalf of a prohibited donor, or solicit on behalf of a prohibited donor, another person to make a political donation, and
- a person to accept a political donation made by or on behalf of a prohibited donor.[13]

Refer to section 2.2 below for background to the Belcarra Act reform.

2.2 Crime and Corruption Commission's Operation Belcarra

In September 2016, the Queensland Crime and Corruption Commission (CCC) commenced an investigation, Operation Belcarra, of complaints regarding the conduct of candidates in several local governments during the 2016 local government elections. One of the aims of the investigation was to examine practices that may give rise to actual or perceived corruption, or otherwise undermine public confidence in the integrity of local government, and to identify strategies to prevent or minimise corruption risks and increase public confidence.[14]

In conducting Operation Belcarra, the CCC found 'widespread non-compliance with legislative obligations relating to local government elections and political donations … largely caused by a deficient legislative and regulatory framework'.[15]

10 *Electoral Act 1992*, pts 3, 4, 6, 7.

11 *Electoral Act 1992*, s 201A

12 *Electoral Act 1992*, ss 270, 271.

13 *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*, part 3.

14 Crime and Corruption Commission Queensland (CCC), *Operation Belcarra: A blueprint for integrity and addressing corruption in local government* (Belcarra Report), October 2017, pp 2-4; explanatory notes, p 1.

15 CCC, *Operation Belcarra: Reforming local government in Queensland*, www.ccc.qld.gov.au/corruption/operation-belcarra-public-hearing

The CCC published *Operation Belcarra: Reforming local government in Queensland* (the Belcarra Report) in October 2017. The Belcarra Report made 31 recommendations 'to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making'.[16] In response to the Belcarra Report, the Queensland government expressed support, or support in principle, for all 31 recommendations.[17] The recommendations from the report are provided at **Appendix C**.

2.2.1 Queensland Government response to CCC's Belcarra Report

Following the CCC's investigation and subsequent publication of the Belcarra Report, the government introduced the Belcarra Bill on 6 March 2018, which addressed a number of recommendations from the Belcarra Report (recommendations 20 and 23 to 26). The committee was advised that the Belcarra Bill was the first stage of integrity reforms to implement the government's response to recommendations from the Belcarra Report.

Of relevance to this Bill, the Belcarra Bill gave effect to Recommendation 20 of the Belcarra Report to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers and relevant industry organisations, by amendment to the Electoral Act and the LGE Act. The amendments extended to members of the state parliament and candidates in both state and local elections.

The amendments relating to political donations commenced on 2 October 2018.[18]

2.3 The High Court of Australia and the implied right to freedom of political communication

Aspects of the proposed amendments in the Bill may affect people's freedom to participate in the political process at a local and state level, both generally and regarding the treatment of fundraising contributions.[19] The committee considered it relevant to explore the nature of the right to freedom of political communication in Australia as part of its examination of the Bill.

Articulated by findings of the High Court of Australia (HCA) in the early 1990s,[20] Australians enjoy an implied right from the *Australian Constitution* to the freedom of communication on political matters. However, this right is not absolute and can be restrained by legislation, albeit with certain qualifications. Three judgements of the HCA are especially relevant to this Bill.

2.3.1 *Lange v Australian Broadcasting Corporation* [1997]

In *Lange v Australian Broadcasting Corporation* [1997] (Lange v ABC) the High Court unanimously acknowledged that there was an implied right of communication within the *Australian Constitution*. This implied right will invalidate a law that burdens or restrains political communication to an impermissible extent. In Lange v ABC, the court outlined a test to determine the validity of a law. The 'Lange Test' is subsequently available to the courts to decide whether or not a law is invalid in regards to political communication. The Lange Test involves two considerations:

- whether the law burdens political communication, and

16 CCC, Belcarra Report, October 2017, p xii.

17 Queensland Government, *Government response – Operation Belcarra report: A blueprint for integrity and addressing corruption risk in local government*, October 2017; explanatory notes, p 2.

18 Proclamation - Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018 (commencing certain provisions), SL 150, 2018. The Belcarra Act contains retrospective transitional provisions which provide that any donation received after 12 October 2017, which is a prohibited donation under the Act, is to be paid back to the person who made it within 30 days of the Act commencing.

19 Explanatory notes, p 3.

20 *Nationwide News Pty Ltd v Wills* [1992] HCA 46; *Australian Capital Television Pty Ltd v Commonwealth* [1992] HCA 45; *Lange v Australian Broadcasting Corporation* [1997] HCA 25.

- whether the law is appropriate and consistent with the system of government established by the *Australian Constitution*.[21]

By introducing the Lange Test, it follows that the implied freedom found in the *Australian Constitution* by the HCA is not absolute, but subject to certain limitations. These limitations were tested by New South Wales legislation in two judgements, as outlined below.

2.3.2 *Unions New South Wales v New South Wales* [2013]

In *Unions New South Wales v New South Wales* [2013][22] (Unions NSW v NSW) the validity of provisions in the then *Election Funding, Expenditure and Disclosures Act 1981* (NSW) were brought before the HCA. Specifically, the ban on political donations from *anyone* other than an individual enrolled on an electoral roll for state, federal or local government elections (corporations and other entities) and the validity of limitation on aggregated electoral communication expenditures were considered.

The HCA unanimously agreed that the provisions (in place since 2012[23]) were invalid on the grounds that they impermissibly burdened the implied freedom of communication on governmental and political matters, contrary to the *Australian Constitution*. As an aside, the HCA noted that similar laws may be considered valid if they constitute reasonable and proportionate limitations on implied freedom, for legitimate ends and via proportionate means.[24]

The New South Wales government subsequently amended the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) in 2014 to remove the invalid provisions.[25]

2.3.3 *McCloy v New South Wales* [2015]

In 2015 the New South Wales ban on specified prohibited donors was challenged and ruled to be constitutional. In *McCloy v New South Wales* [2015][26] the HCA applied the Lange Test and upheld the validity of provisions within the *Election Funding, Expenditures and Disclosures Act 1981* (NSW), in relation to prohibited political donations specifically made by property developers (in place since 2009[27]) and caps on election expenditure. A majority of the HCA concluded that the provisions in the *Election Funding, Expenditures and Disclosures Act 1981* did not impermissibly burden the implied freedom of communication, and were appropriate to secure and promote the actual and perceived integrity of the parliament and the government in New South Wales.[28]

The *Electoral Funding Act 2018* (NSW), which recently repealed the *Election Funding, Expenditure and Disclosures Act 1981* (NSW), continues provisions banning any form of political donation by property developers and tobacco, liquor or gambling industries, disclosure of political donations and caps on electoral expenditure.

