ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Mr RA Stevens MP
Ms NA Boyd MP
Mr ST O'Connor MP
Mr DG Purdie MP
Ms KE Richards MP (via teleconference)
Mr M Berkman MP

Staff present:

Ms L Manderson (Committee Secretary)
Mr A Hin (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE ELECTORAL AND OTHER LEGISLATION (ACCOUNTABILITY, INTEGRITY AND OTHER MATTERS) AMENDMENT BILL 2019

TRANSCRIPT OF PROCEEDINGS

MONDAY, 20 JANUARY 2020

Brisbane

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The committee met at 9.18 am.

CHAIR: I declare open the hearing for the Economics and Governance Committee's examination of the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019. I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to elders both past and present. My name is Linus Power. I am the member for Logan and chair of the committee. With me here today are Ray Stevens, the member for Mermaid Beach and the deputy chair of the committee; Nikki Boyd, the member for Pine Rivers; Sam O'Connor, the member for Bonney; Dan Purdie, the member for Ninderry; and Kim Richards, the member for Redlands, who is on the phone. We welcome Michael Berkman, the member for Maiwar, who will be joining us as a participating member.

On 28 November 2019, the Hon. Yvette D'Ath, Attorney-General and Minister for Justice, introduced the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 into the Legislative Assembly. The bill was referred to this committee for examination, with a report date of 7 February 2020. On the introduction of the bill, the Legislative Assembly also agreed to a motion that the committee, when examining the bill, also consider recommendation No. 1 from the Crime and Corruption Commission's Operation Belcarra report regarding the feasibility of introducing expenditure caps for Queensland local government elections, with a view to the model commencing after the 2020 government elections.

The purpose of this morning's hearing is to assist the committee with its examination of the bill, including exploring various issues that have been raised by submitters. This hearing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. The hearing is being recorded and broadcast live on the parliament's website. Media may be present and will be subject to my direction. The media rules endorsed by the committee are also available from the committee staff if required. All those present today should note that it is possible that you may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone present to turn off mobile phones or, at a minimum, switch them to silent mode.

AULBY, Ms Hannah, Executive Director, Centre for Public Integrity (via teleconference)

ORR, Professor Graeme, TC Beirne School of Law, University of Queensland

WHEALY, Mr Anthony QC, Chair, Centre for Public Integrity (via teleconference)

CHAIR: I invite each you to make an opening statement, starting with Professor Orr. I will extend the same opportunity to the Centre for Public Integrity. After that, committee members will have some questions for you.

Prof. Orr: I thank the committee for the invitation to be here this morning. I will try to be brief, in part because my submission is limited to the parliamentary electoral law reforms. Given the time frames, I did not have time to get into the local government side of things. Generally, in principle I support the general aim to broadly regulate the campaign finance system, so my submission focused on legal and technical questions on campaign finance and also the proposed signage regime.

I will be brief also because I realise that today you have lined up 35 other witnesses between 9.15 am and 3.30 pm, which is barely a school day. I do confess that in 25 years of appearances I have not seen such a crammed day. I note that for your sins you have no lunch break. Lest that sounds flippant, there is a warning to heed in all of this to hasten slowly. I see that the Council of Civil Liberties, amongst others, has objected to the hurried nature of these complex proposals over December and January, fearing limited detailed scrutiny.

Can I suggest that there is also a constitutional imperative at play here. The government, the parliament and this committee need to consider what comes after enactment. Over the past decade, the High Court of Australia has stressed that it looks for a rational evidence basis if you are going to justify any significant restraints or limits on freedom of political communication or on the recently

implied principle of equality of opportunity to participate politically. I think other submitters have raised concerns about the level of third-party expenditure limits or burdens on third parties and donation levels.

My submission in regard to constitutionality, for example, focuses on what I think are serious problems with the bill in relation to discrimination against Independents. Away from this room you might think, 'Oh well, so what—Independents? They're lone wolves. They won't be able to muster a challenge to this legislation.' That is all the more reason why the committee has to stop and consider constitutional fairness in this regard.

In short, your report, I think, will be crucial to some aspects of this legislation, assuming that some aspects may be challenged before the High Court. It is not sufficient just to assert general principle, which you and I may agree upon in terms of regulation, and to wave airily and say, 'Well, New South Wales regulates this area in this way, roughly,' or point at, say, the bogeyman of Mr Palmer and his billionaire spending as happened in the recent federal election.

The High Court will look for an evidence base. They will look for things like: have you considered what is the Queensland media market, what is the recent level of party spending in Queensland, et cetera. That is the end of my opening remarks.

Mr Whealy: Both Hannah and I, but Hannah in particular, are prepared to answer any questions on the detail of our submission. Thank you for the opportunity to address on this important legislation. The Centre for Public Integrity supports the reforms in the bill wholeheartedly. However, we believe it could be strengthened in several areas.

We are concerned that the definitions of electoral expenditure, political donations and third-party disclosures in the bill may not be sufficiently wide. In our submission, which I will not go to in any detail, we suggest that electoral expenditure could include, and perhaps should include, expenditure on campaign staff and expensive consultants. We also suggest that income from large party membership fees and fundraising events should be included in the definition of political donations. We are particularly concerned about third-party disclosures and the fact that income received by peak bodies, wealthy individuals and corporations and used for electoral purposes may not be adequately covered by the bill, leading to a lack of transparency.

Finally, we look at the impact on charities and not-for-profit bodies. We accept that charities and not-for-profit bodies should be within the umbrella of the scheme, but we suggest that perhaps the administrative burden on those bodies, which are often small bodies reliant on volunteers and donations, might be lightened somewhat. Perhaps a threshold of electoral expenditure to define a third party could be raised to allow charities to continue to advocate on their issues and not be penalised too harshly.

In that context, we have noted in our submission that the current bill would allow, by comparison, companies or industry groups to self-fund $1 million in election campaigns without any disclosure of the source of the income. This allows an opportunity for vested private interests to have an undue influence on elections. That is our main concern—that is, the undue influence of money in politics. There are other matters of detail, Mr Chair and members, but you may wish to ask us some questions about those.

Mr STEVENS: Professor Orr, it has been suggested that the bill privileges the interests of registered parties over other election participants, including citing the gap between permitted spending for registered parties versus the Independent members, and registered and unregistered third parties. You have also raised concerns about this matter. What sorts of amendments or exclusions might address this differential problem?

Prof. Orr: I will take that in two categories. One is in relation to, say, Independents or non-registered parties, and I think that is very problematic. It may not be such a big issue in Queensland, but it will be in some seats. I have suggested in my submissions, for example, that in New South Wales Independents have a $200,000 expenditure cap and in South Australia Independents and micro-parties receive public funding at a higher rate than parties to recognise the fact that they do not have economies of scale, whereas in Queensland we still have a discriminatory public funding system, which is going to be perpetuated in this bill, where Independents receive public funding at a lower rate than parties. I cannot see how that can be constitutionally defended.

In relation to non-government organisations, third parties—whatever you call them—that is another matter. I think, as Mr Whealy QC suggested, there is a strong argument in our tradition in the Westminster system that election times are to be a time of deliberative focus on those accountable bodies that are standing for election. There are good reasons, and we see this all around the world,

to limit the spending of third parties at lower levels than registered parties, candidates and others. The question then becomes the detail. One year is a long regulated period in advance, even in a four-year electoral cycle. There is also the potential for undue burden on non-government, charity and other groups—Mr Whealy, Ms Aulby and others will talk about that—from the administrative burden of some very complex legislation on them.

Those are the sorts of things that you need to be thinking about. The principle is okay, but it is the administrative burden comparing, say, a large trade union, a political player or a large industry lobby to the sorts of community groups that you want to have active. It would be unreasonable to say that they should have unlimited spending capacity, because that creates all sorts of loopholes as well—the waterbed effect we call it—in campaign finance and its hydraulics.

CHAIR: We are all local MPs. My understanding is that Independent candidates have a higher spending threshold than party candidates at the local level.

Prof. Orr: As I understand the bill—I see that the Department of Justice and Attorney-General has gone through all our submissions and given responses—there is a $92,000 cap for party spending and there is also the potential for $58,000 of constituency level spending by the candidate themselves. If I am right on that, that creates a potential $150,000—

CHAIR: Professor Orr, my question was about expenditure at a local level where we do brochures, posters and advertising in the local newspapers.

Prof. Orr: Yes, but you combine the cap on the party and the expenditure by the party candidate themselves—

CHAIR: I understand that.

Prof. Orr:—at the constituency level and you end up with a higher cap than an Independent would have, as well as the discrimination on the basis of the funding received to potentially support some of that spending. That is what I was querying in that regard. On top of that you have that Independents do not have economies of scale—most of them—and on top of that you have the fact that the party is making a very large expenditure.

CHAIR: The threshold for Independent candidates for expenditure at the local level, specifically from their campaign accounts, is greater than what a party registered member has from their campaign accounts.

Prof. Orr: Yes, but you also have the party expenditure cap. If you are endorsed by a party you cannot separate yourself from the party expenditure both in terms of its state level impact and in terms of any party expenditure that, as we know, largely controls the constituency level campaign anyway.

CHAIR: I think the spending threshold is $85,000. From your research, from their declarations, how many Independent candidates expended $85,000?

Prof. Orr: I have not done that kind of empirical work, but it would not matter to the High Court. They will simply say that you have unjustifiable discrimination built into the system. The High Court in the last few major cases in this area has stressed the need for a level of equality between participants.

CHAIR: What I am asking though is: is your issue at the legal level—that is, whether it meets the test of the High Court—about which I would argue that if it was not impacting anyone in the past then perhaps that would be important, or—

Prof. Orr: It is a principle matter.

CHAIR: Right. It is a principle matter that affects how many people in reality? How many Independent candidates in the past would this have affected in reality?

Prof. Orr: It seems strange to talk about the empirical expenditure patterns of Independents in the past when we are not, for example, looking at the total party spending. I do not see any data produced here to justify expenditure levels generally and where they are being pitched. We know that in Queensland there have been significant Independent candidates and party breakaway candidates in the past—some of whom have decided the fate of governments. It is not a purely theoretical issue. We also know that the party system is fraying at the edges, generally speaking, and that Queensland is unusual in having relatively few political parties, probably because we do not have an upper house as well. Again, this is not simply a matter of jurisprudential mere abstract principle.

CHAIR: So it is not a matter of jurisprudence. Whose rights are we protecting? Which particular Independent candidates who spent more than $85,000 are we protecting?

Prof. Orr: I am sorry, I do not understand the thrust of your question. We are not talking about the rights of any particular people in the past. We are talking about a level of principle in terms of equality that will not just concern the High Court but also should concern those people who may want to run in the future or those people who may want to support them or the general public.

CHAIR: At what level would you set that expenditure? How many people would take advantage of that expenditure cap?

Prof. Orr: As in New South Wales, you would set the expenditure cap at at least as much as what the parties combined can spend on the party controlled constituency level campaign and your campaign account as a candidate. You would certainly put that as a minimum because Independents and micro-parties do not have the established infrastructure that the parties have and will not benefit from the statewide expenditure. That is what it has been in some other states. On top of that you have the problem of the underfunding of Independent candidates through public funding, which dates back to the Campbell Newman days. Again, I do not see anywhere in Australia where that is replicated.

CHAIR: It is a tired expression, but all politics is local. If I were a local candidate who was in a party and I had a cap that was some one-third of the cap of the Independent candidate running against me, they would be able to campaign on specific local issues which the party might not have as a strategic interest. That would provide a really different playing field for someone in a registered party. With respect, and anyone on the committee might want to put this differently, having run local campaigns, that local influence is really important, as is campaigning on local issues.

Prof. Orr: We are coming at this from a slightly different perspective. We are not living in the 19th century where you people are running as essentially independent, constituency level people unaffected by the whole statewide campaign, the party control of statements and brochures and the centralisation and professionalisation of campaigns that we have seen over the last 50 years or so. I think it is a little bit unusual to suggest that you are effectively hamstrung and tied in ways that mean that you are discriminated against by a system where I am arguing for equality for Independents.

CHAIR: Three times as much in reality. It is three times as much expenditure at the local level for an individual campaign. That may not be available to local MPs who are party registered.

Mr O'CONNOR: Professor Orr, in the section on caps in your submission in particular you had a few things that you thought the committee should consider. In terms of the level of the caps, you talked about the need to have a rationale behind it to insulate against a High Court challenge, which you have touched on already this morning. I just wanted to know if you had an opinion or something that you found in your research on the level that the caps should be at, particularly against other jurisdictions. Are there any particular figures that you think we should be considering in general—you have talked a lot about Independents—particularly around the party candidate caps?

Prof. Orr: The total party cap, as I suggested, comparing it to, say, New South Wales, where it is not unduly high. You also have to think about what is capped, what is defined as expenditure, the one-year period and so on. What I am suggesting, though, is that the government cannot just come up with this in a black box without a green paper and then try to get this through with one day of public consultation without considering things such as the nature of the different media markets in Queensland, the relativity of spending between parties, the history of spending by parties—none of which I would necessarily see coming before us today even—and then just hope that the High Court is going to say, 'It is not our job to police this area.' The High Court has made it its job whether we like it or not.

Mr O'CONNOR: You mentioned the one-year period to the election date being quite long by world standards. What are those standards across other jurisdictions that you have observed?

Prof. Orr: In some jurisdictions it is several months from polling day. The UK has a one-year period which can backdate, as happened in the recent snap election. By world standards, a one-year period is quite long and can create issues.

Mr O'CONNOR: What needs to be factored in?

Prof. Orr: We are moving towards fixed terms, so that is a good thing in terms of predictability. What needs to be factored in is, for instance, some of the things I mention in the submission. It could be difficult for a party to know in advance how many seats it is going to run in if it is not one of the major parties and for smaller NGOs and so on to predict when they are going to hit in that $1,000 mark, which expenditure is going to be included in that and so on. One year is a significantly long period. Again, it will be one thing that the court will look at in terms of the balance of the justification of some of these limitations. Obviously, the more you narrow the period the less you trample on some of the concerns of NGOs that their issue advertising, their general advocacy, is

going to be caught up in a very intricate web. A period that was shorter and focused more on the six months before electioneering, for example, is more easily defended not just constitutionally but also in terms of the practicalities of its impact.

Ms RICHARDS: I wish to continue on the thoughts around the one-year period. We have seen evidence here in Queensland now, as we head into the 2020 election, of candidates being endorsed by parties well outside the 12-month period and legitimate campaigning, with cost associated, underway. I saw that personally out my way in December. We had big electronic LED billboards out promoting. I know that there were mail drops done in the electorate of Gaven before Christmas. We are 11 months out from an election and we are seeing legitimate and real campaign expenditure occurring. When we are seeing that on the ground in Queensland now, could you elaborate a little further on why you think 12 months is too long?

Prof. Orr: How long is a piece of string? You have to think in terms of balance and apportionment. If you are talking about the impact particularly on third parties and the High Court, I point out that electioneering and political advocacy is not just focused on party spending like it may have been in the 1940s and 1950s. This is an increasingly complex web in which civil society is involved. I am talking in terms of the balance of this. A one-year period is about as long as you will get anywhere in the world. We know in the UK it has caused some problems and concerns—

Ms RICHARDS: As I said, we are seeing endorsed candidates on the ground prior to the 12 months and legitimate campaign expenditure occurring. The intent of the bill is to capture campaign expenditure. I think the 12 months reflects exactly what is happening on the ground around campaigning.

Prof. Orr: There is a problem here. If we are entering a period of permanent campaigning then we are going to have to regulate the whole four-year term and then we have to think about it not in terms of campaign finance but political finance. That is almost like a three-dimensional chess game rather than a two-dimensional one. I understand your point.

Mr PURDIE: A number of stakeholders have raised concerns about the definition of electoral expenditure. You have also identified issues regarding the lack of clarity surrounding the reference to spending on opinion polls, research activities, social marketing et cetera and how that is different in this proposed legislation to that in New South Wales. Can you elaborate on that?

Prof. Orr: The point I was making was in terms of expenditure on data. I will put it this way: traditionally around the world people think about regulating election expenditure. The assumption was that we are regulating something which is public and open. We are regulating TV campaigns, radio campaigns and literature. The parties can keep track of each other. Increasingly over the last five years, but moving into the future, at least around the world, a lot of money is being spent behind the scenes on campaign analytics such as Facebook messaging tools and so on. The question of the ability to capture that in terms of the definition in the legislation is very important, but also then you get into the question of enforcement and how we trace some of these things. Who is going to be doing the tracing? Will the Electoral Commission have the ability? What are the time limits for prosecution? Why doesn't excessive expenditure imperil the election outcome under this proposal? It goes on.

CHAIR: In that regard, the suggestion would be that obviously at a data level you have to produce an outcome to communicate with somebody, be it Facebook advertising, print mail or some kind of output.

Prof. Orr: You are not just talking to yourselves to advocate, yes.

CHAIR: On that level, the preparation and all of the analytical tools that derive from that are part of the production of that product, so is that not something that is then captured?

Prof. Orr: My suggestion is that it has to be clarified. We have to make sure we have 21st century legislative definitions and that it is not based on 20th century assumptions, which is a big thing that haunts this field. Then you get into questions that other people have brought up; for example, what is the cost of production if we are talking about back office staff and so on and so forth. Then you get into the chicken-and-egg question: what about third parties and so on such as political parties who exist as political machines and then how are you going to separate some of their fixed costs, which are mostly designed to achieve their advocacy or general charitable outcomes, from the things that political parties do? We accept that political parties are electioneering machines—not solely but predominantly.

Mr O'CONNOR: Anthony and Hannah, in your submission you suggest the insertion of a clause that requires state accounts to be independently audited. Currently the ECQ does some auditing as part of its post-election review process. Do you envisage the ECQ doing that auditing or do you want it more widespread or mandatory, as you suggested, and what would the auditing that you talk about look like?

Ms Aulby: The main point there is that it should be mandatory. Whether that is done by each participant as part of their disclosure process or centrally is up for negotiation. I imagine it would be easier for each participant to do that. It would not be that different from what participants have to comply with in terms of their organisational registration. Every charity requires an audit and political parties require auditing, so I imagine it would not be too difficult to get those auditors to complete the auditing of disclosure.

The reason we recommend that—especially federally but in all areas—is that, when you are dealing with such large amounts of data coming in, the process of monitoring and enforcement can be quite difficult and unless you have a very strong and well-resourced regulation team within the Electoral Commission, which we would recommend having as well, it can be difficult for the Electoral Commission to cover off on every single disclosure. We recommend having that audit process independently as a monitoring and regulation system.

Mr BERKMAN: Professor, you have already noted that a lot of submissions address concerns about third parties and the very onerous administrative burdens that may apply to them. Other submissions have also noted that charities are already legally precluded from promoting or opposing candidates or political parties. Do you have a view you can share with the committee not so much as a general proposition but on whether those burdens, those issues, raise any constitutional concerns?

Prof. Orr: As currently drafted?

Mr BERKMAN: Yes.

Prof. Orr: My submission did not focus on that because I knew other people were going to be focusing on that. I knew there were people with better expertise in that regard. I certainly accept as a general principle that you have to be holistic in the regulation. I am not sure it is entirely true to say that charities cannot engage in some electioneering. The High Court has accepted in the Aid/Watch case that charities and other NGOs are entitled to engage in political activities, and some of those political activities will involve influencing electors at electoral time. In term of finding a balance, as I have said, the one-year regulated period is long. The $1,000 limit to register is very low. There are a variety of other areas you could look at in the legislation to mollify some of those concerns.

Mr BERKMAN: Thank you, Professor. I did not mean to put you on the spot, not having addressed it in your submission.

Ms Aulby: We have concerns. As Professor Orr said, the High Court is interested in equality of participants, and any time there is inequality it needs to be justified. Our concern is that third parties that rely on donations, which are charities and not-for-profits, are not treated equally as other third parties such as industry peak bodies and corporations. I can imagine that the High Court would have something to say and look for rationale about why it is that some types of third parties are regulated more heavily than others.

Mr STEVENS: Professor, you have mentioned the High Court on several occasions. Can you enlighten the committee on how you see this legislation ending up before the High Court?

Prof. Orr: It would not end up in a single inquiry into the whole legislation. It would depend on which, if any, particular groups with a justiciable standing, as we say, challenge which aspects of it. I focused on some aspects to do with Independents, who I think are unlikely to mount a challenge, given their nature. We know that some litigation has been driven by trade unions. If you have a situation where a trade union's spending must be aggregated to the Labor Party, the High Court has said that is problematic. Then you have questions about the impact on third parties and political parties in terms of donations. I am sure the Liberal Party—I think we are hearing from the Spences—are going to be looking at some of these aspects, so it is not possible for me to say in advance.

I am not saying that the parliament should be scared of the High Court. I do not personally agree with the High Court getting too deeply involved in this area. I think it has become micromanaging in some respects, but it is what it is. The High Court can be invited to consider impacts on political freedom of communication and impacts on political equality with regard to specific aspects of the legislation. What is important is the process and the evidence base on which you act, because that will help insulate any reforms against the High Court unduly trammelling what is otherwise a question for an open democratic discussion.

CHAIR: In America where they have tried to introduce campaign legislation we have seen the advent of workaround super PACs and other organisations which effectively defeated the intent of the legislation. Money continues to be a big influence, which we are all agree is not healthy. When we put in too many exemptions, does that not provide many more opportunities to defeat the intent of the legislation by putting in workarounds where other organisations are created solely for that purpose?

Prof. Orr: I think when you look around the world it is largely about the culture. If the culture is going to be hypercompetitive and what we call the 'bad man' in the law, parties going to get specific legal advice to find workarounds, then it really does not matter whether you draft it broadly in principle or whether you draft it very fine and very intricate. You are going to have a cat-and-mouse game and—

CHAIR: That is a fairly dismal view of the process of law, isn't it?

Prof. Orr: The process of law? No, I am talking about the culture of politics. To a certain extent we have a situation in South Australia and New South Wales whereby if you can have some agreement between the major players and the parties on what is fair and if you can have some buy-in from other organisations, depending on the nature of politics in this state—as we know, there are six or seven parties; there are a few major players—then you are likely to have a more stable system than if you have none of that buy-in. We have seen this in the past. We know that the Bligh government brought in significant legislation which was then wiped away by the Newman government, and now we are revisiting it in the second term of the new government. There are two aspects of the cat-and-mouse game. The first is whether there is political stability, agreement on the general principles, and then it is about tweaking the detail. Then you have the question about whether particular actors will go looking for loopholes. It is a long-term game that you are getting into.

CHAIR: I thank Anthony Whealy, Hannah Aulby and especially Professor Orr for appearing today.

COSTELLO, Mr Sean, Principal Lawyer, Queensland Human Rights Commission

DRURY, Ms Alice, Senior Lawyer, Human Rights Law Centre

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

CHAIR: I would first ask the representative from the Queensland Human Rights Commission to make an opening statement before we extend the same opportunity to representatives from the Human Rights Law Centre. It would be appreciated if your opening statements could be kept to no more than five minutes, as committee members we will have a number of questions for you.

Ms Holmes: Good morning, and thank you very much for the opportunity to appear before you today. I first of all acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging.

The commission supports the objectives of the bill which are aimed at enhancing the democratic rights of all Queenslanders. The Human Rights Act 2019 commenced on 1 January with regard to the requirement for a member who proposes to introduce a bill into the Legislative Assembly to prepare a statement of compatibility. No statement of compatibility was required for this bill when it was introduced in 2019. Nonetheless, the commission believes it is important for both this committee and the parliament to consider relevant human rights protected by the Human Rights Act when examining this bill. There are a number of rights engaged, and our submission sought to provide a framework for the assessment of human rights compatibility. I will ask Mr Costello to briefly outline that framework and our recommendations.

Mr Costello: In applying the Human Rights Act to these changes, we note in our submission the right to freedom of expression and to participate in public life are those particularly engaged by the electoral and expenditure caps in the bill. We also noted that the proportionality assessment in section 13 of the Human Rights Act, which says how rights can be limited and when they are reasonably limited, is essentially similar to the High Court's assessment of whether a burden on the implied freedom of political communication under the Constitution is reasonable. Applying these principles, we suggested some amendments be considered regarding the impact on smaller non-government organisations and charities and note that the committee has received a number of submissions on this point, including from the Human Rights Law Centre. In our submission we suggested some potential amendments, but we are not necessarily fixed on that. Really, what we are looking for is that any limitation on rights is demonstrably justified in the bill, including through other amendments if necessary.

We touched on some other matters in our submission as well in terms of the various caps that have been chosen. Perhaps the committee may seek further information from the government on that. We note that came through last week. We also refer to what we understood was an evidential burden placed on a defendant for the new dishonest conduct offences, which engages the presumption of innocence under the Human Rights Act. We suggest this requires justification. Given that it does place a burden on the defendant, perhaps there could be clarity about exactly what the extent of that burden is.

Ms Drury: I thank the committee for the opportunity to appear today. At the Human Rights Law Centre we believe that Australians deserve a parliament that represents and prioritises them, and of course that also extends to Queensland state elections. This is impossible when candidates' election campaigns are funded by wealthy individuals and corporate interests. To have a fair system, election spending should be limited, large donations to candidates and political parties should be prohibited, and that should be compensated by increased public funding. These are the reforms that the Human Rights Law Centre is pushing for at the federal level. Naturally, so far as the bill achieves these aims we applaud it. However, democracy also requires a thriving civil society. Community voices and charities are really vital in terms of speaking out during election debates on matters like homelessness, violence against women and how to best respond to and prepare for future bushfires.

Electoral reform is incredibly complicated, not least because we have many different types of organisation being regulated under the banner of third parties. For instance, both Toondah Action Group and Queensland Resources Council are being regulated under the same banner. Unless very carefully thought through, reform in this space can easily become discriminatory in its application. Unfortunately, that is what we are facing in this bill. If passed unamended, this bill will severely restrict those that rely on donations for their advocacy—for example charities and community groups—from speaking out in the lead-up to elections but leave big corporate spenders largely unimpeded. I think the radio silence from the private sector in terms of calls for submission to this committee is telling in that respect as well.

Just to make it clear to the committee, the compliance burden is so high and the bill is so complicated that groups wanting to do something like put ads in the local newspaper or distribute a leaflet on a property development in their local area will need to find good legal advice, an accountant and also an agent willing to take a risk of personal liability of a fine of up to $26,000 for getting this wrong. I am sure the committee is well accustomed to the way in which these community groups and charities often run. They are often volunteer run or run on a shoestring budget. Addressing this kind of compliance burden is just frankly impossible.

