Parliamentary Committees



Electoral and Other Legislation Amendment Bill 2019

Report No. 27, 56th Parliament
Economics and Governance Committee
June 2019

Economics and Governance Committee

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Deputy Chair	Mr Ray Stevens MP, Member for Mermaid Beach
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Contents

Abbreviations

Assembly	Legislative Assembly of Queensland
Belcarra Report	Crime and Corruption Commission, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government,* October 2017
Belcarra Stage 2 Bill	Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019
Bill	Electoral and Other Legislation Amendment Bill 2019
CCC	Crime and Corruption Commission
committee	Economics and Governance Committee
department	Department of Justice and Attorney-General
ECQ	Electoral Commission of Queensland
EDO (Qld)	Environmental Defenders Office (Qld) Inc
EDS	Electronic disclosure system
FLPs	fundamental legislative principles
Electoral Act	*Electoral Act 1992*
Independent Panel	Independent Panel established by the Queensland Government in 2016 to inquire into the conduct of 2016 local government elections, chaired by James Soorley, with Wayne Kratzman and Pam Parker
Soorley Report	Independent Panel (James Soorley, Wayne Kratzman and Pam Parker), *Inquiry report: A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election*, March 2017
LGEA	*Local Government Electoral Act 2011*
LSA	*Legislative Standards Act 1992*
Minister	Hon Yvette D'Ath MP, Attorney-General and Minister for Justice
OQPC	Office of the Queensland Parliamentary Counsel
POQA	*Parliament of Queensland Act 2001*
QLS	Queensland Law Society
Referendums Act	*Referendums Act 1997*
RO	returning officer
Standing Orders	Standing Rules and Orders of the Legislative Assembly

All Acts are Queensland Acts unless otherwise specified.

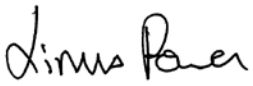
Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Electoral and Other Legislation Amendment Bill 2019.

The committee's task was to consider the policy outcomes to be achieved by the proposed legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has 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 on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General for their assistance.

I commend this report to the House.



Linus Power MP
Chair

Recommendations

The committee recommends the Electoral and Other Legislation Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (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 (FLPs).[3]

1.2 Inquiry process

On 1 May 2019, the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice (Minister) introduced the Electoral and Other Legislation Amendment Bill 2019 (Bill) into the Legislative Assembly. On 2 May 2019, the Bill was referred to the committee for examination, with a reporting date of 21 June 2019.

During its examination of the Bill, the committee:

- invited written submissions from the public, identified stakeholders and email subscribers[4] (a list of submissions is provided at **Appendix A**)
- received a written briefing on the Bill from the Department of Justice and Attorney-General (department), prior to a public briefing from departmental officials on 13 May 2019 (a list of officers who appeared at the briefing is provided at **Appendix B**)
- held a public hearing in Brisbane on 27 May 2019 (a list of witnesses who appeared at the hearing is at **Appendix B**), and
- requested and received written advice from the department on issues raised in submissions on the Bill.

Copies of the material published in relation to the committee's inquiry, including the submissions, transcripts and written advice, are available on the committee's inquiry webpage.[5]

Alongside the Bill, on 1 May 2019 the Hon Stirling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs, introduced the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 (Belcarra Stage 2 Bill) into the Legislative Assembly. That Bill was referred to the committee for detailed consideration and report by 21 June 2019.

The objectives of the Belcarra Stage 2 Bill include reforms to local government electoral administration. A number of the proposed reforms in the Belcarra Stage 2 Bill are consistent with amendments in the Bill. Some evidence received by the committee was relevant to proposed amendments in both Bills.

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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, Schedule 6.

3 POQA, s 93(1).

4 The committee contacted over 160 identified stakeholder groups and individuals and over 900 email subscribers to invite submissions on the Bill.

5 Queensland Parliament, Economics and Governance Committee, *Electoral and Other Legislation Amendment Bill 2019*, https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/ElectoralOLA2019.

1.3 Policy objectives of the Bill

The objectives of the Bill, as outlined in the explanatory notes, are to:

- improve the integrity, transparency and public accountability of state elections by implementing the further legislative stage of the government's response to certain recommendations in the report of the Crime and Corruption Commission (CCC) titled *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Belcarra Report)
- facilitate operational improvements and support efficiencies in the State electoral system by implementing the government's response to the Independent Panel's report chaired by James Soorley, *Inquiry report: A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election* (Soorley Report)
- ensure that provisions of the *Electoral Act 1992* (Electoral Act) and related legislation reflect the adoption of four-year fixed terms in Queensland, and
- achieve improved consistency across the electoral system, including better alignment between state and local government elections and referendums, and make other minor improvements.[6]

1.4 Government consultation on the Bill

The explanatory notes state that 'no consultation' occurred in the preparation of the Bill.[7]

The Bill includes the government's response to recommendations in the Belcarra Report and the Soorley Report. The explanatory notes describe the consultation undertaken by the CCC and the Independent Panel with respect to those inquiries.[8]

1.5 Requirement for an absolute majority

The Bill proposes to amend the Electoral Act to provide discretion for the Speaker of the House or the Governor not to fill a vacancy in the Legislative Assembly in the last three months before the next normal dissolution day,[9] which from 2020 will be predetermined, in accordance with the *Constitution (Fixed Term Parliament) Act 2015*.

Under s 4A of the *Constitution of Queensland Act 2001* the Bill will require an absolute majority - equal to a majority of the number of seats in the Assembly - in order to be presented to the Governor for assent.[10] Section 4A is invoked because the Bill proposes to amend the powers of the Parliament.[11]

The requirement was introduced in response to a recommendation made by the Committee of the Legislative Assembly in 2016, in its *Report No 17, 55th Parliament – Review of the Parliamentary Committee System*, to 'ensure that amendments to the Constitution were given detailed consideration'.[12]

6 Electoral and Other Legislation Amendment Bill 2019 (Bill), explanatory notes, p 1.

7 Explanatory notes, p 10.

8 Explanatory notes, p 10.

9 Bill, cl 15.

10 Department of Justice and Attorney-General (department), correspondence dated 10 May 2019, p 2.

11 *Constitution of Queensland 2001*, s 4A(1).

12 Committee of the Legislative Assembly, *Report No.17 – Review of the Parliamentary Committee System*, February 2016, p 46.

1.6 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 and its policy objectives, and consideration of the information provided by the department, submitters, and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Electoral and Other Legislation Amendment Bill 2019 be passed.

2 Background to the Bill

2.1 Legislative framework

The Constitution of Queensland provides for the Parliament in Queensland, and the powers, rights and immunities of the Legislative Assembly (Assembly), its members and committees, as well as the election of members of the Assembly and the duration of parliamentary terms.[13] The POQA contains laws relating to the operation of the Assembly, and its members.[14]

The *Electoral Act 1992* (Electoral Act) and the *Local Government Electoral Act 2011* (LGEA) 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, the registration of political parties, election funding and disclosure requirements, and the establishment of the Electoral Commission of Queensland (ECQ) to impartially administer these electoral processes and matters.[15]

The Electoral Act, the LGEA and the *Referendums Act 1997* (Referendums Act) underpin the functions, powers and responsibilities of the ECQ in relation to the conduct of elections, redistribution of state and electoral boundary areas, public right to access electoral information and disclosure of information in the public interest.[16]

2.2 Belcarra Report

In response to complaints about the conduct of candidates in a number of 2016 local government elections, the CCC initiated 'Operation Belcarra' to determine whether candidates committed offences under the LGEA that could constitute corrupt conduct, and to examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government.[17]

On 4 October 2017, the Belcarra Report was tabled in the Legislative Assembly. The report made 31 recommendations for change, to reduce the risk of corruption and to provide for increased transparency, integrity and accountability in local government (see **Appendix C** of this report).[18]

The CCC's recommendations were intended to apply to all Queensland councils. The CCC noted that the systemic issues identified through Operation Belcarra may create a disparity in the obligations relevant to state and local government, and it may be appropriate to adopt the report recommendations at the state government level.[19]

On 10 October 2017, the government response to the Belcarra Report was tabled, which supported, or supported in principle, the report's recommendations. The Bill implements, in part, a further legislative stage of reforms in response to the Belcarra Report in relation to the state electoral system, and adds to those reforms concerning electoral accountability implemented by the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018*.[20]

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13 *Constitution Act 1867*, 2A; *Constitution of Queensland Act 2001*, Parts 1, 2A, 4.

14 POQA, s 5; Chapter 4.

15 *Electoral Act 1992* (Electoral Act), pts 3, 4, 6, 7.

16 Electoral Commission of Queensland (ECQ), *Legislation*, https://www.ecq.qld.gov.au/about-us/legislation.

17 Crime and Corruption Commission, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Belcarra Report), October 2017, p xi.

18 Belcarra Report, pp xii – xviii.

19 Belcarra Report, p xii.

20 Explanatory notes, p 2; Electoral Act, pt 11, subdivision 4: from October 2018 political donations from property developers and industry bodies representing property developers were banned, with retrospective provisions from October 2017 (s 427). The prohibition extends to candidates, third parties, political parties, councillors and members of state parliament.

2.3 Soorley Report

In October 2016, an Independent Panel was appointed to undertake an inquiry into the ECQ's conduct of the 2016 local government elections, the referendum on four-year fixed terms and the by-election for the state electorate of Toowoomba South. The Independent Panel was chaired by James Soorley, former Lord Mayor of Brisbane.[21] The Independent Panel's report, *Inquiry report: A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election* (Soorley Report) was published in March 2017.

The Soorley Report was tabled in the Legislative Assembly on 15 June 2017, along with the Queensland Government's response. The Soorley Report made 74 recommendations concerning improvements to electoral processes and to achieve a greater level of consistency between state and local election administration (see **Appendix D** of this report).[22]

In response to recommendations in the Soorley Report of a policy and legislative nature, the government stated:

> *The Queensland Government will undertake a comprehensive review of early voting processes including postal and pre-polling voting as well as consider the other recommendations directed to Government that are of a policy and legislative nature (together with the ECQ's proposed legislative amendments referred to in the Report); engage with key stakeholders; and progress any amendments which are considered necessary and desirable in accordance with usual processes and timeframes in advance of the next ordinary general state election (for the inaugural four year fixed parliamentary term) and the next local government elections.*[23]

2.4 Additional electoral reforms

The Bill proposes to make additional amendments to the Electoral Act and Referendums Act to improve consistency across electoral systems, including achieving better alignment between Commonwealth, state and local government elections and referendums.[24] According to the Minister, these amendments are to support 'operational improvements to the electoral system', to 'improve aspects of the voter experience'.[25]

These amendments include measures to align Queensland's position with the Commonwealth position on prisoner voting, provide for the online publication of all returns and the release of elector information to prescribed entities, allow a returning officer to suspend or adjourn polling at a polling booth and expand the types of emergencies for which a poll may be suspended or adjourned.

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21 Independent Panel, *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election* (Soorley Report), March 2017, p 10. James (Jim) Soorley was Lord Mayor of Brisbane from 1991 to 2003.

22 Soorley Report, p 38.

23 Tabled report, 15 June 2017, p 2; the next Queensland state election is scheduled to be held on Saturday 31 October 2020. Pursuant to the *Constitution (Fixed Term Parliament) Amendment Act 2015,* ch 2, pt 2A, all elections following this election will be held every four years on the last Saturday of October. Local government elections are held every four years. The next local government elections will be held on Saturday 28 March 2020. Department of Local Government, Racing and Multicultural Affairs, *Local government elections*, https://www.dlgrma.qld.gov.au/local-government/local-government-elections.html.

24 Explanatory notes, pp 2-3.

25 Hon Yvette D'Ath MP, Attorney-General and Minister for Justice (Minister), Queensland Parliament, Record of Proceedings, 1 May 2019, p 1322.