2.4 Electoral law in other Australian jurisdictions

The Bill proposes to introduce provisions to Queensland legislation based on the New South Wales legislation in relation to restrictions on political donations.

The committee conducted a brief overview of electoral legislation in Australian states and territories and the Commonwealth in relation to donations and expenditure to ascertain the approach taken to political donations in other jurisdictions. The overview is provided below.

---

21 *Lange v Australian Broadcasting Corporation* [1997] 145 ALR 96, at 112.

22 *Unions New South Wales v New South Wales* [2013] HCA 58.

23 *Election Funding, Expenditure and Disclosures Amendment Act 2012* (NSW).

24 *Unions New South Wales v New South Wales* [2013], at 44.

25 *Election Funding, Expenditure and Disclosures Consequential Amendment Act 2014* (NSW).

26 *McCloy v New South Wales* [2015] HCA 34.

27 *Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009* (NSW).

28 *McCloy v New South Wales* [2015], at 199.

2.4.1 Limitations on political donations

Source of donation

Under New South Wales legislation, the following donations are prohibited:

- donations where the name and address of the donor are unknown
- donations from or on behalf of prohibited donors, including property developers (now including individuals), tobacco industry business entities and liquor or gambling industry business entities.[29]

In New South Wales it is also unlawful for a political donation to be accepted unless the donor is:

- an individual who is enrolled to vote on certain electoral rolls
- an entity that has an Australian Business Number or similar, or a principal or executive officer with an Australian residential address.[30]

In Victoria, recent changes to the *Electoral Act 2002* (Vic) introduced new laws governing political funding and disclosure, which included a ban on foreign donations (donors need to be an Australian citizen or resident, or a business with an Australian Business Number).[31]

There are no restrictions on who may make a political donation in South Australia, Western Australia, Tasmania, Australian Capital Territory (ACT), Northern Territory, or at the federal level. Notably in 2015 the ACT made changes to relax the territory's funding and financial disclosure scheme, including the removal of the restriction on receiving donations from organisations and persons not enrolled in the ACT for use in ACT elections.[32]

Reporting donations

All states and territories except for Victoria and Tasmania require that donations over a certain threshold must be reported.[33] However, in Victoria from 25 November 2018 donations of $1,000 or more need to be disclosed. In New South Wales, a donation of less than $1,000 is treated as reportable if it and other earlier, separate political donations made by the same entity to the same party or candidate within the same financial year, would, if aggregated, be equivalent to $1,000 or more.[34]

The Northern Territory, ACT, Western Australia, Victoria and the Commonwealth also prohibit anonymous donations over various thresholds. [35]

Caps on donations

Similar to Queensland, there are no caps on donations in South Australia, Western Australia, Tasmania, ACT, Northern Territory, or at the federal level. There was a previous cap on donations of $10,000 in one financial year to an ACT political entity for ACT election purposes. This cap was removed in 2015.[36]

---

29 *Electoral Funding Act 2018* (NSW), ss 49, 51-53.

30 *Electoral Funding Act 2018* (NSW), s 46.

31 Victorian Electoral Commission, *Candidates and Parties – Funding and Disclosure*, https://www.vec.vic.gov.au/CandidatesAndParties/FundingDisclosure.html

32 Elections ACT, *New electoral campaign finance laws in the ACT*, 5 July 2016, https://www.elections.act.gov.au/funding_and_disclosure/new_electoral_campaign_finance_laws_in_the_act2

33 *Electoral Funding Act 2018* (NSW), s 6(1); *Electoral Act 1992* (ACT), s 216A; *Electoral Act 1907* (WA), s 175R; Victorian Electoral Commission, *Candidates and Parties – Funding and Disclosure*, https://www.vec.vic.gov.au/CandidatesAndParties/FundingDisclosure.html; *Electoral Act 1985* (SA), ss 130ZJ, 130ZK, 130ZL; *Electoral Act 2004* (NT), ss 191, 193-194.

34 *Electoral Funding Act 2018* (NSW), s 6(2).

35 *Electoral Act 2004* (NT), s 197; *Commonwealth Electoral Act 1918* (Cth), s 306; Victorian Electoral Commission, *Candidates and Parties – Funding and Disclosure*, https://www.vec.vic.gov.au/CandidatesAndParties/FundingDisclosure.html; *Electoral Act 1992* (ACT), s 222.

36 Elections ACT, *New electoral campaign finance laws in the ACT*, 5 July 2016,

New South Wales and Victoria are currently the only jurisdictions to place a cap, disclosed or otherwise, on the amount that can be donated to political parties and candidates.[37] Victoria recently passed strict new laws in regards to political donations, including widening the scope of the cap to all donors (not just those with a 'relevant licence'[38]) and reducing the cap on political donations from $50,000 to $4,000, coming into effect on 25 November 2018. There will also be a cap of six third-party campaigners a donor can donate to within an election period.[39]

Election expenditure

Victoria, Western Australia, South Australia and the Northern Territory place no limitations or caps on election expenditure.

In New South Wales, electoral communication expenditure is capped at state elections during the capped state expenditure period.[40]

Tasmania provides a cap on electoral expenditure for the Legislative Council but not in the Legislative Assembly.[41]

In the ACT, electoral expenditure caps were decreased in 2015 from $60,000 to $40,000 for the 2016 election, indexed annually thereafter.[42]

In South Australia, political parties, candidates and third parties must create a designated campaign account for election campaigns under the *Electoral Act 1985* (SA).[43] All donations must be paid into the account and all political expenditure must be made from the account. Associated entities are not required to maintain a campaign account. In the ACT, political entities were previously required to quarantine expenditure for ACT elections within a defined ACT election bank account, however this requirement has since been removed.

The *Commonwealth Electoral Act 1918* (Cth) does not stipulate any limits on the amount that political parties or other entities can spend in relation to election campaigns. Independent candidates, unendorsed Senate groups and Senate groups endorsed by more than one registered political party must furnish to the Australian Electoral Commission a return which sets out details of all electoral expenditure in relation to the election within 15 weeks of polling day in the election.[44]

2.4.2 Proposed Commonwealth Law Reform

Recommendations for reform by Australian Senate select committee

Mr Berkman MP recommended that, in examining the Bill, the committee consider the findings of the Australian Senate's Select Committee into the Political Influence of Donations (the select committee). The select committee was established on 15 November 2017 to inquire into and report on electoral administration reform.

https://www.elections.act.gov.au/funding_and_disclosure/new_electoral_campaign_finance_laws_in_the_act2

37 Electoral Commission NSW, *Caps on political donations*, http://www.elections.nsw.gov.au/fd/political_donations/caps_on_political_donations (last accessed 14 August 2018).

