



# Inquiry into the feasibility of introducing expenditure caps for Queensland local government elections

## About this paper

This paper provides information about the Economics and Governance Committee's (committee) inquiry into the feasibility of introducing expenditure caps for Queensland local government elections.

Submissions to the inquiry close on **20 January 2020** (by 5pm).

## Inquiry terms of reference

On 28 November 2019, the Hon Yvette D'Ath MP, 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 the committee for consideration, with the committee required to table its report on the Bill by **7 February 2020**.

On the introduction of the Bill, the Legislative Assembly also resolved that the committee, when considering the Bill, also consider recommendation 1 from the Crime and Corruption Commission's (CCC) 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 local government elections.

The CCC's recommendation 1 is:

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

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

## Background

Equity in elections is a fundamental principle of Australia's democratic system of government. This is reflected in the tenet of 'one vote, one value', which is enshrined in laws governing the distribution of electoral boundaries. It is also recognised that all voters should have a fair opportunity to participate in elections, including a fair and equal chance of nomination and election as a candidate. In this respect, there have been growing concerns about the shortcomings of our regulatory system, and particularly the lack of restrictions on electoral campaign funding and spending.<sup>1</sup>

The trend of increasing campaign expenditure has been a well-recognised characteristic of the Australian electoral landscape in recent decades. In what has been described as a campaign 'arms race', political

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<sup>1</sup> See, for example: Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011; Senate Select Committee into the Political Influence of Donations, *Political influence of Donations*, Commonwealth of Australia, 2018; Danielle Woods and Kate Griffiths, 'Who's in the room? Access and influence in Australian politics', Grattan Institute Report No. 2018-12, September 2018; Crime and Corruption Commission, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* (Operation Belcarra Report), October 2017, p 45.

parties and other election participants have spent progressively larger amounts on broadcast advertising and other campaign messaging across an expanded range of media platforms.<sup>2</sup>

On the one hand, donations or electoral spending are recognised as a form of political participation and can be seen as an expression of ‘democratic will’.<sup>3</sup> On the other, however, there are concerns that wealth can purchase a dominant share of the political discourse (and by extension, votes), with implications for equity and for the breadth of options and viewpoints presented and discussed. The growing reliance on private donors to finance campaign spending requirements also creates the potential for real or perceived influence on decision making, eroding public confidence in the integrity of the political process.<sup>4</sup> In 2019, 56 per cent of respondents to the Australian Electoral Study reported that they believed that government is run primarily for the benefit of the big end of town.<sup>5</sup>

While much of the public attention has been focussed on these issues at the Federal and State levels, the effect is also significant at the local government level. This is particularly the case because in contrast to other levels of government in Queensland, there is no public funding for local government elections, meaning candidates and parties are completely dependent on private funds.

### Belcarra Report findings

The CCC, in its Operation Belcarra Report, highlighted the findings of various previous inquiries into local government, that ‘even relatively modest amounts of funding can allow candidates to swamp their opponents in terms of media exposure and other promotional activities’.<sup>6</sup> Consistent with these previous findings, the CCC reported:

*... an analysis of 2016 donation disclosure data by the CCC showed that, for candidates in the Gold Coast, Ipswich, Moreton Bay and Logan councils, the total amount of money they received was one statistically significant predictor of whether or not they were successful at the election (the other being incumbency...). In these councils, every extra \$10,000 that a candidate received increased their chance of being elected by 51 to 56 per cent, all else being equal. Given some candidates outspend their rivals by tens and even hundreds of thousands of dollars, money can clearly have considerable effects on local government elections.<sup>7</sup>*

#### Operation Belcarra

The CCC commenced Operation Belcarra in September 2016 after receiving complaints about the conduct of candidates for several councils during the 2016 Queensland local government elections. The objectives of Operation Belcarra were to:

- determine whether candidates had committed offences under the *Local Government Electoral Act 2011* that could constitute corrupt conduct, and
- examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government, with a view to identifying strategies or reforms to help prevent or decrease corruption risks and increase public confidence.

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

The CCC’s resulting Operation Belcarra Report, released in October 2017, issued 31 recommendations ‘to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making’.

<sup>2</sup> Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011; Senate Select Committee into the Political Influence of Donations, *Political influence of Donations*, Commonwealth of Australia, 2018.