The Minister stated that the Bill contains amendments to align the Electoral Act and other relevant legislation with the *Constitution (Fixed Term Parliament) Act 2015*, to give effect to four-year fixed terms.[26] On 2 December 2015, the Electoral (Constitutional) Amendment Bill 2015 was introduced by the-then Shadow Attorney-General, Ian Walker MP, but lapsed with the dissolution of the Parliament prior to the last state election on 29 October 2017. The objective of the Electoral (Constitutional) Amendment Bill 2015 was to align those provisions in the Electoral Act with the changes made by the *Constitution (Fixed Term Parliament) Act 2015* to introduce four-year fixed terms. The Bill incorporates amendments based on the lapsed Bill to achieve alignment in relation to fixed four-year terms.[27]

2.5 Expected cost of implementation of reforms from the Bill

The explanatory notes to the Bill do not detail the total allocated funding estimate for implementation of the proposed reforms in the Bill, but state that; '(t)he State Government will incur an additional cost in the implementation of the measures contained in the Bill'.[28]

Departmental representatives informed the committee that 'funding for the ECQ is a matter for the government's normal budget process'.[29]

In response to questioning at the public hearing of 27 May 2019, the ECQ informed the committee, that for the implementation of proposed reforms within the Bill and those proposed in the Belcarra Stage 2 Bill, the approximate estimated cost is largely due to updating and readjusting ECQ's two IT systems: the election management system (EMS) and the electronic disclosure system (EDS).[30]

Other costs are expected to be attributed to the proactive training of councillors, candidates, Members of Parliament and the community.[31] To provide context, the advertising campaign cost to promote public awareness and encourage voter participation for the 2017 state general election was $1.3 million, which encompassed design and production, television, radio, newspaper and digital advertising and social media engagement.[32]

According to the Electoral Commissioner, Mr Pat Vidgen, total expenditure to implement the proposed reforms is expected to be 'in the millions … without being precise', if the bills are passed.[33]

26 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1324.

27 Explanatory notes, p 2.

28 Explanatory notes, p 4.

29 Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General (department), public briefing transcript, Brisbane, 13 May 2019, p 4.

30 Pat Vidgen, Electoral Commissioner, ECQ, public hearing transcript, Brisbane, 13 May 2019, pp 27-28.

31 Pat Vidgen, Electoral Commissioner, ECQ, public hearing transcript, Brisbane, 13 May 2019, pp 27-28.

32 ECQ, correspondence dated 4 June 2019, p 1.

33 Public hearing transcript, Brisbane, 27 May 2019, pp 27-28.

3 Examination of the Bill

3.1 Amendments in response to the Belcarra Report

For the purposes of improving the 'integrity, transparency and public accountability of state elections', the Bill proposes to implement three recommendations from the Belcarra Report in relation to election funding and disclosure, and electoral offence and penalty provisions:[34]

- expanding the ECQ's statutory functions to include administering and promoting compliance with the election funding and financial disclosure provisions of the Electoral Act and the corresponding provisions of the LGEA (recommendation 31 of the Belcarra Report)
- placing an obligation on donors to notify a recipient of the true source of a gift (recommendation 6 of the Belcarra Report), and
- amending and introducing new offence and penalty provisions within the Electoral Act to improve consistency with the LGEA and the Referendums Act to support compliance (recommendation 30 of the Belcarra Report).

The Bill also proposes to affect consistency in state electoral administration in relation to a recommendation from the Belcarra Report concerning local government electoral reform:

- increasing the period over which funding and disclosure prosecutions can be brought from three years to four years from commission of the offence (consistent with recommendation 29 of the Belcarra Report).

The proposed reforms are considered in this section of the report (sections 3.1.1 to 3.1.4).

Stakeholder comment generally

The Environmental Defenders Office (Qld) (EDO (Qld)) was supportive of the policies to be implemented in the Bill in relation to implementation of recommendations from the Belcarra Report.[35]

The Whitsunday Regional Council expressed support for the Bill in respect of the implementation of recommendations from the Belcarra Report, and stated:

> *Council submits that any proposed reforms to local government should also be implemented by the State and supports amendments which impose the same obligations on candidates and elected members at the State and local level regarding electoral funding and financial disclosure.*[36]

Department response

The department acknowledged that the Bill and the Belcarra Stage 2 Bill are consistent in many respects. The department stated:

> *However, some differences are required which reflect the differing legislative requirements already in place (including certain features within Part 11 of the Electoral Act 1992 concerning electoral funding and financial disclosure), differences due to the nature of party politics at State level and the need for specific policy outcomes to be achieved at either the local or State government level.*[37]

34 Explanatory notes, p 1.

35 Whitsunday Regional Council, submission 1, p 1.

36 Whitsunday Regional Council, submission 1, p 1.

37 Department, correspondence dated 4 June 2019, p 2.

3.1.1 Expansion of ECQ's statutory functions

The Bill would amend the ECQ's statutory functions to include a new function 'to administer and promote compliance' in regard to electoral funding and financial disclosure. The Bill proposes to insert a new function of the ECQ at s 7 of the Electoral Act and at part 6 of the LGEA.[38] The amendments address recommendation 31 from the Belcarra Report.[39]

According to the Minister, the new provision 'recognises the critical role of the ECQ in monitoring and enforcing compliance with the election funding and financial disclosure requirements which are key to the integrity, transparency and accountability of the electoral system'.[40]

The expansion of the functions and powers of the ECQ are complemented by the amendment of existing provisions and the introduction of new offence and penalty provisions (as described in section 3.1.3 of this report).[41]

Stakeholder views

The Electoral Commissioner, Mr Pat Vidgen, submitted to the committee:

> *The ECQ supports the proposed change to statutory functions that acknowledges our important role of promoting compliance with the funding and disclosure provisions of the Electoral Act. This is a responsibility that I, as commissioner, take very seriously and it is a function that the ECQ has developed significantly over recent years with the implementation of the Prohibited Donors Scheme and real-time electronic disclosure.*[42]

The EDO (Qld) was supportive of expanding the ECQ's statutory functions to include administering and promoting compliance with the election funding and financial disclosure provisions of the Electoral Act and the corresponding provisions of the LGEA.[43]

3.1.2 Obligation to disclose true source of a gift

Disclosure return

Currently all candidates, registered political parties, associated entities, groups and individuals are required to submit a return to the ECQ disclosing details of any loans, donation and gifts given or received. All returns received prior to the introduction of ECQ's EDS on 1 March 2017 are published, as submitted, on the disclosure returns page of the ECQ website. All reportable transactions received after that date are published through the EDS.[44]

The current requirements for a disclosure return are as follows: any gift or loan of $1,000 of more from an individual or organisation must be reported to the ECQ within seven business days of the transaction by the candidate or registered political party receiving them, and by the entity making them. A candidate or registered third party who receives gifts totalling $1,000 or more from a third party must advise the third party that they are also required to disclose the gift through the ECQ's EDS.[45]

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38 Bill, cl 5.

39 Bill, cl 5; department, correspondence dated 10 May 2019, p 2.

40 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1322.

41 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1322.

42 Public hearing transcript, Brisbane, 27 May 2019, p 26.

43 Environmental Defenders Office (Qld) Inc (EDO (Qld)), submission 4, p 1.

44 ECQ, *Funding and disclosure*, https://www.ecq.qld.gov.au/candidates-and-parties/funding-and-disclosure.

45 ECQ, *Funding and disclosure handbook: for state elections and by-elections*, September 2018, p 1.

The Bill proposes to place an obligation on donors to notify a recipient of the true source of a gift.[46] This measure would implement recommendation 6 of the Belcarra Report.[47]

The new requirement would apply in circumstances where a first person or entity provides a gift or loan through an intermediary with the main purpose of enabling that intermediary to make an ultimate gift or loan to a recipient who is a registered political party, candidate or a third party,[48] so that the first person or entity is considered to be the 'source' of the gift or loan.[49] The circumstances would be prescribed in new s 260A of the Electoral Act.[50]

Where an entity that is not the source of a gift makes a gift or loan up to equal or exceeding the gift threshold amount of $1,000, to a recipient who is a registered political party, candidate or a third party, the entity must give the recipient a notice that states that the entity is not the source of the gift or loan and provide the relevant particulars of the entity that is the source of the gift or loan.[51] This requirement also applies to an entity making a gift to third parties who incur expenditure for political purposes.[52]

The Bill requires the ultimate recipient to incorporate relevant particulars of the source in their disclosure returns, within the disclosure period.[53]

Failure to comply with this requirement is an offence with a maximum penalty of 20 penalty units.[54]

Disclosure period

The current disclosure period for gifts or loans as defined within the Electoral Act and the Electoral Regulation 2013 is as follows: the disclosure period for a candidate who stood for election in the preceding four years commences 30 days after the polling day and ends 30 days after polling day for the current election. For all other candidates, the disclosure period begins when the person is preselected by their party to contest the election, announces or publicly indicates their intention to be a candidate or nominates as a candidate, whichever day is earliest.[55]

The Bill proposes to replace s 198, which sets out the meaning of the term 'disclosure period', with a new s 198 to redefine 'disclosure period' for candidates *and* third parties in order to ensure the disclosure period is consistent with the introduction of four-year terms, and to incorporate recommendation 6 of the Belcarra Report.[56]

The disclosure period for a third party providing gifts to candidates is the period that commences 30 days after the polling day for the last state general election and ends 30 days after the polling day for the election.[57]

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46 Electoral Act, s 271: It is unlawful for a candidate or person acting on behalf of a candidate to receive gifts equal to $200 or more, or for a political party to receive gifts equal to $1000 or more, unless the name and contact details of the giver are known and the receiver has no grounds to believe the name and address given are not the true name and address of the third party.

47 Explanatory notes, p 21.

48 Electoral Act, s 197: A *third party* means an entity other than a registered political party, an associated entity or a candidate.

49 Explanatory notes, p 21.

50 Bill, cl 59.

51 Department, correspondence dated 10 May 2019, p 2.

52 Bill, cl 62; explanatory notes, p 9.

53 Bill, cls 60 to 65; department, correspondence dated 10 May 2019, p 2.

54 Explanatory notes, p 21. Regulation 3 of the Penalties and Sentences Regulation 2015 sets the value of a penalty unit at $130.55, as at 1 July 2018. The value of a penalty unit will rise from 1 July 2019 to $133.45.

55 Electoral Act, s 198; Electoral Regulation 2013, s 7.

56 Bill, cl 58, new section 198 (1) – (2).

57 Bill, cl 58, new section 198(3).

Additionally, for candidates who did not stand for election in the last state general election, the disclosure period will, under the new proposed s 198, commence on the earliest of nomination, or *indication* of an intention to be a candidate, for example, by accepting a gift made for a purpose related to the election.[58]

The length of the disclosure period is currently prescribed in ss 8A-8D of the Electoral Regulation 2013, pursuant to ss 261-265 of the Electoral Act.

On introducing the Bill, the Minister stated that, it 'would require all donations and loans made within seven days of polling day to be disclosed within 24 hours of them being made.'[59] The Bill does not contain amendments to require disclosure within 24 hours of donations given in the last seven days before polling day. The department confirmed that 'it is proposed to amend the Electoral Regulation 2013 to require 24 hour disclosure of gifts given in the last seven days before an election'.[60]

Stakeholder views and department response

The EDO (Qld) was supportive of the proposed obligation to notify the true source of a gift or loan in their submission to the inquiry.[61]

The department noted the support of EDO (Qld) on the Bill.[62]

3.1.3 New and amending offence and penalty provisions

The Bill purports to introduce and amend offence and penalty provisions in the Electoral Act to align with offences and penalties in the LGEA. The provisions are a consequence of recommendation 30 of the Belcarra Report which called for increased penalties for offences in the LGEA so as to be 'an adequate deterrent to non-compliance'.[63]

New and amending offences and penalties include:

- failure by returning officers (ROs) or assistant ROs to notify the ECQ if they become a member of a political party; maximum offence for non-compliance 40 penalty units[64]
- a person wearing or displaying a badge or emblem of a political party or candidate in an election during voting hours in a polling booth; maximum one penalty unit[65]
- failure to give notice under new s 312A for persons who lodge an incomplete return to provide the ECQ with additional information within five years; 20 penalty units
- an increase in the maximum penalty for third parties who submit false and misleading claims or returns under part 11 of the Electoral Act; from 50 to 100 maximum penalty units[66]
- failure to give notice of the true source of the gift; 20 penalty units[67]
- publish information about a gift to a candidate, registered political party or third party that the person knows is false or misleading; 20 penalty units,[68] and

58 Bill, cl 58; new section 198(3).

59 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1323.