38 A relevant licence means a licence granted under the section 13 of the *Casino Control Act 1991* or section 3.4.29 or 4.3.8 of the *Gambling Regulation Act 2003.*

39 Victorian Electoral Commission, *Candidates and Parties – Funding and Disclosure*, https://www.vec.vic.gov.au/CandidatesAndParties/FundingDisclosure.html

40 *Electoral Funding Act 2018* (NSW), s 27.

41 *Electoral Act 2004* (Tas), s 160.

42 *Electoral Act 1992* (ACT), s 205D.

43 *Electoral Act 1985* (SA), s 130K, 130L, 130N.

44 *Commonwealth Electoral Act 1918* (Cth), s 309.

The select committee tabled its final report on 6 June 2018. According to Mr Berkman MP, this report provides 'a clear insight into the nature and extent of the issues, the community concern and the need for reform to restore community confidence in the system'.[45] The select committee made a number of recommendations, including that the Australian Government:

- introduce a cap on donations of $1,000, above which disclosure is required, and a cap on campaign expenditure by political parties, candidates and associated entities
- introduce a ban on donations from developers, banks, mining companies and the tobacco, liquor, gambling, defence and pharmaceutical industries, as well as foreign donations
- introduce requirements for online, continuous, real-time disclosure to the Australian Electoral Commission of donations to political parties, candidate and associated entities, and
- initiate discussion with state and territory governments with regards political donations regulation, with a view to harmonising laws within two years.[46]

The Australian government is yet to provide a government response to the select committee's report and its recommendations.

Proposed reforms currently before the Australian Senate

The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth) was introduced to the Australian Parliament in December 2017 and is currently before the Senate. It proposes a number of reforms to Australia's electoral administration including the introduction of public registers and enhanced disclosure requirements, prohibiting donations from foreign governments and state-owned enterprises for the purpose of financing public debate, and limiting public election funding to demonstrated electoral spending.[47]

45 Public briefing transcript, Brisbane, 20 August 2018, p 2.

46 Senate Select Committee into the Political Influence of Donations, *Political Influence of Donations*, 2018, p v.

47 Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cth), explanatory memorandum, pp 3-4.

3 Examination of the Bill

3.1 Prohibition on donations from corporations

The Bill proposes to extend the prohibition provided for in the Belcarra Act by making unlawful:

- making and accepting political donations made by or on behalf of prohibited corporate donors, and
- prohibited corporate donors (or others on their behalf) soliciting other persons to make political donations.[48]

The Bill provides that the prohibition on political donations encompasses candidates in state or local government elections, groups of candidates in local government elections, third parties, political parties, councillors and members of state parliament, in keeping with the Belcarra Act.[49]

3.1.1 Overview of proposed amendments

Definitions of prohibited donors and political donations

A prohibited donor is defined in the Bill as a company registered under the *Corporations Act 2001* (Cth) (Corporations Act) or an industry representative organisation a majority of whose members are companies registered under the Corporations Act. The Bill specifically excludes charities, not-for-profit organisations, or employee and employer organisations under state or federal industrial relations legislation.[50]

Similar to the Belcarra Act, the Bill defines a political donation as a gift made to or for the benefit of:

- a candidate, political party, elected member, or
- another entity - to enable the entity to make a gift to or for the benefit of a candidate, political party, elected member, or to reimburse the entity for making a gift or incurring electoral expenditure.

A gift includes amounts paid to a political party for membership or affiliation with the party if the total amount paid in a calendar year exceeds $1,000, and fundraising contributions, such as the amount paid for a raffle ticket or an item at a fundraising auction.[51]

If a gift is made in a private capacity for the recipient's personal use, and the recipient does not intend to use the gift for an electoral purpose, then the gift is not a political donation. However if any part of the gift is subsequently used for an electoral purpose, then that part of the gift is a political donation, and the recipient is taken to accept that part of the gift at the time it is used for an electoral purpose.[52]

A loan from an entity other than a financial institution made to or for the benefit of a candidate, political party, elected member, or made to or for the benefit of another entity to enable the entity to make a gift, or reimburse them for making a gift, to or for the benefit of a candidate, political party, elected member is also defined as a political donation.[53]

48 Explanatory notes, p 2.

49 Bill, pts 2, 3; Explanatory notes, p 3.

50 Bill, cls 6 (s 280) and 14 (s 113A); Explanatory notes, p 3.

51 Bill, cls 13 (s 113)

52 Bill, cls 13 (s 113).

53 Bill, cls 5 (s 201B) and 13 (s 113).

Penalties and recovery of prohibited political donations

The Bill mirrors the Belcarra Bill by providing that a person who unlawfully makes or solicits a prohibited donation or who accepts a prohibited donation would commit an offence punishable by up to $52,220 (400 penalty units) or two years imprisonment. Making or accepting a prohibited political donation is also unlawful if the person 'knows or ought reasonably to know of the facts that result in the act or omission being unlawful'.[54]

The Bill proposes to require a person who accepts a prohibited donation knowing it was unlawful to accept the donation to pay the state twice the amount of the prohibited donation, or if the person did not know it was unlawful to accept the donation to pay the state the amount of the donation.[55]

The Bill proposes to provide that a person who knowingly participates, directly or indirectly, in a scheme to circumvent the prohibition would commit an offence punishable by up to 1,500 penalty units ($195,825) or 10 years imprisonment, similar to the Belcarra Bill.[56]

Mr Berkman MP advised that the Bill is 'a necessary step' to ensure that 'elected representatives in the Queensland parliament are here to further the interests of Queensland society as a whole, not a narrow set of corporate interests, and to participate in a contest of ideas as to how we best achieve that'.[57]

3.1.2 Issues raised during the inquiry

Perceived risk, and justification, for the prohibition of corporate donors

In acknowledging that the amendments suggested by the Bill may curtail people's freedom of communication, Mr Berkman MP stated that the provisions are justified given that:

> *… the risk of corruption has been repeatedly examined in major inquiries in Queensland and other Australian jurisdictions over the last 25 years; highlighting the inherent potential of donations to lead to perceptions of corruption.*[58]

He added that there was an assumption of corruption which the Bill would address:

> *… there is no sensible reason to assume that other local governments or the state government are somehow immune from this kind of corruption risk.*[59]

Stakeholder views and responses from Mr Berkman MP

The CCC did not support the Bill's intent to expand upon the reforms of the Belcarra Bill. In their submission the CCC drew the committee's attention to aspects of the recommendations made by the CCC in the Belcarra Report, to consider whether the Bill's provisions concerning the prohibition of corporate donations reflect the findings of the HCA decision in Unions NSW v NSW are justified, and whether the actual or perceived risk of corruption is sufficiently demonstrated.