<sup>3</sup> Professor Anthony Gray, cited in CCC, Operation Belcarra Report, October 2017, p 45.

<sup>4</sup> CCC, Operation Belcarra Report, October 2017, p 45; Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011.

<sup>5</sup> The Australian Election Study is a representative public opinion survey that has been fielded after every election since 1987. In 2019, 59 per cent of survey participants indicated they believed that government is run ‘entirely for the few big interests in town’ or ‘mostly for the few big interests in town’. See: Sarah Cameron and Ian McAllister, *Trends in Australian Political Opinion: Results from the Australian Election Study, 1987-2019*, Australian National University, 2019, p 100.

<sup>6</sup> CCC, Operation Belcarra Report, 2017, p 43.

<sup>7</sup> CCC, Operation Belcarra Report, 2017, pp 43-44.

This uneven financial competition can arise as a result of the financial advantages experienced by wealthy, self-funded candidates or, as is more common, the receipt of significant donor funding by some candidates. In this respect the CCC reported that in 2016, while approximately 80 per cent of candidates did not report receiving donations, the top six candidates (according to total donation value) together received over \$1.2 million, or 25 per cent of donations.<sup>8</sup>

Regardless of the source of the financial inequity, the CCC concluded that prospective candidates can be deterred from running for council in the first instance, and even if they do contest, may be unable to properly compete with well-funded candidates. This can limit the diversity and quality of candidates who contest local government elections.<sup>9</sup>

The CCC noted that this was a concern raised by a number of people spoken to as part of Operation Belcarra, and particularly in relation to mayoral elections. For example, one interview subject commented:

*I think that the scenario we have at the moment is you can only run for the mayoralty if you've got a bucket of money, because you can't afford to run against someone who's got virtually unlimited funds. That's why we're not getting the candidates that we should get.<sup>10</sup>*

A number of Australian and international jurisdictions have now adopted, or are in the process of adopting, electoral expenditure caps.<sup>11</sup> While some of these spending caps apply only at the state or national level,<sup>12</sup> New South Wales, Tasmania, New Zealand and the United Kingdom (among other international examples) have also imposed caps on expenditure for local government elections (see Appendix 1).

Identified benefits of implementing caps on electoral expenditure caps include:

- caps can reduce or contain the costs of an election, avoiding excessive or wasteful expenditure and reducing the level of election finance required, meaning that more candidates (including less wealthy candidates) may compete in an election
- with an applied limit on spending, there is no real advantage in one candidate or party having access to greater financial resources (or at least any advantage may be reduced), improving financial equality between candidates
- in limiting the scope for excessive spending on broadcast and other advertising, caps can prevent a few well-resourced voices from 'crowding out' others, and allow for a broader range of views to be presented and considered, and
- in limiting permitted spending, caps can reduce the demand for campaign funds, minimising the scope for undue influence (and accompanying perceptions that donor interests may be prioritised over those of the voting public).

The primary opposition to caps has related to their imposition on the freedom of political communication, with some arguing that candidates should be able to campaign in whatever manner they see fit (so long as they comply with other legal requirements). Concerns have also been raised that it is difficult to set realistic caps due to the changing costs of electioneering techniques, inflation, and potential exploitation of administrative loopholes; and that caps can be hard to enforce.<sup>13</sup>

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<sup>8</sup> CCC, Operation Belcarra Report, October 2017, p 44.

<sup>9</sup> CCC, Operation Belcarra Report, October 2017, p 43.

<sup>10</sup> CCC, Operation Belcarra Report, October 2017, p 43.

<sup>11</sup> The United Kingdom, Canada and New Zealand all cap electoral spending, and two thirds of European countries also limit the amount a candidate can spend on an election campaign. See: International Institute for Democracy and Electoral Assistance, *Political Finance Database – Regulation of Spending*, December 2019, <https://www.idea.int/data-tools/question-view/562>

<sup>12</sup> New South Wales, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory have all implemented expenditure caps at the state/territory level in recent years, and Queensland's Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019, which is currently being considered by the committee, proposes to reintroduce expenditure caps for Queensland state government elections (caps were previously in place from 2011 to 2014).

<sup>13</sup> Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011, p 106.