60 Department, correspondence dated 4 June 2019, p 2.

61 EDO (Qld), submission 4, p 1.

62 Department, correspondence dated 4 June 2019, p 5.

63 Belcarra Report, p xviii.

64 Bill, cl 8.

65 Bill, cl 52, aligning with s 187 of the *Local Government Electoral Act 2011* (LGEA).

66 Bill, cl 67.

67 Bill, cl 59.

68 Bill, cl 68; new s 307D aligning with s 129 of the LGEA, but set to move to s 195A pursuant to clause 249 of the Belcarra Stage 2 Bill.

- use, disclose or allow another person to access elector information unless it is for a purpose related to an election; 200 penalty units.[69]

Clauses 103, 104, 105, 106 and 107 amend sections 72, 73, 76, 77 and 78 of the Referendums Act to align those sections with penalty provisions in the Electoral Act.[70]

Stakeholder views

There was some support from stakeholders for the new and amending penalty provisions.[71]

The ECQ submitted:

> *The new penalties proposed through the bills [Electoral and Other Legislation Amendment Bill 2019 and Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019] will support the ECQ in performing this regulatory role while also heightening the expectation of the ECQ taking compliance and enforcement action against those who fail to uphold the law.*[72]

The EDO (Qld) supported the provisions to amend and introduce new offence and penalty provisions within the Electoral Act to improve consistency with the LGEA and the Referendums Act, and to support compliance.[73]

The Queensland Local Government Reform Alliance Inc was supportive of the penalties proposed in the Bill and the Belcarra Stage 2 Bill, and stated:

> *There must be penalties that are proportionate and material to any breach of legislation. … We support registers and declarations which need to be publicly available.*[74]

The Queensland Law Society (QLS), in referring generally to both the Bill and the Belcarra Stage 2 Bill, expressed some reservation as to the proposed new and amending penalties, being 'broad in nature' and able to 'catch a great variety of different conduct' ranging from serious offences, to those that could be considered 'very minor misconduct'.[75]

The QLS drew attention to:

> *… a discrepancy … between the penalties imposed for failure to vote in a Commonwealth election ($20.00) and a Queensland election (1 penalty unit, currently $130.55). The Society questions whether there is an intention to have consistency between penalties.*[76]

Department response

The department responded to the noted discrepancy in penalties by clarifying that 'the Bill does not include amendments to change the current penalty imposed for failing to vote at a Queensland State election'.[77] The Bill includes measures to align the penalties between the LGEA and the Electoral Act. The department stated:

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69 Bill, cl 47.

70 Department, correspondence dated 10 May 2019, p 3.

71 See for example Greg Smith, Local Government Reform Alliance Inc, public hearing transcript, Brisbane, 27 May 2019, p 18; EDO (Qld), submission 4, p 1.

72 Pat Vidgen, public hearing transcript, Brisbane, 27 May 2019, p 26.

73 EDO (Qld), submission 4, p 1.

74 Greg Smith, public hearing transcript, Brisbane, 27 May 2019, p 18.

75 Matt Dunn, General Manager, Public Affairs and Governance, Queensland Law Society (QLS), public hearing transcript, Brisbane, 27 May 2019, p 38.

76 QLS, submission 5, p 2.

77 Department, correspondence dated 4 June 2019, p 6.

The Bill does not attempt to align penalties or other provisions of the Electoral Act with the Commonwealth Electoral Act 1918. Any such alignments are beyond the scope of the Bill.[78]

3.1.4 Time period for funding and disclosure prosecutions

The Bill proposes to increase the time period during which funding and disclosure prosecutions can be brought, from three years to any time within four years after the offence was committed.[79] The provision would complement the new, and amending, offence and penalty provisions contained in the Bill, and align the Electoral Act to fixed four-year terms (refer to sections 3.1.3 and 3.3.1 of this report).

The Bill would insert new s 435 which provides that the extended period for prosecution only applies to offences committed after commencement.[80]

Stakeholder views

The EDO (Qld) was supportive of the reforms concerning prosecutions.[81]

3.2 Amendments in response to the Soorley Report

The Soorley Report identified potential opportunities for operational improvements to both elections and referendums, including improvements to technology, communication, postal voting and the role and employment of ROs.[82]

The Bill intends to implement recommendations 4, 41, 43, 61 and 74 of the Soorley Report for the purposes of operational improvements and to support efficiencies in the state electoral system,[83] including 'making the voting experience faster and easier for those who do participate'.[84]

Recommendation 74 of the Soorley Report refers to 14 items of suggested amendments to 'be investigated and implemented as appropriate'.[85] During the inquiry by the Independent Panel, the ECQ provided these suggested amendments to the Electoral Act and the LGEA, to 'assist ECQ to streamline the conduct of elections and increase consistency between state and local government election operations'.[86]

The Bill proposes to implement items 1, 2, 3, 4, 5, 9, 11, 12, 13 and 14 of recommendation 74 (see *Soorley Report Appendix to Recommendation 74 - ECQ proposed legislation amendments*, **Appendix D** of this report).

Stakeholder comment generally

The ECQ was supportive of the recommendations made in the Soorley Report. In considering the proposed amendments in the Bill that implement these recommendations, the ECQ stated that:

78 Department, correspondence dated 4 June 2019, p 6.

79 Bill, cl 67

80 Bill, cl 73; department, correspondence dated 10 May 2019, p 3.

81 EDO (Qld), submission 4, p 1.

82 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1323.

83 Explanatory notes, p 2.

84 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1323.

85 Soorley Report, p 38.

86 Soorley Report, Appendix 5.

> *Overall, these amendments will allow the ECQ to modernise processes in planning and conducting election events, in line with public expectations around accessing information and exercising choice in voting options. A number of these amendments, in particular those implementing recommendation 74 of the Soorley report, would implement improvements identified by the ECQ to streamline the conduct of elections and enhance consistency between state and local government elections.*[87]

The ECQ noted the proposed reforms would have positive consequences for electoral administration:

> *Increasing consistency in processes for state and local government elections will reduce the complexity and risk inherent in the ECQ's ongoing requirements for the training of temporary election staff. The amendments will also impact on the development of the EMS, and these requirements are being incorporated into current planning and delivery processes.*[88]

3.2.1 Appointment of returning and assistant returning officers

The Bill proposes to enable the ECQ, rather than the Governor in Council, to appoint ROs and assistant ROs, to be consistent with the LGEA and in accordance with recommendation 4 of the Soorley Report.[89] Additionally, the Bill would require ECQ to terminate such appointments where the officer becomes a member of a political party.[90]

The Soorley Report found that the recruitment and selection process for ROs was 'inadequate, inconsistent and lacking transparency'.[91] Currently the ECQ appoints ROs for each local government area, while the Governor in Council appoints ROs for state government elections. The Soorley Report observed the practice whereby many ROs were often already selected and automatically reappointed for state elections.[92]

Consequently, the Soorley Report recommended (at recommendation 4 and item 1 of recommendation 74) that the current practice of the Governor in Council appointing ROs for state elections be discontinued and all ROs be appointed, or terminated, by the ECQ.[93] The Bill proposes an amendment to s 31 of the Electoral Act to align the section with corresponding provisions in the LGEA in respect to ROs and assistant ROs.[94]

The Bill would require the ECQ to terminate such appointments where the RO becomes a member of a political party.[95]

Clauses 6 and 7 of the Bill propose to validate any actions or decisions taken by the RO, so as to ensure an election remains valid during any period in which an officer becomes a member of a political party before their appointment is officially terminated.[96]

87 ECQ, submission 2, p 3.

88 ECQ, submission 2, p 3.

89 Leanne Robertson, department, public briefing transcript, Brisbane, 13 May 2019, p 2.

90 Bill, cls 6-7.

91 Soorley Report, p 17.

92 Soorley Report, p 17.

93 Soorley Report, p 17.

94 Bill, cls 6, 7.

95 Bill, cls 6, 7.

96 Explanatory notes, p 11.

The Bill intends to create a new s 32A, with an obligation for an RO or assistant RO to immediately notify the ECQ if the officer becomes a member of a political party, unless the officer has a reasonable excuse.[97] The maximum penalty for failure to notify the ECQ would be set at 40 penalty units (refer to sections 3.1.3 and 4.1.1 of this report).[98]

3.2.2 Deadline for postal vote prior to polling day

During investigation of the March 2016 local government elections, the Soorley Report found instances where ballot papers intended for postal vote were not received by voters or were delayed in the postal system, as well as instances of ballot papers being delivered by Australia Post after election day.[99]

Currently the ECQ must send a ballot paper and declaration envelope to an elector who requests a postal vote if the request is received no later than 7pm on the Wednesday before polling day. According to the explanatory notes, this cut off determination does not reflect current postal service delivery standards and is unlikely to reach persons who request a ballot paper close to the current cut-off before polling day, especially people living in remote and regional areas.[100]

The Bill would implement recommendation 41 and item 13 of recommendation 74 of the Soorley Report, by amending the deadline by which applications for postal votes must be made. The Bill proposes to amend s 119 of the Electoral Act to provide that an elector's postal vote request must be received by the ECQ not later than 7pm on the day that is 12 days before the polling day of the election. It is intended the amendment would ensure all electors who request a postal vote to have 'a reasonable prospect' of the postal ballot being received before polling day.[101]

The Bill would also require the RO to post, deliver or send the ballot paper or declaration envelope as soon as practicable after receiving the request, implementing the intent of recommendation 43 of the Soorley Report.[102]

The department informed the committee that the new deadline will assist in quicker processing times, in so far as:

> *… having an earlier cut-off means that voters will ideally take the initiative to register to automatically receive the postal ballot as soon as the election is announced, which means that hopefully they will return their completed ballot papers sooner as well.*[103]

The department advised the committee that the ECQ is intending to undertake a communications strategy to ensure there is adequate public education of the new cut-off day for postal vote applications.[104]

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97 Bill, cl 8.

98 Whether the 'reasonable excuse' in the clause potentially raises a breach under the LSA in regard to onus of proof, is discussed at section 4.1.1 of this report.

99 Soorley Report, p 25.

100 Explanatory notes, p 7.

101 Bill, cl 38(1); explanatory notes, p 7.

102 Bill, cl 38(2); Soorley Report, p 57.

103 Melinda Tubolec, Senior Legal Officer, Strategic Policy and Legal Services, department, public briefing transcript, Brisbane, 13 May 2019, p 7.