The stated purpose of the bill is to level the playing field but, unfortunately, the bill risks worsening political inequality in Queensland. On that basis, we believe that it is vulnerable to constitutional challenge. We received advice from eminent QC Stephen Keim to that effect. In fact, I have a spare couple of copies of the advice which I am very happy to provide to the committee if that is useful.

CHAIR: If you could hand that up, we can look at it.

Ms Drury: Finally, we have put forward a couple of discrete amendments that we believe will go a long way to improving this bill while maintaining the integrity of the system of donation caps, donation disclosure and expenditure caps that we think will bolster the position of charities and community groups under the bill and protect the bill from constitutional challenge. I am very happy to talk the committee through that amendment if it is useful.

CHAIR: We will accept this document for tabling.

Mr STEVENS: Ms Holmes, your submission identified a number of issues about which the committee may wish to seek further advice from the department. In particular, you stated that the explanatory notes do not provide sufficient detail on how the relevant caps were chosen and whether they are suitable or adequate et cetera. What key questions do you consider might need to be answered in respect of the cap figures?

Mr Costello: The conversation that you had with Professor Orr that we had the benefit of listening to probably elaborated on the sorts of evidence we are looking for. The government I know has provided further information today. Essentially the question—it was related to the discussion you had with Professor Orr—is really about why those particular caps have been chosen and what was the rationale for them when compared to some other jurisdictions and how they have approached the caps. The discussion you had with Professor Orr highlighted the sorts of questions we were looking at.

Mr STEVENS: It was more a question than you having your own suggestion?

Mr Costello: We do not necessarily advocate for a particular cap. Generally in human rights, the burden falls to the government generally which is limiting rights to demonstrate why the particular policy it has chosen is a reasonable limitation on rights. It is about further information being provided by the government about why those particular caps were chosen for various election participants.

Mr STEVENS: Ms Drury, you mentioned that you were very supportive of the legislation in terms of the undue and improper influence created by wealthy individuals or wealthy corporates in influencing politicians. You did not mention very wealthy unions and their donations in relation to that matter and the influence that they may have in union interest legislation, et cetera. Is there a comment that you would like to make in relation to union donations on the matter?

Ms Drury: I do address unions in the submission. We think the threat of corruption posed by unions is less on two bases, one of which is that at the end of the day unions receive their money as small membership contributions from ordinary Australians. By the way in which they operate, they are more representative in that way. The other reason is that there is a set number of unions that are able to spend up to a million dollars in an election in Queensland. There is a very limited number of unions that would be able to incur that kind of expenditure, whereas there is an unlimited number of corporations and wealthy individuals who would be able to incur a million dollars during a state election.

Mr STEVENS: All corporates have many small investors in those corporations. It is only the head body that makes the decision to donate, if you like. Similarly, it is only the head body of the union, rather than all of the union members, that makes the decision to donate. Where is the difference between those two scenarios?

Ms Drury: I think there is a big distinction between an industry association, which is representing the likes of BHP, and a union that is representing workers. That is our position on the distinction.

Mr STEVENS: That difference is?

Ms Drury: The difference is the capacity and the power of the different organisations to represent ordinary Australians.

Ms BOYD: Ms Drury, you identified that there is nothing in the bill to prevent corporations from spending multiple millions through varied subsidiaries. Are you able to elaborate on that and provide us with your view about how that could be addressed?

Ms Drury: It is something that I obviously would be very happy to look into more and provide a more detailed answer on notice. Certainly, when it comes to the definition—I think in this instance it would be under third party—there would need to be clarification that subsidiaries of a corporation should be treated as the one entity.

Ms BOYD: In your opening remarks in relation to not-for-profits, charities and community groups you provided the view that it is onerous in terms of the compliance that this bill proposes for those groups in terms of being provided with legal advice, advice from an accountant and so forth. As an ordinary donor to these groups, would there not be a set expectation that the community group, the charity or the not-for-profit already is operating with legal advice and knows how to operate within a framework to the regulations? Certainly, I know that as I donate to charities I expect that the money will end up where I am told that it will end up, that it will get there the right way and that the process will ensure that the cause will be addressed through a proper framework. Does this bill not simply provide that?

Ms Drury: No, it does not, with respect. You can expect that your money will be distributed by a charity in accordance with law. I think that is absolutely a reasonable expectation. The difficulty that we are facing with this bill, though, is that the compliance burden is so high that you could very realistically end up asking a charity to spend more on legal advice than it is actually using on advocacy, which from a donor perspective would be a bit of a disastrous result. You do not want all of your donations to go on legal advice on whether or not they can advocate. You want that charity to be out there doing the advocacy.

CHAIR: At what level do we do this? A business, large or small, has to be in compliance with industrial relations law, employment law and health and safety law. We do not usually make exemptions that say that those laws do not apply at a certain threshold because there is a significant burden—and there is—to be lawful. Small unions, like the Bacon Factory Union of Employees, have to consult and work out whether they are doing something within the framework of law and a whole bunch of other laws. Charitable organisations already have to comply with significant regulation. Is it not the case that having an account, spending from that account and making that transparent is necessary for the transparency of democracy in Australia, or should we find exemptions?

Ms Drury: To be quite careful with our language, our amendment is not actually an exemption; it is a narrowing of the definition of 'electoral expenditure', just to make that clarifying point. The other really crucial point to make is that regulation should only be imposed, particularly if it is going to restrict and chill speech, if it is justified. The reason for capturing third parties in donation, disclosure and cap obligations is to avoid corruption of the political system, so a political party cannot divert donations to a third party because it can no longer receive it. That issue does not arise with respect to charities and it is not a significant issue with respect to small organisations with an income of less than $50,000. Regulation for regulation's sake is the issue that we are facing here. There will be very minimal, if any, benefit to improving democracy and improving the integrity of the electoral system in Queensland by capturing these two different types of organisation in this bill.

CHAIR: With respect, those that have followed the attempts of legislatures all over the world to ensure a process of fair electoral spending see—I put this question to Professor Orr—that people use other vehicles to do that electoral spending, especially ones that have a voice that seems credible. In seeing that a system where all organisations follow the same, we may see that money flowing in that direction. We are actually acting in anticipation of that, in the knowledge of the way these types of legislation have been subverted throughout the world.

Ms Drury: The concern is that a fake charity in essence would be set up in order to funnel donations?

CHAIR: There are all sorts of concerns. Should we not have a process of having a bank account, having clarity and having it registered? It is about making it clear to Queenslanders where people are attempting to affect the political system, whatever definition we end up with, when they are seeking to give the perception that they are open and transparent.

Ms Drury: This bill does not require open and transparent processes for the vast majority of the largest players in Queensland elections.

CHAIR: With respect, do they not have the same process of having an account registered and declaring that they are making expenditure?

Ms Drury: They do, but corporations, for instance, will not have to disclose the revenue streams they are using; nor are they restricted in terms of the revenue streams they are permitted to use. The same goes for industry associations and unions. They are not restricted in terms of the revenue streams they are permitted to use. Only charities and those that receive donations are restricted in that way and only charities and small community groups are restricted in terms of the type of donation they can use.

CHAIR: That being said, the Registered Organisations Commission and the Corporations Act make clear the revenue of corporations and unions. In that way, there already are declarations on where that revenue comes from.

Ms Drury: Sure. That is not relevant to the electoral process. The major issue is that if the government cannot show that charities and small community groups can be used to corrupt the process, which we do not believe is the case, then they should not be regulated in a way that will prevent them from doing advocacy.

Mr O'CONNOR: You talked about how the bill in your opinion would not achieve its purpose of levelling the playing field, particularly because it allows corporations and industry associations to spend more relative to charities, unions and other organisations. Is that your assertion?

Ms Drury: There are two points, one of which is that they are not captured by a lot of the onerous obligations under this bill including the donations cap. They will be able to spend more because there is an unlimited number of them that could coordinate a campaign together.

Mr O'CONNOR: Do you mean up to the million?

Ms Drury: Up to a million dollars each.

Mr O'CONNOR: What is the basis? It is already the case in Queensland that every donation to a candidate or a political party over a thousand dollars has to be disclosed in real time, so we already know what money is going into existing campaigns and candidates. I just looked up one that you mentioned, the Resources Council of Queensland. They have donated $64,000 since 2016 out of a total of about $30 million. What is the basis for you thinking they are going to pick up campaigns that they are not already running? They are already donating not much. Why would they suddenly start spending millions of dollars on elections?

Ms Drury: They already are spending millions of dollars on elections.

Mr O'CONNOR: That is $64,000 out of $30 million.

CHAIR: That is their donations.

Mr O'CONNOR: That is how much they have donated in the last four years: $64,000 out of $30 million total donations in Queensland.

Ms Drury: Our position does not change. They are already spending an enormous amount, and that may increase if they cannot donate to the political parties. Typically, Queensland Resources Council and other peak industry associations do not donate directly to political parties. Corporations do, so that applies more to corporations that might become more involved with direct campaigning if they cannot donate to political parties to do their own campaigning.

Mr BERKMAN: Before I move on to the question, I want to be really clear. The question the member for Bonney was asking perhaps muddied the waters between direct spending from peak industry groups and donations to political parties, whereas you were addressing those as separate things.

CHAIR: That was the point I was trying to make, too.

Ms Drury: That is right.

Mr BERKMAN: I assume you have seen the suggested amendments from the Human Rights Law Centre and the Human Rights Commission. The Human Rights Commission has suggested more broadly that changes could include simply exempting charities from the changes since they are already prevented from promoting or opposing political parties. Are there any issues with that as a proposal, Ms Drury?

CHAIR: We heard Professor Orr say that that is not the High Court's interpretation. They actually were able to be actively involved. I want to be careful about that assumption as we have heard evidence previously that that is not actually correct.

Mr BERKMAN: If I could clarify my question—

CHAIR: Please go ahead.

Mr BERKMAN: Specifically, it is about the section that has been referred to in submissions, section 11 of the Commonwealth Charities Act, which includes disqualifying purposes, which I understand include promoting or opposing a candidate or political party.

Ms Drury: That is completely correct. Mr Berkman is completely correct that charities are not allowed to have that purpose. I think the point Professor Orr was making, without wanting to verbal him, is that that does not mean they cannot do any activity in an election. Obviously we would not be here if that was the case. Just to be really careful, I think Mr Berkman's position was correct. I lost track of the question.

Mr BERKMAN: Do you have any thoughts on a general exemption of charities from these changes given those precluded activities? Does the commission have a view on the specific amendment that the Human Rights Law Centre has proposed?

Mr Costello: As I alluded to in our opening statement, obviously there has been a range of amendments put. I think some of the confusion—and I think we went to this in our submission as well—is about the definition of election expenditure. Victoria has a slightly different definition; it might be narrower. That is another way of tackling the issue. As I said, I do not think we have a hard and fast position on it. It is more that if it cannot be a justified limitation—this burden on government organisations and charities—then we would be looking for some form of amendment to lessen that burden, whether that is being very clear about what election expenditure is or whether that is taking them out of the regulation.

Mr BERKMAN: Ms Drury, do you have a view on the general exemption? Does that satisfy your concerns?

Ms Drury: We have put forward a very carefully thought through amendment that would still capture charities. Our proposal is actually narrower and that is ultimately the one that we support and we think quite a few charities in Queensland support. That would be our first preference. I am very happy to talk the committee through that amendment if that is useful.

CHAIR: Ms Drury, I may be verballing here, but the assertion that Amnesty could spend $100,000 and not be captured—it was put in the paper that a charity perhaps could spend $100,000.

Ms Drury: That was from Mr Keim's advice.

CHAIR: There are obviously a lot of charities, just as there are a lot of businesses. On the same basis, could we argue that business should be able to spend $100,000 without falling under the system?

Ms Drury: Businesses are able to do any kind of campaigning they like; charities cannot. That is the big difference. The reason we are putting this amendment forward is because of the discriminatory impact of this bill. Businesses are going to be able to go out there and say what they like, regardless of this bill.

CHAIR: On that suggestion, if businesses did not fall foul of advocating for a vote that the High Court has set for charities they should be able to advocate for a particular position on coal or any issue that is important to business as long as they do not promote a particular candidate; they should be able to do that up to $100,000? If they were to campaign in exactly the same way as charities are able to, which undoubtedly influences elections—those businesses used be able to do that style of campaigning up to $100,000. Is that the position that you are putting forward?

Ms Drury: No, the position we are putting forward is accepting that there are restrictions that hit charities and small organisations whereas they do not hit businesses. There is very little to no corruption risk posed by charities and small community groups and on that basis there should be a narrower definition of electoral expenditure which we would not extend to businesses. I might steer us away from the $100,000 because that is not actually our position in our submission. That was just an example given by Mr Keim in the advice; it was just an illustrative example. He was not talking about a cap, so I think we are speaking at slightly cross-purposes. Does that make sense as to why we are drawing a distinction between charities and businesses?

CHAIR: I just had that tabled paper from Mr Keim and I thought if it is good for one organisation is it not good for another, and if we were to take that exemption why do we apply it to that? A lot of community groups—and we see this more and more—stir up a strong, often political issue in order to do fundraising, especially amongst their membership and to extend their membership. We see it on Facebook and in advocacy letters that I receive. There are incentives—let's not say corruption risk—for community groups and not-for-profits to engage in this to expand their organisation. That is actually part of the process on which some of them work.

Ms Drury: Is that a problem? What is the connection between that and the scheme of this bill?

CHAIR: Obviously for the benefit of their shareholders, businesses wish to increase the size of their business and advocate for the positions that are best for them. In some cases community groups actually campaign within this space in order to solicit donations by objectively involving themselves in the political sphere.

Ms Drury: I am a little bit lost as to why that makes a difference under this scheme. Should this scheme try to capture that?

CHAIR: I am just saying that there are complexities in the way that not-for-profit organisations work in some cases—not all not-for-profit organisations. Some of them have an organisation where they solicit funds on a regular basis campaigning on issues that are often political. They have incentives to do this. If they are campaigning in a political space, should they not be regulated and registered?

Ms Drury: They will still be regulated and registered under the amendment that we have put forward.

CHAIR: I am glad to see that.

Ms Drury: To be totally clear, we are just talking about a narrowing of the definition.

CHAIR: Ms Drury, others have made a different assertion, so I just wanted to get that on the record.

Ms Drury: That is fair enough, but we are resting on the assertions that we made in our submission. The only reason we are focusing on this amendment that will be specific to small organisations and to charities is because of the discriminatory application of the bill as it currently exists. We are only trying to ameliorate that discriminatory application. We are not trying to say that charities should be above the law; we are not trying to make that argument at all. We are just saying that at the moment they will not be able to do their advocacy in election years and at the moment that is very much vulnerable to constitutional challenge.

CHAIR: We might move on. I do not think there were any questions taken on notice.

BARNES, Ms Laura, Senior Manager, Policy, Advocacy and Capacity, Queensland Council of Social Service Ltd

BENSON, Ms Kerrin, CEO, Multicultural Australia and Board Member, Queensland Community Alliance

KENNEDY, Mr Devett, Lead Organiser, Queensland Community Alliance

SEIBERT, Mr Krystian, Private capacity (via teleconference)

CHAIR: Good morning. First, I would like to invite the Queensland Council of Social Service to make an opening statement before we extend the same opportunity to representatives from the Queensland Community Alliance and Krystian Seibert. I remind you that if we keep them reasonably short we will have a longer period for questions.

Ms Barnes: Thank you very much for this opportunity to address you today on what we consider to be a very important issue. Before we start I would like to acknowledge the traditional owners of the land that we meet on here in Brisbane and indeed across Queensland. I pay respect to elders past and present, voices that are increasingly important as we engage on major public policy issues across Queensland that affect people in communities. Their voice and their wisdom are important in these issues and I thank them and am grateful for the opportunity to hear them.

QCOSS is the peak body for community and social services and a voice for people experiencing poverty and disadvantage. Our vision is for equality, opportunity and wellbeing for every person and every community. A key part of our role and the role of our sector is public advocacy on a range of public policy issues to improve outcomes for people and communities. Working with our members and engaging in communities, we hear firsthand stories of where policy, programs and systems fail people and where action must be taken by our policymakers to support better outcomes for our communities.

As the peak body, as I have outlined our role, we support the intentions of this bill. We support the intention to level the playing field in elections, to improve integrity and to minimise the risk of private influence in our elections. Increasingly, people are feeling disconnected from our electoral process. They are disillusioned with politics and elections. We have been working across Queensland, engaging in communities from the gulf to the south-east corner and west. What we are hearing is that people feel excluded from the decisions that affect them and this disillusionment with election cycles is part of that. This is a concern to us. Connected, engaged people make strong communities. Working to build transparency and integrity of the electoral process goes a long way to rebuilding that trust in our democratic institutions.

However, as we stated in our submission, we are concerned that this bill has serious consequences for public policy advocates, community organisations and charities—those defined as third parties in this bill. Community sector organisations are in a unique place to hear and represent the voice of Queenslanders who experience the most disadvantage, and undertaking public advocacy for these people and for communities is an important role. These are voices that are often otherwise hidden. The bill as it stands has the potential to silence this important voice in the public debate and in doing so limits the opportunities that we have to improve the lives of Queenslanders.

We have outlined key issues in our submission but I will restate them very briefly. One key issue we have is with the complexity of this bill, particularly around the definition of the term 'electoral expenditure'. Secondly, the difference between public advocacy, awareness raising and electoral expenditure is unclear and may require specialist legal advice. That is onerous for small organisations in particular. Thirdly, this bill places significant regulation and administrative burden. Separate bank accounts, appointing an agency, registering donations and notifying donors all creates additional new work for organisations that are already stretched and under-resourced. In terms of the risk of noncompliance, the liability for agents and possibly—I note in some of the other submissions—for directors is substantial: $26,000. This may be a deterrent for smaller organisations, particularly those that are volunteer run. Finally, the caps and limits on donations limit the capacity of organisations to undertake this work. Unlike for political parties, there are no public funds provided in recompense.

Altogether, our fear is that many organisations will choose not to engage in public policy in the election period rather than take the risk. On top of this, as we have heard already this morning, it is unnecessary. Community organisations registered with the Australian Charities and Not-for-profits Commission are already prohibited from promoting or opposing a candidate or political party.

We must by law act for the public benefit. We cannot introduce or vote on legislation. We cannot approve developments or pass regulations. We are not decision-makers. Our role is a voice. Our role is that of public advocate—a role that is put at risk by this bill.

Finally, if passed as is, this bill will in fact create an unequal playing field. It requires disclosure only of donations, not of membership fees or revenues. To be honest, for QCOSS as a member organisation we can continue to use our membership fees to support us to continue our advocacy, but for much of our sector—for our members—donations are the only way to undertake this work. These are organisations on the ground who hear daily the struggles and the opportunities of their communities, and these are the voices that could be silenced.

Mr Kennedy: I will make a brief introduction and then ask Kerrin Benson to speak to some examples. The Queensland Community Alliance brings together faith groups, unions, community organisations and ethnic associations to work together for the common good. You will know from our submission that we have 36 member organisations across Queensland. Our alliance supports the overall intention of the bill and we agree that there is a need for reform that allows elections to work more effectively and transparently.

As previous submissions have outlined, we think there are concerns in relation to the impact on civil society. The role of civil society in a democracy is crucial and nuanced. Our alliance recognises that the basis of a healthy economy and a healthy democracy is a strong and healthy civil society—those organisations that people join on a voluntary basis. Faith groups, unions and the community sector play an important role in raising issues that are of concern to their members in an organised way. However, they also have a role in educating their members about issues in society and forming the understanding that their members have. Both of those roles need to be respected and upheld. One of the concerns we have about the bill is that it conflates the former with the latter.

There are three overarching concerns which you will see in our submission. The first is the compliance burden, the second is the donations cap and the third is the registration threshold for third parties. The concerns for our member organisations fall into two sets of organisational concerns. The first relates to civil society organisations that are not actually intending to campaign but, because of the breadth of the definitions here, could be considered as engaging in electoral expenditure and could be caught up with this quite unintentionally. The second set of concerns are civil society organisations that are intending to run public campaigns and actions and that are restricted in their operations. I will hand over to Kerrin Benson, the CEO of Multicultural Australia, to speak to a particular example.

Ms Benson: Thank you for the opportunity to talk with you today. I think up-front I would like to acknowledge the complexity of the legislation and say how incredibly impressed I am already just by how much you are trying to get your heads around this issue.

I support the intent that we need fairer elections and that we want to limit big-money influence in elections, but as the CEO of Multicultural Australia, formerly MDA—I have been there 16 years—I am concerned that it will impact on our regular business of working really actively with government for good public policy. I do not think we are unique in being a charity that has always had a really strongly bipartisan approach and has tried to give voice to the issues of our clients and work actively with government about that. That might be lobbying, that might be advocacy or that might be co-design of public policy, but it is really the shared agenda that we have to have good public policy for the people we all represent.

In a very practical way, I thought I would just talk through an example of some work that we have done that I find really ambiguous in terms of the bill that is being proposed. For about the last 12 years we have been working with people who have sought protection here in Queensland—people who are looking for a safe place to live: asylum seekers. Asylum seekers did not have access to public transport concessions. That is seemingly quite a small thing, but they are living on 87 per cent of Centrelink, so very low incomes. The impact of that is that they have not been able to participate very well in contributing back here in Queensland. It really limited the possibility of people volunteering particularly and giving back. We did a lot of advocacy on that with both sides of politics and with all of you when you were in government over that time.

Before the last election that issue became really serious and we did a couple of things. We started raising some money to support that. Most of that money actually went to contributing to go cards for asylum seekers, but we then worked with the Community Alliance to also pull together some public meetings and start a petition. Eventually we went to the transport minister with the head of a faith organisation and the head of the transport union and talked about that issue and were successful, which was terrific. It happened that that was 10 months before the election.

In thinking about that example, I am not sure where all of that sits in this bill—what part of the donations actually went to the advocacy, what part of the donations actually went to money for bus tickets for asylum seekers and where a charity like us would sit. I think ultimately we share the same goal: we want to work together for good public policy for the people we serve. I come to encourage you to think about what this looks like on the ground for charities.

Mr Seibert: Good morning. I thank the committee for the opportunity to appear by telephone today. I will try to keep it brief. I made my submission and am providing these comments in a personal capacity as an industry fellow at the Centre for Social Impact at Swinburne University of Technology in Melbourne. My research interests include the regulation of advocacy by not-for-profit organisations. For this reason I have an interest in how the electoral laws apply to this framework, which is why this bill is relevant.

My submission and evidence today specifically relates to the impact of the bill on not-for-profit organisations undertaking advocacy and civil society more broadly. I have raised numerous concerns about the bill in my submission, particularly in relation to the donation caps and expenditure limits it proposes to introduce. Although one of the key policy objectives behind chapter 2 of the bill is to 'level the playing field for electoral campaigning and ensure that an individual person or entity has a reasonable opportunity to communicate to influence voting in an election without being "drowned out" by the communication of others', the bill actually does the opposite. Donation caps and expenditure limits can tilt the playing field towards government in particular by making it more difficult to fundraise for campaigning activities which seek to challenge or hold government accountable and by limiting the amount of political speech which seeks to challenge or hold government accountable.

The Queensland government has recognised the impact that donation caps can have on fundraising and therefore has proposed the provision of additional funding to compensate for the loss of donation revenue by political parties and candidates, but that is only for political parties and candidates and not for third parties. When you further consider the fact that government can also use taxpayer funded advertising to promote its policies, a clear inequity is further created between government and third parties participating in our democratic process. The inequity is also reinforced between third parties that rely more on donation revenue versus those that use membership revenue to fund their electoral expenditure.

Although I have major concerns with some of the fundamental concepts which underpin the bill, I have suggested some changes which may help mitigate the harmful aspects of the bill on not-for-profit organisations and charities in particular. These are detailed in my submission, and I am very happy to discuss them today with the committee and to answer any questions the committee may have.

CHAIR: The assertion that caps cut donations is something that I would contest. I think the idea was that the government was reluctant to continue to increase public funding with no caps because that would ensure there was just an arms race to increase it beyond that with donations. It is more that with a capped system we can almost entirely publicly fund and therefore go further to reduce any incentives or risks of corruption. I disagree with the statement that caps cut donations. Instead, public funding can actually completely eliminate the parties having to seek donations and that implicit link with corruption.

Mr Seibert: I suppose the impact on revenue for political parties and candidates will not be as significant because—

CHAIR: Because they will not need it because of public funding is my assertion.

Mr Seibert: Yes, but organisations such as third parties face the impact of the caps but they do not get any form of public funding. Unless the Queensland government is proposing to introduce a grants program for charities and not-for-profit organisations engaging in the electoral process—

CHAIR: With respect, Mr Seibert, the attempt is to eliminate the pressure on the people who make the final decisions and that influence and need to look after donors. That is the entire intention of it. That is not the case with those who are advocating from the community. That is the intention of the policy. I hope you understand that the public funding is to remove the need for parties to seek outside assistance with their campaigns because they are the people who will make the final decisions on a particular policy.

Mr Seibert: With respect, if the intention is to remove the pressure on elected officials to fundraise and the potential for there to be undue influence et cetera then I suppose that begs the question as to why the caps are imposed on third parties and others who are not involved with making decisions.

CHAIR: Because they can have undue influence in their campaigns over politicians without caps. Anyway, these are the first principles of this bill. The deputy chair has a question.

Mr STEVENS: Ms Barnes, your submission stated that the advocacy from social service not-for-profit groups is being stifled already and that the bill may exacerbate this problem. In terms of social service not-for-profit groups, can you give me some examples—even though you said earlier that it did not really affect you that much—where the sector may be affected by this legislation?

Ms Barnes: A few examples come to mind. In preparing for today I thought through some of the examples we have come across. I will keep them fairly generic. We have been working in a rural town in Queensland where issues of disability access and accessibility have come up as a major issue. It includes ramps for buildings and improved footpaths but also public transport options for people who have limited mobility. That is a public policy issue. The community has been advocating for work to occur in that area. This is getting into a little bit of a hypothetical now but should they, in their advocacy around this particular piece of work, gain donations to support that work and to cover any expenses—including leaflet drops and those kinds of things—they would then be subject to the requirements of this bill.

Let's say, as a state election draws near, they advocate to the local candidates around fixing the footpaths and fixing public transport for their community. A month out from the election, one candidate makes a commitment to fix the issues they have raised. The question for us then is: is this now covered by this bill? The questions that come into that are around needing to know this ahead of time and the complexity of definitions of what is and is not an electoral expenditure. As a small community organisation, particularly in a regional/rural community where access to legal advice may be limited, it is likely that they will choose not to advocate rather than risk falling foul of the law. That is one example.