Further, Queensland has recently implemented a range of measures to provide transparency about the influence of political finance in local government election campaigns, including requirements for real-time disclosures of expenditure and donations, transparent candidate bank accounts and transactions, and clarification of the true source of donations where provided via a third party.<sup>14</sup>

Ultimately, the success of any system of expenditure caps for Queensland local government elections will depend on the design and features of the model implemented, and the extent to which they effectively balance freedom of political communication with the need to ensure a fair process that is free from perceptions of undue influence, and which ensures standing for office is not restricted to the wealthy.

## Model features

### The definition of electoral expenditure

The definition of 'electoral expenditure' can have a significant impact on certain candidates or parties, depending on spending priorities. Some jurisdictions have focussed on applying limits only to advertising or electoral communications, while in others a more expansive approach is engaged. In some cases travel or transport expenses are included, though it has been highlighted that this could disproportionately affect candidates in large local government areas.<sup>15</sup> The relevant New Zealand definition does not include the operation of a vehicle on which electoral advertising appears if the vehicle 'is used in good faith by the candidate as the candidate's personal means of transport'. There are also varying approaches in relation to expenditure on research associated with the electoral campaign, among other identified expenses.

#### ***Issues for consideration***

1. What are the primary campaign expenses for candidates, groups of candidates, political parties and third party groups for local government elections?
2. What types of expenses should be included in any expenditure cap, and what should be excluded?

### The period of application

The period of application for spending limits is another key consideration. For any cap to be effective, it needs to cover the full length of time over which electoral expenditure is dispensed. If the relevant period is not of sufficient length, it may leave scope for 'pre-spending' before the commencement of the cap (including scope for advantageous spending by incumbents). Conversely, the application of a cap over an extended period may also present difficulties for candidates in terms of responding to arising issues and engaging with electors.

#### ***Issues for consideration***

3. For how long do candidates, parties and third parties campaign for local government elections?
4. From what period should expenditure caps apply?

### The level of campaign expenditure caps

The level at which campaign expenditure caps are set is important as imposing too low a level will have a negative impact on political communication. In this respect it has also been highlighted that caps set at a

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<sup>14</sup> As implemented by the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*. The requirements for real-time donation and expenditure disclosures, including disclosures of the original source of donations (including gifts) made via a third party, will come into effect on 20 January 2020.

<sup>15</sup> Government of Tasmania, *Electoral Act Review: Interim Report*, December 2019, p 38.

low level may favour incumbents and other well-known candidates, as challengers may be limited in their ability to raise their profile and overcome this 'headstart' advantage.<sup>16</sup>

Equally, imposing a cap that is too high will render the cap meaningless.

As previously noted, there is considerable variability in campaign spending across Queensland's 77 councils, reflecting the variation in the population size and nature of their local government areas. In terms of funds contributed for campaign expenditure, the CCC noted that in 2016, there were 29 councils for which no donations were reported, while around \$2 million of the \$4.3 million in reported donations were received by candidates in the four councils that were the focus of Operation Belcarra.<sup>17</sup>

Other jurisdictions have developed various scaled systems with applicable limits determined by the number of electors (and/or other factors). This reflects the premise that expenses associated with communicating with the electoral population increase as the size of the electoral population increases, albeit recognising that there will be economies of scale that can be harnessed by campaigners for larger populations. Given the variation in the size and nature of Queensland's local government areas and wards, some degree of scaling will inevitably be required within any expenditure cap scheme. Applicable caps should ideally be informed by some analysis of understanding of the relative expenses associated with communicating electoral platforms and values to electors across wards of different size and characteristics.

### *Mayoral candidates*

Mayoral candidates typically spend more than other candidates in local government elections, and the effect is amplified in South East Queensland. In recognition of the additional expenses mayoral candidates incur in reaching a greater number of voters, some jurisdictions have provided for higher expenditure caps for these candidates. Where this is the case, however, it has also been argued that higher mayoral expenditure caps may encourage candidates to run for mayor disingenuously solely to access higher expenditure caps.<sup>18</sup>

### *Groups of candidates and political parties*

Most jurisdictions employ some type of aggregation approach with respect to groups of candidates and political parties, so that the applicable cap is the sum of the applicable caps for the candidates within the group or party. Queensland's approach in this regard will also need to be determined.