104 Leanne Robertson, department, public briefing transcript, Brisbane, 13 May 2019, p 7.

3.2.3 Absentee voters to be issued with an ordinary vote

Currently, electors who are not in their electoral district but wish to undertake a pre-poll, visit a polling booth on election day outside of their electorate, or use mobile polling during the pre-poll period, must make a declaration vote. The Soorley Report noted that, during the 2015 state general election, 159,421 absent declaration votes were lodged either on polling day, at declared institutions or by mobile polling.[105]

The Bill will enable absentee voters to be marked off the electoral roll at the polling booth and issued with an ordinary vote rather than a declaration vote.[106]

The Bill allows printing of ballot papers at any polling booth for each electoral district available to voters for use by ordinary vote.[107]

According to the department, the reform will make voting faster and easier for absentee voters and achieve efficiencies for the ECQ.[108]

3.2.4 Issuing of replacement ballot papers

The Soorley Report noted reports of water-damaged postal vote forms and ballot papers from local government elections held in March 2016, in regional areas affected by monsoonal weather. Additionally, the Report noted a significant number of ballot papers not witnessed or incorrectly filled in, as well as confusion over the correct envelope to deliver the ballot paper.[109] The Soorley Report recommended (at item 2 of recommendation 74) that the ECQ have the capacity, under certain circumstances, to provide a voter with a replacement ballot paper and declaration envelope for use in an election.[110]

The Bill proposes to insert new s 123A to enable an issuing officer at a polling booth to give an elector another ballot paper if they are satisfied the ballot paper is marked, damaged or destroyed to the extent that it cannot be used to make a vote.[111]

The Bill would insert new s 123B to allow an RO to provide a postal voter with a replacement ballot paper if the voter requests it, either by mail or in person at a polling booth.[112] The proposed new s 123B requires the elector to make a declaration on the declaration envelope as to the nature of the damage to the ballot paper or that the ballot paper was never received, and that the elector has not otherwise already voted in the election.[113]

Stakeholder views

Mr Pat Coleman submitted that there would need to be strict compliance methodology in place to ensure the authenticity of ballot papers where they are to be printed at polling booths.[114]

105 Soorley Report, p 57.

106 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1323.

107 Bill, cl 23.

108 Leanne Robertson, department, public briefing transcript, Brisbane, 13 May 2019, p 3.

109 Soorley Report, p 27.

110 Soorley Report, p 53.

111 Bill, cl 40.

112 Bill, cl 40.

113 Bill, cl 40.

114 Pat Coleman, submission 3, p 4.

Department response

In response to concerns regarding security and authenticity, the department stated:

> *… reproduced ballot papers are subject to the same legislative requirements as pre-printed ballot papers, and when printed, will be identical. All ballot papers, whether pre-printed or reproduced, will be printed on the same paper. This paper has security measures to show it is an original ballot paper: laminated on front with multiple copies of the ECQ logo which is visible under a blue light; and secretive markers printed on the back which is a printed weave pattern that conceals how the elector votes when folded.*[115]

3.2.5 Preliminary processing of declaration envelopes

The Bill proposes to amend s 125 of the Electoral Act with regard to the examination, and preliminary processing of declaration envelopes and ballot papers, to clarify that the process may occur before or after polling day.[116] The proposed amendment would allow for all the ballots to be taken out of their declaration envelopes and be ready in a ballot box for counting in a preliminary count.[117]

The proposed amendment is in response to the Soorley Report which identified understaffed polling booths, polling booth staff working late into the night to complete the count, and variations in the method of counting during the 2016 local government elections.[118]

According to the department, the amendment would allow the ECQ to 'better disperse its workload over the election period and allow the election result to be determined sooner'.[119]

To effect the change, cl 44 enables the ECQ to include ballot papers from declaration envelopes in the preliminary count of the election by amendment to s 127 of the Electoral Act.[120]

In terms of maintaining the security of ballot papers and secrecy of the vote, cl 44 directs ECQ staff to follow procedures approved under the new s 130A to ensure the secrecy of the vote is maintained.[121] New s 130A would enable the ECQ to make procedures about how absentee votes at an election are to be counted.[122] The procedures would be enabled by regulation and published on the ECQ website.[123]

The Soorley Report recommended that preliminary counting commence prior to the closing of the polls on election day, and for the counting to occur in a secure area. The Bill does not articulate a time when preliminary processing or counting may commence; however the procedures described in new s 130A(2) and to be enabled by regulation, are expected to set out the circumstances in which absentee votes are subject to preliminary counting at a polling booth.[124]

115 Department, correspondence dated 4 June 2019, p 3.

116 Bill, cl 42.

117 Melinda Tubolec, department, public briefing transcript, Brisbane, 13 May 2019, p 7.

118 Soorley Report, p 30.

119 Leanne Robertson, department, public briefing transcript, Brisbane, 13 May 2019, p 2.

120 Melinda Tubolec, department, public briefing transcript, Brisbane, 13 May 2019, p 7.

121 Bill, cl 46.

122 Bill, cl 46; explanatory notes, p 19.

123 Bill, cl 46; s 130A(3).

124 Bill, cl 46; s 130A(3).

3.2.6 Retention of financial records and election papers

The Bill proposes to change the period for which financial records are to be kept by the ECQ, candidates, parties and third parties in relation to electoral funding and expenditure to five years, from the date the claim or return was made or required to be made.[125] The provisions would implement items 4 and 5 of recommendation 74 of the Soorley Report to accord with provisions within the LGEA, and align to four-year fixed parliamentary terms from 2020. The proposed amendment would also complement the proposed change to increase the period over which proceedings can be initiated for offences against the funding and disclosure provisions of the Electoral Act (refer to section 3.1.4 of this report).

Currently, s 136 of the Electoral Act requires the storage of formal ballot papers only, and declaration envelopes, until the day or issue of the writ for the next state general election.[126] Clause 48 of the Bill proposes that the timeframe for which formal and informal ballot papers for the election, certified copies of electoral rolls and declaration envelopes must be kept is for a minimum time period of one year after the polling day for the election, or longer if there is an application to dispute or appeal an election or the material is being used for authorised analysis or research.[127]

An equivalent amendment is proposed to the Referendums Act by cl 102 of the Bill.

Stakeholder views

Mr Pat Coleman submitted that financial records should be kept for 10 years, 'because prosecutions can be stalled by incumbent governments'.[128]

Department response

The department stated that the five-year requirement for retention of financial records accords with the change to the prosecution period for offences against part 11 of the Electoral Act from three to four years and to ensure that financial records will be available for any prosecutions.[129] According to the department:

> *It is not necessary to require persons to store the financial records beyond the prosecution period. It is noted that most persons would be required to keep the records for a period of 7 years for taxation purposes nonetheless.*
>
> *…*
>
> *It is also noted that returns are to be published on ECQ's website and will continue to be available beyond the four year period. The storage requirement only relates to retention of the original receipts and records.*[130]

3.2.7 Additional amendments to the Electoral Act

The following amendments to the Electoral Act are intended to increase transparency and accountability,[131] and enhance electoral processing and efficiency:

- provision of a choice of payment methods for nomination payments to include payment by credit card and electronic bank transfer[132]

125 Bill, cl 69; explanatory notes, p 8.

126 Electoral Act, s 136(1).

127 Bill, cl 48.

128 Pat Coleman, submission 3, p 4.

129 Department, correspondence dated 4 June 2019, p 4.

130 Department, correspondence dated 4 June 2019, p 4.

131 Minister, Queensland Parliament, Record of Proceedings, 1 May 2019, p 1323.

132 Bill, cl 18 implementing item 9 of recommendation 74 of the Soorley Report.

- notification of polling locations on the ECQ website and removal of the current requirement that polling booths, pre-poll centres and mobile polling booths be notified in the *Queensland Government Gazette*[133]
- removal of the requirement for ballot papers to be attached to a butt numbered in a regular arithmetical sequence; the butt will instead be required to feature the name of the electoral district, an amendment that would reduce excess printing costs with 'no corresponding security advantage',[134] and
- requirement for ballot papers to direct voters to number every square in the order of their preference.[135]

3.3 Amendments to enable additional electoral reforms

The Bill proposes amendments to the Electoral Act and other legislation to improve consistency across the electoral system and to reflect the adoption of four-year fixed parliamentary terms in Queensland. The policy objectives in these proposed reforms are outside of the government's response to recommendations from the Belcarra Report and the Soorley Report.

3.3.1 Amendments to reflect four-year fixed parliamentary terms

The Bill contains amendments to the Electoral Act, the POQA, the *Acts Interpretation Act 1954* and consequential amendments to the *Constitution of Queensland Act 2001* to align with changes made by the *Constitution (Fixed Term Parliament) Act 2015*. The Bill contains amendments to redistribution provisions and disclosure periods that apply to candidates in an election to reflect fixed four-year terms.

The proposed amendments would vary provisions concerning:

- electoral redistributions to reflect four-year fixed terms and to provide that a redistribution does not affect a by-election before the Legislative Assembly is next dissolved or expired (cls 9, 10 and 11)
- the preparation of the electoral roll to be three years after a state general election, reflecting four-year terms (cl 12), and
- amendment of the disclosure periods applying to candidates to be consistent with four-year terms (cl 58).

Providing the Speaker or Governor discretion to issue writs to fill vacancies

Clause 15 of the Bill proposes to omit and replace ss 82 and 83 of the Electoral Act, in relation to writs for elections. With four-year fixed terms providing greater certainty of the next election date, the Bill would provide discretion for the Speaker or the Governor not to issue a writ to fill a vacancy in the Legislative Assembly in the last three months before the next normal dissolution day for the Legislative Assembly.[136]

The intention of the amendment is to avoid the expense and operational impost for the ECQ, and inconvenience to electors, of holding by-elections in the three months before the dissolution of the Legislative Assembly for an ordinary state general election.[137]

133 Bill, cls 19 - 21 implementing item 3 of recommendation 74 of the Soorley Report.

134 Bill, cl 24 implementing item 12 of recommendation 74 of the Soorley Report; explanatory notes, p 3.

135 Bill, cl 24.

136 Bill, cl 15; explanatory notes, p 3.

137 Department, correspondence dated 10 May 2019, p 8.

The committee has noted (in section 1.5 of this report) that cl 15 of the Bill triggers s 4A of the *Constitution of Queensland Act 2001*, requiring an absolute majority in the Legislative Assembly in order to be presented to the Governor for assent.[138]

3.3.2 Prisoner voting

Under s 106 of the Electoral Act, persons serving a sentence of imprisonment are not entitled to vote at an election for an electoral district.

The Bill proposes to amend s 106(3) of the Electoral Act so that a person who is serving a sentence of imprisonment of less than three years will be entitled to vote.

The amendment would align Queensland's position with the Commonwealth position following the High Court's decision in *Roach v Electoral Commission* [2007],[139] which found that amendments to Commonwealth legislation disqualifying all prisoners from voting were invalid, 'because it cast the net of disqualification too widely without regard to the culpability of the offender'.[140] The Court upheld the validity, however, of the previous law providing that prisoners serving a sentence of three years or longer are not entitled to vote.

Queensland is currently the only state or territory to not allow any prisoners to vote if they are serving a custodial prison sentence.

In South Australia and the Australian Capital Territory prisoners are not disqualified from voting.[141] All other jurisdictions disqualify certain prisoners from voting in elections, depending on the sentence being served. Minimum sentences vary between jurisdictions: from one year or longer in New South Wales and Western Australia, three years in Tasmania, and five years in Victoria.[142] The *Commonwealth Electoral Act 1918* (Cth) enables prisoners serving a sentence of three years or less to vote in any Senate or House of Representatives election.[143]

Generally, prisoners vote as registered postal voters. In Western Australia and the Northern Territory, some correctional facilities are serviced by mobile polling facilities.[144]

Accounting for the differences between jurisdictions, the department stated that the reasoning for setting the Queensland position to the three years or less sentence eligibility was to 'mirror' the Commonwealth, and because:

> *Queensland has a joint roll arrangement with the Commonwealth, there are advantages in making use of the Commonwealth systems available to the ECQ to annotate the roll with corrections data.*[145]

138 Department, correspondence dated 10 May 2019, p 2.

139 *Roach v Electoral Commission* [2007] HCA 43.

140 Explanatory notes, p 5.

141 *Electoral Act 1985* (SA), s 29(5); *Electoral Act 1992* (ACT), s 72(1) and (2).

142 *Electoral Act 2017* (NSW), s 30(4); *Electoral Act 1907* (WA), s 18(1)(c); *Electoral Act 2004* (Tas), s 31; *Constitution Act 1975* (Vic), s 48(2)(b).

143 *Commonwealth Electoral Act 1918* (Cth), s 93(8AA).

144 Australian Electoral Commission, *Remote mobile polling locations (as at the 2019 federal election)*, https://www.aec.gov.au/election/remote.htm.