CCC Commissioner Mr Alan MacSporran stated in the submission:

> *I have previously told the Committee my personal view that in an ideal world all donations would be banned, but the High Court has said, and the law is, that there needs to be an evidence based response which is proportional to the threat identified.*[60]

---

54 Bill, cls 7 (s 307A) and 15 (s 194D). A penalty unit has a value of $126.15: Penalties and Sentences Regulation 2015 (PS Regulation), s 3; Explanatory notes, p 4.

55 Bill, cls 6 (s 281A) and 14 (s 113C); Explanatory notes, pp 6-7, 9-10.

56 Bill, cls 7 (s 307B).

57 Mr Berkman MP, public briefing, Brisbane, 20 August 2018, p 2.

58 Explanatory notes, p 3.

59 Public briefing, Brisbane, 20 August 2018, p 1.

60 Submission 4, p 2.

Mr MacSporran noted:

> *The CCC acknowledges that one of the matters the Committee's current inquiry may consider is whether there is sufficient evidence to conclude that the Bill's provisions prohibiting political donations by for-profit corporations in State or Local Government elections is a proportionate response to any demonstrated threat of actual or perceived corruption in those areas of government. However, at the time of preparing this submission, the CCC is not aware of, and does not consider it holds, sufficient evidence in this regard.*[61]

At the public hearing of 20 August 2018, CCC representatives stated that there has to be 'sound evidentiary basis for prohibiting political donations across-the-board'.[62] The CCC reaffirmed that during the Operation Belcarra there was not sufficient evidence based on the investigation conducted 'to extend the prohibition further'.[63]

Acknowledging the CCC submission, Mr Berkman MP observed that 'this is the CCC's position on the information currently available to it, and is subject to any further evidence gathered'.[64] At the public hearing, Mr Berkman further stated:

> *This is a similar position to the position that the CCC took in respect of developer donations and the ban as it applies to the state government which has since been legislated.*[65]

In relation to evidence to justify the provisions in the Bill, both Mr Berkman MP and the Environmental Defenders Office Qld (EDO Qld) contended that the provisions in the Bill are based on the New South Wales *Election Funding, Expenditure and Disclosure Act 1981* (now the *Electoral Funding Act 2018 (NSW)*), which the HCA found to be valid.[66]

Mr Berkman MP also submitted that if the committee is concerned about adequate information to justify the proposed reform in the Bill, a committee of the parliament could task the CCC with undertaking 'a fulsome, independent inquiry'.[67] He stated:

> *While the Bill could be enacted and related policy reform pursued in the interests of improving accountability and public confidence in Queensland's electoral system, I believe a targeted inquiry by the CCC into the influence of political donations would be most useful, and should be instigated to ensure all relevant evidence is available to demonstrate the proportionality of such a legislative response.*[68]

Mr Berkman MP further advised that the Bill proposes to prohibit donations from corporate organisations because a perceived risk of corruption is as damaging, in terms of public confidence, as evidence of corruption:

> *Whether or not the imputed conduct or decision-making comes to light in formal allegations, investigations, charges or convictions, the perception of benefit and profit as a consequence of huge donations from massive corporations, whether lawful or not, undermines public confidence in the integrity of government in Queensland.*[69]

There was some agreement from submitters about the need to address the potential damage to public confidence of a perceived risk of corruption. Ms Claire Ogden submitted 'Political donations are not given by corporations and companies out of the goodness of their hearts. There is a direct link between

61 Submission 4, p 3.

62 Public hearing transcript, Brisbane, 20 August 2018, p 6.

63 Public hearing transcript, Brisbane, 20 August 2018, p 7.

64 Response to submissions, 6 July 2018, p 2.

65 Public briefing transcript, Brisbane, 20 August 2018, p 4.

66 Explanatory notes, p 3; public hearing transcript, Brisbane, 20 August 2018, p 2.

67 Public briefing transcript, Brisbane, 20 August 2018, p 2.

68 Correspondence to committee, 7 July 2018, p 2.

69 Public briefing transcript, Brisbane, 20 August 2018, pp 2-3.

the donations and favourable outcomes'.[70] Her submission was echoed by Mr Neil Cotter who stated:

> *By definition corporations function to maximise profit, have no other interest and cannot operate for the public good. … Any donation from a corporation has to be assumed to be motivated by an expected return on investment.*[71]

However, Ms Ogden offered unsubstantiated examples to support her claim of a direct link between donations and favourable outcomes, as no specific evidence was provided to support such a claim.

On the issue of whether a corporate entity might be inclined to make political donations because of their philosophical preferences, Mr Berkman MP stated:

> *I would argue that corporations do not, as corporate business entities—particularly when we are looking at listed companies—have the capacity to hold a philosophical view. They are legally bound—directors of listed companies in particular—and duty bound to maximise the profits for shareholders. That is their sole reason for existence. It is that pinnacle objective of maximising profits for a very narrow group of society as compared with seeking other philosophical objectives that can be achieved by other not-for-profit groups, charities, benevolent societies and the like. I disagree with the premise of your question that corporate entities are in real terms capable of pursuing philosophical ends. Profit is their goal.*[72]

Possible outcomes of the prohibition of corporate donations

During the inquiry the committee questioned the implications of banning a single but broad class of donors, such as for-profit corporations, including the potential for corporations to find a way to circumvent the prohibition.