Another example is that QCOSS has been advocating for increases to Newstart for several years now. That is part of a public campaign across the nation. It is a federal issue. Recently Jackie Trad, the Treasurer of Queensland, has come out in favour of increasing the rate of Newstart. Does that now also become electoral expenditure where we need to consider the implications inside the complexity of this particular bill? As a fairly large peak body with a membership revenue we are a different case. However, a small organisation may choose: 'The complexity is too hard. We are not going to campaign on this. We do not understand and we do not have access to the legal resources to help us make good decisions.' That voice is silenced.

Mr STEVENS: That concurs with what Ms Benson has said in that the complexities are far above your understanding and where you need to go with it. What would be your remedy to the legislation to make those complexities clearer for you to be able to deal in your existing environments?

Ms Barnes: We have made some recommendations in our submission around what we think some of those remedies may be. We have taken advice from the Human Rights Law Centre around what some of those remedies may be. To be honest, the complexity of the legislation is difficult for us, even as a peak body, to get our heads around so we have taken advice from the Human Rights Law Centre around the recommendations and remedies for some of that complexity. We would, however, be open to discussions around alternative remedies should they be suggested by the committee.

Mr STEVENS: Do you believe that further consultation is necessary before this goes through the House?

Ms Barnes: Yes, absolutely. In our submission we made comments on the process for this bill, particularly the opening of public consultation just before the Christmas break. The short consultation period has made it difficult for all of us to be able to get our heads around the bill and particularly to communicate to our members and to the broader community about the implications of this bill for the way they act for public policy advocacy in Queensland.

CHAIR: Turning to that legal advice, one of the examples in regard to section 44—you may not have got Mr Keim's advice. You talked about the campaign about footpaths. Someone wanted to stop a development and ran an advertisement in a local newspaper and then a particular candidate came out to support that. Then they sought to raise $10,000 to run a local newspaper and letterbox campaign which urged voters to support candidates who support the environment. On that example, seemingly your organisations would fall foul of the federal registered charities act.

Ms Barnes: Yes.

CHAIR: You still have to have that advice to know whether you are doing the right thing in terms of advocating for a particular candidate. I am saying that organisations like yours have to be careful about how they do that advocacy as it is. They need to know where they stand and seek

advice from peak bodies like yours. What changes? Bodies still need to be professional if they are involved in this space and understand where they stand within the law. We have made the case that money flows to where the gaps are. That is why we are trying to conserve the integrity of the bill. Given that they have to follow the law in this case—and Mr Keim's advice here would seem be a breach which I would be careful of promoting too much—I am not sure whether this would actually be acceptable under the Charities Act. All of these organisations have to follow the law as a due process.

Mr Kennedy: Can I make a quick clarification. Mr Keim's advice is not the advice that we have sought. The Human Rights Law Centre has provided advice on recommendations which we have supported in our submission, and I believe QCOSS is in the same situation.

CHAIR: But they are relying on Mr Keim's advice on the—

Mr Kennedy: No, my understanding is that they have additionally sought Mr Keim's advice on the constitutional and other matters. My understanding is that the suggestions on amendments have come separately to Mr Keim's advice.

CHAIR: My point still stands. Where community groups are involved in the advocacy or campaigning space—the High Court has said that there is some capacity to do that but they are limited under their registration—they need professional advice at all levels. Isn't the same chilling effect there?

Ms Benson: Yes, absolutely, and I think you make the point well that the Charities Act is pretty adequate in this space.

CHAIR: I do not think I made that point at all. I said that there is significant legal advice that you need to seek to undertake to be compliant with the law there.

Ms Benson: Yes, so I would make that point then. I thought you were making the point that the Charities Act is pretty adequate in terms of lobbying and trying to have undue influence. I think that covers it off, really.

CHAIR: You do not see that organisations would begin to push the boundaries of that rule and therefore get donations because they are an exempt organisation or are placed in a different category from businesses?

Ms Benson: My view would be that the greater risk that is run is that organisations would pull back from having that dialogue with government. Our position is exactly the same as Laura's. We have only been able to take advice from the Human Rights Law Centre. It is not something that I have felt our organisation should get further legal advice on to really get across these issues. We are fairly focused on spending our money in the work that we need to do.

CHAIR: Having dealt with a few of the organisations involved, I know that you are pretty forthright and can act within the legal framework to very clearly express it. Do you really have a doubt that people will simply drop back from doing that, knowing that there is a reasonable capacity to do this under the law?

Ms Benson: No. I strongly believe that people would start to just gently over time culturally move back from things that present risk.

CHAIR: I think you are more forthright than that.

Mr O'CONNOR: My question is directed mainly to the Queensland Community Alliance. There were a few examples within your submission about the advocacy that you undertake that you think would get caught up under this legislation. I was trying to get my head around how this will restrict that advocacy. Is it the compliance burden that you have concerns about, or is it the $4,000 cap or the $1,000 per year cap on donations that would go towards that advocacy? It does not stop you from performing that advocacy. Is it just those background things that you have the issue with? Referring to the example you gave about the forum with the transport minister and the associated costs, you could still incur that expenditure. You would have the million dollar cap overall as a third party.

Mr Kennedy: Yes. We have advice from organisations in New South Wales, for example, that the compliance cost for some organisations is approximately $20,000. If you are spending a million dollars, $20,000 is actually quite reasonable; it is a cost of doing business on that spend. If you are looking at spending $1,001 or $2,000, that $20,000 compliance cost is a massive burden. Essentially, most organisations would choose not to spend the $2,000. That is a large part of where our concern is: it actually impacts most significantly the organisations that will spend the least. I will give some examples to illustrate that. A church puts a notice in their newsletter that says, 'The Uniting Church supports better maternity care in our district and thinks that is an important way of caring for our

community. Please pray that the next leaders in Queensland provide appropriate resources to this.' We have been lucky to be able to engage with the Attorney-General's office and, through them, the ECQ. We appreciate the fact that they have engaged with us openly on this because they do not have to but, essentially, we have put examples like that to them and the advice that we have been given is that that would be considered electoral expenditure.

Mr O'CONNOR: How would that have a $20,000 compliance cost?

Mr Kennedy: I am not saying that putting those two lines in a newsletter which is maybe two or four pages has a $20,000 compliance cost, but that is now electoral expenditure.

Mr O'CONNOR: What is the compliance burden on that?

Mr Kennedy: By putting those two lines in there, you are now caught under the act and, therefore, you need to get legal advice. The local parish priest or Uniting Church minister is then questioning: 'Am I allowed to put that in the newsletter? Maybe I won't.' They need to get the legal advice. Say it costs $200 to print that newsletter. If there are five congregations in the area that are part of the Uniting Church that do that, that is $1,000 so now they need to register as a third party and all of those requirements—the agent, the separate bank account, the legal advice and so on—kick in. There is a very low threshold to engage all of those obligations.

Mr O'CONNOR: That is why you propose increasing it to $6,000?

Mr Kennedy: Yes. As I said before, there are two categories in our membership. That is the best example of organisations that are not intending to campaign. There is no intention for that to be a campaign but—

Mr O'CONNOR: You are saying by those activities they would get caught up?

Mr Kennedy: Yes, very inadvertently.

CHAIR: With respect, we all have local campaign organisations and we all have to look at this act in terms of complying with it. None of us are going to spend $20,000 in following that compliance. We are going to read the law, get a fact sheet, start a bank account and be our own agent or appoint an agent. I do not understand how that would cost $20,000.

Mr Kennedy: There is less complexity there. You are clearly caught within it. There is no doubt that as the member for Logan, when you run as a candidate, you are caught within this legislation, but for Multicultural Australia or the Beenleigh Uniting Church there certainly is doubt about whether you are caught within this legislation.

CHAIR: Your concern is not for organisations that intend to campaign or advocate, because obviously they will have very little costs because we anticipate very little costs. Your concern is for organisations that may stray over the line; is that right?

Mr Kennedy: As I said, we have two sets of concerns that need to be addressed almost separately. There are these situations—

CHAIR: I am trying to question the credibility of $20,000 when we all face this.

Mr Kennedy: Okay—

CHAIR: That is what New South Wales told you?

Mr Kennedy: Yes, we have spoken to organisations in New South Wales that have given that advice. Obviously their legislation is not exactly the same.

Mr O'CONNOR: You talked about how the need to sign a declaration that a donation may be used for electoral or campaigning purposes would further impact the ability to engage and connect communities. Is that really a big concern? If someone is donating money to a cause that then becomes a campaign, is them signing a declaration that it is be used for that purpose a big concern? Would they have an issue with that?

Mr Kennedy: I would suggest that the example Multicultural Australia has given and the example QCOSS has given tend to a situation where for risk-averse reasons you would have to make sure of every donation, because you do not know which of those donations, in another year's time, might suddenly become considered electoral expenditure. Now, every donation you get you are asking someone to say that it is okay for it to be used for electoral expenditure. That is likely to have the impact of some donors saying, 'No, I don't want to donate for electoral expenditure,' or we have set up a situation where we have to get that signature or that declaration from everyone.

Ms Barnes: I think some of the organisations that are being caught up in this are organisations for which electoral campaigning is not actually their primary purpose. Going to your point earlier, electoral campaigning is the primary purpose of the organisations that you set up and, as the

Queensland Community Alliance have said, the purpose is really clear and you are clearly inside the remit of this bill. We are talking about, in many cases, organisations whose primary purpose is feeding the homeless, supporting refugees and asylum seekers, working with disability support and supporting people with disability and for which issues of public advocacy may come up and may be raised. It is the support and information raising or awareness raising or public advocacy purpose to them. For those organisations, knowing whether a donation is going to be used for the purpose of electoral campaigning is very difficult, particularly 12 months out. When you are looking at campaigns over a 12-month period, it is unclear what issues will become electoral issues in the lead-up to that campaign, particularly in the context of this legislation with the very broad definition of electoral expenditure including both direct and indirect campaigning. Direct campaigning, I think, is 'Vote for this person because what they are saying is good', but with indirect campaigning it is very difficult for us to determine whether or not our public advocacy is indirect electoral campaigning and that is—

CHAIR: We are talking about indirect, aren't we, because of the nature of the registration only?

Ms Barnes: Can you say that again?

CHAIR: The federal legislation actually prevents—

Ms Barnes: That is exactly right; I am sorry.

CHAIR: We are talking only about indirect and this is only where people do more than $1,000 worth of indirect. Is it that $1,000 that is a concern? What of the organisations that do incidental or small things? For instance, if there is a newsletter the cost of production might be $50, but the cost of the two lines might be a proportion of that. It takes a lot of newsletters from the Uniting Church to get to $1,000, for instance—a lot of two-liners.

Ms Barnes: The $1,000 strikes us as being very low. It does not take long to use up $1,000. I think other submissions have raised issues around what falls inside the definition of that $1,000. Does it include labour, time and all those kind of issues as well?

Mr PURDIE: Ms Barnes, you raise concerns about the short time frame allowed for consultation on the bill. The explanatory notes state that peak bodies were consulted in relation to this bill. Can you each tell me what consultation the government has undertaken with your peak body in relation to this?

Ms Barnes: We have had no consultation prior to the bill.

Mr PURDIE: Mr Kennedy, you mentioned that you have had consultation with the Attorney-General's office.

Mr Kennedy: We sought that out following the introduction of the bill.

Mr PURDIE: As far as you guys are concerned, you were not consulted?

Ms Benson: We have driven a small consultation ourselves in the week before Christmas. Naturally enough, that had a small turn-up because it was the week before Christmas.

Mr BERKMAN: I am trying to put a bow on a lot of what you have said already, if I can.

CHAIR: Mr Berkman, just put a question rather than putting bows on things.

Mr BERKMAN: I will, sorry. Rather than speaking about direct and indirect campaigning, issues based campaigning is the way a lot of submissions have referred to it. Let us say, for example, that we are talking about the Beenleigh Uniting Church. If they are faced with this uncertainty about whether or not certain spending is electoral expenditure, the alternative, it seems to me, is for you to take a donor statement from everyone who puts money in the tray as it goes around on Sunday morning. Do you think it is more likely that organisations such as the Beenleigh Uniting Church will simply withdraw from any of that issues based advocacy or will they put the donor statement with every donation that goes in the bowl?

Ms Benson: I can speak for my own organisation. Working actively with government in a very bipartisan way is important for us, so I think we would pull back from that if we were needing to ask everybody who makes a donation to declare that as some kind of electoral spending. I think we would take a different path.

Mr Kennedy: To clarify, the Beenleigh Uniting Church is a totally fictional example. I agree with the answer. As the Queensland Community Alliance—and this goes to the chair's point earlier—we might, as the whole alliance which has an active role in this particular space, continue to be active, but those member organisations—the individual churches and community groups et cetera—I think would be highly unlikely to. They would choose to withdraw. That is part of the reason one of our

suggested amendments is a particular exclusion of communication to members from being electoral expenditure. The communicating to your own members should not fall within the definition.

CHAIR: As there are no further questions, I thank Mr Seibert, Ms Barnes, Mr Kennedy and Ms Benson for appearing and for your feedback.

Proceedings suspended from 11.07 am to 11.21 am.

BRENNAN, Ms Deborah, Senior Solicitor, Environmental Defenders Office Queensland

ELBERT, Ms Jolene, Democracy Campaigner, Australian Conservation Foundation

PANDELOGLOU, Ms Tina, General Counsel, Australian Conservation Foundation (via teleconference)

CHAIR: I will ask the Environmental Defenders Office Queensland to make an opening statement before we hear from the Australian Conservation Foundation. If we can keep it brief there will be more time for questions.

Ms Brennan: Good morning, Chair, Deputy Chair and members of the committee. Thank you for the invitation to appear this morning. The Environmental Defenders Office is a community legal centre specialising in public interest environmental law. Overall we support the intent of the bill to provide a more level playing field for electoral campaigning and to provide all voices with a reasonable opportunity to be heard during an election campaign. However, as has been discussed quite extensively this morning, we do have some concerns with particular provisions of the bill that will affect third parties.

Our key concern, as I think has been discussed quite a lot this morning, is the uncertainty of the term 'electoral expenditure', and in particular the fact that it encompasses expenditure intended to otherwise indirectly influence voting in an election. We are concerned that this uncertainty may have a chilling effect on participation in the debate by some third parties, particularly members of the community sector. In that regard, we have recommended changes to narrow the scope of this definition, however only for very small organisations and registered charities. We have also recommended some other changes to alleviate the administrative burden on small donors and small third parties. I will leave it at that.

Ms Elbert: Good morning and thank you for the opportunity to be here today. Our submission relates to chapter 2 of the bill and will also be the focus of my and my colleague's comments today. I would like to begin by stating that the Australian Conservation Foundation strongly supports the intentions behind this bill—that is, to make elections more transparent, fair and accountable for Queenslanders. The Australian Conservation Foundation actively advocates for democratic integrity reforms which we see as a critical step to ensuring that our democratic government serves the best interests of the places, plants and animals that we seek to protect and the people who depend on them.

As they were not the key focus of our submission, I would like to first take the opportunity to point out our organisation's strong support for certain aspects of this bill. Firstly, we strongly support the introduction of electoral expenditure caps and believe that these caps should apply to all entities that participate in elections, including charities, as they do in the proposed legislation. We also strongly support the introduction of caps on political donations as they apply to political parties, candidates and associated entities. We believe there are strong reasons and principles which merit such caps. Their implementation would be a significant step forward for integrity of Queensland elections. We, of course, support increased public funding to candidates and political parties to provide for better debate and policy development.

As many have pointed out, however—and as we focus on in our submission—we are deeply concerned about the treatment of third parties in this bill, both in terms of the way in which the proposed legislation will discourage public interest advocacy around election times and in terms of the inequity with respect to who this bill captures. We believe it misses a key opportunity to bring greater accountability and transparency to some of the biggest spenders at elections—corporations and industry groups. This is to me a key point that has come up—

CHAIR: Just to clarify, business and corporate industry groups are third parties.

Ms Elbert: That is correct.

CHAIR: So it is not all third parties. When you are referring to third parties you are referring to particular groups of third parties.

Ms Elbert: We are concerned about how third parties are treated in the bill and that it does not take into consideration the differences between third parties. There are many different types of third parties that are being regulated under this bill.

Mr STEVENS: Fourth parties?

Ms Elbert: That could be a solution. Given the broad definition of electoral expenditure, which again we see as the key issue, this bill would capture the regular issue based advocacy activities of organisations around election times. By issue based advocacy activities I mean the work of organisations to advocate on an issue such as protecting the Great Barrier Reef. The significant administrative requirements introduced by this bill along with the donations cap will have the effect of silencing important community groups and voices at election periods.

Advocacy makes Australia a better place, and because of advocacy we can snorkel on a reef without oil rigs and the Franklin still flows. We have the NDIS, privacy laws and unleaded petrol, to name just a few achievements that we have won through advocacy. As an environmental organisation, the issues we work on, such as transitioning to renewable energy or protecting and restoring nature, are frequently issues around elections because they require policy change. During election debates most individuals on their own rarely have the opportunity to influence debates or bring issues to the forefront. It is often through organisations such as charities and community groups that organisations can come together to collective raise issues that are important to them, whether it be fighting to protect a forest, advocating for better mental services or any other important cause.

To capture issue based advocacy as electoral expenditure, as this bill would, we believe is to conflate the two. There is no public interest benefit in the issues based advocacy of charities and small community groups being stifled as it will be in this bill. To do so would be a step backwards for democracy in Queensland.

We have made several recommendations in our submission which we are happy to talk through, but we would like to draw your attention to the first recommendation in our submission which is in support of an amendment to the definition of electoral expenditure. We believe that this is the most significant and critical reform needed in order to ensure that the bill does not discourage legitimate community voices. I would also like to note that, given comments raised earlier in the day, simply raising the level of the cap on donations or simply raising the threshold for registering as a third party will not be sufficient to ease the concerns we have raised in our submission. We welcome any questions from the committee.

Mr STEVENS: Like quite a few of the witnesses we have had here today, your submission and what you have expanded upon there raise concerns around public interest advocacy activities that environmental groups such as yours may be engaged in. Can you give some practical examples of the activities that you have already engaged in that would definitively be stopped or prohibited by this legislation?

Ms Elbert: Absolutely. It is very difficult to say whether something will in the future, based on this bill, be definitively captured because of how subjective and open to interpretation it is. I can give examples of the types of issues we have worked on during past Queensland elections which would likely be captured under this legislation.

The Australian Conservation Foundation advocates for transition to renewable energy sources. In the prior Queensland election we took out a billboard which promoted the transition to renewable energy. That type of activity, if it is within a certain period and in proximity to an election, even though it does not say anything about how to vote or a political party, would most likely be captured under this legislation. It is activities such as that which are in furtherance of our regular ongoing advocacy activities to promote the transition to renewable energy that, because of the administrative burdens and other requirements under the bill, many organisations would likely choose not to partake in.

Mr STEVENS: How long did that billboard run for?

Ms Elbert: I would have to take that question on notice.

CHAIR: If you are running a campaign where you spend, say, $100,000 advocating that a particular mine not be started for various reasons, that would be issues based advocacy that you think should not be captured under the definitions?

Ms Elbert: Talking about advertisements to specifically voice an opinion about whether the mine should or not be started?

CHAIR: Yes.

Ms Elbert: I think that is focusing on the issue. It is not talking about a political party or how a Queenslander should vote, so it should not be captured.

CHAIR: Of course. It is quite clear that the opposite—'start the mine now'—should also not be political. That is an issues based campaign, exactly the same method.

Ms Elbert: As this bill is currently written there are already no limitations on an organisation spending money on that type of advertisement.

CHAIR: Any third party could run a campaign saying 'stop a particular mine', just as anyone could run a campaign saying 'start a particular mine', so I do not really understand. If this issue is not to be captured at all, someone advocating for the environment and someone campaigning for a particular development over which there are environmental questions are both involved in issues based campaigns; are they not?

Ms Elbert: That is correct. We believe that it is very important for individuals around election time to be able to voice their opinions and the beliefs of communities on the issues; however, what this bill does—and I think what we are getting into—is the difference between electoral expenditure and donations caps and the regulation on donations. If we wanted to control the—

CHAIR: I want to concentrate on issues based campaigning. It was a big part of your push that where there is an issues based campaign that does not mention a political party—whether it is to start a particular mine or stop a particular mine; both of them are equally issues based campaigning—it should not be captured in any way under electoral expenditure under the definition. It is already your position that issues based campaigns should not be included. There are issues based campaigns that particular people here may like or not, but they are still issues based campaigns and they should all not be captured under third-party electoral expenditure and the definition of campaigning.

Ms Elbert: I think to an extent issues based campaigns, if they are not directly trying to influence how individuals should vote, need to be protected.

CHAIR: I do not mean to be rude, but that position on many issues is slightly naive. 'Stop a particular mine' is effectively a code word for a particular party's campaign. It is naive to think that issues based campaigning does not directly influence and advocate for a particular vote. Would you describe that as fair?

Ms Elbert: I think we have to have limits. You want to capture the right amount. I do not know where you exactly draw the line, but this bill would capture a significant amount of issues based campaigning.

CHAIR: If someone wanted to spend $10,000 in my electorate to say 'stop a mine', would that be acceptable? Would that be something that should be in an electoral campaign?

Ms Elbert: Yes, if that is within—

CHAIR: That contradicts what you have in your submission. You said that issues based campaigning—advocacy that does not mention a political party—is not part of the electoral process. We began the question by asking whether people should be able to spend $10,000 to say 'stop a mine'. I think you are contradicting the issues based campaigning argument there.

Ms Elbert: That is an issues based campaign; is that right?

CHAIR: Yes, but you have argued that they should be exempt from the electoral—

Ms Elbert: I am saying whether we like an issues based campaign or not, that is not the merit by which we judge whether citizens should have the ability to run that campaign.

CHAIR: That takes us back to the question: should issues based campaigns—some of which are proxies for a particular party and some of which are proxies for another party—be exempt from electoral expenditure disclosure?

Ms Elbert: I think issues based advocacy to an extent should be exempt, but I would take a bit of issue that a particular campaign can be argued to be a proxy. How do we judge whether or not it is a proxy or a very legitimate—

CHAIR: I will give you an example. There is a particular Senate candidate who wears earrings that say to stop a particular mine. I would say it is fairly clear that that is a proxy. We all know what we are talking about here. I do not even have to mention it. We all know what we are talking about here, so we do not have to pretend it is not a proxy for a particular party's view. I think we will move on.

Mr O'CONNOR: The Conservation Foundation talked about the compliance burden, and I think you said you have 600,000-odd active members within your organisation who donate to you in a variety of ways, whether it is an ongoing monthly donation or a one-off larger donation that they give a couple of times a year. What is the difficulty with the compliance burden in terms of tracking how much they give? I would not have thought that would be too difficult. You also mentioned the need for a donor receipt. I imagine they would have a receipt anyway if they donate or if they requested one. Would it be that difficult to comply with this?

Ms Elbert: I will try to answer this question and then I may ask Tina to jump in because she has dealt with this issue at the federal level. As our submission states, all of our donations come in at different levels and at different times. For us to track how much a certain donor has given as a political donation versus another type of donation would have to be done manually. Ensuring that we have receipts and donor statements would also have to be done manually. At times we have had to follow up with donors to say, 'This is a political donation, and that means that your personal information will be revealed on a public register.' The explanation to our donors as to why that is and what that means all has to be done manually. We do not have any system to track that, other than staff resources which would have to be diverted away from other fundraising activities to comply. Maintaining a separate state bank account also incurs additional costs and resources.

Ms Pandeloglou: We obviously have a system for tracking donations that come in, but there is an overlay here. We would have to separate out donations or portions of donations. Some donors make intermittent donations or regular monthly donations, so we would have to pull out of the system and separate out donations that were made where a donor statement had been provided. That is an added complexity which, if it was not done manually, would take quite a lot of resources. We would have to put in a new electronic system to try and capture that.

Mr O'CONNOR: Is it determining which part of the donation would go to the political purpose?

Ms Pandeloglou: Which donations and over the full electoral cycle. We are not talking about if this exercise was done over a limited period of time but over the electoral cycle.

CHAIR: I do not mean to give you administrative advice, but would it not be as simple as on the website or the forms people fill in to put in credit card details having a box that is ticked or a box that says, 'No, I only wish it to be used for a different description purposes,' and then put one set of money in the electoral account in accordance with the act and the rest in a different account? It is a fairly simple administrative process, is it not?

Ms Pandeloglou: Not when you have tens of thousands of donors like an organisation like ACF does. Not all of our donations are received electronically; some donations are made in advance. A system is not currently in place where these donations can be filtered into separate accounts. Over the electoral period people may choose to give some donations they are happy to use for electoral expenditure and others that they are not. Yes, we could pay for a system to be developed. We are a large national organisation and it may be less of an issue for us because we have resources if we have to put such a system in place. Smaller organisations do not have the manpower and resources to do that.

CHAIR: They cannot operate two bank accounts and create a new form for donations—

Ms Pandeloglou: It is not as simple as that. It is a matter of separating out those donations—

CHAIR:—remembering that donations under $200 are not captured—

Ms Pandeloglou: No, I appreciate that.

CHAIR: It is only donations over $200. Having a form and two accounts is not a massive, onerous burden on any organisation.

Ms Pandeloglou: We take a different view of that. Having spoken to a number of smaller organisations in Queensland, they take a similar view to us.

Mr O'CONNOR: You also mention in the submission the potential risk to favourable tax treatment that you currently receive. Can you elaborate on those concerns?

Ms Pandeloglou: I think you might be talking about our concerns regarding the issuing of tax deductible receipts. Is that what you are referring to?

Mr O'CONNOR: Yes.

Ms Pandeloglou: Our concern is really a technical issue, and that is that the current wording in the bill regarding what is required in the donor's statement, saying that the donor intends these funds to be used for electoral expenditure, may mean that an organisation such as ACF is not able to issue a deductible cash receipt because there is a tax ruling that makes it clear that if a donor states an intention as to what their money is to be spent on it is not regarded as a gift. They can provide a preference. We feel that the issue could be addressed by saying, 'The donor is happy that the money may be used by the organisation for this reason,' but by actually specifying that is what the money is to be used for may give rise to the organisation not being able to treat that as a tax deductible gift.

Mr O'CONNOR: That relates to the tick box the chair mentioned?

Ms Pandeloglou: No, it is really about the wording required in the donor's statement in the current legislation which we think could be quite easily addressed by a donor statement basically saying that the individual is happy for the money to be used in that way but it is really at the organisation's discretion. They do not actually say that the money must be used in this way, which is the way in which we feel the current bill specifies the wording needs to be in the donor's statement.

CHAIR: There being no further questions, I thank you all for appearing to assist the committee today.

MARTIN, Dr John, Research and Policy Officer, Queensland Council of Unions

CHAIR: Good morning. Thank you for joining us today. I invite you to make an opening statement, after which committee members will have some questions for you.