145 Melinda Tubolec, department, public briefing transcript, Brisbane, 13 May 2019, p 5.

The Bill intends to amend the Electoral Act to provide that persons in detention (including those on remand and those sentenced to a term of imprisonment) must make a declaration vote and vote by way of postal voting.[146] The electoral district in which a person who is serving a sentence of imprisonment is entitled to be enrolled is the electoral district for which the person was enrolled immediately before starting to serve their sentence. If the person was not enrolled prior to imprisonment, the relevant district will be an electoral district in which their next of kin is enrolled, the district where the person was born, or the district to which the prisoner has the closest connection (in that order of precedence).[147]

On the capacity for prisoners to vote in secrecy and without intimidation, the department informed the committee that there are strict requirements in the Electoral Act to ensure the secrecy of the vote. Accordingly, the department advised that it has 'every assurance' in Queensland Corrective Services being able to arrange for prisoner voting in accordance with the Electoral Act.[148]

Stakeholder views

The EDO (Qld) submitted that the provisions for prisoner voting would improve fairness for those in shorter periods of detention by aligning Queensland's position with the Commonwealth position.[149]

The QLS welcomed the Bill's proposed amendment to prisoner voting. The QLS stated:

> *As a representative democracy, the citizens of Queensland have the right to determine who governs through voting at an election for their electoral district. Moderating the Act's current position in favour of a broad class of prisoners will allow a greater percentage of Queenslanders to access their right to vote.*[150]

Mr Bill Tait was supportive of the Bill's amendments to the Electoral Act to allow eligible prisoners to vote, but submitted that all prisoners should have the right to vote. Mr Tait also submitted that mobile polling would provide a 'more due democratic process' than the proposed postal voting method.[151]

Department response

The department noted the comments about prisoner voting and welcomed the support of the QLS and EDO (Qld).[152]

3.3.3 Online publication of returns

The Bill provides for the online publication of all returns, and for certain information to be withheld for privacy or other reasons by way of regulation.

The ECQ has been publishing returns online in addition to those specifically authorised to be published under s 316 of the Electoral Act, since the 2009 state election.

The Bill proposes to amend s 316 (Publishing of returns) and s 317 (Inspection and supply of copies and returns) to reflect current practice.[153]

146 Bill, cl 34, amendment to s 115 of the Electoral Act; department, correspondence dated 10 May 2019, p 9.

147 Department, correspondence dated 10 May 2019, p 8.

148 Melinda Tubolec, department, public briefing transcript, Brisbane, 13 May 2019, p 6.

149 EDO (Qld), submission 4, p 2.

150 QLS, submission 5, p 2.

151 Bill Tait, submission 7, pp 3-6.

152 Department, correspondence dated 4 June 2019, p 5.

153 Bill, cls 71, 72; explanatory notes, pp 23-24.

A new subsection 316(3) to the Electoral Act is proposed to ensure that when publishing a copy of a return, information about a silent elector, or other information, is deleted. The clause would also require the ECQ to publish a return within five working days after it is given to the ECQ.[154]

The Bill would introduce new s 433 (Publication of returns) in the Electoral Act to validate the past publication of returns by the ECQ.[155] Section 433 would provide that returns to which s 316 did not apply before the intended commencement of the provisions in this Bill and were published by the ECQ on its website were, and continue to be, published for the purposes of the Electoral Act.[156]

3.3.4 Suspension and adjournment of polls

Suspension of poll at a polling booth

Clauses 21 and 78 respectively propose to insert new s 99B in the Electoral Act and new s 16B in the Referendums Act. These provisions allow a RO to suspend the poll at a polling booth on polling day for not more than four hours if the taking of the poll is, or is likely to be, temporarily interrupted or obstructed by:

- a serious threat of a riot or open violence happening, or
- a serious risk to the health or safety of persons at the polling booth, or
- another emergency.[157]

The new provisions require the RO to adjourn the conduct of the poll if:

- for any reason, taking of the poll at the polling booth cannot resume on polling day, or
- the RO is satisfied that it is unreasonable for an elector who would have otherwise cast a vote at the polling booth while it was suspended to have cast a vote at another polling booth.

Adjournment of poll at a polling booth

Clauses 22 and 79 respectively propose to replace current s 100 of the Electoral Act and amend s 17 of the Referendums Act to expand the circumstances in which the RO may adjourn the poll at a polling booth.[158]

At present, the RO may adjourn the poll at a polling booth if the taking of the poll is, or is likely to be, interrupted or obstructed by:

- storm, tempest, flood, fire or a similar happening, or
- riot or open violence.

The Bill would provide that an RO may adjourn the poll at a polling booth if satisfied that the taking of the poll at the polling booth is, or is likely to be, interrupted or obstructed by any of the following to the extent that the taking of the poll cannot start or continue at the polling booth:

- a storm, flood, fire or similar happening
- a riot or open violence
- a serious threat of a riot or open violence happening

154 Bill, cl 71; explanatory notes p 23.

155 Bill, cl 73.

156 Explanatory notes, p 24.

157 See also Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019, cl 169.

158 See also Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019, cl 170.

- a serious risk to the health or safety of persons at the polling booth, or
- another emergency.[159]

Under the proposed amendments, the ECQ must publish notice of the day fixed for taking, or resuming, the adjourned poll on the ECQ's website and in other ways the ECQ considers appropriate. Currently, the notification must be given in the *Queensland Government Gazette* and other ways the ECQ considers appropriate.

Committee comment

The committee notes that new ss 99B(3) and 100(1) operate on the basis of an RO *being satisfied* of certain elements in order to suspend or adjourn a poll, whereas new s 99B(1) is expressed in what might be considered absolute terms because the phrase 'being satisfied' is not included in the provision. The same issues arise regarding the Referendum Act amendments. New s 16B(1) relates to the suspension of a poll in absolute terms, whereas new ss 16B(3) and 17(1) operate on the basis of a RO *being satisfied* of certain elements. The department noted this possible minor drafting issue.[160]

3.3.5 Release of elector information

The Bill proposes a new s 133A in the Electoral Act to require the ECQ to:

- publish information about first preference votes and the distribution of votes, and
- give a registered political party or an independent member elector information including names and addresses, method of voting and in some instances location of voting, on request.[161]

According to the explanatory notes, the new provisions will:

> *… assist the analysis of the demographics and patterns of voting at polling booths and changes in those demographics and patterns over time. It will also assist in communicating relevant information to electors (for example, where the location of polling booths change between elections). The information will also assist political participants to communicate with electors.*[162]

The committee notes that in relation to privacy concerns, the elector information referred to in the provisions relate to voting method rather than the actual vote cast, so that the secrecy of the ballot is still maintained.[163] Elector information to be released under the proposed provisions is set out at new s 133A(4):

> *The elector information about an elector who voted in an election is—*
>
> *(a) the elector's name and address; and*
>
> *(b) whether the elector voted in person, by post or in another way; and*
>
> *(c) if the elector voted in person at a polling place in the electoral district for which the elector was enrolled for the election—the location of the polling place.*

The department informed the committee that the new provision was 'a policy decision of government' and is consistent with information already provided in relation to Commonwealth elections. The provision is consistent with elector information release arrangements in New South Wales and Victoria.[164]

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159 Electoral Act, proposed new s 100 (Bill, cl 22).

160 Department, correspondence dated 4 June 2019, p 2.

161 Bill, cl 47.

162 Explanatory notes, p 6.

163 Melinda Tubolec, department, public briefing transcript, Brisbane, 13 May 2019, p 4.

164 Department, correspondence dated 20 May 2019, attachment 1.

Committee comments

The committee notes two safeguards in the new provision to maintain personal privacy. Firstly, the Bill provides that the ECQ must not give elector information about a silent elector[165] to a registered political party or independent member.[166] Secondly, the new provision makes it an offence with a maximum penalty of 200 penalty units to use, disclose or allow another person to access elector information, unless the use, disclosure or giving of access is for a purpose related to an election.[167]

The committee notes the Bill does not contain a transitional provision in relation to the release of elector information from previous elections and is unclear as to the extent of the provision's retrospectivity.

As to whether the ECQ would be enabled to release elector information from the 2017 state general election, the department stated it:

> *… understands that the Electoral Commission Queensland (ECQ) is able to provide this elector information in relation to the 2017 State general election. In light of the Committee's question, [the department] will give further consideration to the operation and drafting of subsection 133A(2) and consult with the ECO as appropriate.*[168]

The committee considers a transitional provision, to articulate the date from which elector information from previous elections, would be available and may be of benefit.

3.3.6 Use of electoral roll information

Clause 50 amends s 177 of the Electoral Act to provide that use or disclosure to another person or allowing another person to access information in a copy of the electoral roll is prohibited, unless it is for a permitted purpose.

The permitted 'purposes' for which a person may use information obtained from the electoral roll under s 61 of the Electoral Act are expanded to include a purpose prescribed under regulation made under s 61(2).

Section 61(2) relates to the discretionary provision of information on the electoral rolls and sets out a table of persons and organisations to whom the ECQ may give a copy, in any form, of information in relation to electoral rolls. Currently, the circumstances in which information is to be given is prescribed as:

> *(a) on request by the department or State public authority; and*
>
> *(b) without charge; and*
>
> *(c) for a purpose prescribed under a regulation.*[169]

Stakeholder views

The EDO (Qld) was supportive of requiring the ECQ to publish election information in relation to preference voting and the provision of elector information to eligible recipients for a purpose related to an election.[170]

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165 Pursuant to the *Commonwealth Electoral Act 1918* (Cth), s 104, individuals can apply to be silent electors on the grounds that having their address on the electoral roll would place at risk their, or another person's, safety.

166 Bill, cl 47, new s 133A(5).

167 Bill, cl 47, new s 133A (6); explanatory notes, p 19.

168 Department, correspondence dated 10 May 2019, p 2.

169 Electoral Act, s 61(2).

170 Submission 4, p 2.

3.4 Amendments to the Referendums Act 1997

The Bill proposes to amend the Referendums Act to achieve greater consistency with the Electoral Act.[171]

Additionally, the Bill would amend the Referendums Act to mirror equivalent amendments to the Electoral Act.[172]

Committee comment

The committee notes the amendments to the Referendums Act are consequential amendments.

171 Bill, cls 103-107.

172 Bill, cls 74 – 102 and 180 – 121.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that fundamental legislative principles 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 to the institution of Parliament.

It is the committee's role to consider whether a bill has sufficient regard to the FLPs articulated in the LSA 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 brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Appointments as returning officers

Clause 6 amends s 31 of the Electoral Act to allow the ECQ, rather than Governor in Council, to appoint an RO for an electoral district, and require the ECQ to terminate such an appointment where the officer becomes a member of a political party. Clause 7 effects similar amendments to s 32 of that Act in relation to assistant ROs.

Clause 73 inserts various transitional provisions, including new s 429. That section terminates any appointments of incumbent ROs or assistant ROs under ss 31 or 32 of the Electoral Act upon the commencement.

It might be thought that proposed s 429 raises a potential inconsistency with the general FLP that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes provide this background regarding appointments as ROs or assistant ROs:

> *[The] appointments do not have an end date and are usually terminated by the Governor in Council at the same time that the new appointments are made. The officers typically carry out their functions in a six week election period, over which they are remunerated. For the remainder of their appointment, they do not receive remuneration.*[173]

The explanatory notes state that any termination effected by the new provision:

> *… will have no practical effect given incumbents are appointed on the understanding that fresh appointments would be made before commencement of the next election.*[174]

Committee Comment

In relation to the termination of appointments of incumbent ROs or assistant ROs, the committee is satisfied that the provisions have sufficient regard to the rights and liberties of individuals.

Right to vote - prisoner voting

Clause 27 amends s 106(3) of the Electoral Act to provide that a person who is serving a sentence of imprisonment of three years or longer is not entitled to vote at an election. Clause 84 affects an identical amendment to s 21(3) of the Referendums Act regarding eligibility to vote at a referendum.