Stakeholder views and responses from Mr Berkman MP

In response to the prohibition on property developers already legislated by the Belcarra Act, the EDO Qld stated:

> *… we really need a broader ban on the for-profit corporations. I gather what has happened in New South Wales is that there have been enterprise foundations, or initiatives thought up to try to thwart these bans. A broader ban would be more effective in trying to control corruption and lead to better quality decision-making.*[73]

Mr Berkman MP responded to the concern of possible evasion of the proposed prohibition by noting that the Bill deals with the 'donation-once-removed type scenario', 'where someone who facilitates the giving of a donation by a prohibited corporate donor would fall afoul of the provisions of the bill'.[74]

However, in response to committee concerns that a ban on political donations by corporate donors will give rise to third-parties making independent campaigns, such as is prevalent in the United States, the CCC commented that corporations would find ways to get their agenda across to the public despite the provisions of the Bill:

> *… if corporations cannot get their messages to political parties and get their messages out through political parties then they are going to find another medium to do it and they will be more direct in relation to that.*[75]

Additional electoral reform

A number of submissions were supportive of the Bill but called for the reforms to be extended further.[76] The suggested reforms, outlined below, were varied.

---

70 Submission 5, p 1.

71 Submission 17, p 1.

72 Public briefing transcript, Brisbane, 20 August 2018, p 3.

73 Public hearing transcript, Brisbane, 20 August 2018, p 4.

74 Public briefing transcript, Brisbane, 20 August 2018, p 5.

75 Public hearing transcript, Brisbane, 20 August 2018, p 7.

76 See for example submissions 6, 9, 18 and 19.

Stakeholder views and response from Mr Berkman MP

The Organisation Sunshine Coast Association of Residents noted that the Bill's reforms were a 'desirable first step' that would bring Queensland closer to a point where limits on donations could 'go further and limit such donations to natural persons on the electoral role for the local or state electorate in which they are enrolled'.[77]

Brisbane Residents United submitted that there should be a cap placed on expenditure for elections, a clarification of the definition of 'lobbyist' and a strengthening of existing limitations on lobbyists moving between government and the private sector.[78]

The Southern Downs Regional Council supported the Bill's proposed amendments but questioned why the prohibition could not be further extended to include not-for-profit organisations, submitting:

> *… anything that removes opportunities to influence responsible decision making or impact on the reputation of local government should be considered as best practice in how local governments operate and rate payers funds are allocated*.[79]

The EDO Qld strongly supported the Bill.[80] EDO Qld submitted that the committee ought to consider further policies to make 'even greater improvements' to the 'integrity of governance in our State', including publicly funded elections and a cap on expenditure by candidates.[81]

EDO Qld and Brisbane Residents United called for the introduction of a 'betterment tax', payable to the government where land zoning benefits a property developer.[82]

Mr Berkman MP informed the committee that:

> *… it is noteworthy that not one submission was made in opposition to the bill. The CCC's submission, which warrants separate consideration, neither supported nor opposed the bill. Every other submission either agreed with the reform proposed or indicated a desire to see it go further.*[83]

Committee consideration and comment

The committee understands the motivation for the objectives of the Bill but notes the CCC found insufficient evidence during Operation Belcarra to extend their recommendation for electoral reform beyond banning donations from property developers to candidates, third parties, political parties and councillors. The committee is not confident that the evidence provided by Mr Berkman MP is sufficient for the Bill to pass the Lange Test given the more recent High Court cases, as the committee considers that the Bill proposes to restrict the implied freedom of political communication without sufficient justification for the restriction to be considered appropriate.

The committee notes the government's Belcarra Act is the first stage of the government's electoral law reform agenda, which includes implementation of the remaining recommendations of the Belcarra Report and 'further reforms aimed at reinforcing integrity, minimising the risk of corruption and providing for increased transparency' at the state and local government levels.[84]

---

77 Submission 6, p 1.

78 Submission 9, pp 2-3.

79 Submission 18, p 1.

80 Public hearing transcript, Brisbane, 20 August 2018, p 2.

81 Submission 19, p 2.

82 Submission 19, p 2; submission 9, p 3.

83 Public briefing transcript, Brisbane, 20 August 2018, p 2.

84 Hon Sterling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, Record of Proceedings, 6 March 2018, p 191.

3.1.3 Proposed amendments during Consideration in Detail

Mr Berkman MP informed the committee that the Bill was largely modelled on the Belcarra Bill. Following the passage of the Belcarra Bill through the Legislative Assembly, a number of the Bill's clauses will require consequential amendment in consideration in detail to address this duplication.[85]

Mr Berkman MP provided the committee with a draft of the necessary amendments for consideration by the committee as part of his response to submissions.[86] The list of proposed amendments to the Bill are provided at **Appendix D**.

85 Correspondence to committee, 7 July 2018, p 6.

86 Correspondence to committee, 7 July 2018, Annexure 11.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that fundamental legislative principles (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of parliament.

It is the committee's role to consider whether a bill has sufficient regard to the fundamental legislative principles articulated in the LS Act and to advise the Legislative Assembly accordingly. Where the committee identifies a possible breach of those principles, it will consider and advise on whether the breach may be justified in the context of the objectives of a bill.

The committee has examined the application of the FLPs to the Bill, and considers that clauses 6 and 7, and 14 and 15 raise issues of fundamental legislative principle in relation to the creation of new offences and penalties and freedom of communication on political matters.

4.1.1 Rights and liberties of individuals

Creation of new offences and penalties

Clauses 7 and 15 create new offences in relation to political donations by 'prohibited corporate donors' and schemes to circumvent prohibitions on particular political donations for both state and local government.

The Bill makes it unlawful for a:

- prohibited corporate donor to make a political donation
- person to make a political donation on behalf of a prohibited corporate donor
- person to accept a political donation that was made (wholly or in part) by or on behalf of a prohibited corporate donor
- prohibited corporate donor to solicit a person to make a political donation
- person to solicit, on behalf of a prohibited corporate donor, another person to make a political donation.[87]

The Bill also makes it a:

- misdemeanour offence to do any of these unlawful acts 'if the person knows or ought reasonably to know of the facts that result in the act or omission being unlawful under that section' (the maximum penalty is 400 penalty units or 2 years imprisonment), and
- crime for a person to knowingly participate, directly or indirectly, in a scheme to circumvent a prohibition about political donations (the maximum penalty is 1,500 penalty units or 10 years imprisonment).[88]

The Bill proposes dealing with the abovementioned crime by way of summary proceedings in certain circumstances, in which case the maximum penalty is 100 penalty units or 3 years imprisonment.[89]

The creation of a new offence potentially breaches the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of the individual.

Reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to those rights and liberties.