Dr Martin: The QCU generally supports the bill. I think it has been described as the arms race, which we would agree needs to be in some way curtailed. The events of the last federal election probably show why we would come to that conclusion. We do, however, have some specific concerns. I will go through those section by section in a moment. We also suggest that registered organisations are required, as it stands, to make significant disclosures. There is concern that additional reporting may lead to inadvertent noncompliance. Having regard to the ensuring integrity bill that we understand the federal government either will reintroduce or will introduce something similar, there is concern that technical errors here may have consequences elsewhere for registered organisations. One way out of that may be to exclude registered organisations from the reporting requirements under the bill.

I will go to some of the specific sections within the bill. I understand that section 199 has been the subject of considerable discussion and that issue of 'otherwise influence'. Our concern is that, if enacted, this bill may place limitations on registered organisations being able to advocate on behalf of their members. We do note that subsection 199(5) is of some comfort in that there is dominant purpose. The way in which that would be interpreted is that there can be only one dominant purpose. Similarly, if you look at the wording of subsection (4)(b), there is an exclusion for political parties from what might be seen as internal administration. We suggest that that could be replicated for third parties, but to put any of that beyond doubt we advocate that any sort of internal communication with membership—I heard that raised by other organisations—should be excluded from that definition of political expenditure.

In terms of section 213, there is a question in terms of the absence of an agent. We highlight to the committee that, in the case of registered organisations, committees of management will often be made up of people holding honorary positions who are rank-and-file members. We do not believe it is appropriate for those people to be held to account in the case that an agent has not been appointed. We support the submission of the Queensland Council for Civil Liberties with respect to that.

Section 215 relates to the state campaign account. I think you have heard from others that this could be fairly onerous for small organisations. We direct the committee to pages 3 and 4 of the Human Rights Law Centre submission with respect to some of the challenges that that would pose. This may be seen as being overly pedantic, but subsection 216(1)(d) appears to enable a candidate to pay into their own account, which I guess makes sense. The concern there is: if there is an express reference to a candidate, does that exclude other people being able to pay into their own account? The provisions are not replicated for third parties; it just mentions candidates. It is a technicality, I guess.

Section 252 relates to the $4,000 limit for a participant and $6,000 for candidates. We consider that particularly the $4,000 limit is inordinately low by comparison to the amount of money able to be spent by other organisations, in particular political parties. Again perhaps a technicality, section 256(b) appears to limit the number of third parties to which a person can donate. It also appears to limit the number of times a person can donate to a third party. I am not sure that that is the intention of the bill. There is a $4,000 limit, so the number of times you donate should not be the issue; it should be the financial cap, if that make sense.

In relation to section 263, we support the submission of Queensland Community Alliance that it should only be relevant information that is disclosed to the Queensland Electoral Commission. Section 280 refers to one year. By comparison to the New South Wales legislation, that would seem to be a fairly lengthy period of time. We suggest that might be reduced. I understand that section 297 has been dealt with to some extent. It provides the requirement to register for $1,000 or over. We would consider that to be a fairly low limit A thousand dollars would not be difficult to spend.

The only other specific is with respect to chapter 3, section 185F(2)(b). It is our view that there is a distinct risk that limiting signage to political parties may be held to be unconstitutional. Those are our specifics.

Mr STEVENS: You mentioned in your preamble that you share the concerns of other stakeholders about the breadth of the definition of electoral expenditure. In particular, the QNMEU raised a similar concern regarding communications with members to inform them of electoral matters through various platforms. Obviously you have very large membership. On what justification do you feel that disseminating information on particular issues and how to vote on particular issues or whatever does not qualify you to be a third-party interest in an election?

Dr Martin: It is internal communication. It is a matter for the organisation. I guess that goes to where you draw the line with respect to these matters, but that is for an organisation. That is internal communication.

CHAIR: When organisations raise the funds themselves, as unions do from their membership, communicating to the people who contributed the funds is different from taking funds and communicating to those who had not actually contributed the funds?

Dr Martin: Absolutely, yes. It is not advertising as such; it is a communication between the organisation leadership and its membership. It is as simple as that.

CHAIR: This came up earlier. The trade union movement and the employers associations have a very tightly regulated membership, and there is very strong legislation controlling who is and is not a member. I do not want to re-prosecute that. That is different from organisations where you once clicked on an email on a website that might also constituent membership. If we were to look at this membership issue, how would we determine the difference between the heavily regulated industrial organisations membership and perhaps something that is a website where there is a tick box or a Facebook group?

Dr Martin: Membership fees would be the single biggest determinant. It takes a fair bit more commitment to pay your union subscription than it does to click on a website.

CHAIR: In that way, you are perhaps advocating for fee based organisations in the way that the employers organisations have a fee base to be part of them and the unions have a fee to be a member.

Mr STEVENS: The problem I have is disassociating your communication and third-party political activism. We had submitters saying they are issues based and they are concerned about being picked up on an issues base, not even saying to vote one way or the other. As the chair suggested, issues can be a proxy vote for one party or another, but in this case, clearly, if you are making definitive calls about a direction in voting, if you like, on a political matter, how does that not become a third-party matter that should be captured under this legislation?

Dr Martin: This goes to the dominant purpose. The dominant purpose of a union is protecting its membership and communicating with its membership. Let us use an example of sacking 14,000 public servants. Unions may take objection to that in terms of their regular business. Our concern is: if this were captured, a discussion with the membership with respect to that—whether that is calling meetings or sending out correspondence to members—would be captured and, by virtue of the limitations, at some stage the union's capacity to represent its members would cease.

Mr STEVENS: The explicit purpose of this legislation is to ameliorate or avoid completely, if possible, improper influence. That is the stated object of the legislation before the House. What you are saying is, 'Yes, I understand the group that you represent.' I am just saying that it is about how you are captured rather than your capacity to do it. The fact that you can influence a large membership group—20,000, 30,000 or whatever—is a matter that should be captured under this definition.

Dr Martin: No, because to do otherwise would prevent the union from—perhaps we will talk about the police union, for example. It might prevent the police union from communicating with its members about matters that it considers its members should be aware of, and that is the concern: 'This is what government is proposing which we believe is not in your best interests.' It is a question of what is the primary role? The primary role of a union is to look after its membership. There are political activities which will be caught up by the legislation. We are saying that simple communication with your membership should not be part of that.

Mr O'CONNOR: I want some commentary on the million dollar cap for third parties. Do you think it is too low, too high or about right? Is there anything you can add?

Dr Martin: It is very arbitrary, but it seems to be an appropriate amount. You could effectively campaign with a million dollars, I would assume. Never having had that much to campaign with, I assume that would be a reasonable amount.

Mr O'CONNOR: What consultation did you have on this bill? We heard various other organisations—

Dr Martin: The Attorney-General called a meeting of unions affiliated with the QCU and those that are not, so a range of unions. That was in early December—

Mr O'CONNOR: After it was introduced?

Dr Martin: I do not know.

Mr STEVENS: It was introduced on 28 November.

Mr O'CONNOR: It was early December.

Dr Martin: Was it? Okay. Then yes, it must have been.

Mr O'CONNOR: You met with the AG in early December?

Dr Martin: Yes.

Ms BOYD: I have a question in relation to your comments relating to the proposed signage restrictions that are outlined in this bill. Can you elaborate on the QCU's position around that for us, please?

Dr Martin: I guess the case law would be McCloy v New South Wales in the High Court. There are three elements. The first question is: does the law effectively burden the freedom—this is the implied freedom of political communication—in its terms, operation or effect? Yes, it does. Are the purposes of the law and the means adopted to achieve the purpose legitimate in the sense that they are compatible with the maintenance of a constitutionally prescribed system and representation of government? What it seeks to do is stop clutter or it being unsightly. That aspect of putting limitations seems reasonable, but if it is only limited to political parties and candidates—that is, it excludes third parties—we would suggest that that is not reasonable in terms of that particular purpose. We just do not believe it would be advancing that legitimate objective.

CHAIR: To put it another way, the deputy chair is very popular with his electorate. If a thousand people were to turn up to the booths, each of them a third party advocating with their own sign for Mr Ray Stevens—obviously if third parties were each allowed to hold one sign that would undermine the entire intent of that section of the act. There is a general popular will that there be some kind of limitations. You can see why the government had to put that provision in place to stop Mr Stevens's many friends from each having their own sign.

Dr Martin: With the greatest of respect to the deputy chair, I find that unlikely.

CHAIR: Even I, who am not so popular, could find a fair few people who are willing to put forward—some of them are part of your organisation.

Dr Martin: To what end? We are not before the High Court at the moment, but that would be a hypothetical scenario that you are playing out whereas some of the third-party campaigns that have taken place within state elections that are not hypothetical, that were quite real, would be excluded by this legislation. We believe that definitely runs the risk of impinging upon that implied freedom.

Mr BERKMAN: I have a very brief question on the issue of aggregation. I do not know if you were here earlier for Professor Orr's evidence. We did not go into it during the oral evidence, but he expressed in his submission concern that the bill should more clearly state that associated entity spending is automatically aggregated to the party cap. His submission suggests that there is some ambiguity about that in the bill as drafted. I suppose there are two questions. On your reading of the bill, is that automatic aggregation clear in the bill and, if not, do you have any issue with an amendment to achieve that effect?

Dr Martin: The aggregation to which Professor Orr referred was not one of the matters that arose as a matter that was a particular concern to us. I can understand what he is saying, but I would probably have to defer to him on this particular point. That is not a matter that was raised with me by any of my affiliated unions as something that we should be concerned about.

CHAIR: Just to put that another way, there is one party that has a 110-year history of affiliates and the affiliates often campaign in directions that are specific to the needs of their membership—and are not in any way controlled or directed—in some cases against the party they are affiliated with. Does the idea that that should automatically be included in the party's cap sound reasonable?

Dr Martin: Was that not the Unions NSW case? Was that not the attempt in Unions NSW, which was struck down?

CHAIR: I think it might have been slightly different, where they were attempting to stop unions making any expenditure whatsoever. This is about including a cap when we know the affiliates have very different priorities, sometimes—

Dr Martin:—at odds, and the 2012 state election would be the classic example of that. Yes, there is a probability that we are more likely to campaign for one political party than others, but they are not the same organisations with the same objectives in every set of circumstances.

CHAIR: It is often very contradictory.

Mr BERKMAN: Just to go back to the precise question, your position, or that of QCU, is that an associated entity's spending should not be automatically aggregated in the way it is in New South Wales, for example?

Dr Martin: I would have to take that one on notice.

Mr BERKMAN: I would very much appreciate it if you would. Thank you.

Dr Martin: Rather than avoiding it, it would be better to answer you.

CHAIR: There being no other questions, I thank Dr Martin for appearing. I note that you took something on notice. Could you email that response to the secretariat before by 12 pm this Friday so we can include that in our deliberations? Thank you.

BLAKE, Mr Andrew, Project Lead—Democracy & Risk, GetUp!

FADDOUL, Mr Daney, Political Director, GetUp!

CHAIR: Thank you for joining us today. I invite you to make an opening statement, after which the committee members will have some questions for you.

Mr Blake: I would like to thank the committee for inviting us to the hearing today. I would like to acknowledge that we meet on the land of the Jagera and Turrbal people. We would like to make one substantive amendment to page 1 of our written submission, to add the words 'for profit' in front of 'organisation' in point 2, 'membership fees to third parties' under 'Key Changes', and replicate that change on page 2 in the second paragraph under the section headed 'Membership Fees'.

As stated in our submission, GetUp! is largely supportive of the thrust of this bill, in particular the expenditure caps on electoral campaigns. We believe that democracy should be focused on who has the best ideas, not who has the deepest pockets. However, there are a few critical provisions that we feel need amendments. As many other groups have addressed similar issues today, we would like to focus on two issues contained in our submission. The first is the issue of signage.

We support the bill's intent to end the bunting arms race, and the desire to prevent crowding out is a noble one; however, the restrictions go too far. GetUp! believes that the proposed prohibition on third parties displaying signs within the restricted zone at polling booths is in violation of the implied freedom of expression under the Australian Constitution. We have seen this tested in 2013 and again as recently as 2019 in the Unions NSW v New South Wales case as the High Court struck down provisions that limit the voices that voters can hear.

While there is an allusion to the potential inconsistency with the freedom of expression and the explanatory memorandum of this bill, it seems to ignore these recent rulings. This bill is repeating the same mistakes that led to those provisions in New South Wales legislation being struck down twice because of their unjustified burden on the implied freedom. The restriction on signage within the restricted zone should apply equally to political parties, candidates and registered third parties. We appreciate that the Department of Justice and Attorney-General has responded to our submission and we assume that this will be rectified by the time the final bill is presented to parliament.

GetUp! believes that the more democracy the better. Excluding third parties from polling day is not more democracy. Political parties do not and should not have a monopoly on voters' attention. We support the restricted zone, the limit on the number of signs and the requirement that they be accompanied; however, these rules should just apply to everybody in the process.

The second point GetUp! would like to address is the loophole for for-profit organisations to get around the donation caps. GetUp! has long been in favour of donation caps and welcomes these moves; however, we are concerned about the ability for for-profit organisations to get around them. Many industry organisations do not take donations from their member companies but, rather, charge them a membership fee. The Minerals Council is the perfect example of this. They charged their member corporations a membership fee which allowed them to spend $23 million in the lead-up to the 2010 federal election. While organisations like the Minerals Council or the Queensland Resources Council will be subject to the expenditure cap—the same cap as GetUp! will be—they will be able to charge a membership significantly greater than an individual can donate. GetUp! believes the membership fees for for-profit organisations should be set at the same level as individuals can donate: $4,000 over the course of the four-year cycle. As I said, many other organisations have spoken on similar issues in our submissions, so we will leave it at that. I am happy to take questions.

Mr STEVENS: Your submission objects to the requirements for election participants to have a dedicated state campaign account. The department has argued this will aid in monitoring and compliance to ensure the integrity of the donations and expenditure cap scheme. Arguably, for election participants this could also make it easier to track cumulative donations and expenditure so you would more easily be able to confirm your own compliance. Can you comment on this proposal and how the proposed amendments depart from your current approach to managing your campaign finances?

Mr Blake: Every modern organisation has some sort of accounting system that can track exactly what you said—all that money coming in and going out—and assign it to the right lines of expenditure, whether it is for everyday purposes, a specific campaign account or whatever. There is simply no requirement to have a separate bank account. Every accounting software ever invented can do that.

Mr STEVENS: So what is your objection to having a dedicated account on the matter?

Mr Blake: It is just an unnecessary requirement. It creates an extra burden that is unnecessary. There is a large number of accountants already employed by the Electoral Commission. They will be able to see the chart of accounts for any political participant to be able to identify exactly where the money is going in and out. It is just a burden that is not necessary.

CHAIR: For small organisations—in this I include probably all of our campaigns—having a dedicated account, where we know that is reserved for electoral expenditure or at minimum all of the electoral expenditure has to come from that account, is something that provides a greater deal of clarity. For them to have to maintain internal settings within their accounting software, which I do not know that any of us run, would actually create more burdens.

Mr Faddoul: They would have to have that internal accounting anyway in order to do their proper planning and budgeting for whatever work they happen to do. The issue boils down to: is there a basis for which internal accounting processes do not provide the need for the Electoral Commission of Queensland to knock on the door and say, 'We need to see if you are properly accounting for the donations you receive for electoral purposes and the expenditure cap'? If the answer is that that does not provide sufficient information then let us hear about why there is a need for a separate bank account, but if it does then we do not see the need for this extra requirement.

CHAIR: I do not run accounting software with my own campaign, but I do know that putting that funding into a single campaign account and keeping all expenditure through there means that I know exactly that that money came from that account.

Mr Blake: If that is what an organisation wants to do, we are not saying, 'Don't do that,' but it should not be a compulsion on everybody. The systems in most organisations will show exactly that same information to the Electoral Commission.

Ms BOYD: At the last federal election I know that GetUp! targeted I think three federal seats. Certainly the seat that Pine Rivers is in—Dickson—was one of those seats. You urged your membership to donate to get rid of the sitting members in those federal electorates. What accountability and transparency do you have to your membership to demonstrate to them that the money they donated for those specific political purposes was in fact expended there?

Mr Faddoul: I think it actually boils down to a broader point. We ask our members to donate for a particular purpose. This purpose was our federal election campaign effort. The federal election campaign effort was actually for a number of different things that we did. To give you one example, we campaigned in that federal election with respect to issues as well as with respect to particular candidates or parties that we thought did not follow the sorts of values that GetUp! members want when it comes to a more sustainable future, a just future and an economically fair future. It is actually about donating to a particular campaign. That is why, from our purpose, it is about demonstrating to those members: 'You donated for our federal election campaign and here is what we did in the federal election campaign.'

Ms BOYD: So when you specifically put the call out for your membership—and all Australians—to donate to get rid of a sitting MP, that money in fact did not go to those specific seats that you were calling for it to go to? It was more broadly applied?

Mr Faddoul: No, it went to that as well. The point I am trying to make is that our campaign was about a federal election effort which was about, in that case, trying to remove the influence of the hard right in our politics in a number of different areas—when it comes to the environment, when it comes to social justice, when it comes to economic fairness. That campaign is involved in those seats but also is involved in a broader national political debate.

Mr O'CONNOR: I want to touch on the expenditure caps. Obviously it has been discussed quite a bit, particularly for third parties—the cap of a million dollars. We heard from Professor Orr this morning that there needs to be a rationale behind the level of cap that is chosen. As a major third party, could you give us some insight into what you would have spent on the last Queensland election? There was quite a heavy bit of campaigning from GetUp!. What sort of figure would you have spent in that period?

Mr Blake: We spent just over $162,000 on the last Queensland election, so we are fine for a million dollars.

Mr BERKMAN: You have gone to the precise issue that we have discussed many times over this morning around smaller third parties and proposed amendments to the definition of electoral expenditure. I just want to drill down into one paragraph. I assume you have seen the Human Rights Law Centre's submission. Do you support the amendment it has proposed to achieve what you have identified in your submission?

Mr Blake: We believe that we are not as affected by these laws, with the exception of the signage prohibition, as some other organisations are, but we accept that there is a relatively high compliance burden and we are supportive of their proposed amendments to make it easier for everybody's voices to be heard.

Mr PURDIE: You have suggested that the third-party threshold should be raised following consultation. Do you have any views on what may be a preferable threshold amount?

Mr Blake: We do not have a specific dollar amount in mind. We have seen suggestions of $5,000 or $6,000 and I think that is probably closer to the mark. A thousand dollars is just too low. A local newspaper that wants to put on a community forum can easily rack up a thousand dollars in venue hire, promotion and so on. Then suddenly that newspaper is a registered third party. They are captured by the process when they do not necessarily need to be: they have their own set of regulations. So it could be $5,000 or $6,000 but we are open to consultation on that. It is not something that would necessarily apply to us but we recognise the burden for other groups.

CHAIR: There being no further questions, we thank you for your appearance here today and thank you for providing assistance to the committee in our deliberations.

MENZIES, Ms Jennifer, Principal Research Fellow, Policy Innovation Hub, Griffith Business School, Griffith University

CHAIR: I invite you to make an opening statement, after which committee members will have some questions for you.

Ms Menzies: I would like to thank you for giving me the opportunity to address the committee today. I am taking a bit of a broader approach about the nature of the conventions and whether there is a case for making them legally binding. I am talking about the conflict-of-interest provisions in the bill. That approach is from a legal background. My background is in public administration—I was cabinet secretary from 2001 to 2004—and also through my position at Griffith I have published in the area of constitutional conventions. I just mention this because I have had direct experience of the management of the conflict-of-interest disclosure through cabinet.

As parliamentarians you are all very familiar with Westminster style conventions. I will add just a couple of points. They remain an integral part of Westminster style democracies. They have evolved to add detail to political practice, particularly around parliament and cabinet, and they are designed to form a restraint on the abuse of power of the government through these rules of behaviour in areas where the Constitution is silent.

There are two main characteristics of a convention. The first is that they are not legally binding. Since they are not subject to judicial interpretation, they are flexible to evolve in response to changing circumstances and political values. Really, they impose a series of obligations on political actors to conduct themselves in specific ways. They are based on the principle of reciprocity and mutuality, so as each party gains government they observe the constraints imposed by the conventions.

The conflict-of-interest provisions are a subset of the cabinet conventions. In Queensland, like all other jurisdictions in Australia, they are based on the Cabinet Handbook and there is further detail in the Ministerial Handbook and you know what the elements of that convention are. If a potential conflict exists, the minister will advise the Premier or the Prime Minister and that person—here it is the Premier—has a number of courses of action available. They can approve it and say, 'No, there wasn't a conflict'; they can require the minister to divest himself or herself of the relevant private interest; or they can require that the minister not partake in the cabinet discussion around that.

I think it is important to note that if a breach occurs and the conflict is not disclosed the sanctions are political. The Premier, again, has a range of actions available. They can require the minister to apologise publicly; they can require the minister to divest himself or herself of their interest; they can require the minister to stand aside or resign; or they can refer the matter to an external authority for investigation, which in Queensland is the CCC. This system of disclosure and sanction is uniform across Australian jurisdictions. I think there is, in short, a fairly high level of probity in cabinet deliberations in Australia.

The Crime and Corruption Commission made several recommendations about strengthening the administrative processes of declaring a conflict of interest within the cabinet meetings, and I think those tweaks are great. They will ensure such declarations are front of mind during any cabinet deliberation. They made the further recommendation that parliament create a criminal offence for occasions when a member of cabinet does not declare a conflict that does or may conflict with their ability to discharge their responsibilities. That is what has gone through into the draft legislation.

If the amendments in the electoral and other legislation amendment bill are adopted, claims of breaches will now be tested in the courts. I think this collision of cabinet and the criminal justice system may have some unintended consequences, both to the management of cabinet and to the system of conventions as a whole. The retrospective nature of criminal prosecutions could call into question cabinet decisions that have already been acted upon or delay such decisions as a judge tries to work out whether or not there has been a breach.

I think in an already highly contested and hyperpartisan political system it increases the capacity for political opponents to lodge complaints to disrupt the system of government and cabinet. Assessing whether there has been a failure to declare a conflict is not always straightforward. It often veers into areas of oversight, a misunderstanding about the provision or poor judgement rather than criminal intent. Interpretation of a breach can also be subjective, situational and context dependent.

I think the major implication is for the impact on the system of conventions as a whole. Conventions allow politicians to self-police their behaviour. I know that this is not a popular concept in the era of distrust of politicians, but the majority of politicians the majority of times respect the conventions that manage their behaviour within our parliamentary system of government. I think making conventions legally binding has the potential to diminish the mutual and reciprocal nature of

conventions. It also reduces the flexibility that characterises conventions, which allows them to adapt. Being in the Criminal Code or whatever freezes the convention and it cannot adapt with changing times.

The CCC recommendation to criminalise the conflict-of-interest convention was based on the Jackie Trad case, as we know, in which they did not find any evidence that a criminal offence had been committed and they did not identify a pattern of behaviour which would indicate that legal sanctions were necessary. It is taken on the basis that they are there to prevent corruption as well.

As I said, freezing the convention into law takes away its capacity to respond as community values change. Before the conflict-of-interest provision is criminalised, I think there is a case for further investigation. Is there evidence that the convention of declaring a conflict of interest is being breached and the convention is no longer holding? I would look at an analysis of the types and frequency of declarations and whether there has been any change to the pattern—something that would indicate things are changing. I would make a comparison with other jurisdictions and Westminster style governments and parliaments and how they manage that conflict-of-interest disclosure and whether any of them are considering legalising it. I would also conduct a review of other conventions that have been legalised and the impact of that change on the convention. I did a bit of research into that in the constitutional law literature. It said that a concrete example of a convention crystallised into law and enforced as such remains as elusive as ever.

Mr STEVENS: Thank you for outlining your thoughts on this particular issue. As you correctly stated, this particular part of this legislation has arisen out of the Jackie Trad case, where there was no criminal activity found by the CCC and yet there were recommendations on how to deal with conflict-of-interest matters and now they will be dealt with in a criminal way—but, as I understand, if it is knowingly not admitted to that you might have a conflict of interest on the matter. It is a very difficult matter to prove that you knowingly kept something away from cabinet, for instance, when you were dealing with a matter. I am confused. You are saying that convention is better than putting in what we have here in the criminal outcome for the parliament; is that correct?

Ms Menzies: Yes, because I think the Premier or the Prime Minister already has a range of sanctions around dismissing the minister, referring it on for a corruption investigation or whatever.

Mr STEVENS: Yes, and knowing that you have deliberately misled cabinet, if you like, is already a corruption offence?

Ms Menzies: If it is a corrupt thing: you have misled cabinet because you have taken money or something.

Mr STEVENS: There is already a criminal offence. I will move to another area. Do you have a particular view under the bill's establishment of similar offence provisions for the dishonest conduct of councillors—they have been in the news of recent times—and their advisors which could effectively be seen as an extension of the response to the CCC's recommendation in relation to the dishonest conduct of a member?

Ms Menzies: It gets a bit tricky in conventions, because conventions are tied to the Constitution. Local councils are a creature of the state government. I did not really look at that aspect, I must say. I do not have a clear view on that.

CHAIR: You could understand for the public that—

Ms Menzies: You certainly cannot omit one or the other.

CHAIR: For the public and the hundreds of years of tradition of Westminster conventions, which certainly are not present in any local government, it would be hard to explain to give people certainty about those issues when it comes to that.

Ms Menzies: I totally understand the political imperative that you will have to do this—

CHAIR: But you still think it is wrong?

Ms Menzies:—because of the current climate. I just think you need to be aware that there is not a big history of criminalising conventions.

CHAIR: In your research, did you see other times when organisations such as the CCC in equivalent jurisdictions under the Westminster system had sought to crystallise and codify particular conventions?

Ms Menzies: The trend has been to codification. They started off as general rules and now, for example, you have these huge caretaker conventions which are issued at every election. Through the Cabinet Handbook and the Ministerial Handbook there is a lot of codification so that people are clearer and clearer about what they are. Legally, the courts can take a convention into account. I could

not find a lot of evidence of them actually being criminalised. My concern is that you have these two systems of sanctions where someone has knowingly breached it so the Premier has sacked them and what have you, and then they are in the criminal court system. I am not sure how that will all fit together.

CHAIR: We have seen these conventions evolve. As is often stated in this type of research, in the early part of the Howard government—I am not meaning to be critical here—he had a very strong stance of implementing that convention. Then academics, at least, had seen in the later part of the Howard government the implementation of those conventions differently in terms of ministerial responsibility. Is that something that you think is appropriate in reflecting good governance and the process of governance?