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173 Explanatory notes, p 8.

174 Explanatory notes, p 5.

Clause 34 amends s 115 of the Electoral Act to provide that persons in detention (either on remand or serving a term of imprisonment) must make a declaration vote (effectively, voting only by way of a postal vote). Clause 90 effects a similar amendment to s 26 of the Referendums Act regarding voting at a referendum.

Clauses 27 and 84, in denying the right to vote to certain persons, and cls 34 and 90, in denying some methods of voting to certain persons, raise an inconsistency with the general FLP that legislation should have sufficient regard to the rights and liberties of individuals.

Under s 106 of the Electoral Act, as it currently stands, a person who is serving a sentence of imprisonment is not entitled to vote at an election for an electoral district. Clause 27 amends s 106 to provide that only persons serving a sentence of three years or longer are disqualified from voting.

Section 21(3) of the Referendums Act would be in similar terms regarding voting in a referendum.

Acknowledging that the amendments do reduce the scope of the current disqualification applying to all persons serving a term of imprisonment; the issue of impact on the rights and liberties of the individual remains.

Section 4(1) of the the LSA provides that the FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. While not specifically listed in the LSA, a parliamentary democracy based on the rule of law involves the right of an adult citizen to participate fully in the democratic process, including being able to vote in an election.

Regarding cl 27 (and presumably by implication also cl 84), the explanatory notes state:

> *… the Bill moderates the current position in favour of a broad class of prisoners, aligns with the current Commonwealth position and has regard to the culpability of a person's offending in disqualifying them from voting.*[175]

Regarding cl 34 (and presumably by implication also cl 90) requiring prisoners to vote only by way of postal vote, the explanatory notes state:

> *The amendment reflects operational considerations and current practice for prisoners who are eligible to vote.*[176]

Committee comment

The committee is satisfied that a requirement that persons in detention must vote by way of postal vote has sufficient regard to the rights and liberties of individuals, and has regard to operational and security imperatives.

Right to privacy – confidentiality of information

Clause 8 inserts new s 32A in the Electoral Act to require a RO or assistant RO to immediately notify the ECQ if the officer becomes a member of a political party unless the officer has a reasonable excuse.

Clause 47 inserts new s 133A in the Electoral Act which provides that the ECQ must:

- publish information about first preference votes and the distribution of votes, and
- give a registered political party or an independent member elector information (this includes electors' names and addresses, method of voting (in person, by post, or otherwise), and in some instances, location of the polling booth at which they voted) on request.

Clause 50 amends s 177 of the Electoral Act to expand the 'permitted purposes' for which a person may use information obtained from the electoral roll under s 61 to include a purpose prescribed under relevant regulation made under s 61(2).

[175] Explanatory notes, p 5.

[176] Explanatory notes, p 5.

Clause 59 inserts new s 260B which provides that an entity that makes a gift or loan to a registered political party or candidate (equal to or exceeding the gift threshold amount of $1,000), who is not the true source of the gift or loan, must give the recipient notice of that fact and provide the relevant particulars of the entity that is the source. There is an identical requirement for an entity making a gift to third parties who incur expenditure for political purposes. The relevant particulars of the true source of a gift or loan are required to be included in returns to the ECQ and published by the ECQ (with addresses of silent electors deleted).

Clauses 8, 47, 50 and 59 all raise an issue of FLP relating to the rights and liberties of individuals (s 4(2)(a) of the LSA), regarding an individual's right to privacy with respect to their personal information.

The right to privacy, the disclosure of private or confidential information and privacy and confidentiality are relevant to consideration of whether legislation has sufficient regard to individual rights and liberties.

The requirement in cl 8 for ROs to disclose political party membership is not addressed in the explanatory notes.

In regard to cl 47, elector information held by the ECQ might assist the ECQ itself in its operations. Noting that current provisions allow for the release of certain elector information on the electoral rolls,[177] the release of additional elector information to political parties or candidates as proposed by the Bill should be balanced against the privacy of voters.

While there is a confidentiality provision (proposed s 133A(6)) making it an offence to disclose the relevant information further to a third party, the issue remains whether the disclosure proposed by cl 47 is justified.

The explanatory notes state regarding cl 50:

> *The Electoral Act currently provides that a regulation may prescribe persons or organisations to whom the ECQ can give a copy of electoral roll information and the circumstances in which the information may be given. The information that can be provided is limited to the publicly available part of the electoral roll.*[178]

While currently no persons or organisations are prescribed as recipients of electoral roll information, the amendment will ensure that any persons or organisations prescribed in the future are able to use that information for any prescribed purpose for which it is given.

The explanatory notes acknowledge the breach of FLP in cl 59:

> *Although making a gift or loan is voluntary, it may require an individual to disclose information that he or she may reasonably wish to keep private (specifically, name and address information).*[179]

Additionally, cl 59 discloses the fact of the source of the donation. The explanatory notes give this justification:

177 Electoral Act, s 61.

178 Explanatory notes, p 6.

179 Explanatory notes, p 9.

This impact on an individual's privacy is necessary to allow for increased transparency of the electoral system and support electors to make informed decisions. Without this information, which supplements that already required under the Electoral Act by those who give disclosable gifts or loans, the information would not be meaningful enough to provide the degree of transparency to support this objective. In addition, a safeguard applies so that the silent electors will not have their addresses published by the ECQ. Individuals can apply to be silent electors on the grounds that having their address on the electoral roll would place at risk their, or another person's, safety. This ensures that the disclosure required for transparency is appropriately balanced with measures to ensure that the privacy of the address information of vulnerable individuals is protected.[180]

Committee comment

The committee considers that the requirement proposed by cl 8 for ROs to disclose political party membership is justified, having regard to ensuring the integrity of, and confidence in, the electoral system. The committee finds the provisions enabled by cl 50 and cl 59 are justified, and thus have sufficient regard to the rights and liberties of the individual as required by the FLPs. The committee considers provisions proposed in cl 47 impact on an individual's privacy, but with safeguards incorporated into the Bill, the potential breach of FLP is justified.

Penalties

The Bill includes a number of provisions which introduce new offences and penalties or affect increases to existing penalties. These provisions are set out in **Appendix E**.

The introduction of the new and increased penalties affects rights and liberties of individuals. Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied. A penalty should be proportionate to the offence. In relation to the proportionality of penalties, the OQPC Notebook states:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

… Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[181]

Many, though not all, of the new and increased penalties are relatively modest.

In relation to the Electoral Act amendments, the explanatory notes state:

These changes are for the purpose of achieving greater consistency between offence and penalty provisions in the Electoral Act and the LGEA (as contemplated in recommendation 31 of the Independent Panel's Report); and to address emerging areas of concern. The offences are appropriate and the penalties proportionate to the nature of the offending and comparable existing provisions in the Electoral Act and the LGEA.[182]

In relation to the Referendums Act amendments, the penalty increases are quite small. The explanatory notes state:

The individual penalty increases are minimal and align with comparable offences in the Electoral Act. The proposed new corporate penalties accord with the penalties under the Electoral Act.[183]

180 Explanatory notes, p 9.

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

182 Explanatory notes, p 9.

183 Explanatory notes, p 9.

Where distinct penalties for corporations have been introduced, these are generally slightly less than those that would otherwise apply by virtue of s 181B of the *Penalties and Sentences Act 1992*. That section applies to any provision prescribing a maximum fine for an offence but not expressly prescribing a maximum fine for a body corporate different from the maximum fine for an individual. In any such case:

- the maximum fine is taken only to be the maximum fine for an individual, and/or
- if a body corporate is found guilty of the offence, the court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.

The corporate penalties being inserted in the Referendums Act are four or four and a half times the individual penalty.

The QLS drew attention to:

> *… a discrepancy … between the penalties imposed for failure to vote in a Commonwealth election ($20.00) and a Queensland election (1 penalty unit, currently $130.55). The Society questions whether there is an intention to have consistency between penalties.*[184]

Whilst consistency in penalties is an aspect of any consideration of consistency of a Queensland legislative provision with the FLPs, this is primarily of concern across like offences in the same legislation, and across comparable offences across the Queensland statute book. When looked at from the point of view of proportionality, it is difficult to view the Queensland penalty of one penalty unit as other than proportionate.

Committee comment

The committee considers that the offences and associated penalties in the Bill are proportionate and relevant to the objectives of the amendments and the principal Acts.

Reasonable excuse provisions

The Bill proposes to insert new s 32A in the Electoral Act to require an RO or assistant RO to immediately notify the ECQ if the officer becomes a member of a political party unless the officer has a reasonable excuse.[185]

Clause 54 inserts a replacement s 192 in the Electoral Act to provide for two offences:

- if a person is given a request (under s 119 or 120) to give, post or send to the ECQ or an RO, the person must promptly give, post or send the request to the ECQ or RO, unless the person has a reasonable excuse, and/or
- if a person is given a declaration envelope (under s 119(8)(d)(ii)) to post or send to the ECQ or an RO, the person must promptly post or send the declaration envelope to the ECQ or RO, unless the person has a reasonable excuse.[186]

The clauses, in providing for a 'reasonable excuse', possibly raise a potential breach of s 4(3)(d) of the LSA which provides, in effect, that legislation should not reverse the onus of proof in criminal matters without adequate justification. Legislation should not provide that it is the responsibility of a defendant in court proceedings to prove innocence.

The issue is not canvassed in the explanatory notes. It is probable that establishing a reasonable excuse will likely involve the proof of matters within the knowledge of the defendant, or a legal onus of proof.[187]

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184 QLS, submission 5, p 2.

185 Bill, cl 8; as noted in section 3.1.4 of this report, there is a maximum penalty of 40 penalty units for a failure to so notify.

186 There is a maximum penalty in each case of 20 penalty units or 6 months imprisonment.

187 OQPC, *Principles of good legislation: OQPC guide to FLPs: Reversal of onus of proof, Version 1-19 June 2019*, p 5 [3].

In Queensland, 'reasonable excuse provisions' are drafted on the assumption that the *Justices Act 1886* will apply and place both the evidential and legal onus on the defendant to raise and prove the existence of a reasonable excuse.[188]

For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidentiary means and where the defendant would be particularly well positioned to disprove guilt.[189] However, pursuant to a provision containing an exemption where a reasonable excuse exists and the evidential onus lies with the accused, as is the case with clauses 8 and 54, it may be considered that the legal onus of proof remains with the prosecution.[190] This would ensure that liability would not be unjustly imposed.[191]

Committee comment

The committee considers the reasonable excuse provisions in these circumstances are justified.

4.1.2 Institution of Parliament

Delegation of legislative power

Clause 46 inserts new s 130A in the Electoral Act to require the ECQ to make procedures about how absentee votes at an election are to be counted. The provision stipulates various matters that must be provided for by the procedures. Clause 101 affects similar amendments to the Referendums Act regarding the counting of absentee votes at a referendum.

The procedures must provide for a number of specific issues, including ensuring votes are counted at polling places in a way that does not compromise the secrecy of voting.

Each provision specifies that the procedures:

- do not take effect until approved by a regulation
- must be tabled in the Legislative Assembly with the approving regulation, and/or
- must be published on the ECQ website.[192]

The clauses arguably contain a delegation of legislative power by requiring the ECQ to make procedures about how absentee votes are to be counted. The amendments raise a potential inconsistency with the FLP that legislation should only allow the delegation of legislative power in appropriate cases and to appropriate persons.[193]

Additionally, a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[194]

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

The Office of the Queensland Parliamentary Counsel states:

188 *Justices Act 1886*, s 76.

189 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

190 OQPC, *Principles of good legislation: OQPC guide to FLPs: Reversal of onus of proof, Version 1-19 June 2019*, p 26 [73].

191 OQPC, *Principles of good legislation: OQPC guide to FLPs: Reversal of onus of proof, Version 1-19 June 2019*, p 26 [74].