### *Third party groups*

Those jurisdictions that have imposed donation or expenditure caps on political parties and candidates have tended to include an extension of those caps in some form to third parties, such as unions and industry bodies. Otherwise, it is recognised that there are risks that third parties may be used as a way to circumvent expenditure caps, effectively nullifying their effects.<sup>19</sup>

Expenditure caps for third parties have also been acknowledged as a way of addressing concerns about the potentially disproportionate influence of third parties on elections, including concerns that they may come to 'drown out the voice of the real players, the candidates and political parties'.<sup>20</sup> It has also been emphasised, however, that they 'should not be set so low as to prevent third parties from having a genuine voice'.<sup>21</sup>

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<sup>16</sup> Government of Tasmania, *Electoral Act Review: Interim Report*, December 2019, p 38; Ivan Pastine and Tuvana Pastine, 'Incumbency advantage and political campaign spending limits', *Journal of Public Economics*, vol. 96, 2012, pp 20-32.

<sup>17</sup> CCC, *Operation Belcarra Report*, October 2017, p 44.

<sup>18</sup> Joint Standing Committee on Electoral Matters, *Inquiry into the impact of expenditure caps for local government election campaigns*, October 2018, p 15.

<sup>19</sup> Joint Standing Committee on Electoral Matters, *Report on the funding of political parties and election campaigns*, Parliament of Australia, November 2011, p 149.

<sup>20</sup> Kerry Schott, Andrew Tink and John Watkins (NSW Expert Panel), *Political Donations: Final Report*, December 2014, vol. 1, pp 8, 29.

<sup>21</sup> Kerry Schott, Andrew Tink and John Watkins, *Political Donations: Final Report* (NSW Expert Panel), December 2014, vol. 1, p 8.

Recent judgements of the High Court, while recognising the legitimacy of the principle of political equality and preventing voices being drowned out, have made clear that any restrictions on third party campaign spending must be proportional and well justified, and not determined on an arbitrary basis.<sup>22</sup>

#### ***Issues for consideration***

5. How much are local government candidates spending on their campaigns, and how does spending vary across local government areas, and for new or incumbent candidates?
6. How much are mayoral candidates spending on their campaigns, and how does this vary across different local government areas?
7. How much are groups of candidates, parties, and third parties spending on campaigns, and how does this vary across different local government areas?
8. What factors should be used to determine variation in the applicable expenditure cap? For example, should caps vary according to:
  - a. the number of electors within the local government area
  - b. whether the council is a metropolitan or non-metropolitan council
  - c. the different categories of council identified by the Local Government Remuneration Commission, or
  - d. some other variable?
9. Should there be any difference in the applicable cap depending on whether the candidate is independent or endorsed by a party?
10. Should higher caps be set for mayoral candidates, and if so, how should they be calculated?
11. What caps should apply for groups of candidates and political parties? Should some form of aggregation be employed to calculate these spending caps?
12. What caps should apply for third party groups?
13. Should different caps be set for by-elections than for general elections?

### **Enforcement provisions**

Expenditure caps are only effective in so far as they are enforced. Poor enforcement can amplify existing inequalities, by suppressing spending amongst compliant election participants, just as those seeking to circumvent the system may be boosting their campaign outlays.

Appropriate systems must be in place so that expenditure can be properly monitored and audited against statutory caps. Additionally, any penalties for those in breach of the statutory limits must be sufficiently large that they will be taken seriously, and not seen as merely a 'cost of doing business'.

#### ***Issues for consideration***

14. What penalties should apply in relation to expenditure in excess of a cap and/or efforts to circumvent an applicable expenditure cap?
15. Are any additional powers or supporting provisions required to aid the Electoral Commission of Queensland in monitoring and investigating the accuracy of reported expenditure?
16. What resources or training may need to be provided to candidates and other election participants to ensure they understand their requirements with respect to any expenditure caps?

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<sup>22</sup> *Unions v NSW* [2019] HCA 1; *Spence v State of Queensland* [2019] HCA 15; *McCloy v NSW* [2015] HCA 34.



## How to contribute to the committee's inquiry

The committee welcomes public input into its inquiry.

### Provide a submission

The committee invites submissions on the issues identified for consideration in this issues paper, and any other issues relevant to inquiry. General guidelines on making submissions are available [here](#).