Ms Menzies: There is a lot of academic research into the ministerial responsibility convention, because that is the one that is seen as no longer holding. Ministers do not automatically resign if there has been some misdoing in their department or maladministration. I think that is the kind of outlier of the conventions. That has really evolved over time and does not hold the way that it used to.

CHAIR: I do not have a declaration that I am a graduate of Griffith University, I do not have a declaration that I have a diploma and a degree and started on a third, and I do not have a declaration that I once worked for them. None of that is in my declarations because it is not required. If a decision about Griffith University came to cabinet, I would not have a personal benefit but I have a deep affection and connection to the institution. That would obviously not be seen as a conflict of interest.

Ms Menzies: In my experience of cabinet, that issue would be brought to the attention of the Premier and the Premier would say, 'No, I think you are comfortable.' You would need to bring it to attention and then the Premier would make the call. I have seen a lot of people leave the cabinet room because of things like that, if it is an ongoing close connection. It is a judgement call.

CHAIR: You think that is the appropriate level—on a case-by-case basis, reflective of community sentiment and the ongoing mutual and reciprocal relationship with conventions?

Ms Menzies: I think it is a solid convention.

CHAIR: Do you think it is one that is holding?

Ms Menzies: I think it is.

CHAIR: I think it is a difficult decision that we face on those things. There being no further questions, I thank you for giving us an insight into this from a different perspective.

CAVANAGH, Ms Julie, Executive Director, Election Events Management, Electoral Commission of Queensland

LEWIS, Mr Wade, Assistant Electoral Commissioner, Electoral Commission of Queensland

MUNDY, Ms Mel, Director, Funding, Disclosure and Compliance, Electoral Commission of Queensland

VIDGEN, Mr Pat, Electoral Commissioner, Electoral Commission of Queensland

CHAIR: Thank you for joining us today. I invite you to make an opening statement, after which the committee members will have some questions for you.

Mr Vidgen: I would like to thank the committee for the invitation to attend the hearing into the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill. My name is Pat Vidgen, Electoral Commissioner of Queensland. I am accompanied by Wade Lewis, Assistant Electoral Commissioner; Julie Cavanagh, Executive Director, Election Events Management; and Mel Mundy, Director of Funding, Disclosure and Compliance. Wade, Julie and Mel have operational responsibility for the delivery of elections and electoral funding and disclosure arrangements and will be able to assist members with any more detailed queries they may have in relation to particular provisions of the bill.

As I advised the committee at the hearing on previous electoral bills in 2019, the ECQ's role is to administer and operationalise the legislation passed by the parliament. As an independent and impartial statutory authority, the ECQ does not comment on policy decisions of government; however, the ECQ continues to work closely with the government to provide advice on the operational implications of particular proposals and ensure that any proposed legislative amendments are workable for the ECQ as a regulator and service delivery agency.

The electoral integrity bill proposes fundamental changes to the way political parties and candidates receive and spend funds for electoral purposes. These amendments, if passed, would clearly require the ECQ to implement a range of new processes and procedures, expand system functionality and develop a new education resource to support administration of the provisions. The ECQ is already considering the measures that would be required to be implemented should the legislation be passed by the parliament.

The committee is concurrently conducting an inquiry into expenditure caps to local government elections. The ECQ is of the position that many of the issues raised by the committee in its consultation paper will be policy decisions for the Queensland government. As the committee would be aware, the current arrangements and obligations for funding disclosure and reporting of political donations and electoral expenditure are complex and the ECQ expends considerable effort on stakeholder engagement and outreach to assist political parties, candidates and other political participants to understand their obligations. From an operational standpoint, should caps be extended to local government, consistency in definitions and other requirements would create efficiencies in compliance and enforcement as well as stakeholder engagement and education activities.

Additional compliance activities would also be required in response to regulate new obligations and offences contained within the bill. Such activities would be undertaken in accordance with the ECQ's existing compliance and enforcement policy. Due to expansion of electoral funding and disclosure regulations in recent years, the ECQ is focused on strengthening its capabilities in this area and is well positioned to deliver these additional compliance activities.

The introduction of new restrictions on signage around early voting centres and polling booths during elections will also create new operational responsibilities for the ECQ. The changes to signage may provide benefits to voters in ensuring they are not impeded during the voting process and to suppliers by minimising potential damage to venues. The ECQ is still considering the operational enforcement implications of the proposed restrictions. This includes responsibilities for monitoring of signage for compliance by returning officers and other polling officials, arrangements for removal of noncompliant signs and any possible workplace health and safety implications, and relationships with relevant enforcement agencies such as councils, the Department of Transport and Main Roads and the Queensland Police Service.

Finally, I would like to note that 2020 is a significant year for the ECQ. Delivering an election is a major logistical exercise, and the ECQ will conduct both local government and state government elections this year. For example, the local government elections are held for 77 mayoral positions

and 503 councillor positions, over 3.2 million electors in Queensland are required to vote, and over 1,000 polling places and 10,000 election staff are required. The ECQ has been modernising the way it delivers these services, and I am confident that we are well prepared to deliver the local government elections on 28 March.

While local government election preparations have been taking place, the ECQ has also been undertaking early preparations for the state general election on 31 October and preparing new systems and resources to support amendments from the previous electoral bill, many of which commence from today, 20 January. The ECQ remains ready to take all action required to meet its statutory obligations. However, I would note that implementation of changes during an election year creates additional service delivery risks as the ECQ prioritises its efforts within the limitations of available resources. In this respect, the ECQ welcomes certainty in the statutory framework at the earliest opportunity as we move forward in delivering the upcoming elections.

In closing, I would like to thank the committee for the opportunity to provide input into the inquiry. We are happy to answer any questions from the committee members in relation to the bill.

CHAIR: Thank you very much, Commissioner Vidgen. I note you made commentary about policy decisions and the fulfilling of responsibilities in your role. I ask members to keep that in mind when they frame questions. Obviously as an independent statutory authority, it reflects on the way you choose to answer those questions.

Mr STEVENS: Welcome, Commissioner and assistants. My questions are framed around your capacity as a commission to deliver on the outcomes of this legislation. The first relates to your current staff numbers and your capacity to deal with compliance and monitoring activities in the organisation. Could you also speak to the additional processes that might be required to address the outcomes of this legislation, should it pass early in this year, for the upcoming election? Have you been asked to provide a budgetary consideration for any extra processes and staffing arrangements so you can give us an idea what this legislation will cost the commission?

Mr Vidgen: I will respond to the last element first and then Mel may respond to the earlier question asked by the member. In regard to the budgetary implications, as a commission we are working through, subject to the passage of the legislation, what the implications may be against our current resource base. With the range of legislation and the amendments that have occurred to the legislation we administer over the past little while, we have had budget supplementation and we are activating that now in terms of system enhancements and also staffing increases. Given the timing of the legislation and the traditional budget cycle of government, we believe that once we have a proper assessment of what those implications are, if we do need to seek additional resourcing—and we are not there at the moment—we will do that through the ordinary budget process.

Mr STEVENS: Which is due in April?

Mr Vidgen: That is correct. At the moment we have not identified any additional costings to us, but that is not to say that that may not occur, given that we are still working through these issues, coupled with delivering the elections in both March and October. Our focus is primarily on the business at hand, but we are very well aware that we do need to have a proper analysis of the implications of this legislation pending its passage. Mel can speak a bit more about the earlier question that you asked.

Ms Mundy: There were a few questions in there and I want to make sure that I can answer those for you. Pat talked about staffing, and you also wanted some information around the compliance activities and systems and obviously funding. I will start with staffing.

Obviously, our staffing is currently high given the delivery of the election and the amendments that we are implementing. As Pat mentioned before, a lot of those systems are going live today. Our response to the compliance issues has been boosted in preparation for those amendments that have already come through. As per our submission to the committee, we feel that with those additional resources to our compliance division we will be able to appropriately respond to any breaches of the amendments that are proposed by this bill for the state general election and, as Pat mentioned before, systems as well.

We are not in a position at the moment to fully understand what implications there are for the systems, but there are likely to be changes; for example, new reporting requirements in our electronic disclosure system. That will require people to provide additional information and assist us in monitoring things around caps as well.

Mr STEVENS: How many staff are currently in monitoring and compliance?

Ms Mundy: We are in the process of recruiting additional staff through last year's budget process. We are hoping to bring on a number of additional investigators to assist with, firstly, the local government elections, but that will then flow into the state general election in October this year and any of the new offences that are brought through if this bill is passed. Currently we have a funding disclosure unit of around six, including project officers. We are hoping to add an additional four or five to that over the next few months.

Mr PURDIE: I know that you are still working through the process leading up to the budget. Do you anticipate that you will need extra compliance officers at booths to assess signage regulations and the distance that certain signs are allowed from polling booths? Is there some sort of estimate as to how many extra booths and compliance officers you will need?

Ms Cavanagh: We anticipate that, yes, we will. On the numbers, at this stage it is a little too early to say that we will need one person at every booth. We need to work through that with our state colleagues, as Pat mentioned, at QPS and Transport and Main Roads. Certainly there will be some training for our booth supervisors to ensure they understand their obligations and responsibilities. Yes, it may mean an increase at polling booth level, but as to what those numbers are it is too early to be able to give you that.

CHAIR: An earlier witnesses said that registered third parties should also be able to put up a sign, and possibly all third parties. Would that put an additional compliance burden on local returning officers in attempting to verify the status of third parties?

Ms Cavanagh: Yes, quite possibly it would. It is not something we have looked into in detail yet but, yes, I expect that it would.

CHAIR: Obviously having just one sign per candidate is a relatively easy thing for them to count.

Ms Cavanagh: It is two at the moment, as per the amendment.

Ms BOYD: It is a little harder. It is twice as hard.

CHAIR: Having that limited number of signs per candidate is relatively easy for the returning officers to evaluate. You are worried about others who seek to participate who do not understand the rules or are resistant to that activity; is that the concern?

Ms Cavanagh: I do not know that we are worried about it. There is certainly an education piece that we need to be right across. We have some work to do in that space, to make sure that whoever is involved in that absolutely knows what their obligations are, as well as our staff at the polling booth level understanding that so they can take the appropriate action.

CHAIR: As part of that, normally you have a polling place marker, which is basically determined by legislation.

Ms Cavanagh: Yes.

CHAIR: Possibly not as part of legislation but as part of process, would you have a clear sign saying that it is a requirement that within 100 metres of a particular gate there be only two signs per candidate?

Ms Cavanagh: Quite possibly. We have not got to that level of detail yet. We are working through it but, yes, that is on our minds.

Mr O'CONNOR: You mentioned that today being the 20th a lot of the previous legislation kicks in, particularly with local government. I think expenditure cumulatively over $500 has to be declared from today onwards.

Ms Mundy: That is right. There are some transitional returns that are due from today and they have two weeks to comply. There are also catch-up returns in relation to donations, gifts and loans that have been received, going back to May 2019. There are two lots of transitional returns that need to be lodged, starting today.

Mr O'CONNOR: Has the electronic disclosure system been upgraded ahead of that? What further upgrades would you anticipate ahead of these further reforms, should they be passed?

Ms Mundy: I can confirm that the EDS has been upgraded in preparation for what we refer to as the Belcarra 2 changes. Those systems are available for people to access and use. It went live today.

Mr O'CONNOR: I imagine that the next two weeks will be quite busy for that, as people catch up on—

Ms Mundy: Yes, because it captures a number of electoral participants. Looking at the current bill and the amendments here, we anticipate that the system will need to accommodate members for the state general election. There will be some necessary changes so that people can fulfil those obligations as well

Mr O'CONNOR: The upgrades that you have made ahead of today are a good test for even more that you anticipate with these changes?

Ms Mundy: We hope so.

Mr Lewis: The final form that the legislation takes is really important to us in terms of making these kinds of changes to our systems. The policy intent we understand, and we usually start preliminary work to talk to our providers and to our staff and develop what we think the system might look like. However, the very final form of the legislation is quite critical to us, to give us that certainty about hitting 'go' and giving someone a purchase order to develop some functionality in the system and things like that. That is the kind of thing that we are looking for pretty quickly.

Mr O'CONNOR: Let alone how you communicate what the requirements are for people and trying to make it as easy as possible to actually submit it.

Ms Mundy: That is right.

Mr O'CONNOR: I went through the handbook and it seems reasonably simple, but it could take a while for people to get used to, I guess.

Ms Mundy: Thank you. That is great feedback. I would add that, as we also mentioned in our submission, from a user perspective any automated systems that are quite intuitive for them to use will be beneficial for us and we will be exploring those sorts of things as well, to make it easy to comply.

Ms RICHARDS: Could you outline how, through this bill, you will be able to capture any expenditure of federal members of parliament using their federal communications allowance to influence voting in a state election? I know that there absolutely are requirements for state members of parliament in Queensland, but how does this bill capture federal members of parliament using their communications allowance for that purpose?

Mr Lewis: That silence is us thinking about it. It is an interesting question.

Ms Mundy: Again, this is not a definitive answer because, as Wade suggested, it is something that we are still thinking through. I suppose it links back into having dedicated state campaign accounts. If there are any gifts or expenditure incurred for a state campaign, that person would be required, as a third party, to have that information made available to us. I think that is probably a preliminary view at the moment. We are still working through a lot of those issues.

Ms RICHARDS: If a federal member of parliament was developing and distributing literature that was clearly to influence the state election, they themselves would become a third party and would be required to establish a state election campaign account and fall under the same rules as a third party; is that what you are saying?

Ms Mundy: Like I said, it is still something that we are working through. Obviously federal versus state is an issue that we need to think quite carefully about. If that is the case, we will be certainly educating those participants; however, at this stage we are still working through whether or not those people will be required to register as a third party, open state campaign accounts and those sorts of things. We are still working through it.

Mr BERKMAN: In various responses you have noted that the service delivery risks are exaggerated the closer to election dates we get and that the final form of the legislation is imperative to actually rolling it out. What is the sensible drop-dead date? When do you need to know what this legislation looks like to have it in place by 31 October this year?

Mr Vidgen: I cannot give a precise answer, but, as an example, with the system that went live today, final legislative certainty was not provided to the ECQ until November. That meant that systems coding and development could not conclude until after that date, which really truncated ordinary development time in terms of development testing and training. That is not ideal. That gave us literally only three months over a Christmas period, which puts a lot of pressure on everyone involved in that process. From our point of view, the longer the better. Longer than three months would be great.

As I said earlier, this year not only are we focusing on implementing legislative amendment; we are also focused on delivery. It is a challenging year for us. We will deliver, but the more time that the commission receives the better.

Mr BERKMAN: I can guarantee that I will use every bit of legislative sway that I have to ensure more than three months for you.

CHAIR: Thanks for that last question. I have a question, rather than a statement, about the postal vote changes that should make the process of delivering postal votes much clearer for you. It must be frustrating to be sending out postal votes to people knowing that it is unlikely they will be returned by an election date.

Ms Cavanagh: It is, and our challenge there is to ensure the public are educated on that earlier date for the close of postal votes. We are working very hard, through our media channels, to make sure that message is out there. Yes, it will be a lot easier to deal with that knowing full well that the post takes longer than three days, which is what it used to be.

CHAIR: Certainly I find that the post takes longer than three days. Is that the experience of the Electoral Commission as well?

Ms Cavanagh: It is, yes.

Ms BOYD: Do you have any figures on how much third parties have expended in previous state elections in Queensland?

Ms Mundy: We did try to find those figures for you. The electronic disclosure system does identify donors who expend over $1,000. At the moment it is not able to capture whether that is expenditure incurred, so it is not easy for us to give you some figures on that. Obviously the expenditure of registered political parties is a lot easier to find through periodic returns, but currently the system does not give us an indication of the number of third parties that may require registration if these laws are passed. It is something that we will be actively looking at and we are hoping that the new EDS that went live to today will be able to give us an indication of that down the track.

Ms BOYD: Interestingly, through my experience with the system I have noted that if an organisation that is located in my electorate donates, for instance, it will come up as 'Pine Rivers', but it does not necessarily mean that the money has come to me or to a political opponent in the seat of Pine Rivers. Is that a legislative glitch? Is it the user? Is it the system?

Ms Mundy: You are talking about the gift map in the electronic disclosure system?

Ms BOYD: Yes.

Ms Mundy: Yes, it was something that we specifically looked at to make it more user friendly as far as displaying the information that you need. Hopefully when you log into the electronic disclosure system this time around the information will be easier for you to see. It is valuable information for us to see where the money is coming from, but you are right: it is not necessarily the case that the money is being spent where it has come from. We completely understand. That is why detailed returns will be available to people to actually see where that money is coming from and who it is going to.

Ms BOYD: I have been trying to use the disclosure system over the course of the weekend and it has been out of action. I tried to log in again today unsuccessfully. Have you had other reports of this? Is it back up or is it user error on my behalf?

Ms Mundy: I would not go that far. I certainly would not say it is user error. The system did go live at nine o'clock this morning. As we said, it did go live today so there may be some glitches. However, we have a number of staff to support you through that process. If there was an earlier login it may not have been available to you. We certainly can assist you to log into the EDS to fulfil those obligations and have a look if you contact our office.

Ms BOYD: Wonderful, thank you. Over the last two elections the returning officer has chosen a location for one of the pre-polls in my electorate that does not actually allow electioneering. It is a shopping centre. Essentially, we are not able to furnish people with a how-to-vote card. We are not allowed to have signage in that particular location. Is the Electoral Commission in its training and support looking to address these kinds of situations so we have the ability to actually implement the rights that are afforded to us through the act?

CHAIR: While strictly the bill does not deal with pre-poll, we are dealing with postal votes which might direct people towards pre-poll. Do you have a quick answer to that?

Mr Lewis: The answer is yes. We are looking at that sort of thing. This year presents an excellent opportunity for us to look at polling places and early voting centres in a very different way than in the past, when we have had to scramble to sometimes get some of the very many polling places together. We have taken a very deliberate and longer term look at polling places and returning officer offices as well, which in the past have been used as early voting centres in many locations.

I would have to say that we do look at a lot of these places primarily from the point of view of the suitability for electors and as a voting service provided to electors. You are absolutely correct that there needs to be that facility for scrutineering and campaigning and we certainly take that into consideration with its suitability and accessibility as a voting place.

CHAIR: I imagine shopping centres might be more comfortable when there is going to be a considerable limit on the signage that is displayed that could perhaps displace other businesses.

Mr Lewis: That is certainly not the kind of location we prefer, really.

CHAIR: There being no further questions, I would like to thank you all for appearing.

de CHASTEL, Mr Brett, President, Local Government Managers Australia Queensland (via teleconference)

DIEHM, Mr Ken, Chief Executive Officer, Fraser Coast Regional Council (via teleconference)

HALLAM, Mr Greg, Chief Executive Officer, Local Government Association of Queensland

LEWIS, Mr David, Councillor, Fraser Coast Regional Council (via teleconference)

O'SHEA, Ms Tamara, Interim Administrator, Logan City Council

STAFFORD, Ms Georgia, Lead, Intergovernmental Relations, Local Government Association of Queensland

TRINCA, Mr Silvio, Acting Chief Executive Officer, Logan City Council

CHAIR: I invite Mr Hallam from the Local Government Association of Queensland to make an opening statement before we hear from others on the panel. Please keep your opening statements relatively brief as committee members will have a number of questions for you.

Mr Hallam: The LGAQ welcomes the opportunity to provide a submission on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 on behalf of our 77 member councils. Overwhelmingly, the LGAQ and its members support any legislative changes that are designed to increase transparency and accountability and will achieve that in practice and ensure that local government continues to be a highly functioning system of government. Therefore, while we have broad-based support for the intent of the bill, our member councils have raised with us serious concerns about several of the proposed amendments and associated reform proposals largely from a practicability standpoint. I turn to those matters.

Firstly, the proposal to mandatorily fill councillor vacancies at undivided and multimember division councils within the first three years of the term by awarding the position to the candidate with the next highest vote rather than via the current practice of holding a by-election we believe is problematic. Councils believe this may result in undemocratic results as replacement councillors may be elected with little community support, especially where a candidate with strong voter support vacates the office. There is also little evidence to suggest that runners-up are in fact elected when by-elections are held. Providing the existing council with the option to either appoint the candidate or determine it by a by-election would seem the most acceptable outcome in that circumstance.

Planned changes to conflict-of-interest provisions are largely supported to provide greater clarity and certainty. However, the lack of specificity regarding the date for commencement of these provisions is a serious omission and one we bring to your attention.

The proposed amendments to the ordinary business exemption related to planning scheme amendments we submit are impractical and unworkable. It is contended that when reinforced and expanded obligations to declare conflicts of interest combine with the banning of developer contributions and existing ministerial oversight and guidelines regarding plan making, any ordinary business changes will negatively impact the timeliness of decisions and the administrative burdens on councils when they are considering planning matters. Given the broader safeguards proposed and those already in place and the lack of evidence of the issue, we ask that those provisions be seriously reconsidered and the existing exemptions maintained.

We also raise questions regarding the issue of the councillor advisor role within the bill. A number of our member councils—and I should say that this only applies to probably a dozen at most—have raised matters with us. Many believe that while these changes may be well intended they have been proposed without proper consultation and consideration and there is serious potential for unintended consequences, especially where these roles do not exist and the industrial relations implications for both the council and the potential incumbents need to be properly reviewed.

We also have concerns about a minister of one political ilk making a decision about the number of people appointed from a party. For instance, if it were the Brisbane City and it were a Labor minister deciding how many advisors Brisbane City could have, or equally if it were a LNP minister doing it to a Labor administration, we think there could be some major issues with that. We propose in that instance that those matters should be the subject of determination by the Remuneration Tribunal.

In relation to expenditure caps, we generally support those. However, we believe that further work has to be done and more research has to be completed before we can come to what I think is a sensible and concluded position on those matters.

Finally, changes to the Local Government Regulation 2012 proposed to accompany the bill are of great concern to councils across the state as they reveal a clear tendency on the part of the government to move away from the general competency concept, which has been enacted since 1936, towards a prescriptive regime, particularly when the view of local government and councils is likely to stifle meaningful participation in community engagement or alternatively reduce existing and effective mechanisms. We are there referring to the definition of council business and ordinary meetings. We are happy to take questions on our submissions.

Ms O'Shea: Thank you for opportunity to speak today. I would like to acknowledge the traditional owners of the land on which we meet and pay my respect to elders past, present and emerging. Both Silvio Trinca, the acting CEO, and I are here today to share with you our views from the perspectives of both the administrative and the executive functions of council.

As a local government in administration, we are in a unique position to be able to offer candid and impartial insights. Our intention is to ensure that the local government sector is in the best possible position to deliver on its purpose of serving the community and that the state government's reform agenda is fit for purpose in a local government environment.

Council generally welcomes the reforms contained in the bill and acknowledges the need to make improvements to processes to ensure local governments provide good outcomes for the community. I refer to the council's submission dated 9 January and take this as read. Council does, however, have particular concerns with the practical application of some proposed provisions, particularly in relation to the application of the new councillor advisor regime, new chapter 6, part 5, division 2A. I would like to use our opening statement to provide committee members with some examples of the difficulties that are likely to arise.

Members of the committee would be aware of the frameworks in place to support elected members, both parliamentary and ministerial, at the state level. These are not dissimilar to those provided to members at the federal level. These include the provision of electorate office and ministerial staffing. This support is no doubt necessary for the good governance of the state and enables members and ministers to properly discharge their duties and obligations. Council does not dispute the need for support to councillors to similarly enable them to meet their own responsibilities.

In the case of the state, this support is underpinned by well-established institutional frameworks. For members of parliament the Parliamentary Services Act 1988 and for ministers the Ministerial and Other Office Holder Staff Act 2010 provide the necessary heads of power. For members of parliament their support is administered through the Clerk of the Parliament, with the ultimate arbiter and decision-maker the Speaker of the House. In the case of ministerial staff, this is done through the ministerial services office of the Department of the Premier and Cabinet. The arbiter and decision-maker is the Premier. In both instances, the core administrative arm of government, its departments and directors-general are not involved. They are the not the employers, and with good reason. In our Westminster system of government an impartial Public Service, providing frank and fearless advice, is critical to good governance and a robust democracy.

The proposed reforms to appoint councillor advisors envisage no such institutional support frameworks. Notwithstanding that there is proposed regulation to support the reforms, the provisions in the bill do not accommodate or allow for the establishment of similar frameworks. In practical terms, the council administration becomes the employer of councillor advisors. By comparison, this would be the same as a government department becoming responsible for the employment of ministerial staff, with the director-general their employer and the decision-maker regarding an advisor's contract, performance, disciplinary matters and termination. The impartiality of the director-general would be severely tested in such a scenario.

For the majority of councils, the CEO has to work hard to ensure an even-handed approach to a group of independent elected representatives. For Logan there are 13 such people. This does not provide the basis for a robust and frank working relationship between the CEO and elected representatives or their advisors. For example, how would a CEO resolve a dispute between a local government employee who makes an allegation of bullying and harassment against an advisor in circumstances where the councillor who appointed them believes this is a vexatious complaint? How would the CEO resolve a direction by a councillor to terminate an advisor in order to appoint a new advisor with contractual and industrial relations obligations? The CEO, while being their employer, has no day-to-day managerial role and cannot assess performance or other related matters,

particularly in the case of a dispute between the advisor and the councillor. If there is such a disagreement between the CEO and councillor there is no arbiter, as is the case for an MP and the Clerk of the Parliament where this is the Speaker.

The terms and conditions and pay scale of ministerial and MP staff are outlined in relevant handbooks and determined by independent means. While the bill envisages that roles and responsibilities and numbers be prescribed by regulation, it notes that contractual terms and conditions, including pay scale and termination, be determined by the CEO following a resolution of council. Logan has 13 elected representatives including the mayor. There could be a scenario where there are 13 or more different contracts to administer. By comparison, should a similar approach apply to the state it would require MPs, for example, to make decisions around the pay and conditions of their own electorate staff. These are just a few examples of the concerns held with regard to the practical application of councillor advisor provisions.

As indicated earlier, Logan City Council is appreciative of the broad intent of the bill, including the need for appropriate support to elected members to enable them to discharge their obligations and responsibilities. I would note that at this juncture the council already provides each councillor with a dedicated administrative officer, and the office of the mayor has a team of four staff. However, council recommends that the committee give further consideration to practical implementation issues for local governments potentially with a view to removing these provisions so their practical application can be more fully explored and issues resolved before recommending this bill to the parliament. Thank you for your time and the opportunity to appear before the committee today. I am happy to answer any questions members may have.