192 Bill, cl 43, proposed section 130A(3) of the Electoral Act and section 41A(3) of the *Referendums Act*.

193 *Legislative Standards Act 1992* (LSA), s 4(4)(a).

194 LSA, s 4(4)(b).

> *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.*[195]

One aspect to consider is whether the delegate may only make rules or procedures that are subordinate legislation, and thus subject to disallowance.

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore not subject to parliamentary scrutiny.[196]

Here it can be noted that, as mentioned, the amendments expressly require that the procedures made by the ECQ must be approved by regulation and tabled with the regulation. These requirements enhance the level of scrutiny by the Parliament.

The explanatory notes state:

> *The delegation of legislative power in this instance is necessary given the detailed operational considerations. The delegation of legislative power has been mitigated by clearly setting out in the section the subject matter for the procedures and providing that the procedures do not take effect until approved by regulation and must be tabled in the Legislative Assembly with the regulation and published on the ECQ website.*[197]

Committee comment

The committee is satisfied that the provisions are appropriate, and have sufficient regard to the institution of Parliament, particularly noting the subject matter of the procedures and the requirements for approval by regulation and tabling.

4.2 Explanatory notes

Part 4 of the LSA 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 notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

However, the committee observed occasions where the explanatory notes do not identify the specific clauses involved when discussing issues of FLPs. This includes, but is not limited to, consideration of clause-amending sections in the Electoral Act but not identifying that the section is in the Electoral Act (as opposed to the Referendums Act) and not referring to the clauses making 'mirror' amendments to the Referendums Act.

195 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 154.

196 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 155.

197 Explanatory notes, p 6.

Appendix A – Submitters

Sub #	Submitter
001	Whitsunday Regional Council
002	Electoral Commission of Queensland
003	Pat Coleman
004	Environmental Defenders Office (Qld) Inc
005	Queensland Law Society
006	Coolum Residents Association Inc
007	Bill Tait

Appendix B – Witnesses at the public briefing and hearing

Public briefing — 13 May 2019

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Melinda Tubolec, Senior Legal Officer, Strategic Policy and Legal Services

Public hearing — 27 May 2019

Electoral Commission of Queensland

- Mr Pat Vidgen, Electoral Commissioner of Queensland
- Mr Wade Lewis, Assistant Electoral Commissioner
- Ms Melanie Mundy, Acting Director, Compliance Division

Queensland Law Society

- Mr Matt Dunn, General Manager, Policy, Public Affairs and Governance
- Mr Calvin Gnech, Chair of the Occupational Discipline Law Committee
- Ms Deborah Kim, Policy Solicitor

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 cut off 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 – Recommendations from the Soorley Report

Recommendation 1
That ECQ secures a consultant in change management and organisational culture to work on management issues.

Recommendation 2
That the ECQ reviews its structure so that recruitment, training and management of all election staff is its core business. The ECQ therefore needs to have a more integrated approach to recruitment and training, involving both Events Planning and Human Resources.

Recommendation 3
That a more transparent process for the recruitment, selection and appointment of ROs needs be adopted.

Recommendation 4
That the current practice of the Governor in Council appointing ROs for state elections should be abolished and all ROs should be appointed by the ECQ.

Recommendation 5
That there should be a comprehensive review of RO position descriptions, including the scope of their roles and responsibilities.

Recommendation 6
That the RO job description should clearly state that all available ballots must be counted on election day, without exception.

Recommendation 7
That the RO operational manual be reviewed by ECQ to ensure procedures are clear and not open to interpretation.

Recommendation 8
That the ECQ undertakes a formal review of RO performance after each election, along with a process to document lessons learned.

Recommendation 9
That the RO remuneration structure be reviewed, taking into consideration the size of the electorate, the type of voting, the RO responsibilities and their workload.

Recommendation 10
That core RO training should be completed six weeks prior to the election. The panel acknowledges there will be weekly updates up to election day. Compulsory training should include online modules, face-to-face Q&A forum(s) and weekly online updates (webinars).

Recommendation 11
That ROs must competently complete training on the Declaration of Votes process and the how-to-vote cards approval process and subsequently ensure face-to-face training by the ROs with polling booth staff on these and all election processes.

Recommendation 12
That candidates must meet and engage with the ROs regarding their obligations as a candidate at least two weeks before the election to ensure they have clear understanding of the rules, guidelines and their responsibilities, both during pre-polling and on election day.

Recommendation 13
That the RO job description should include approval of how-to-vote cards. If there is any dispute on how-to-vote cards they should be referred to the ECQ for final approval.

Recommendation 14
That the ECQ provides a pro forma template for candidates to use for their how-to-vote card communication.

Recommendation 15
That an ECQ contact be provided to candidates in their election kit should they need to escalate contentious election day rulings by ROs.

Recommendation 16
That the ECQ sends a representative to the DILGP's Intending Candidates training to explain guidelines around how-to-vote cards and other election matters for those who are considering running for office.

Recommendation 17
That the ECQ should review the policy and legal framework around political material distributed by people who are not running in an election. Options should include removal of signage, confiscation of material, penalty notices and, where necessary, injunctions.

Recommendation 18
That regulations around the minimum distance from the entrance of the pre-polling and polling booths (including corridors) by volunteers and candidates be enforced by polling booth officers.

Recommendation 19
That volunteers handing out how-to-vote cards on behalf of candidates be controlled, particularly at large or contentious polls.

Recommendation 20
That in larger polling booths and/or hotly contested elections, the ECQ should consider the employment of a security officer to monitor activity which might be construed as canvassing for the elector's vote. Police intervention may need to be considered where warranted.

Recommendation 21
That Queensland should retain the current optional preferential voting system for local government elections at least until after the next election.

Recommendation 22
That ROs continue to have the responsibility for the recruitment of polling booth staff.

Recommendation 23
That job descriptions and responsibilities for polling booth staff be reviewed to ensure that there is clarity of roles and responsibilities for activities on the day and during counting.

Recommendation 24
That the ECQ should use all possible media channels, such as local newspapers, radio, ECQ website, council websites and online advertising, for the recruitment of polling booth staff.

Recommendation 25
That the ECQ should bring together some experienced ROs after each election for a total review of polling staff activity.

Recommendation 26
That there should be a merit-based recruitment process that includes a pre-qualification criterion for mandatory skills (i.e. local knowledge, ICT competency and managerial experience).

Recommendation 27
That ROs should not automatically appoint family members and friends as polling booth staff. The ECQ can only approve these appointments under special circumstances.

Recommendation 28
That the ECQ ensures its new SEMS includes the functionality to allow polling staff to lodge job applications online and also nominate their preferred booth location(s).

Recommendation 29
That training be compulsory for all polling booth staff.

Recommendation 30
That training includes staged modules, each of which must be completed in sequence, with all modules needing to be successfully completed before the election.

Recommendation 31

That ROs meet all polling booth staff prior to election day. In some cases this may involve training or simply discussing the operation of the day.

Recommendation 32

That the ECQ reviews the effectiveness and usability of the platform used for online training with the external provider.

Recommendation 33

That all electorates that offer pre-poll voting must take steps to ensure that voters can cast their ballots in the two weeks leading up to the election. In remote and Indigenous communities this may not apply.

Recommendation 34

That ROs should select pre-polling booth locations in consultation with local councils, real estate agents, businesses and community groups. Final numbers and location of pre-polling booths to be signed off by ECQ.

Recommendation 35

That the pre-polling locations must be advertised in advance of the commencement of pre-poll voting in traditional and online state and local media as well as on local council websites.

Recommendation 36

That the ECQ review the criteria around the selection of pre-polling booth locations and use the lessons learned from the 2016 local government elections to inform future location of pre-polling booths. These include:

- that all pre-poll and polling booths must be accessible to people with disabilities. Disabled parking must also be available as well as parking that is close to the venue for elderly voters
- that locations with dense traffic should be avoided to ensure that people going about their daily business are not inconvenienced.

Recommendation 37

That pre-polling booths must be separate from, or a designated distance away from, current sitting councillor electorate offices.

Recommendation 38

That larger polling booths recruit an adequate number of staff to cater for an increased number and an expected ever-increasing number of pre-poll voters.

Recommendation 39

That if an RO is unable to perform their duties at a pre-polling booth they may delegate to another officer such as an assistant RO for those times.

Recommendation 40

That ECQ undertakes a comprehensive review of timelines for postal voting to expedite the election counting process.

Recommendation 41

That applications for postal votes be submitted to ECQ as soon as possible and no later than 10 working days prior to the election.

Recommendation 42

That ECQ must send out postal vote forms within 24 hours of receiving a request.

Recommendation 43

That the cut-off point for postal vote distribution be six working days before the election.

Recommendation 44

That postal-only voting be restricted to councils in remote and regional areas where the total number of electors is less than 5000. All other councils should only have pre-poll, absentee and election day polling booth voting.

Recommendation 45
That postal votes should only be counted if they are received within five working days after the election.

Recommendation 46
That if the number of outstanding postal votes cannot change the electoral outcome then the poll should be declared.

Recommendation 47
That ballot papers be distributed in a single envelope that folds out with a perforated edge. The ballot itself should be enclosed in another plain envelope.

Recommendation 48
That the ECQ voter information letter be tailored to individual electorates and the type of voting offered in the electorate.

Recommendation 49
That in the lead up to an election, ECQ needs to engage several experienced election participants to attend board meetings to provide an external perspective.

Recommendation 50
That a planned program to manage postal voting be developed to address issues of timing, security, accuracy and convenience, especially in remote areas.

Recommendation 51
That ECQ postal vote packages need to include an additional separate envelope for returning the ballot paper, which does not disclose the ballot to the person registering the envelope's return against the electoral roll.

Recommendation 52
That electronically assisted voting for the vision-impaired and people with a disability should continue to be supported.

Recommendation 53
That due to high setup costs, as a first step the ECQ introduces e-voting by the 2020 election at some pre-polling and polling booths.

Recommendation 54
That the ECQ investigates options for internet voting in the longer term and begins to prepare for full online voting at the first appropriate election.

Recommendation 55
That the ECQ should trial technology that will allow polling staff to register and print ballot papers for absentee voters.

Recommendation 56
That the ECQ introduces clear performance management criteria with the AEC for the management of the electoral rolls.

Recommendation 57
That the technology be upgraded to ensure the bar code system automatically marks voters off the roll.

Recommendation 58
That once the roll has formally closed, there should be no further changes to the roll permitted for the current election.

Recommendation 59
That the declaration voting process should be reviewed to maximise efficiency.

Recommendation 60
That to ensure the count is completed on the night, ROs be empowered to roster staff who have not worked during the day to commence the count. If staff wish to work throughout voting and counting, ROs should arrange a roster for refreshments, lunch breaks and dinner. In smaller remote communities, polling booth staff would obviously also complete the count.

Recommendation 61
That legislation be amended to allow all pre-poll and postal vote counting to commence at 4pm on election day in a secure area. This will place an added demand on scrutineers but will allow staff to focus on the close of the count and report results in a more timely manner.

Recommendation 62
That the ECQ and LGAQ negotiate an agreed budget and required resourcing prior to the election. This is of added significance due to the discounted costs of including the referendum in the 2016 election.

Recommendation 63
That the ECQ must establish thorough consultation processes with the LGAQ.

Recommendation 64
That the ECQ should continue to provide costing to councils for elections and by-elections.

Recommendation 65
That in the interests of transparency the panel supports the ECQ running all local government elections.

Recommendation 66
That the timing of elections be reviewed and consideration given to holding the election during October or November in non-state election years, when weather conditions and festive dates are less likely to affect administration, logistics and community involvement.

Recommendation 67
That the state CIO be asked to review all aspects of ECQ ICT, including technology processes, systems, personnel and contracts. This may include the recruitment of a permanent CIO.

Recommendation 68
That ECQ should make ICT a priority, ensuring use of the best of breed technology available.

Recommendation 69
That the LGEA be amended to only allow electronic payment methods, including online credit card transactions.