87 Bill , cls 6 (s 281), cls 14 (s 113B)

88 Cls 7 (s 307A and 307B)

89 Bill, cls 10 (307B), cls 15 (s 194D and 194E), cls 16

Additionally, any penalty should be proportionate to the offence. Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

> *the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.*[90]

The explanatory notes do not specifically address issues of fundamental legislative principle under the LS Act in relation to the creation of the new offences and penalties. Regarding proportionality, the penalties mirror those prescribed in the Belcarra Act for similar offences. The proposed amounts therefore align with existing legislation for like offences. It is noted the application of the offences in this Bill, if passed, would be to a wider group.

It should also be noted that the Bill would provide for the recovery of prohibited donations as a debt due to the state 'if a person accepts a prohibited donation'. The amount of any prohibited donation is recoverable as a debt to the state, or twice that amount if the recipient knew it was unlawful to receive the prohibited donation.[91]

On the face of these provisions, any liability to repay is not expressed to be dependent upon there being a conviction for a prohibited donation.

The amendments state that any liability to repay is:

- not a punishment or sentence for an offence against section 307A in the Electoral Act (or section 194D in the case of the LGE Act) or any other offence
- not a matter to which a court may have regard in sentencing an offender for an offence against section 307A and section 194D or any other offence.[92]

In spite of these last-mentioned provisions, any liability to repay can be properly considered as part of the imposed consequences of an action in some circumstances in considering the proportionality of the provisions in the context of fundamental legislative principles.

Committee consideration and comment

In the context of the stated policy objectives of the Bill, the committee considers the new offences and penalties are proportionate to the existing offences and penalties contained in the Belcarra Act.

Freedom of communication on political matters

An issue of fundamental legislative principle arises as to whether banning political donations by for-profit corporations or an industry representative organisation, as proposed by clauses 6 and 14, impinge on the freedom to participate in the political process and freedom of communication on political matters.

As referred to earlier, whilst the *Australian Constitution* does not explicitly protect a right to freedom of speech, the HCA has held that there is an implied right to freedom of political communication.[93]

The explanatory notes consider in this context the decisions in *Coleman v Power* [2004] and in *McCloy v New South Wales* [2015].[94] The explanatory notes rely on the former case for the following proposition:

---

90 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

91 Bill, cls6 (s 281A), cls 14 (s113C)

92 Bill, cls6 (s 281A), cls 14 (s113C)

93 See *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, p 560, referred to in the explanatory notes, p 4.

94 *Coleman v Power* [2004] HCA 39 and *McCloy v New South Wales* [2015] 257 CLR 178.

> *However, the freedom of political communication is not absolute, and may be subject to legislative restrictions, providing any such restrictions do not impinge on the system of representative government. Whether legislation imposing restrictions on freedom of political communication is constitutionally valid will be established by examining whether it burdens political communication, has a legitimate purpose compatible with the maintenance of representative and responsible government, and is reasonably appropriate and adapted.* [95]

The question of whether a ban on political donations impinges on the implied freedom of political communication was specifically considered by the HCA in *McCloy v New South Wales* [2015], which considered the constitutional validity of New South Wales legislation banning political donations from property developers. The decision establishes the proposition that the lawfulness of any burden on the implied freedom on communication rests on the relevant law being:

- for legitimate purposes
- enacted 'by rational means which not only do not impede the system of representative government provided for by the Constitution, but enhance it', and
- justified as a 'proportionate means' of achieving its purpose.[96]

Committee consideration and comment

As discussed in section 3.1.2 of this report, the committee notes the CCC's findings from Operation Belcarra, where insufficient evidence was found to support recommendation for further restriction on electoral donation and expenditure, beyond the banning of donations from property developers.

Without sufficient evidence, the committee considers that the Bill cannot justify further burden on the implied freedom on communication as it is not clear to the committee that the Bill would meet the three tests from the decision in *McCloy v New South Wales* [2015], particularly justification that the Bill's proposal is a proportionate means of achieving its purpose.

4.2 Explanatory notes

Part 4 of the LS Act requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The explanatory notes are sufficiently detailed and, other than lacking consideration of FLPs in relation to the creation of the new offences and penalties, contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

[95] Explanatory notes, page 4.

[96] *McCloy v New South Wales* [2015] 257 CLR 178.

Appendix A - Submitters

Sub #	Submitter
001	David Hutley
002	Elly Hanrahan
003	Don Margetson
004	Crime and Corruption Commission
005	Claire Ogden
006	Organisation Sunshine Coast Association of Residents Inc
007	Dr Gemmia Burden
008	Verity Paterson
009	Brisbane Residents United Inc
010	Redlands2030
011	Redlands City Council
012	Wallace Wright
013	Pat Coleman
014	Chris Turnbull
015	Miranda Bertram
016	John Meyer
017	Neil Cotter
018	Southern Downs Regional Council
019	Environmental Defenders Office (Qld) Inc

Appendix B - Witnesses at public briefing and public hearing

Public briefing — 20 August 2018

- Michael Berkman MP, Member for Maiwar

Public hearing — 20 August 2018

Brisbane Residents United and Environmental Defenders Office (Qld)

- Jo-Anne Bragg, CEO, Environmental Defenders Office (Qld)
- Kate Grudzinskas, Solicitor, Environmental Defenders Office (Qld)

Appendix C - Recommendations from the Belcarra Report

Recommendation 1

That an appropriate Parliamentary Committee review the feasibility of introducing expenditure caps for Queensland local government elections. Without limiting the scope of the review, the review should consider:

(a) expenditure caps for candidates, groups of candidates, third parties, political parties and associated entities
(b) the merit of having different expenditure caps for incumbent versus new candidates
(c) practices in other jurisdictions.

Recommendation 2

That the Local Government Electoral Act be amended to require real-time disclosure of electoral expenditure by candidates, groups of candidates, political parties and associated entities at local government elections. The disclosure scheme should ensure that:

(a) all expenditure, including that currently required to be disclosed by third parties, is disclosed within seven business days of the date the expenditure is incurred, or immediately if the expenditure is incurred within the seven business days before polling day
(b) all expenditure disclosures are made publicly available by the ECQ as soon as practicable, or immediately if the disclosure is provided within the seven business days before polling day.

Recommendation 3

That the Local Government Electoral Act be amended to:

(a) require all candidates, as part of their nomination, to provide to the ECQ a declaration of interests containing the same financial and non-financial particulars mentioned in Schedule 5 of the Local Government Regulation 2012 and Schedule 3 of the City of Brisbane Regulation 2012, and also:
    - for candidates who are currently members of a political party, body or association, and/or trade or professional organisation — the date from which the candidate has been a member
    - for candidates who were previously members of a political party, body or association, and/or trade or professional organisation — the name and address of the entity and the dates between which the candidate was a member.