Mr de Chastel: I am the CEO of Noosa Shire Council, but I am not appearing here today as the CEO of the council; I am here as the president of Local Government Managers Australia Queensland branch. For those who are not aware, LGMA is a professional membership organisation. We have over 500 members across Queensland local governments, all 77 councils, mainly at the CEO and senior executive level. We do not deal with policy or political issues; for example, we do not have comments today about election caps. We leave that to the LGAQ and other councils. We focus on practical implementation issues. We have a lot of members, myself included, with over 30 years of experience at the front line about what works and what does not when legislation goes through.

I want to touch on a couple of issues in terms of the proposed bill, firstly conflict-of-interest provisions. Overall, we think these provisions are good and they will work well in practice. The approach of prescribed and declarable interests has been well thought out and is probably a big improvement on what we have at the moment. As the LGAQ mentioned, we also have concerns about practical implementation in terms of commencement dates. As we know, we are about to finalise a council term on 28 March with the election, so we just want to make sure that when those new provisions come in they are timed to come in with the new term of the council and we do not have to train up councillors who are here at the moment for a couple of weeks and then start again. The commencement date is really important with regard to that particular issue. Secondly, I think the bill has also done a great job in terms of admin support staff for councillors. That has been a problem for a number of years. What is being proposed is both practical and sensible in trying to fix up how those provisions work.

There are two areas where we think the proposed bill will have some practical problems, and the first relates to filling councillor vacancies. We have also identified the provision which proposes that for undivided councils in the first three years the runner-up would have the first opportunity to be appointed That probably will not work in practice. Three years is a long time. Things change, people get new jobs, they leave town—particularly in some of the smaller communities—and community sentiment can change in that period as well. We think that, while the intent was good in terms trying to reduce the costs of by-elections and so on, practical implementation will cause some problems. Perhaps a by-election approach would be more sensible even though it may have a higher cost for communities.

The last issue I want to touch on is the grey area of councillor advisors. We have had a look at the provisions in the bill and we have some real concerns that the mechanism of being set up is really, to use a colloquialism, a bit ‘half pregnant’, particularly around industrial relations issues. We can see occasions at the moment where there may be conflict between the councillor advisor and staff. How can a CEO resolve those disciplinary actions against a councillor advisor when they do not really have control over their day-to-day duties and can only enforce through contract arrangements, not the other provisions that would be in HR policies that a council would have? Similarly, if there is a breakdown in the relationship between the councillor advisor and the councillor and there may be a

complaint about the councillor made by the councillor advisor, it is a very difficult scenario for a CEO who is, if you like, reporting to the councillors having to make decisions about the employment of that councillor advisor.

We also note there is supposed to be a code of conduct for councillor advisors. Councils already have codes of conduct for their staff which are different across the state. Every council would have a slightly different code of conduct for its staff. Some of them, for example, will cover things like alcohol and drug testing. Some of them will have provisions about whether someone can take employment outside of the council. It would be very difficult to have different types of codes of conduct for councillor advisors and council staff where you have people working in the same organisation and different codes apply, so it is just the practicalities. Recordkeeping is another example about the obligations between councillor advisors and council staff. We think that provision needs a bit more thought and perhaps some consultation with, I suspect, the five or 10 largest councils that have them. At this stage, trying to implement it in terms of what is in the bill will cause more problems in practice than is envisaged. That covers the issues we wanted to raise. I am happy to take questions.

Mr Lewis: Good afternoon. I am David Lewis, councillor from the Fraser Coast Regional Council. I have with me the CEO, Ken Diehm. It is proposed that I address you briefly, but obviously we are both available for questions if that is required. Thank you for the opportunity to address the committee. I want to concentrate primarily on the declarable conflict-of-interest provisions, but I will say something very briefly about informal meetings and the closed meeting proposals as well, if I may.

Can I illustrate by way of example that one of our councillors owns a business in a seaside suburb, and whenever a matter comes up relating to that precinct he often declares a perceived conflict. In all cases—except those where it is very particular and he might elect to vacate—we invariably resolve that there is no conflict or that, alternatively, he can stay in any event. That works satisfactorily in a formal meeting where we can make that decision and it will apply to a subsequent informal meeting or workshop, but it does not deal adequately with a prior meeting or workshop because obviously there has been no opportunity to resolve his participation at that point.

The current section 175I prohibits him from 'influencing or attempting to influence' et cetera, notwithstanding that when we get to a formal meeting a few days later we will almost certainly approve his participation. This not only deprives him of an opportunity to participate at the early stages when an idea might be getting worked up; it also deprives the whole council of the benefit of his experience and wisdom—and if it is his precinct, that may be more wisdom and experience than the average—and it deprives the residents of his division of being represented. The new proposed chapter 5B unfortunately continues the problem and arguably makes it worse. Section 150EE defines participating in a decision and effectively limits that to formal council or committee meetings. That, of course, works adequately where you can allow participation under the new section 150ES(3), but the ghost of the old section 175I rears its problematic head with the new section 150EZ. In even more express terms that prevents influencing or even discussing the subject matter. Again, there is an exemption where there has been a decision to allow participation, but again this only works prospectively. It does not work retrospectively.

The tribunal decided two cases last year which are relevant. In the Tate matter on the Gold Coast the councillor informed the meeting that he had a relationship with solicitors who were a consultant on a matter before the council but expressly said he did not have a conflict and, in effect, invited any councillor with a different view to put it to the test. No-one did. On hearing the complaint the tribunal found that that approach was acceptable, although they did find that it was a perceived conflict. In another matter involving the Gympie Regional Council a councillor had a businesses in a precinct where there was a master plan being developed for street enhancement and he omitted to declare that conflict. The tribunal found there was no conflict but said in these cases that it was 'better to register the interest'. I assume they meant this would entail the Tate approach—that is to say, 'these are the facts, but I do not think there is a conflict'.

In my submission, I do not think this is a satisfactory situation. It is noteworthy that, as the Independent Assessor referred the above matters, they must have thought there was at least a prima facie case against the councillors. Justice and Attorney-General's comments on the submissions at page 66 suggest that the councillor can make a threshold decision as to whether there is a conflict. In my view, this is dangerous. It exposes councillors to the risk that others, and in particular the Office of the Independent Assessor or the tribunal, might take a different view. Arguably, even a discussion between one councillor and another about whether there is a conflict might be a breach of section 150EZ, at least where the conclusion of that discussion is that, yes, there is a conflict. My view is that here we are getting into the realm of the theatre of the absurd.

In my submission, the bill is an opportunity to address these problems but it does not. My suggestion is that one solution could be to provide that where a councillor intends to leave a subsequent formal meeting then they should be bound by the section 150EZ provisions, but where they intend to stay—subject, of course, to being approved by the other councillors—they can participate until that decision is made, perhaps with the rider that there be disclosure of the facts. An alternative is that the bill could establish a system where the councillor discloses the interest to the CEO, and the CEO can send a memo to all other councillors and we can have a decision by flying minute without having to wait for a formal meeting. Councillors should be encouraged to disclose these interests and the procedures should be simple and effective. What we want to strive for is maximum disclosure and maximum participation in decision-making and, with respect, this bill does not achieve that.

One other aspect that should be touched upon is the question of whether, once a consent to participate is granted under section 150ES(3), this stands in perpetuity or whether it needs to be raised and decided every time it comes back to the council. Subparagraph (3) in paragraph (b)(i) allows for approvals to participate but refers to participating at the meeting, although that is not consistent with other sections which would suggest that the consent is a continuing one for subsequent informal meetings and discussions.

One other concern is raised under section 150EQ, where particulars of the disclosure are set out. We run across a problem where disclosing particulars will breach the confidentiality of a matter. Our submission is that there should be an exemption from at least some of those requirements where the matter is a confidential one, such as disclosing the name of the related party. The confidentiality may well be the fact of the name or identity of that related party. In our submission, it should be sufficient to disclose this in a confidential section of the council rather than in an open part of the meeting. Of course, you would need to make a similar exemption in section 150FA relating to the recording of those particulars in the minutes.

I will very briefly mention informal meetings. These are mentioned in the November information paper. I gather they are to be included in regulations which we have not seen, so I will confine my comments. The informal meetings are very valuable to the work of councillors. It is a great opportunity for us to tease out the issues in an informal setting and, where necessary, in a closed setting for all sorts of reasons which I am happy to go into but will not unless you want me to. We have this problem again with the declarable conflict of interest at informal meetings. The recommendations I made earlier may resolve those. An additional or alternative proposal might be that informal meetings be empowered to make that decision about whether a councillor with a declarable conflict can nonetheless participate.

We also have a concern about how informal meetings might be defined. Is it two councillors or all councillors? These sorts of informal meetings are multifaceted. For argument's sake, they could include meetings with ministers and members of parliament, governments, community representatives, industry groups, the LGAQ, and so on. If regulations are made as to what is required at an informal meeting, it is necessary that we give consideration to all of those different types of informal meetings which we might need to deal with. We are content with the general thrust of being as open as possible with these meetings but we are just concerned about some of the fine detail.

Finally, if I could just say a word about closed meetings, we share the concerns that Mr Hallam raised earlier about maintaining the opportunity to close meetings where topics include contracts, decisions under the Planning Act, other business which may prejudice the interests of the council and so on. We feel that excluding those will stifle the debate and unreasonably prejudice the interests both of the council and of individuals. I am happy to address any further issues.

CHAIR: All of the representatives have given very fulsome opening statements, so there might not be as many questions as normal.

Mr STEVENS: Mr Hallam, currently we have a very public situation on the Gold Coast in relation to matters about Gold Coast City council. The LGAQ has expressed concern about the creation of the role of council advisors. I understand that that is where the issue is at the moment. We are awaiting resolution of that particular issue. Can you elaborate on why the LGAQ foresees significant difficulty with political appointments, if you like, as Ms O'Shea referred to earlier, in terms of advisors to councillors being more like ministerial staff than a public service as opposed to having them included, as I understand you would like, really under the auspices of council employment regulations?

Mr Hallam: It is a unique practice that has grown out over probably a decade or so now. On our count there are 12 such people, either full-time or part-time, servicing mayors and councillors in Queensland. It reflects the different role of mayors, the modern media age and the ability for them to

respond quickly to matters. The situation at the Gold Coast, as far as I am aware, is the first serious test of the issues regarding the relative powers of mayors, CEOs and these types of people. We say that they are required and necessary because of the nature of the work of mayors today. What we say, though, is that they should remain the employees of council. Otherwise you will have to look at something like a members of parliament act to cover their employment. There should be some clear guidelines about to whom they are responsible.

Ultimately, though, in all industrial matters those who appoint are also those who dismiss. That is an important point. We would say that there needs to be some wording to say that the mayor would be consulted in relation to all of those matters. Equally, we say that questions of remuneration and how many of these people may be necessary to perform the duty should properly be the business of the Remuneration Tribunal. As I indicated, there is a situation now where we have a Labor minister determining how many advisors the LNP might have. If they were in opposition in Brisbane City Council or the current situation we have was reversed, that is not appropriate. I do not think that meets the pub test. We think there is a simple delineation of who is responsible for what and how conflicts are resolved, and, as I said, questions of remuneration and numbers should be the responsibility of the Remuneration Tribunal.

Mr STEVENS: Would you not agree that the probable direction of either role—it is really in the major councils that we have these council advisors, for want of a better term—will be different from a council officer direction? How they go about their business will be different from what is required of a council officer. It is the same with a public servant in terms of the ministerial staff. Their role is completely different—to be independent, as Ms O'Shea pointed out, for the council. Clearly, these positions are entirely different from a normal employee of council.

Mr Hallam: That is correct. If you think of it in these terms, all council staff obviously must follow the law as it stands and the whole spectrum of acts. They are required to follow fully all decisions of council and, in the case of a mayor, the directions of the mayor. These people would have the role of go-betweens, if you like. They would have no powers of direction; otherwise, that would interfere with the role of the CEO or their next level of management. They would be literally aides to guide and assist the elected member, the mayor, to get their materials together, be prepared for meetings et cetera. It is beyond a normal secretary's role in terms of diary management. There could well be some advice about where there may problems that a council officer might not foresee in considering a matter. We could prescribe a job description or PD for these people that makes it separate but does not interfere with or contravene the powers of the Local Government Act in respect of decisions of council.

Mr STEVENS: That does not exist now?

Mr Hallam: It does not, no. It is a vacuum. The difficulty on the Gold Coast—I am sure it occurs elsewhere—is that this is novel, as the lawyers would say. There are no parameters. We do not have anything to guide us.

CHAIR: Indeed, the expansion of this role is not that old in state and federal governments as well.

Mr O'CONNOR: Mr Hallam, another of the main concerns you have with the bill concerned the replacement of a councillor who departs within the first 36 months. The proposal is to have the runner-up take that position. You rightly pointed out a situation where a popular local councillor gets 80 per cent of the vote, the runner-up gets 11 per cent but they then become the councillor. You also made the point that in the 15 by-elections in this term of local government only three of the runners-up ran and became the councillor. Is the existing situation what you would want to see remain, where it splits it into the three—

Mr Hallam: Yes, we argue for the status quo, the legislation as it stands now. The ultimate test is the one you mentioned, that on only three occasions in 12 those people were elected to the vacant office. That says it all.

Mr O'CONNOR: The status quo is what you advocate for?

Mr Hallam: Exactly.

Mr O'CONNOR: Can you comment on the consultation you had before this bill was introduced and even after—both the LGAQ and any of your member councils?

Mr Hallam: We had a historic special meeting of the LGAQ last year. Most of these matters were canvassed. I am guided by a policy executive of 16 elected members from across Queensland. We have a group that we consult with, the Local Government Managers Association, so

Mr de Chastel and some of his colleagues were also involved in discussions around questions particularly of the regulation and our concerns about how we define meetings as formal and otherwise. It was very broad and very detailed, plus we had the benefit of our legal advisors and external counsel.

Mr O'CONNOR: And the government consulted you after you had done that internally? What was that like?

Mr Hallam: To be fair, we have had excellent cooperation from the government. We have been consulted at every turn. The only thing we have not seen is the regulation.

CHAIR: The very fulsome introductory statements canvassed a lot of those issues, and we will dutifully ensure the report reflects the issues put forward. Thank you very much for your participation.

Proceedings suspended from 1.41 pm to 1.58 pm.

HANDLEY, Ms Elizabeth, President, Brisbane Residents United Inc.

SMITH, Mr Greg, Management Committee, Queensland Local Government Reform Alliance Inc.

WALKER, Mr Chris, President, SEQ Alliance

CHAIR: Welcome back. I acknowledge that Melva Hobson, the president of OSCAR, wished to be here but due to some unforeseen circumstances is unable to attend. It is my understanding that Mr Smith may be able to give some clarity as to any questions we have on OSCAR's submission. I now call upon you to give a brief opening statement.

Mr Walker: Thanks for the opportunity to present to this committee. The SEQ Alliance is a coming together of South-East Queensland community groups who are concerned about the need for improved planning and governance. Our membership includes Brisbane Residents United, Gecko from the Gold Coast, OSCAR from the Sunshine Coast and Redlands2030, which I represent also. It is important that community groups get the opportunity to put their case on behalf of the many thousands of people we collectively represent, balancing the views of well-funded organisations who represent sectional interests.

We thank the state government for its ongoing local government reform program and progress made so far. We also acknowledge that most of these reforms appear to have bipartisan support. We particularly commend the staff in the department of local government who have been involved in reform of this sector over the last two years for the excellent community engagement they have carried out.

Most of the current reforms are supported by community groups in the SEQ Alliance—or at least the objectives of those reforms. Most of our members' submissions focused on chapter 5, affecting local government, but some of us have also commented on other reforms. Gecko's submission raises concerns about the administrative burden of regulating expenditure considered to be election campaign activity that is undertaken by third-party groups which are staffed largely by volunteers or, in most cases, wholly by volunteers. Gecko also supports the regulation of ratepayer funded political advisors and suggests the need for this to be tightened up a little further.

Redlands2030 is particularly concerned that the current reforms do not appear to deal with councillors who fail to declare and manage conflicts of interest outside of formal council meetings, noting that at Redland City Council, which is the one I can speak clearly about, much of the discussion involving the body of councillors happens in workshops or other informal meetings.

We also share concerns expressed by the CCC in its submission to the committee about legislation dealing with dishonest conduct, which is based on intentions of an individual. My colleagues Elizabeth Handley from Brisbane Residents United and Greg Smith may also comment briefly upon issues from their submissions about the proposed legislation.

Ms Handley: Thank you for this opportunity to make a presentation to your committee on the proposed electoral and other legislation bill. I represent Brisbane Residents United, Brisbane's peak body for community resident action groups. I have been involved in local community groups for over 20 years.

Before I discuss our major concerns with the bill, I would just like to note a major change to make to our submission on this bill. It would be on page 2 of 12 and it is at the bottom of chapter 3. We have there 'third party signs' and we left out the word 'not'. It should say 'third party signs should not be restricted to outside the 100-metre perimeter'. In our original we said 'should', but we actually meant 'should not'. Sorry about that.

Our major concerns with this bill are as follows. The appointment of political staff into local government has been an insidious imposition on the ratepayers' purse and ratepayers' trust. They are not elected; nor do they serve the primary purpose of the Local Government Act, which is to provide for a system of local government in Queensland that is accountable, effective, efficient and sustainable. This will also institutionalise the revolving door of staff between industry, political parties and government that leads to insider relationships established and used for political advantage and private sector benefit without due regard given to the public interest. These staff are not covered by legislation that addresses the conduct of councillors or mayors; nor are they to be local government employees. It will add to the considerable political advantage of the major parties and incumbents by giving them a four-year campaigning tool with a ratepayer subsidy amounting to hundreds of

thousands of dollars. This makes a mockery of any political expenditure cap. If political parties wish to employ political staff to work with local or state government level elected officials, let them pay and be responsible for them.

Our second point is that an elected position is undertaken with full knowledge of the time contract you enter into with the electorate. We have become increasingly concerned with the trend where mayors or councillors resign in the last 12 months just to allow their party-affiliated successors time to become established in the electorate. Elected officials who resign during that period must have a very good reason for doing so. Going to their next position is not an acceptable reason. This has already happened a number of times in Brisbane. A political party that wants to take advantage of the value of incumbency can do so via a by-election that they fully fund.

We welcome the government's response to the Operation Belcarra report and look forward to further legislation to deal with the remaining outstanding recommendations. All legislation is only as good as its compliance procedures and funding provided to ensure that those procedures are followed. We call on the Queensland government to give serious consideration to our concerns to ensure that Queensland is moving towards a system of state and local government that truly inspires confidence and certainty from all stakeholders and empowers our communities to meaningfully participate at all levels of government. We look forward to questions from the committee.

Mr Smith: The Queensland Local Government Reform Alliance is a peak group of residents organisations that goes beyond South-East Queensland. OSCAR is a member of the QLGRA. Due to Melva's unfortunate circumstances I will be making comments on behalf of them. The deputy chair may recall that last time I was here and attempted to do that he showed me a fair bit of kindness in referring to the wearing of two hats. I was actually prepared for that that day, whereas today it has come as a last-minute thing.

As far as prescribed conflicts of interest are concerned—I will just pick out the things that we particularly want to make a point of and indicate otherwise if it is not a position held by both the QLGRA and OSCAR—we believe all threshold figures relating to donations, conflicts of interest and registers of interest should have a bottom threshold of $5,000, not the $2,000 that is suggested here. Both our organisations are strongly opposed to the appointment of political advisors, but I guess it is a case where the horse has bolted. We certainly welcome the attempt now to provide at least a regulatory framework around those appointments. We would have a number of concerns about that that have been particularly expressed by Elizabeth and also, interestingly, by the LGAQ and Local Government Managers Australia.

This is unique to the QLGRA. They propose in their submission that the 36-month threshold for by-elections be extended another six months to 42 months so that the community electors would be in total control of the appointment of a vacancy with a councillor or mayor and it would not be in the hands of, say, a CEO, notwithstanding the bill's clauses on that. We had a quick discussion. I cannot claim this is our formal position, but I actually thought the notion of removing this distinction between divided and undivided councils is a good one. Whether it is a 36-month threshold or 42-month threshold, I believe we would very strongly favour the notion that there should be by-elections in both undivided councils and divided councils, again consistent with the ability for voters to have control of that process at the time it is needed.

The biggest issue we have—and it is a bit hard when we do not have the regulations in front of us. We are deeply concerned about the use of closed meetings. Section 275 of the Local Government Regulation refers to capacity. It says 'councils may resolve to move into closed sessions'. Certainly in the council that I am most closely concerned with as far as OSCAR is concerned, that is turned into 'will resolve'. There is very little analysis by council as to whether they need to be in confidential session or not. That has been proved to us a couple of times when we have had to go through an expensive RTI process and found we got everything—that is, there was never any reason for the issue to be treated confidentially. We strongly support the removal of the clauses that were proposed by the department. In fact, in the case of Sunshine Coast Council, 88 per cent of its closed meetings would not have been closed if we had these regulations in place. The worrying thing is that there is the proposal to introduce a clause that says 'a councillor's position in a negotiation becomes a new item'. I just know that creative CEOs will be able to use that to make sure that just about everything is in closed session.

It is interesting that the LGAQ representative—and it rightly represents its membership, that is the 77 councils in the state—talked about being forced to move from a competency based arrangement to a prescription, but it appears that is what we need because I think councils are proving that if you leave it to them they do not make the right judgements about whether things should be treated confidentially or not. They talk about the council's interest or the interests of parties.

The interest that is completely ignored is the community interest, the public interest. We believe there are very few justifications for going into closed session—legal matters yes but mostly no. If they must go into closed session, we need to have access. The community needs to know the basis on which decisions were made and, if necessary, the release of any documents that were the basis for the decision should be made available as soon as possible after the decision has been made.

Mr STEVENS: Do you or your group have a position in relation to the replacement of a councillor should that councillor vacate their position for some reason, considering that the proposal in this legislation is to fill that position with the one who ran second? I remember a very popular mayor of the Albert shire was elected with 67 per cent. I would hate to think that someone with, say, 15 per cent, 20 per cent or 11 per cent, in the case of my good associate here, filled that position whereas the LGAQ wanted the status quo to remain in terms of the replacement of a councillor. Do you have a position on that matter?

Mr Smith: Yes. I obviously did not do it very well, but our position would be that that should be done by by-election and the community would wear the cost of that in the interests of good governance. The only variation that I sort of alluded to was at the moment the proposal makes a distinction between divided councils and undivided councils. I am persuaded that there is no reason for that to really be the case. Yes, absolutely there should be a by-election.

Mr PURDIE: Greg, in most of the submissions you have called for the threshold for gifts in relation to conflicts of interest to be reduced from $2,000 to $500. I think Greg might have said reduced from $5,000 to $2,000. The submissions have called for the amount to be reduced from $2,000 to $500. How did you come to that amount? Can you give us an explanation as to why you have suggested that?

Mr Smith: Consistency. That is the threshold for donations. Correct me if I am wrong, but I also believe it is the threshold for register of interest entries. The consistency would make life easy. One thing is true: it is getting more and more complicated to be an elected official. In terms of training and in terms of what they have to be across, having different thresholds in different areas does not seem to us to be justified so why not make it simple?

Mr O'CONNOR: What is the particular issue with the political staff? I think Mr Hallam from the LGAQ was saying that he could list 12 such positions that exist formally across the state. That clearly shows that there are people who are occupying Public Service type positions but performing political roles. Is it not better to bring it into the open, like this legislation does, have a code of conduct around it and put some of the same obligations that councillors have on them onto these staff?

Ms Handley: I would suggest to you that this is a situation that has been allowed to develop. Whether it should have been allowed to develop is not something that has ever been questioned. Now that it is coming to be legislated, I think now is the time to question whether it ever should have been allowed to develop. It is something that only happens in larger councils. If most small councils went to their ratepayer base and said, 'We want to pay for Fred Nerk to have a political advisor who works alongside them,' they would get a very firm, 'No, thank you very much.' If the people of Brisbane, Logan or the Gold Coast had been asked, 'Are you prepared to pay for a political advisor for your mayor or councillors?,' I suggest that there would have been a very firm 'no'.

It is a situation that has arisen. It is sort of like saying, 'Slavery was okay and we should continue. Now we will legalise it because it was something that came along.' I very much appreciate the fact that you are putting in place some sorts of boundaries, but I suggest that you look at whether it should be happening at all. What you are in fact doing in the majority of cases is funding a person for a political party.

CHAIR: To expand on the comments by the member for Bonney, an alternative would be having those roles that are defined in that way or councils choosing not to have them at all. That might make a clearer delineation. Instead of a blurring of lines, as the member for Bonney has alluded to, council officers could say, 'I think that's the role for your political advisor. My job is to represent the council,' and have a greater strength within that because we have put that delineation in. Is that a reasonable argument?

Ms Handley: No.

CHAIR: It is not slavery, though, is it?

Ms Handley: No, but it is the thing of being sort of pregnant, if you know what I mean. I believe that the situation down at the Gold Coast was that the person there was directing normal council staff on the way they acted. This is what concerns me. When you have political operatives, how do the normal council staff relate to those people? What sorts of conditions do you put on those political

people so that they have no control over council staff? The way that people perceive power within an organisation is not necessarily the way it is legislated. You get on a very slippery slope when you institute a position for somebody who is in a nebulous position, if you know what I mean. The council itself cannot control them; it is the elected representative who controls them. If that is the situation that you are putting up there and a political party is benefiting from that then a political party should be paying for that.

Mr O'CONNOR: How is a political party benefiting?

Ms Handley: If you have somebody who is assisting a mayor—

CHAIR: I think he is referring to the Gold Coast in this situation.

Mr O'CONNOR: There is only one council that has party politics in it.

Ms Handley: As Brisbane Residents United, that is the one I see. It concerns me the amount of marketing money that is spent by the Brisbane City Council. You have a marketing budget that is spent a lot of the time to the benefit of the people who are already resident in the council and now you are asking the ratepayer to add to that and say, 'We are now going to formalise that we will have staff that will be funded for this particular person.' Let us be clear about this: it does only happen in the larger councils and those larger councils are moving more and more towards party political situations rather than being run by Independents.

The other thing about this is that, particularly in the Brisbane City Council, this benefits the larger political parties. It does not necessarily benefit the smaller or the independent players. I think anything that adds to the advantage that you are already giving the larger political parties should be avoided, because we need a level playing field for good representation and what people see as good representation.

CHAIR: Someone could put the argument that putting these people as the advisors and putting a firewall between them and the rest of the council staff means that there are fewer of those nebulous roles and there is a clearer delineation.

Ms Handley: Where are you going to cut it, though? Who is going to have these people? Are we going to say, 'It's only the mayor,' are we going to say, 'It's the mayor and every one of the councillors in the larger councils' or are we going to say, 'It's the mayor and only the councillors who are in the majority'? Are we talking about only the party that is in the majority or the faction that is in the majority in that council? Are they the only people who get to have advisors or is it going to be every single councillor in a council?