Recommendation 70
That ROs need to have designated specialist call centre resources to support their function.

Recommendation 71
That call centre staffing levels, training and scripting should be reviewed for each election and an FAQs booklet provided to all election staff.

Recommendation 72
The way ballot papers are produced, formatted, structured, and distributed needs to be reviewed.

Recommendation 73
That ballot papers be simplified for scanning purposes.

Recommendation 74
That ECQ's proposed legislation amendments be investigated and implemented as appropriate.

Soorley Report Appendix to Recommendation 74 – ECQ proposed legislation amendments

ECQ provided the Independent Panel with a number of legislation amendments to the *Local Government Electoral Act 2011* and the *Electoral Act 1992*. These amendments would assist ECQ to streamline the conduct of elections and increase consistency between state and local government election operations.

	Topic	***Local Government Electoral Act 2011***	***Electoral Act 1992* (state elections)**	**Comments**
1	**Appointment of Returning Officers (ROs) and Assistant Returning Officers (AROs)**	**s9(2) Returning officers** The electoral commission may appoint a person as the returning officer for an election. **s10(2) Assistant returning officers** The electoral commission may appoint a person as an assistant returning officer for an election.	**s31(1) Returning officers** The Governor in Council may, on the recommendation of the commission, appoint an elector as the returning officer for an electoral district. **s32(1) Assistant returning officers** The Governor in Council may, on the recommendation of the commission, appoint an elector as assistant returning officer, or electors as assistant returning officers, for an electoral district.	To align both acts allows the Commissioner to appoint ROs and AROs. These positions are casual roles and allowing the Commissioner to appoint and separate (for underperforming ROs) will provide flexibility leading up to and during the election period.
2	**Replacement of postal ballot papers**	**s85 Replacement ballot papers** (3) If a ballot paper given to an elector under section 79, 80 or 82 is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6pm on polling day, give the elector a replacement ballot paper and a declaration envelope for use in the election.	**Not required for state elections**	Align with state.

	Topic	*Local Government Electoral Act 2011*	*Electoral Act 1992* (state elections)	Comments
		(4) However, before a replacement ballot paper can be given— the elector must declare, in the approved declaration form, before the issuing officer or an adult witness that—		
3	**Statutory advertising/gazettal**	Statutory advertising for the Notice of the Election, pre- polling booths be published in a newspaper circulating generally in the LG area. Same applies for mobile polling (s 49(3)(b), ordinary polling booths (s 48(3) and the complete list of candidates in ballot paper order (s 57)	Gazettal of the Writ and return of the Writ. Other gazettal advertising polling booths etc. on ECQ website.	Align as much as possible. While advertisements announcing LG elections should remain, the rest can be published on website. Polling booths, pre-poll centres, declared institutions and candidates etc. to appear on the ECQ website.
4	**Material retention**	**s136(1) Storage of ballot papers and declaration envelopes** Retain until the end of the period of the next Quadrennial Election	**s102(2) Storage and disposal of material resulting from and election** Retain until the issue of the writ for the next State General Election	Possible change to retain for 12 months after polling day for both state and local governments.

	Topic	*Local Government Electoral Act 2011*	*Electoral Act 1992* (state elections)	Comments
5	**Material retention**	**s196 Records to be kept** a person who makes or receives a relevant record of an election must keep the record for at least 5 years after the conclusion of the election unless the record in the course of business or administration is transferred to someone else	**s309 Records to be kept** Period of at least 3 years commencing on the day on which the claim of return was made.	Align. No preference which is chosen, but consistency makes warehousing and archiving easier and more efficient.
6	**Definition of a gift**	**107 Meaning of gifts**	**201 Meaning of gift**	Align and provide the same definition of a gift for both Acts. ECQ accepts this is a policy decision for government.
7	**Pre-poll closure**	50(2) (a) Pre-poll ends at 6pm on the day immediately before polling day	118(1) Pre-poll ends at 6pm on the day before polling day	Consider closing pre-poll at 5pm on the day before polling day. Closing times would be consistent with all other pre-polling days - also avoids security issues where pre-poll is located in government buildings.
8	**Removal of declaration flap for LG postal votes**	91(2)(a) Requires the declaration flap to be removed	Not required for State.	Align with State for consistency.
9	**Nomination payments**	39(2)(c) by electronic funds transfer	Not available for State	Align with LGEA for consistency.
10	**Announcement of nominations**	32(1) as soon as practical after the RO has certified the nomination	93(1) as soon as practical after the cut-off day for nominations	Align with State for consistency.

	Topic	*Local Government Electoral Act 2011*	*Electoral Act 1992* (state elections)	Comments
11	**Early counting of votes**	95(1) close of poll	127(1) at the end of ordinary voting hours on polling day	Consider early counting of pre- poll and postal votes from 8am on polling day at the discretion of the Commissioner.*
12	**Ballot papers**	55(1)(b) attached to butt	102(2)(b) attached to a butt	Consider removing the need for the butt to have unique numbering. Costly and impacts the printing process.
13	**Request for postal vote**	81(2A) Request must be received not later than 7pm on the Wednesday before polling day	119 (3) Request must be received not later than 7pm on the Wednesday before polling day	Consider earlier closing time for receipt of postal vote application due to slow mail delivery by Australia Post. Suggest 5pm on Friday one week prior to polling day to allow sufficient time for delivery.

	Topic	*Local Government Electoral Act 2011*	*Electoral Act 1992* (state elections)	Comments
14	**Declaration (absent voting)**	Absent voting does not normally occur in local government elections (See Section 47(1)(a) for City Hall voting)	115 (a) & (b) Electors who wish to vote by going to a polling booth that has not been established for the electoral district for which the elector is enrolled must make a declaration vote. Also, electors who wish to vote by going to a polling booth described in section 99(4)(declared institutions during pre-poll period or (8) (mobile polling during pre-poll period) that is outside the electoral district for which the elector is enrolled must make a declaration vote.	**159,421** absent declaration votes were lodged and admitted at the 2015 state election either on polling day or at declared institutions or mobile polling.(353 rejected). Using an ECL, the elector could be marked off and issued with an ordinary vote for their own district eliminating the need to complete a declaration envelope. Scrutiny would not be required by the RO in the electors district as the elector has been marked off at the point of issue. Results of absent voting would also occur 3 days ahead of the current process.
*****Note the panel recommends (recommendation 61) that counting starts at 4pm not 8am on polling day.				

Appendix E – Proposed New or Amended Offence Provisions

[Note: One penalty unit = $133.45 as of 1 July 2019]

Clause	Offence	Proposed maximum penalty
8	**Insertion of new s 32A** After section 32— *insert*— 32A Obligation to notify membership of political party A returning officer or assistant returning officer must immediately notify the commission if the officer becomes a member of a political party, unless the officer has a reasonable excuse. Maximum penalty—40 penalty units.	$5,338
47	**Insertion of new s 133A** After section 133— *insert*— **133A Election and elector information** (6) A person must not use, disclose to another person or allow another person to access elector information given to a registered political party or independent member under this section, unless the use, disclosure or giving of access is for a purpose related to an election. Maximum penalty for subsection (6)—200 penalty units.	$26,690
52	**Insertion of new s 188A** After section 188— *insert*— **188A Particular badges and emblems not to be worn in polling booths** A person must not wear or display a badge or emblem of a political party or candidate in an election during voting hours in a polling booth. Maximum penalty—1 penalty unit	$133.45
59	**Insertion of new ss 260A and 260B** After section 260— *insert*— **260B Donor must disclose source of gift or loan**	

	(2) When the entity makes the gift or loan to the recipient, the entity must give the recipient a notice that states— (a) that the entity is not the source of the gift or loan; and (b) the relevant particulars of the entity that is the source of the gift or loan. Maximum penalty—20 penalty units.	$2,669
67	**Amendment of s 307 (Offences)** (1) Section 307— *insert—* (2A) A person who fails to give notice of particulars that the person is required to give under section 312A commits an offence. Maximum penalty—20 penalty units (2) Section 307(5), penalty, '50 penalty units'— *omit, insert—* 100 penalty units	$2,669 $13,345
68	**Insertion of new s 307D** After section 307C— *insert—* **307D False or misleading information about gift** (1) A person must not publish information about a gift made to, or received by, a candidate in an election, registered political party or third party that the person knows is false or misleading in a material particular. Maximum penalty—20 penalty units.	$2,669
103	**Amendment of s 72 (Author of referendum matter must be named)** (1) Section 72(1), penalty— *omit, insert—* Maximum penalty— (a) for an individual—20 penalty units; or (b) for a corporation—85 penalty units.	$2,669 $11,343.25
104	**Amendment of s 73 (Headline to general referendum matter advertisements)** Section 73(1), penalty— *omit, insert—* Maximum penalty— (a) for an individual—10 penalty units; or (b) for a corporation—40 penalty units.	$1,334.50 $5,338

105	**Amendment of s 76 (Leave to vote)** Section 76(3), penalty— *omit, insert*— Maximum penalty— (a) for an individual—10 penalty units; or (b) for a corporation—40 penalty units.	 $1,334.50 $5,338
106	**Amendment of s 77 (Canvassing etc. in or near polling places)** (2) Section 77(1), penalty, '9 penalty units'— *omit, insert*— 10 penalty units	 $1,334.50
107	**Amendment of s 78 (Interrupting voting etc.)** Section 78, penalty, '9 penalty units'— *omit, insert*— 10 penalty units	 $1,334.50

Statement of reservation

NON-GOVERNMENT STATEMENT OF RESERVATION

The LNP Members of the Economic and Governance Committee wish to make the following Statement of Reservations and concerns regarding the Electoral and other Legislation Amendment Bill 2019.

1. Postal vote

The Bill moves the deadline for postal vote applications to be submitted to the ECQ no later than 12 days prior to the election (i.e. by 7pm on the Monday two weeks prior to polling day).

However, LNP Members are concerned about the deadline for postal vote applications being moved from 2 days prior to the election to 12 days prior to the election.

LNP Members agree that the deadline of 2 days can create inadvertent consequences, such as ballot papers not being received by the applicant before the polling date. However, LNP Members consider the shift from 2 days to 12 days prior to the election as drastic and unjustified. LNP Members are concerned that voters will only have a short timeframe to apply for postal votes once the writs are issued, which will result in persons (i.e. voters in rural and remote parts of the state) missing out altogether. Essentially, this may have unintended consequences and make it difficult for regional voters to participate in our democracy by exercising their legal obligation to vote.

LNP Members are also concerned by the Independent Panels Report, *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election* (Independent Panel's Report) recommendation to move the deadline for postal vote applications to be submitted to the ECQ to no later than 10 days prior to the election (recommendation 41, 43, and item 13 of recommendation 74).

LNP Members are concerned why Labor's amendments have gone beyond the timeframe recommended by the Independent Panel's Report.

2. Prisoner voting

The Electoral and other Legislation Amendment Bill 2019 seeks to amend section 106 of the *Electoral Act 1992* to provide that a person who is serving a sentence of imprisonment of three years or longer is not entitled to vote at an election for an electoral district. The current provision provides that no prisoner is entitled to vote.

LNP Members do not support this amendment. LNP Members are of the view that no prisoner should have the right to vote. This is because the LNP believes that those who break the law should not have the right to participate in deciding who makes the law. A person serving a sentence of imprisonment, no matter the length of sentence, is not a law-abiding citizen and there should be no discretion for those who are serving shorter sentences.

The Government's justification that this amendment is being proposed to bring Queensland in-line with other jurisdictions is misleading.

Only two other Australian jurisdictions, including Tasmania and the Northern Territory allow prisoners who are serving a sentence of less than three years to vote. New South Wales and Western Australia only allow prisoners who are serving less than one year to vote.

Ray Stevens
Deputy Chair of Economics and Governance Committee
State Member for Mermaid Beach

Sam O'Connor
Member for Bonney

Dan Purdie
Member for Ninderry