Failure to do so would mean that a person is not properly nominated as a candidate. For the purposes of this requirement, Schedule 5, section 17 of the Local Government Regulation and Schedule 3, section 17 of the City of Brisbane Regulation should apply to the candidate as if they are an elected councillor.

(b) require candidates to advise the ECQ of any new interest or change to an existing interest within seven business days, or immediately if the new interest or change to an existing interest occurs within the seven business days before polling day.
(c) make it an offence for a candidate to fail to declare an interest or to fail to notify the ECQ of a change to an interest within the required time frame, with prosecutions able to be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns. A suitable penalty should apply, including possible removal from office.

Recommendation 4

That the ECQ:

(a) publish all declarations of interests on the ECQ website as soon as practicable after the close of nominations for an election
(b) ensure that any changes to a candidate's declaration of interests are published as soon as practicable after being notified, or immediately if advised within the seven business days before polling day.

Recommendation 5

That:

(a) the definition of a group of candidates in the Schedule of the Local Government Electoral Act be amended so that a group of candidates is defined by the behaviours of the group and/or its members rather than the purposes for which the group was formed. For example:

A group of candidates means a group of individuals, each of whom is a candidate for the election, where the candidates:

- *receive the majority of their campaign funding from a common or shared source; or*
- *have a common or shared campaign strategy (e.g. shared policies, common slogans and branding); or*
- *use common or shared campaign resources (e.g. campaign workers, signs); or*
- *engage in cooperative campaigning activities, including using shared how-to-vote cards, engaging in joint advertising (e.g. on billboards) or formally endorsing another candidate.*

(b) consequential amendments be made to the Local Government Electoral Act, including with respect to the recording of membership and agents for groups of candidates (ss. 41–3), to account for the possibility that a group of candidates may be formed at any time before an election, including after the cutoff for candidate nominations.

Recommendation 6

That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to state that, for a gift derived wholly or in part from a source [other than a person identified by s. 109(b)(iii)] intended to be used for a political purpose related to the local government election, the relevant details required also include the relevant details of each person or entity who was a source of the gift. Section 120(6) regarding loans should be similarly amended to reflect this requirement.

Recommendation 7

That the Local Government Electoral Act be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the person or entity required to lodge a return under Part 6 and for the purpose of proving any offence against Part 9, Divisions 5–7.

Recommendation 8

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

Recommendation 9

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

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

(a) adequately and accurately reflect all relevant requirements in Part 6 of the Local Government Electoral Act

(b) contain clear and sufficiently detailed instructions to users to facilitate their compliance with these requirements.

Recommendation 14

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

Recommendation 15

That:

(a) section 27(2) of the Local Government Electoral Act be amended to require candidates' nominations to also contain the details of the candidate's dedicated account under section 126 of the LGE Act

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

Recommendation 16

That the Local Government Electoral Act be amended to:

(a) prohibit candidates, groups of candidates, third parties, political parties and associated entities from receiving gifts or loans in respect of an election within the seven business days before polling day for that election and at any time thereafter

(b) state that, if a candidate, group of candidates, third party, political party or associated entity receives a gift or loan in contravention of the above, an amount equal to the value of the gift or loan is payable to the State and may be recovered by the State as a debt owing to the local government, consistent with the provisions relating to accepting anonymous donations [s. 119(4), LGE Act] and loans without prescribed records [s. 121(4), LGE Act].

Recommendation 17

That the ECQ:

(a) makes the maximum amount of donation disclosure data available on its website

(b) provides comprehensive search functions and analytical tools to help users identify and examine patterns and trends in donations

(c) provides information to enhance users' understanding of donation disclosure data and facilitate its interpretation.

Recommendation 18

That the definition of relevant details in section 109 of the Local Government Electoral Act be amended to include:

(a) for a gift made by an individual, the individual's occupation and employer (if applicable)

(b) for a gift purportedly made by a company, the names and residential or business addresses of the company's directors (or the directors of the controlling entity), and a description of the nature of the company's business

(c) for all gifts, a statement as to whether or not the person or other entity making the gift, or a related entity, currently has any business with, or matter or application under consideration by, the relevant council.

Section 120(6) regarding loans should be similarly amended to reflect these requirements.

Recommendation 19

That section 124(3)(b)(iii) of the Local Government Electoral Act be amended to require the following details to be stated in a third party's return about expenditure, in lieu of the purpose of the expenditure as currently required:

(a) whether the expenditure was used to benefit/support a particular candidate, group of candidates, political party or issue agenda, or to oppose a particular candidate, group of candidates, political party or issue agenda

(b) the name of the candidate, group of candidates, political party or issue agenda that the expenditure benefitted/supported or opposed

(c) the name and residential or business address of the service provider or product supplier to whom the expenditure was paid (if applicable).

Recommendation 20

That the Local Government Electoral Act, the Local Government Act and the City of Brisbane Act be amended to prohibit candidates, groups of candidates, third parties, political parties, associated entities and councillors from receiving gifts from property developers. This prohibition should reflect the New South Wales provisions as far as possible, including in defining a property developer (s. 96GB, *Election Funding, Expenditure and Disclosures Act 1981*), making a range of donations unlawful, including a person making a donation on behalf of a prohibited donor and a prohibited donor soliciting another person to make a donation (s. 96GA), and making it an offence for a person to circumvent or attempt to circumvent the legislation (s. 96HB). Prosecutions for relevant offences should be able to be started at any time within four years after the offence was committed and suitable penalties should apply, including possible removal from office for councillors.

Recommendation 21

That the Local Government Act and the City of Brisbane Act be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the councillor for the purposes of Chapter 6, Part 2, Divisions 5 and 6.

Recommendation 22

That the *Planning Act 2016* be amended to require that any application under Chapters 2 to 5:

(a) include a statement as to whether or not the applicant or any entity directly or indirectly related to the applicant has previously made a declarable gift or incurred other declarable electoral expenditure relevant to an election for the local government that has an interest in the application

(b) any application made to council by a company include the names and residential or business addresses of the company's directors (or the directors of the controlling entity).

A local government has an interest in the application if it or a local government councillor, employee, contractor or approved entity is: an affected owner; an affected entity; an affected party; an assessment manager; a building certifier; a chosen assessment manager; a prescribed assessment manager; a decision-maker; a referral agency; or a responsible entity.