Mr STEVENS: Ms Handley, I was formerly 'Fred Nerk' to then mayor Ron Clarke, who came in not knowing very much at all about local government and governance. For 18 months before I got this gig I was his so-called Fred Nerk, in the time around 2004 when he was elected, so I am particularly familiar with the roles that are played. The Gold Coast mayor has to get right across all issues over a city of some 14 divisions. There was no party political funding. It was a matter of assisting the mayor in reading agendas—I can assure you that they are massive—and getting across all of the issues in all of the divisions. That is what Fred Nerk does. I sympathise with some of the matters that you are raising that they are party political but, because mayors have to be across the whole of the city, would it not be appropriate for the mayor to be fully informed? Is it not reasonable for the mayor—there are mayoral duties; he does not have the time—to have an assistant to be across all of those issues?

Ms Handley: I would respond to that by saying that very good administrative support for your mayor is what is required. It is not political support. They do not need political support to do their job; they need very good administrative support to do their job.

Mr Smith: We would agree with that. We are not saying that mayors should not have someone, but it should be someone who is part of the normal staffing complement of the council under the same sorts of conditions. The LGAQ made that point as well. They can see—and they are the practitioners—that it is going to create real problems in terms of contractual arrangements. I do not share Elizabeth's view about the party politicisation of the positions, but that does not alter our opposition to the positions for the reasons we have outlined.

Mr BERKMAN: None of your submissions went directly to the most substantive amendments proposed on donation caps and spending caps.

Ms Handley: That is because we are addressing that in the inquiry the submissions for which close today. Personally, I thought it was very important to speak about the matters your committee is looking at today and then to give our full attention to the cap.

CHAIR: For the benefit of the member for Maiwar, the committee determined that it was important to have a second call for submissions on that specific matter. Some have addressed that issue in these submissions, and we will take that into account, but we have also asked for submissions separately. There being no further questions, I thank you very much for appearing. There are no questions taken on notice.

BUTLER, Ms Nicole, Director, Media and Engagement, Office of the Independent Assessor

FLORIAN, Ms Kathleen, Independent Assessor, Office of the Independent Assessor

KOHN, Mr Charles, Deputy Independent Assessor, Office of the Independent Assessor

CHAIR: Good afternoon, Ms Florian. Thank you for joining us today. I invite you to make an opening statement, after which committee members may have some questions for you.

Ms Florian: Firstly, I would like to respectfully acknowledge the traditional owners and custodians of the land on which we meet and the elders past, present and emerging. Thank you, Chair and committee members, for the opportunity to make a submission and to give evidence in relation to the bill currently under consideration.

The OIA was established in December 2018 to receive, assess and, where appropriate, investigate and refer disciplinary matters to the Councillor Conduct Tribunal and/or prosecute statutory offences concerned with councillor conduct in Queensland. Our written submission focused on those parts of the bill that are relevant to the operation of the OIA. While we cannot comment on policy matters, we can speak to our experience in enforcing the current councillor conduct framework and conflict-of-interest provisions and the likely implications of the bill in these areas. At this point, and recognising the time pressures that the committee is under, I might open up to questions.

Mr STEVENS: Ms Florian, in previous meetings you have indicated that the number of issues and complaints that you have had to deal with went from somewhere in the vicinity of 400 to 1,400 or something like that. How much do you envisage this legislation will increase your workload again and do you have the staffing capacity to deal with the matters?

Ms Florian: As you are aware, the OIA was resourced to receive approximately 162 complaints. As at 31 December we had received 1,414 complaints. We have commenced 574 investigations. Notwithstanding that volume of complaints, we have completed 266 investigations and there are currently 33 matters with the legal team, 22 matters with the tribunal and 25 matters that have already been determined by the tribunal.

I think the increase in complaints is likely the result of a heightened focus on integrity and accountability, previous under-reporting and increased confidence in complaints assessment that is independent of local government. The bill that is currently before us has two aspects from our perspective. One is changing the statutory offences. The second aspect is around conflict of interest.

In relation to proposed changes to the statutory offences, I would anticipate that they are likely to ensure that most contraventions of relevant provisions are dealt with as misconduct rather than as statutory offences. In that regard, I do not think it is likely to be much different in the sense that most of that conduct is dealt with as misconduct at present. I guess what it removes is the potential to escalate responses to conduct. From a resource perspective, I think that is fairly resource neutral.

The second aspect is the conflict-of-interest changes. This really goes to how the proposed bill would deal with conflicts of interest and how effective that is going to be over time in reducing conflict-of-interest complaints. As I have previously submitted to the committee, the central concern I have about that is returning the onus onto individual councillors to identify when they have a conflict of interest. I think that does have potential for councillors to fail to identify situations where they have a conflict of interest which may result in ongoing complaints.

Mr STEVENS: The second part was any staffing matters that you required further on this?

Ms Florian: Clearly, the OIA is about to take the Brisbane City Council within its jurisdiction as well. There are established processes and government and finance processes during the budget. We have an opportunity to engage and make submissions through that and we are undertaking that process at the moment.

Mr STEVENS: Out of those complaints, how many have you found to be vexatious in nature?

Ms Florian: From memory, we have dismissed 13 complaints as vexatious, but we have put in place an escalating approach to dealing with potentially vexatious complainants. The first step is that we dismiss a matter and write to a complainant and say, 'It is getting close to being vexatious. If you complain again about substantially the same matter, or another matter but it is interpreted to be the same, then you run a risk of having the matter dismissed as vexatious and it is also an offence.' If the same complainant does that again then we dismiss the matter as vexatious and we write to

them saying that if there is a further vexatious complaint then we will be looking at a prosecution under the act. So far, that two-step escalation process has been successful in dissuading all but one complainant from proceeding to the third step.

Mr STEVENS: Is the one who proceeded being prosecuted?

Ms Florian: An investigation has been undertaken and that matter is currently in our legal section, forming a view on the prospects of prosecution.

CHAIR: I probably let that advance too far because it was quite interesting information but not strictly—

Mr STEVENS: With the bill, yes.

CHAIR: Yes.

Mr O'CONNOR: Most of our local government stakeholders would prefer the conflict-of-interest amendments to come into effect after the March elections. Do you have a view on when would be best to have those implemented?

Ms Florian: Any changes to the conflict-of-interest provisions I think would be best placed after the March elections where induction training can double up to also address conflict-of-interest issues. I think that would be the most efficient use of resources.

Mr PURDIE: I notice in your submission about 24 per cent or 25 per cent of your investigations or complaints relate to conflicts of interest. I wondered whether, if these amendments came in, there was enough time to allow you to be in a position to deal with the excess workload, but you have answered that question from the member for Bonney.

CHAIR: I recognise that you have had a big workload as people have found new confidence to put forward their complaints, even if some are misguided. I recognise on behalf of the committee the good work of the Independent Assessor and thank you for your submission and your information today.

Ms Florian: Thank you.

MACSPORRAN, Mr Alan QC, Chairperson, Crime and Corruption Commission

STEPANOV, Dr Nikola, Integrity Commissioner, Queensland Integrity Commission

CHAIR: Good afternoon to you both and thank you for joining us today. I invite you each to make an opening statement, after which the committee might have questions for you.

Mr MacSporran: Thank you, Chair. I thank the committee for the opportunity to appear today. The Crime and Corruption Act has the purpose of reducing the incidence of corruption in the public sector, as you know. While the bill we are talking about here seeks to implement reforms in many areas of our democratic processes, the CCC submission has, by necessity, focused on matters within chapters 4 and 5 of the bill. Those chapters raise issues central to the CCC's corruption and corruption prevention functions.

As you know, the CCC has made recommendations for reform as a result of Operation Belcarra and our assessment of corrupt conduct allegations related to decision-making concerning the Cross River Rail project. The bill's proposed reforms to impose criminal sanctions for noncompliance with disclosure obligations under the Integrity Act, the Parliament of Queensland Act, the City of Brisbane Act and the Local Government Act—that is, the relevant legislation—do not, as they currently stand, in our view, achieve the purposes of the CCC's recommendations.

Central to the reforms proposed by the bill is the imposition of a criminal sanction for noncompliance with relevant disclosure obligations only when there is proof of dishonest intention. There are already existing offences under section 92A, 'Misconduct in relation to public office', or section 408C, 'Fraud', which sufficiently proscribe such conduct. In this regard, I note from their submissions that the Queensland Integrity Commissioner, the Office of Independent Assessor and, it would seem, the Queensland Law Society all appear to share the same view.

Respectfully, historical conventions are no longer considered adequate to enforce the standards of conduct expected of elected representatives by the community as a whole when it comes to executive decisions. This limited reform, as proposed by the bill, is not, with respect, an effective measure to prevent corruption and is not what was intended by the CCC's recommendations.

In the criminal law, the word 'corruptly' is not equated with dishonesty. For this reason, corrupt conduct as defined by section 15 of the Crime and Corruption Act includes alternative forms of conduct which is not honest, is not impartial, is a knowing or reckless breach of trust, involves a misuse of information and involves a misuse of material acquired. Those are all parts of the make-up of the definition of corrupt conduct under our act.

The various disclosure obligations under the relevant legislation should have the common purpose of ensuring that the Premier, the cabinet, the parliament, the local government and, in many circumstances, the public are aware of the relevant private interest to enable accountability and ensure duties are performed in the public interest. The CCC considers effective enforcement of these obligations requires offence provisions which sanction the failure to disclose relevant interests when the person knew or ought to have known of the relevant interest. Offence provisions drafted to this effect will effectively implement the CCC's recommendations.

For the reasons set out in our submission, the CCC does not support the bill's proposal to limit prosecutions for noncompliance with disclosure obligations to only matters for which a dishonest intention is able to be proved. The offence should also prescribe the failure to disclose relevant interests when the person knew or ought to have known of the relevant interest. A strict liability offence is required because otherwise the laws are ineffective in preventing corruption and would negatively contribute to perceptions in democratic decision-making processes. As we said in our submission, the CCC considers that the offence provisions for serious offences by ministers are preferably located in the Criminal Code, where other integrity offences are also housed.

Finally, can I say something by way of opening statement concerning the consultation process in the formulation of the bill. I was consulted by the Attorney-General concerning the general content of the bill before its introduction. I was specifically informed about the proposal to include the requirement of dishonest intent in the offence provisions. In that context, I did not inform the Attorney-General that such a requirement would not meet the CCC's recommendations but did state that when we saw the bill and had the opportunity to fully consider its terms we would then be in a position to make a detailed submission, as we have subsequently done. The process of consultation with the Attorney-General is ongoing about these matters, as it should be. Thank you. I am happy to take questions.

Dr Stepanov: Thank you for the opportunity to speak today and for your consideration of my submission. For the purposes of the record, I am Dr Nikola Stepanov, the Queensland Integrity Commissioner. As you are aware, the functions of the Integrity Commissioner are set out in section 7 of the Integrity Act. Relevantly for today, that includes that I provide advice to those who fall under the act and I can also meet with and provide advice to members of parliament on interest issues. As well, I have a function that also includes public discussion on interest issues and other ethics and integrity matters. Generally speaking, most of the advices I provide relate to the three main areas of corruption: conflicts of interest, the acceptance of gifts and hospitalities, and things such as favour and influence.

In recent years there has been an unprecedented demand for the number of advices that I am required to provide—a more than 600 per cent increase in the last couple of years. This has certainly raised the profile of the office, but I tend to see it as a good thing. I think it is in response to public expectations on those who are elected to make decisions on their behalf and also public officials, and I also think it is because of the work we are doing in the sector with our partners, including the Crime and Corruption Commission and the Independent Assessor among others. I note, however, that there is a general agreement that interest issues are becoming more and more complex and becoming less and less visible.

Regarding my submission, I generally agree with all of the points raised by my integrity colleagues. As well in my submission I provided my observations in regard to two very limited areas. I made some observations around changes to the confidentiality provisions under section 24 of the Integrity Act. I also made some observations in terms of my experience in the local government sector and the proposed changes to the way that interest issues will be dealt with at the local government level.

Regarding the confidentiality provisions, the secrecy obligations in the Integrity Act are at section 24. I note there are some concerns about how broadly section 24(3) applies. There are concerns that all people are bound by the confidentiality provisions and, for example, if some materials have been provided by an advisee they are not able to be used in prosecution or an assessment. That is not correct. Under the Integrity Act, those bound by the confidentiality provisions are fairly limited. It is me and primarily my staff. That is section 24(3). I note that is expressly does not limit the use of any materials or information gained where those materials have been gained lawfully through another act.

I note that there have been some concerns that the confidentiality provisions in the Integrity Act are as powerful as and akin to section 8 of the Parliament of Queensland Act. I do not think that is correct. There is already an exception in the Integrity Act for the use of any information that has been sourced in terms of an investigation or assessment or other. It may be that there is a view that, much like section 53 of the Criminal Code, there is a need to have some legislation overriding parliamentary privilege or something akin to that. However, as I said before, the exception already exists within the Integrity Act. Therefore, I am unclear about the need for a further exception in the Integrity Act and also its very limited application, so it would apply to ministers but it may have very broad implications in terms of where advice may have been sought on a matter by others who are caught up in those particular provisions.

In regard to the changes to material personal interest and conflicts of interest and the way they are dealt with at local government level, in similarity to my colleagues I have some concerns about the effects on transparency and also public confidence. As put by the Queensland Law Society in their submission, laws need to be certain and they need to be capable of being understood by those who will apply them. Over the past two years as the Integrity Commissioner, following the nomination of mayors and councillors, I have provided formal written advice on several hundred occasions. I have also provided informal opinions and referrals on several hundred more occasions. The issues that I have dealt with that were not trivial in nature—and certainly local councillors, in my experience, are not unsophisticated operators. They are generally very well respected members of their communities who put their hands up to do a very difficult job, often on a part-time basis. They usually have longstanding community ties and associations as well. However, they typically would find themselves operating in a very unfamiliar environment where it is becoming increasingly complex and it is quite regulated. Issues, in general, across the board are becoming more complex and less visible, even to experts such as us. It is not uncommon that we disagree about whether a conflict of interest may exist based on a particular set of facts.

Under the proposed legislation, as I have said in my submission, my observation is that it is fairly complex and highly nuanced. It has been suggested that avenues to address any uncertainty councillors might find themselves in would be things such as seeking legal advice or meeting privately

with other councillors and the CEO prior to a public meeting to discuss interest issues. However, it would seem that this would run counterintuitive with public sentiment and the common desire that councillors openly and transparently, in a public forum, discuss interest issues and do so in a way so that they can be held by the public and each other to the standards that they set.

Further, although the legal advice would be provided to a councillor, it is usually paid for on public funds and the advices are rarely made public unless a councillor chooses to use that in his defence, so they are not often used to set standards across councils and across local government. As well, in the event of an uncertain councillor seeking some informal guidance from a colleague privately and before a public council meeting, they may run a risk of committing an offence under the influence provisions. They are also not entitled to enjoy the protections that they ordinarily would if unconflicted councillors had made that decision in a public forum. It also raises questions about the obligations of other councillors. For example, if they are a party to a private conversation before a council meeting, they might be open to committing an offence if they have misread the facts and failed to raise at a council meeting that the affected councillor has a conflict of interest of some kind.

On a final note, I would like to acknowledge that it is a very complex area that the bill is seeking to address in terms of the local government space. I would like to thank the committee for considering my submission and providing me with the opportunity for these further observations. Thank you.

Mr STEVENS: Mr MacSporran, it is nice to see you. Recently the CCC concluded a major investigation of the Gold Coast City council. The public utterances are that there is no systemic corruption coming out of that. However, there are some issues that we have seen in the public forum, which are dealt with in this bill, in terms of the role of councillors' advisors not being a part of the normal guidelines for employees under the council employee role, if you like. Do you have any comment to make in relation to the fact that this bill will separate, if you like, through employment contract or whatever—rather than through the council guidelines for employees—a political role, rather like ministerial advisors have, which council advisors have?

Mr MacSporran: As we say in our submission, there is merit in conducting that separation and making them more like the state position, where you have advisors controlled by those protocols and codes. There needs to be attention to that in the employment contract and other measures, as we say, to make sure that there is no crossing of the boundaries, as it were, from the starter into the political arena on behalf of the elected councillor and mayor, for instance. We welcome changes to those protocols.

You mentioned the Gold Coast. That report, all things being equal, should be published sometime this week or early next week, depending on our committee's assessment of it. That will go into the narrative of some conduct illustrative of this very problem that we are talking about and, more fundamentally, the problem of conflicts of interest which lies at the heart of most integrity issues that we see in this space and elsewhere.

Mr STEVENS: You do support the part about the advisor's role in this bill?

Mr MacSporran: Subject to what we say in our submission about the way that is nuanced, but we need action in that area, yes.

CHAIR: Earlier I talked about putting a particularised role and then putting up a firewall to say that those outside of those particularised roles have a gap between them and the direction of councillors or mayors. In some ways, that really has a proper process of separating out the two and enhancing the CEO's role as the director of staff. It does that.

Mr MacSporran: Yes. It also helps with transparency, which is the key to all of this. There needs to be absolute transparency about those arrangements, what the boundaries are and how they operate.

Mr O'CONNOR: Mr MacSporran, you considered and quite extensively referenced the opposition's bill in your submission into what we are talking about here. Would you say that the opposition's bill more adequately addresses your recommendations from the CCC report?

Mr MacSporran: As we say in the submission for this bill, we pick up aspects of the opposition's bill that more correctly, we think, reflect the intention that we had in making the recommendations. We do intend to make a separate detailed submission in respect to the opposition's bill, which I think is due by the middle of February or thereabouts. We thought it was quite relevant to pick up some of the aspects of it in this submission, because of the very nature of it covering very much the same territory. For instance, we picked up, as you have seen clearly, the idea of having strict liability offences rather than the dishonest intent aspect to it as being a sensible implementation of our recommendations in that respect.

Mr O'CONNOR: You thought it was more appropriate to highlight sections that more accurately reflected your recommendations?

Mr MacSporran: Yes.

CHAIR: Would it be fair to say that the penalties that were put forward in the opposition's bill were deficient in comparison?

Mr MacSporran: As we said, we favour the increased penalties as reflected in the government's bill as opposed to the opposition's.

Mr PURDIE: Mr MacSporran, on the penalties, in both your written and your oral submissions you suggest that proposed section 40A as it stands pretty much overlaps with section 92A and fraud, section 408C, with the element of intent. Is it the case that, with this new section 40A offence, if you can prove an intent essentially you have committed an offence under section 92A or 408C, so this new offence then would be a watering down of that criminal offence or that conflict?

Mr MacSporran: It would be in this sense: the existing provisions of misconduct in public office, section 92A, and fraud, section 408C, require the intent to be proved to constitute the offence. Those offences are serious. They carry substantial penalties of imprisonment. This bill seeks to introduce similar dishonest intent elements but has a lower penalty and, in addition, requires the consent of the Director of Public Prosecutions to commence proceedings. One view of that—not necessarily the correct view—that the public might have is: 'Well, it is the same elements of the offence, the penalty is lower and you can't do it at all in respect of politicians unless you have the director of prosecution's consent.' They might think, 'Well, they are making it harder to prosecute, not easier, so they are lowering the bar and not raising it.'

Fundamentally, our concern is that you do not need another offence with intent. You already have that. If you introduce the strict liability offence in relation to declarations of conflict plus prescribed interest—updating a register of interests—you set the bar higher for the need to be aware of the obligation to disclose and to update your register and there are serious consequences if you do not do that. Secondly, if you do not do it, it might be easier circumstantially to prove that you had a nefarious intent for not doing it as opposed to the current situation where there is no real consequence and there is a bit of a vague obligation set out to declare your conflict and update your interests.

It is a matter of just raising the bar to provide an awareness across the board that if you do not do it there will be serious consequences and you might infer that 'there was another reason you did not do it, because you must have known that you had to do it'. Therefore, it would make it easier to prosecute the more serious offences of misconduct in public office and fraud. That is the rationale behind this. You do not need to duplicate it; you just need to supplement it with some provisions that make it a more serious breach of conduct.

CHAIR: I do not know if you heard Jennifer Menzies from Griffith University speak on being previously involved in the cabinet processes about the traditions of the constitutional conventions. The introduction of a particularised bill that specifically referenced something would obviously have some kind of enhancement if there was a code directly dealing with that and obviously addressing those constitutional conventions and the alternative roles of sanction. In some ways, wouldn't that make it clearer for anyone going forward with a criminal prosecution?

Mr MacSporran: Yes. The point is well made that traditionally politicians' behaviour is governed by longstanding conventions. The trouble with that is that, with respect, they do not necessarily work. People feel freer, it seems, to ignore the convention and the consequences might be minor, if any. That cannot be in the public interest, with respect.

The point that Ms Menzies makes about honing in on that aspect and criminalising it, ignoring the conventions and, in this area, particularly conflicts of interest and prescribed declarations of interest or registers of interest, does not really change anything in this sense: if you are complying as you should with the convention, these provisions will have no effect on you at all. It is only for the smallest minority of people who choose to undermine the public interest and confidence in the system of democratic government who breach the convention and will have these consequences visited upon them.

When she says that you cannot then move to adjust your approach, as the convention could, to changing circumstances, it is really a fallacy in this sense: the basic concept is that you should declare a conflict. What constitutes a conflict from any given situation is up for, we would say—and should be, as it currently is—the meeting to consider, to debate and to work out what the conflict is.

Once you have identified it and disclosed it, it is then a question of how you manage it. That can change with the times. What might be a conflict today might not be a conflict next week or the year after. That can all be accommodated by this criminal offence provision being in place.

CHAIR: With that being said, if we think back on the eighties, the forties or the thirties, what a meeting at that time would have concluded was a conflict and the conventions that now determine a conflict would be quite different.

Mr MacSporran: Absolutely.

CHAIR: In that way, when talking about codifying and locking in, if we had done this in the thirties I suggest that it might have been taken in a very different direction.

Mr MacSporran: My point simply is that if you are creating these offences that criminalise a failure to declare a conflict or update your register, that is a concrete concept that is capable of moving with the times. You could have had that in the thirties and you could have it now. It can change as to what is a conflict and how you manage it, but the fact that you have to declare it, if there is a conflict, is a signpost of integrity that is capable of moving with the times. We are not constraining the convention and its ability and need to be flexible by criminalising it; we are simply criminalising a failure to meet your fundamental obligations for integrity by declaring a conflict.

CHAIR: I do not think you are making the Integrity Commissioner's job any easier. Originally this seemed to be for application to the executive and cabinet. On page 9 of your submission under the heading 'Intentional lack of compliance' it seems to imply that the bill should be applied to all members of parliament. Is that the intention?

Mr MacSporran: I think so. In respect of the failure to update the register of interests, I think so. I cannot think of any sensible reason, frankly, to have that confined to simply ministers. It should apply. As I understand it, every member of parliament has an obligation to update their register, for good reason.

CHAIR: I would like to declare an interest in this because I am a backbencher.

Mr STEVENS: I could remain silent.

CHAIR: And likely to remain so. I am not an executive decision-maker which does seem to me to be the difference. Certainly members of the opposition backbench or frontbench are not executive decision-makers.

Mr MacSporran: That is true, but you may have a role at some point. You might be a backbencher now but you might have other relevant duties to bring into play private interests you have and continue to have that might impact upon your decision-making or input into decision-making. I think it is a bit hard to exclude a large body of people in this space without lowering the bar, as it were, on the integrity front.

If everyone is doing their honest best to update their register and declare conflicts and so forth it should not have an impact and there should be nothing to worry about. It is a matter of trying to get the message through that this is a fundamental thing that needs to be complied with. It is not something that should not have any consequence because it is a fundamental plank in how everyone sees you as members of parliament and ministers.

CHAIR: This is something that has come about upon reflection and was not part of the original advice put forward so there has been some change in that regard? You spoke earlier about consultation on this bill with the government. This obviously was not something that was part of that consultation?

Mr MacSporran: No, it arose at our end upon further reflection about how far this should go. We did consult recently with the Attorney and so forth to express that view after we had put this submission in. No, it was not part of our original intention in the recommendation.

CHAIR: Returning to what Ms Menzies stated, you have no concerns that very few other Westminster parliaments have chosen to codify this? Was that part of your consideration in balancing that right from the beginning?

Mr MacSporran: It was. If our suggestion is adopted it would make the Queensland parliament one of the leaders in this very important space worldwide. I think that is something to be applauded. I cannot stress enough that this is such a fundamental plank of public confidence in the way the parliament and the democratic process works that it cannot be trivialised in any way.

Mr STEVENS: I am confused, Mr MacSporran, and you can hopefully assist me to not be confused. It could be argued that the proposed dishonest conduct offences are likely to apply only in very limited circumstances, noting the intent element of the offences. With the matter that resulted in the CCC's recommendations—we all know that was the Trad matter—the CCC did not find evidence

to support a reasonable suspicion of corrupt conduct or a criminal offence. As I understand it, under this new legislation those offences will become criminal. Is this the change you are talking about in terms of expectation?

CHAIR: I will counsel the deputy chair on using correct titles. That rule still applies in committee hearings. The advice from the committee secretary is that the seeking of hypothetical legal opinions should be avoided. You might like to rephrase the question.

Mr STEVENS: We have this proposed new criminal charge as opposed to a convention. We had a convention previously. In terms of that convention you found no criminal conduct—

Mr MacSporran: We found we could not prove criminal conduct. I do not mean to be pedantic about it, but we simply said that there was no evidence of what turned out to be a dishonest intent. That is, a failure to declare the conflict in respect of Cross River Rail was not accompanied by a nefarious reason for that; hence, it was not corrupt in our jurisdictional sense. Under the current provisions here, all you are doing is making a criminal offence requiring that dishonest intent, lowering the penalty and requiring the director's consent to prosecute it, whereas you currently have two offences—fraud and misconduct in public office—both of which require that dishonest intent. If we had found evidence of dishonest intent, and hence potentially corrupt conduct, we could have charged under misconduct in public office.

Mr STEVENS: What you are saying is that going forward there still has to be intent for criminal charges to apply?

Mr MacSporran: For those criminal charges.

Mr STEVENS: It still would not apply in future similar cases, if you like?

Mr MacSporran: If you had evidence of intent.

Mr STEVENS: Proving the intent is the problem. If you cannot prove intent then these criminal charges will not apply?

Mr MacSporran: That is true. What I am saying is that if you have strict liability offences of failing to declare a conflict and updating your register—so everyone should understand that there is an obligation to do so and if you do not there are serious consequences—and attach that also to the standing agenda item in a cabinet meeting where you are obliged, at the front of the agenda, to declare any conflicts before the meeting starts to discuss issues, then if you do not declare them you are guilty of the criminal offence that we have proposed. Depending on the circumstances, that might lead to an inference reasonably available as the only reasonable inference that you did not do it for a nefarious corrupt intent. Our proposal, although it removes the dishonest intent because it already exists in other offences, raises the bar of accountability for failure to declare and failure to update your register of interests.

Mr O'CONNOR: Mr MacSporran, the bill before us does not implement your recommendations and you would like to see changes?

Mr MacSporran: That is so, yes.

Mr PURDIE: Mr MacSporran, we are talking about intent. As a barrister, maybe you could explain something to me. Intent is essentially a state of mind at the time. How would you normally prove intent?

Mr MacSporran: There are a number of ways you could prove it. One is if someone declared what their intent was. That is the obvious way—the admission was made. It might be a statement of exculpation, 'I had no dishonest intent,' or it might be, 'Yes, you got me. I was trying to hide my private interest because I knew that I would get a benefit if I voted for this project.' All of the circumstances are relevant. Most often intent has to be proved by what is called circumstantial evidence—that is, facts from which you can draw inferences or conclusions. It is often not single facts; it is often a collection of facts from which one conclusion emerges as the only reasonable conclusion. That is generally what a circumstantial case is all about.

If you accept our proposal, as I mentioned before, you have everyone understanding that you have to declare your conflict and you have to update your register and if you do not you can be charged with a criminal offence. That is a serious matter. It should bring front and centre to your attention that obligation and the fact that there are consequences. That would help prove that you may have had a nefarious intent when you failed to declare a conflict, depending on the circumstances and how obvious your failure to declare was, how proximate to the project your involvement was, what your benefit could clearly be identified as. It is a bit hard to be general about it. We think clearly that the proposal we have put forward in our submission definitely raises the bar and makes it easier to prove that dishonest intent in the handful of cases, hopefully, that it would apply to.

Mr PURDIE: I go back to the matter that is the genesis of this amendment that the member for Mermaid Beach raised earlier and your public statement or the reasons you did an assessment on that matter but decided not to investigate it. You have just outlined to us that the most common way to prove intent is by someone's admission. You decided not to investigate it because there was no evidence of intent. What was the reasoning for not questioning the subject to see what the intent was? If that were to investigate to prove intent, this amendment might not be being debated here today.

CHAIR: The committee is charged with dealing with what is in the bill before us. I think that question could be rephrased to deal with the bill before us rather than a prior investigation. Mr MacSporran, you might want to take that on board and comment on the bill before us and the circumstances in the future—that is unless the member wants to rephrase the question.

Mr MacSporran: I think I can answer your query in this way. For the reasons you are aware of, I stepped aside from the assessment of that matter, but there was a public statement made—it was seven pages from memory—that went through the reasons for our ultimate assessment outcome. That was designed to explain to everyone the process we went through—what information we had, how we considered it and why. At the end of the day, our jurisdiction was not engaged because there was insufficient evidence of any corrupt behaviour involved, being the dishonest intent. I could simply refer you to that statement, which I do not have in front of me.

Mr PURDIE: It is accessible online.

Mr MacSporran: I would hope that in there our reasons for our outcome are properly articulated, as they were intended to be. It is all about what the evidence is. You do not always need to investigate to conclude that there is no evidence or insufficient evidence of corrupt intent. That is why we assess things. If there is a prospect that it will move to be evidence of corrupt conduct, engaging our jurisdiction, we might move to the investigation stage. That is a mandated process we go through. We distinguish between assessment, preliminary investigation or feasibility study then investigation for those reasons, but they all have their markers in engagement, if at all, of our jurisdiction. It is an internal categorisation.

We would hope it is useful for the public and the media to understand at what stage we are at. As soon as we say we are investigating, everyone wants to talk about it and speculate about someone being in trouble and that is often not the case. We say assessing it before we conclude to go further. Even if we go further, that is not the end of the story. We need to investigate to find out whether it is actually corrupt possibly or not.

Mr PURDIE: That was the crux of my question. We are talking a lot about intent and the element of intent. The current amendment at section 48 includes intent and the genesis of that. Your decision is online. What was lacking for it to be criminal corrupt conduct under section 15 of your act—

Mr MacSporran: Was the intent.

Mr PURDIE:—was the intent. You said earlier that the most common way to prove that is by someone's admission about what their intent or purpose was. You do not have to answer this question. The decision was made not to investigate because there was no element of intent, but there was no overt attempt to even question the person as to what their intent was.

CHAIR: We seem to be having a circular discussion.

Mr MacSporran: I will make a more general comment as a criminal lawyer in my previous life. If you are looking at whether someone has committed a criminal offence, you would not normally think that the first thing you do is go and ask them whether they were dishonest because you would expect, except if they are very poorly advised, them to say, No, I had no dishonest intent.' I am not saying that is not part of the ultimate investigative process. You might go to them. In fact, before you charge them you would go to them and say, 'Here is all the evidence. What do you say about that? Do you want to be interviewed?' Again, if they are well advised they would say, 'No, thanks. I'll wait until I go to court.' But if they did talk they might say, 'No, of course not. That's all rubbish! I didn't act dishonestly at all.' There would be legitimate reasons you would not approach them in the first instance and ask, 'Did you behave dishonestly?,' because you would pretty much expect what they would tell you and you would not necessarily accept that as being the truth.

Mr PURDIE: A lot of the time serious criminal offences like murder are proved because the offender might admit to their—

Mr MacSporran: They are the minority of cases, unfortunately.

CHAIR: A policeman and a defence lawyer talking! Thank you both for attending. I appreciate the feedback you have given to the committee. I also wanted to note that, in line with the cabinet, committees now bring up conflicts at every single meeting through the meeting agenda as a process of reminding us of our responsibilities. I think it has been healthy for the committee process as well.

Mr MacSporran: Can I make one very quick comment before we adjourn. I appreciate your patience. I cannot emphasise enough that what we have been talking about is the declaration of conflict in the parliament and so forth, but in the local government space, if you look at the history of this, I think the laws came in originally in 2009 or so. They were wound back in 2011 and then they were reintroduced in very similar form and requirement after Belcarra. Our submission, as you have seen, is that that is a very good, workable, practical model and that change to that is fraught with risks if you again unwind what we uncovered as being significant corruption risks in Belcarra. The biggest pushback against those laws was that they do not work because in council you will have a whole meeting of councillors who will all be declaring, either through fear or other nefarious motives, 'We have a conflict so we cannot decide this issue.' As a worst case scenario, if that happened—and a large justification for some of these changes seems to be that they do not work—then you would all sit there and work out a way, as is intended by these provisions as they currently exist, to accommodate the decision as being the right decision but not driven by any of the personal interests that have been declared in the room. The decision is still made and then it is documented as being appropriately made.

Seriously, I ask the committee and anyone else who is interested in this space to again read Belcarra on that section, because it is fundamental to the whole integrity system. I do not denigrate councillors. This is a difficult area. That is why you need assistance to collaborate on what is a conflict and what is not. If you hand it back to them in private or even suggest that they might have a private meeting before the meeting, you are destroying what we want, which is transparency to help them get it right. Similarly, you do not want them to be afraid to go to the Integrity Commissioner for advice because the advice might be made public against them later. You want to encourage them to get the right advice and do the right thing. Anecdotally, that is what is happening.

CHAIR: I think some of the quotes about removing themselves from meetings would be useful in the training that councillors receive after the next federal election. I really appreciate your appearance, Mr MacSporran and Dr Stepanov.

COPE, Mr Michael, President, Queensland Council for Civil Liberties

GNECH, Mr Calvin, Chair, Occupational Discipline Law Committee, Queensland Law Society

McGREGOR-LOWNDES, Mr Myles, Member, Not for Profit Law Committee, Queensland Law Society

MURPHY, Mr Luke, President, Queensland Law Society

CHAIR: I invite the representatives of the Queensland Law Society to make an opening statement and then I will give the same opportunity to Mr Cope. It would be appreciated if these statements could be relatively limited to allow time for questions.

Mr Murphy: Thank you for the opportunity for the society to appear at this afternoon's hearing. In opening I would like to acknowledge the First Nations people as the original inhabitants of the land on which we meet, and I recognise the country north and south of the Brisbane River as the home of the Turrbal and Jagera nations and pay deep respects to elders past, present and future. The society, as you know, is the peak professional body for state legal practitioners, over 13,000 of whom we represent, educate and support. We are an independent, apolitical representative body upon which we believe government and parliament can rely to provide advice.

Can I state at the outset that the society supports the policy objective of promoting integrity and public accountability in state elections and ensuring public confidence in state electoral and political processes. With respect to the bill we raise the following key issues. The society is concerned that the way in which third parties are included in the amendments relating to funding and expenditure for state elections will result in charities and not-for-profits choosing not to participate in public debate due partly to the cost of compliance and the risk of unintentionally breaching these provisions. The society proposes the removal of section 199(1)(c) or in the alternative to removing this provision, which is our preferred outcome, we consider that there could be two compliance regimes which deal separately with groups that are affected by the expenditure caps and those that receive and are affected by the donation caps.

Finally, with respect to chapters 4 and 5 of the bill the society submits that the new offence provisions contained in clauses 62 and 73, which apply to ministers as well as in the amendments to the local government legislation, are unnecessary. There are already two offences in the Criminal Code which will capture the serious conduct contemplated by these provisions. I will ask Mr Gnech and Mr McGregor-Lowndes to add two further short statements.

Mr McGregor-Lowndes: I was listening to the repartee and debate this morning, and I almost fell off my chair because somebody mentioned Beenleigh and then somebody mentioned the Uniting Church congregation in Beenleigh, so to disclose my interest: I am a member of the Uniting Church in Beenleigh.

CHAIR: Apparently they thought it was fictitious, but we found out it is real.

Mr McGregor-Lowndes: It got my mind thinking: does the Uniting Church at Beenleigh have anything to do with electoral expenses? No, but I think politicians and upcoming politicians invite themselves to the men's breakfast before the election to have a meet and greet. I think our church hierarchy may well say that we will no longer hold that function for candidates to come and talk to our men's breakfast. Clearly, I do not think the legislation catches that, but I will explain why.

Listening to the debate this morning there were two things. Firstly, you may not understand how small Queensland non-profit organisations are. It is an inverted peak. There is a huge number of really small ones and there are a couple of really big ones. In the incorporated associations register, which covers many Queensland associations, these are the last statistics I have: four out of five have fewer than 100 members; four out of five have an annual turnover of less than $50,000; and four out of five have assets valued at less than $50,000, so they are pretty small. If you take the ACNC register, of the charities that have a registered office in Queensland 65 per cent are classified by the ACNC as small charities, 50 per cent have no staff and 80 per cent have between zero and four staff members. We are dealing with a lot of very small organisations and a few big ones, so you may want to discriminate between the two.

The second issue I would like to draw to your attention comes out of the new work on regulatory nudging; that is, how do you get somebody who you want to regulate to comply without having heavy sticks, basically? You can nudge them. There is a whole lot of literature on that. It is commonly anecdotally regarded by those who work in the non-profit space that non-profit management is risk

averse and they want to comply with the law. I can give you examples in Canada where they had a crackdown on advocacy over oil pipelines and the civil liability crisis here in about 2001 where non-profits panicked, but the only academic work I could find was some work done by the Australian National University on tax regulation. The point that they came to after research with non-profits was that NGOs are generally more compliant with their tax obligations than for-profits. Avoidance of tax is often inadvertent and due to ignorance. Where wrongdoing is found to be deliberate, publicity will be extremely powerful punishment.

What I am saying is that non-profits overreact to legislation. They just do not want to get involved, and when you hit the political advocacy button they will run 100 miles because the general proposition is that charities do not advocate, although that is not correct. My proposition to you is that the bulk of charities, particularly the bulk of non-profits, will have nothing to do with advocacy. They will want nothing to do with having to comply with electoral laws or regulations and they will run 100 miles. They will overreact. They will be drama queens, hence my comment that I could well imagine that my local parish of the Uniting Church would not invite political candidates to come and have a men's breakfast near an election, or if they did invite one they would invite the lot because they would be perceived that it would be breaking the law and enmesh them in some regulation. They want out of it completely, so they will overreact. I will just leave that.

Mr Gnech: I have been asked to talk about the offences, so I will just talk about them generally. As we know, Operation Belcarra identified what can generally be described as systematic and serious corruption. That is what this legislative regime was implemented to address. It was not implemented to capture innocent mistakes, errors of judgement or administrative oversights from local councillors in particular who have no administrative support, no support in any way and, more importantly, very little training and very little education.

A lot of the discussion is around conflicts of interest and registers of interest. For trained lawyers, it is often difficult to identify whether a conflict of interest actually exists or what an interest actually is. Of relevance, there is no assistance in identifying what the definition of an interest is or where that threshold sits. Ultimately, determining whether something is an interest or not or whether it is a conflict of interest is subjective on the person assessing it at the time as to where the line in the sand is. Ultimately, the scheme that is being purported to be implemented goes even further than it already has. The QLS submission to you is that a look at the Councillor Conduct Tribunal decisions since its implementation shows that innocent mistakes, oversights and administrative errors are what is being captured—not systemic corruption.

I will quickly respond to Mr MacSporran's statements with regard to strict liability offences. He used the words, 'If you are doing your honest best you shouldn't have a problem.' He also said, 'It's to capture those who deliberately choose to undermine the system.' That is, in fact, incorrect. A system implementing strict liability offences? The problem with that is that strict liability offences specifically capture the innocent mistake, the administrative oversight. Section 92A of the Criminal Code, implemented a number of years ago, criminalised public employment misconduct in the workplace. I also refer to section 408C, 'Fraud', of the Criminal Code. Both of those offences are sufficiently broad to capture any conduct that warrants criminal sanction. The Crime and Corruption Commission also has a very broad and powerful function under the definition of corrupt conduct that can appropriately deal with conduct identified in the workplace. This should be a system that focuses upon education rather than putting more employment errors and administrative oversights into the criminal jurisdiction.

Mr Cope: On behalf of the council, I thank you for the opportunity to appear. After lodging this submission I noted that I had overlooked section 199(5) in the draft bill, the provision that provides in relation to third parties that expenditure incurred by a third party is only electoral expenditure if the dominant purpose for which the expenditure was occurred is a purpose mentioned in subsection (1). Once this provision is taken into account, the submissions made on page 6 of our submission need to be revised. First, in that submission we approved the proposal to extend the legislation to direct or indirect promotion of a political party and candidate. It has to be said that that was done not without some qualms, because indirect promotion is a somewhat vague concept. However, on balance we considered that appropriate, because limiting the law to direct promotion would be too narrow. The presence of section 199(5) addresses those qualms.

The more important submission made on page 6 is that subparagraph (c) of clause 1 of the definition of electoral expenditure should be removed, leaving the only relevant purpose as being the direct or indirect promotion or opposition to a political party or candidate. That remains our preferred position so as to limit the impact of this legislation on the capacity of third parties to advocate on behalf of their causes.

The alternative submission was made that if that submission was rejected then the proposed section 199(1) should be amended to remove the reference to purpose and substitute the words 'with a view to' so as to make the liability of the third party clearly dependent on this objective intention. Once again, the dominant purpose provision perhaps makes that unnecessary, but our fundamental position in relation to that section remains.

The reference to 'influencing voting at an election' should be removed and it should be restricted to the dominant purpose of promoting or opposing a political party or a candidate, whether directly or indirectly, on the basis that that appropriately balances, in the case of third parties, the need to regulate political expenditure with the need to protect the free speech rights of third parties. In their comments on our submission, the department again correctly points out that we have incorrectly referenced section 213 rather than section 307AB in relation to the liability of executives of unincorporated associations.

I now move to a couple of points not made in the submission, particularly in relation to political funding. Part of the purpose of this legislation deals with political funding. We would say that it does not go far enough. We would say that the requirement that a party obtain six per cent of the vote before it gets political funding should be removed in order to promote equality among the parties. No doubt, this is intended to deter candidates who are not serious. First of all, that is a matter for voters. However, it would appear that it does not have that effect as the number of candidates keeps growing. When combined with the effective requirement of proof of expenditure in section 223, that should also act as a deterrent to those standing to make a profit.

We also need to do something to assist new entrants into the political process such as candidates receiving grants matching funds raised prior to the calling of election up to perhaps a maximum amount. More specifically, we agree with the comments of Professor Orr that the decision to set the payments to Independents at half that of political parties is unjustified.

Finally, I refer to the signage requirement provisions, the restriction on signage within 100 metres of the polling place. Again, we endorse the comments of Professor Orr. In principle, restrictions on signs at polling places fall into the category of time, place and manner restrictions. They are justified in the same way that police are able to control the time, place and direction of protests on the streets. However, it does seem us to that Professor Orr is correct when he says that registered third parties should be entitled to the same level of access to polling places as political parties and candidates.

CHAIR: Thank you very much. I also want to offer the congratulations of the committee to President Murphy on his election to his new position in the Queensland Law Society.

Mr STEVENS: Congratulations to Mr Murphy as well. Previously, Jennifer Menzies from Griffith University submitted to the committee that the proposed amendments in relation to the dishonest conduct of ministers will unnecessarily criminalise what was previously a convention and may cause some interruptions to cabinet processes and government activities without any evidence of identified pattern of behaviour for which legal sanctions are required. I know that it will probably drum up business for your members in the longer term; however, can you comment on this and also expand on your comments regarding the extension of offence provisions to councillors?

Mr Gnech: I think I have answered that in general terms but, ultimately, there is no need to create further offences when there are offences such as in sections 92A and 408C of the Criminal Code and, again, the powers of the CCC to take action in regard to corrupt conduct. Simply making further offences, injecting themselves in the employment space, for want of another term, is creating undue pressure on the criminal justice system. There is no need to create a new offence every time a new issue arises. Section 92A of the Criminal Code is so broad that it could capture almost any type of conduct.

There is some talk about dishonest intent and there being an issue around the threshold of proving dishonest intent. It is a matter of evidence. Either it is there or it is not. It is as simple as that. We heard Mr MacSporran talk about raising the bar to this strict liability. Can I point out another statement he made? He said that what might not be a conflict of interest this week might be a conflict of interest next week. We could be faced with a situation where a councillor or a member of parliament has their conflict of interests sorted out today and, because of a busy schedule or something, in the next seven days has not kept on top of everything and suddenly is caught by a criminal offence. Surely it could not be the intention of a scheme to capture someone and place them before the criminal courts in those situations. I hope that answers your question.

Mr STEVENS: It does. Specifically, you believe that those words you are uttering now apply also to councillors for the future?

Mr Gnech: Yes.

CHAIR: What is an example where someone could be in fulfilment of the obligations at one moment? Is there an example you can think of?

Mr Gnech: I was quoting the words of Mr MacSporran when I said that.

CHAIR: Not off the top of your head?

Mr Gnech: No. I can give this as an example. Conflicts of interest and registers of interests are a matter of degree and are subjective as to who is assessing them at the time. You could have someone assessing a situation today who says, 'That does not meet the threshold.' A different person assessing the exact same circumstances the next day could say, 'That does meet the threshold.' It is often difficult, as I say, for trained lawyers to identify the difference. How can we expect politicians and local councillors to identify them—and if they do not get it right they face criminal sanction? It is a different story if there is a course of conduct, they receive education and are told, 'Hey, you have not done this right,' and it continues to happen, but strict liability offences capture all of that with no discretion.

CHAIR: That being said, there is public expectation about elected officials in terms of their transparency before the public in relation to their interests. As Mr MacSporran said, when someone is interviewed and says it was an innocent mistake or a bureaucratic error—they would say that wouldn't they?— that makes it difficult, doesn't it?

Mr Gnech: Not all of the time. As Mr MacSporran said, someone can say that. He said, 'We don't ask those questions because that is what they are going to say. It's what the evidence says.' I will give you a hypothetical. Someone has 50 entries on their register of interests, and someone does an assessment and says, 'But there should have been 51,' as opposed to someone does an assessment of a register of interests and says, 'You have put three on there and there should be 50 on there.' Those circumstances are entirely different and allow for a different inference to be drawn. That is what Mr MacSporran was talking about—circumstantial case, circumstantial evidence, taking a different inference from those facts. Under strict liability, both persons in that situation would be caught.

Mr O'CONNOR: Mr Cope, we have had a number of opinions on the expenditure cap length. I think you had four months in your submission. Can you expand on how you came to that length of time?

Mr Cope: I took the four months from the British review I referred to, and I think Professor Orr in his submission says that 12 months is way up there. As the British reviewer said, how many people take any notice of an election 12 months out, apart from politics nerds? It just seems to be an extraordinarily long period and four months seems to make more sense.

Mr O'CONNOR: I think four months would be optimistic for people taking notice.

Mr Cope: I was about to say that four months itself is probably optimistic. It is when you walk into the polling booth for many people, isn't it?

CHAIR: You obviously do not live in the electorate of Logan, where everyone is interested all the time!

Mr BERKMAN: I would like to return to the question of donation and expenditure caps applying to third parties, in particular charities and not-for-profits. Mr McGregor-Lowndes, you have given us some really useful numbers about just how small the vast majority of not-for-profits are in Queensland. How does that line up with the suggestion that we have heard today that compliance with this new regime should be easy for all organisations, including small not-for-profits and charities?

Mr McGregor-Lowndes: It should be a general object of all legislation that those whom it is intended to regulate could pick up an act, read it and understand it. For many acts with new plain English drafting, which Queensland is really good at, you can do that. With this one—and this is just the amendments—it is going to be beyond most non-profits and volunteers. The Electoral Commission is going to have to do some you-beaut fact sheets. I think risk averseness—and I will not go there—will take hold and I fear for civil society and the general debate. Local members and those who want to oppose them should be able to come along to a church meeting and have their say. Is that research, because they are the words used in the legislation? Is that influencing? You are not influencing to one but you want members to make a rational decision by looking at all the options and having a good, open debate. Is that influencing?

If I am a layperson and not a QC looking at that, I can draw all sorts of unintended consequences. I fear for civil society. We have to have more voices rationally debating the issues, not less. I think the Law Society correctly uses the words 'chilling effect on the non-profit sector' once

people become risk averse. They do not want to be caught up in politics and the Electoral Commission. They do not want to go anywhere near there. They just want to do what they are good at, and that is going to church and helping people.

Mr BERKMAN: I cannot resist the opportunity to go back to the Beenleigh Uniting Church very quickly. If I can read into your—

Mr McGregor-Lowndes: I do not speak for them.

Mr BERKMAN: If I can read into your statement—

Mr McGregor-Lowndes: They have probably 'dis-fellowshipped' me by now.

Mr BERKMAN: Your evidence so far is that the hypothetical Beenleigh Uniting Church or another similar organisation—

CHAIR:—and the real one.

Mr BERKMAN:—and the real one. Rather than collecting donor statements with the collection plate, you think they are much more likely to simply withdraw from any advocacy and other activities that might not naturally be considered advocacy?

Mr McGregor-Lowndes: I think donor sheets is probably going a bit too far. They are going to be spooked unless there is a really good education campaign. I just go back to what I know about what has happened in the past. When civil liability hit in about 2001 to 2002, when people were tripping over and then suing people, the number of community fetes that they just cancelled because they could not get insurance—it just went by the way and people just vacated anything to do with children's activities. They just disappeared and dried up overnight. Do you remember the blue light disco? The government of the day had to step in and say, 'We will back the blue light disco,' because the police who ran it said, 'No, we're not going to be in this. It is too risky.' They did not even want to risk-manage it; they just wanted out completely. I suspect that could be an initial reaction to this legislation unless the really positive messages come out.

I think the draftsmen ought to come back and say exactly what it is they are grumpy about. It is not small organisations who spend more than a thousand dollars; there is something else behind that. You have cast the net too wide. Make the draftsmen earn their pay and go back and specify exactly who the baddies are and what the mischief is that you want to catch so you leave the civil society organisations who do what they normally do out of the net.

CHAIR: When we draft laws—for instance, the speed limit—you do find people who are so overly cautious they go 70 kilometres an hour in a 100 zone. However, we do not draft the laws for those who are massively and overly cautious. I would certainly hope that that is not the position the Law Society is now taking, that we draft the laws for the most cautious in our society. I certainly hope that we can encourage community groups—and that the Law Society encourages community groups—to continue to reasonably participate in public activities. I will certainly be attending a lot of church fetes, masses and graduations and I know that they will not have that caution. We should not be drafting laws for the most cautious in our society, should we?

Mr McGregor-Lowndes: No, but I think you need to take into account the behavioural effect that this is going to have. It is different from behaviour that you would have regulating government or businesses, as you will see in Castillo's paper. Civil societies are a very fragile thing. You do not want to dent it. With a little effort your draftspeople could be more specific in the legislation so it was not as widely cast as being 'any research'. In a fellowship meeting where they are doing research on the candidates who come to present, is that research? You can see how a layperson could come to a misunderstanding about that. You have to have a very positive program to overcome those sorts of issues.

Mr Murphy: If I can add to that, I do not think it is the society's position at all that we are advocating for legislation to accommodate or be aligned with the most cautious. The fundamental concern is that the very important role that not-for-profits have played in setting social discourse should not in any way be discouraged. The importance of that I think is highlighted in the submission by Mr Seibert from the Swinburne University of Technology in Victoria in which he went through a number of examples. It is the facilitating of that ongoing involvement and the ability of what we see as being one of the fundamentals of democracy, the ability to participate in public discourse and public discussion, that we are advocating not be compromised.

CHAIR: We certainly do not want that, either.

Ms BOYD: My question is to the Law Society in relation to your proposal around exempting charities that are registered with the ACNC. What are the figures on that? You had figures around the size of charities here in Queensland that are registered with the ACNC. Do you have a bit of a data breakdown of what your exemption proposal would in essence leave behind?

Mr McGregor-Lowndes: I have not done the figures. Here are the stats that I have done on those registered in Queensland from the ACNC register in Queensland from a couple of years ago. Your secretariat could easily do the figures on that.

Mr Murphy: If you would like, we are happy to take that question on notice and provide some answers to you.

CHAIR: Thanks very much and thank you very much for appearing today. In relation to any questions taken on notice, we ask that the response be provided to the secretariat by 12 pm this Friday, the 24th. I want to thank all the witnesses who have appeared today to assist the committee in its inquiry. Thank you also to our wonderful Hansard staff. Thanks also to the parliamentary staff who have been here all day. A transcript of these proceedings will be available on the committee's parliamentary web page in due course and it will be circulated to all witnesses for review. I want to note that it is not a chance to change anything that was said at this hearing but merely to pick up errors in transcription. I declare this public hearing closed.

The committee adjourned at 3.52 pm.