Recommendation 23

That section 173 of the Local Government Act and section 175 of the City of Brisbane Act be amended so that, after a councillor declares a conflict of interest, or where another councillor has reported the councillor's conflict of interest as required by the implementation of Recommendation 24, other persons entitled to vote at the meeting are required to decide:

(a) whether the councillor has a real or perceived conflict of interest in the matter

(b) whether the councillor should leave the meeting room and stay out of the meeting room while the matter is being discussed and voted on, or whether the councillor should remain in the meeting room to discuss and vote on the matter. A councillor who stays in the room to discuss and vote on the matter in accordance with the decision does not commit an offence under the proposed Recommendation 26.

The views put forward by each other person and the final decision of the group should be recorded in the minutes of the meeting.

Recommendation 24

That the Local Government Act and the City of Brisbane Act be amended to:

(a) require any councillor who knows or reasonably suspects that another councillor has a conflict of interest or material personal interest in a matter before the council to report this to the person presiding over the meeting (for a conflict of interest or material personal interest arising at a meeting) or the Chief Executive Officer of the council

(b) require the Chief Executive Officer, after receiving a report of a conflict of interest or a material personal interest relevant to a matter to be discussed at a council meeting, to report this to the person presiding over the meeting.

Recommendation 25

That the Local Government Act and the City of Brisbane Act be amended to provide suitable penalties for councillors who fail to comply with their obligations regarding conflicts of interest, including possible removal from office.

Recommendation 26

That the Local Government Act and the City of Brisbane Act be amended so that, where a councillor has a real or perceived conflict of interest in a matter, it is an offence for the councillor to influence or attempt to influence any decision by another councillor or a council employee in relation to that matter at any point after the matter appears on an agenda for a council meeting (except in the circumstances described in Recommendation 23, part b). A suitable penalty should apply, including possible removal from office.

Recommendation 27

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

Recommendation 28

That:

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

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

Recommendation 29

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

Recommendation 30

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

Recommendation 31

That the ECQ be given a specific legislative function to help ensure integrity and transparency in local government elections and that:

(a) how the ECQ is to perform this function be specified in legislation; this should include engaging with participants in local government elections to promote their compliance with the requirements of the Local Government Electoral Act, investigating offences under the Local Government Electoral Act, and taking enforcement actions against candidates, third parties and others who commit offences

(b) the ECQ be required to publicly report on the activities conducted under this function after each local government quadrennial election, including reporting on the outcomes of its compliance monitoring and enforcement activities

(c) the ECQ be given adequate resources to perform this function.

Appendix D – Proposed amendments to the Bill during Consideration in Detail

ACID - Electoral Legislation (Political Donations) Amendment Bill 2018

Amendments during consideration in detail to be moved by Michael Berkman, Member for Maiwar

1 Clause 3 (Amendment of s 2 (Definitions))

Page 4, line11—

omit, insert—

(1) Section 2, definition *political donation*—

omit.

(2) Section 2—

2 Clause 4 (Amendment of s 197 (Definitions))

Page 4, line 17—

omit, insert—

(1) Section 197, definition *political donation*—

omit.

(2) Section 197—

3 After clause 5

Page 6, after line 22—

insert—

5A Omission of s 274 (Meaning of *political donation*)

Section 274—

omit.

4 Clause 7 (Insertion of new ss 307A and 307B)

Page 9, lines 15 to 18—

omit, insert—

---

v02 C18_0022.fm — July 4, 2018 4:08 pm

7 Insertion of new ss 307D and 307E

After section 307C—

insert—

307D Offence about particular prohibited

5 Clause 7 (Insertion of new ss 307A and 307B)

Page 9, line 29, '307B'—

omit, insert—

307E

6 Clause 8 (Amendment of s 308 (Recovery of payments))

Page 10, lines 18 to 20—

omit, insert—

Section 308(1), 'section 236(3), 271(6) or 276'—

omit, insert—

section 236(3), 271(6), 276 or 281A

7 Clause 9 (Amendment of s 385 (Offences under this part are summary))

Page 10, line 23 to page 11, line 3—

omit, insert—

Section 385(1), 'to 307C'—

omit, insert—

to 307E

8 Clause 10 (Insertion of new s 385A)

Page 11, line 4 to page 12, line 14—

omit, insert—

10 Amendment of s 385A (Proceedings for indictable offence)

Section 385A(2), after 'section 307B'—

insert—

of 307E

9 Clause 12 (Amendment of s 106 (Definitions for part))

Page 12, lines 20 to 24—

omit, insert—

(1) Section 106, definition *political donation*—

omit.

(2) Section 106—

insert—

political donation see section 112A.

prohibited corporate donor, for division 1B, see section 113H.

10 Clause 13 (Insertion of new s 113)

Page 12, line 25 to page 13, line 1—

omit, insert—

13 Insertion of new s 112A

Part 6, division 1—

insert—

112A Meaning of *political donation*

11 After clause 13

Page 15, after line 8—

insert—

13A Omission of s 113A (Meaning of *political donation*)

Section 113A—

omit.

12 Clause 14 (Insertion of new pt 6, div 1A)

Page 15, line 9, '1A'—

omit, insert—

1B

13 Clause 14 (Insertion of new pt 6, div 1A)

Page 15, line 12, '1A'—

omit, insert—

1B

14 Clause 14 (Insertion of new pt 6, div 1A)

Page 15, line 15, '113A'—

omit, insert—

113H

15 Clause 14 (Insertion of new pt 6, div 1A)

Page 16, line 16, '113B'—

omit, insert—

113I

16 Clause 14 (Insertion of new pt 6, div 1A)

Page 16, line 31, '113C'—

omit, insert—

113J

17 Clause 14 (Insertion of new pt 6, div 1A)

Page 18, line 5, '113B'—

omit, insert—

113I

18 Clause 15 (Insertion of new ss 194D and 194E)

Page 18, line 15, '113B'—

omit, insert—

113I

19 Clause 15 (Insertion of new ss 194D and 194E)

Page 18, line 27, '1A'—

omit, insert—

1B

20 Clause 17 (Amendment of schedule (Dictionary))

Page 20, line 26, '113'—

omit, insert—

112A

21 Clause 17 (Amendment of schedule (Dictionary))

Page 20, line 28—

omit, insert—

1B, see section 113H.

v02 C18_0022.fm — July 4, 2018 4:08 pm