Written submissions can be provided emailed to [egc@parliament.qld.gov.au](mailto:egc@parliament.qld.gov.au), faxed to 07 3553 6699, or sent to:

Committee Secretary  
Economics and Governance Committee  
PARLIAMENT HOUSE QLD 4000

The closing date for lodging submissions to the inquiry is **Monday 20 January 2020** (by 5pm).

### Public hearings

The committee is planning to hold a public hearing on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 at the Parliamentary Annexe on 20 January 2020, at which the issues outlined in this paper may be discussed.

A separate public hearing focussing on local government expenditure caps may be held in February 2020.

Videoconference and teleconference facilities will be available to support the participation of stakeholders in different areas of the state.

Further details about the hearings, which will be open for members of the public to attend as observers and will also be broadcast online [here](#), will be advised on the [inquiry webpage](#) in due course.

If you would be interested in giving evidence at a public hearing, please note this in your submission.

### Keep informed about the inquiry

You can subscribe to receive regular email updates about the committee and the inquiry or register as a stakeholder. Check the inquiry webpage for the details [here](#).

You can also follow the work of the committee via the Parliament of Queensland's social media accounts:



## Committee Members

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

## Contacting the committee

Questions about the inquiry should be directed to the committee's secretariat:

<b>Telephone</b>	+61 7 3553 6637
<b>Fax</b>	+61 7 3553 6699
<b>Email</b>	<a href="mailto:egc@parliament.qld.gov.au">egc@parliament.qld.gov.au</a>
<b>Committee webpage</b>	<a href="http://www.parliament.qld.gov.au/egc">www.parliament.qld.gov.au/egc</a>

## Appendix 1 – Overview of selected expenditure cap schemes for local governments in other jurisdictions

<p><b>New South Wales</b></p>	<p>Caps on local government electoral expenditure were introduced in New South Wales (NSW) by the <i>Electoral Funding Act 2018 (NSW)</i>, which repealed and replaced the former <i>Election Funding, Expenditure and Disclosures Act 1981 (NSW)</i>. The NSW provisions were the subject of a 2018 committee inquiry into the impact of expenditure caps for local government election campaigns, which recommended a number of changes to the current system of caps.<sup>23</sup> The amendments were subsequently implemented by the <i>Electoral Funding Amendment (Local Government Expenditure Caps) Act 2019 (NSW)</i>, which commenced on 21 November 2019.</p> <p>The NSW legislation uses a broad definition of electoral expenditure which includes expenditure on advertisements across all media; the production and distribution of electoral material; office costs, including expenses for office accommodation, the employment of staff, Internet, telecommunications and stationery; expenditure on travel and travel accommodation for candidates and staff engaged in campaigning; and expenditure on research associated with election campaigns (other than in-house research).<sup>24</sup></p> <p>Expenditure is capped from a period commencing 1 July in the year of the election and ending on election day (section 87 of the <i>Local Government Act 1993 (NSW)</i> specifies that ordinary elections are to be held on the second Saturday of September 2008 and every fourth year afterwards). For a by-election, the expenditure period commences on the day the by-election is publicly notified.<sup>25</sup></p> <p>Caps applicable for a candidate or group of candidates for election as a councillor (other than a candidate for mayor or a group of candidates that includes a candidate for mayor), which apply irrespective of any party endorsement, are:</p> <ul style="list-style-type: none"> <li>• \$6,000 – where the number of enrolled electors for the local government area or ward concerned for the election is 5,000 or less</li> <li>• \$10,000 – where there are 5,001 to 10,000 enrolled electors</li> <li>• \$18,000 – where there are 10,001 to 20,000 enrolled electors</li> <li>• \$25,000 – where there are 20,001 to 30,000 enrolled electors</li> <li>• \$36,000 – where there are 30,001 to 50,000 enrolled electors</li> <li>• \$46,000 – where there are 50,001 to 75,000 enrolled electors</li> <li>• \$63,500 – where there are 75,001 to 125,000 enrolled electors</li> <li>• \$72,000 – where there are more than 125,000 enrolled electors.</li> </ul> <p>For mayoral candidates, or for a group of candidates that includes a candidate for mayor, the cap increases by 25 per cent (and for a person running as a candidate for mayor and as a candidate for councillor at the same general election, the mayoral cap applies).</p> <p>For third party campaigners, the expenditure cap is one third of the applicable cap for a candidate (other than the mayor).</p> <p>Additionally, any electoral expenditure incurred by a party for its endorsed candidate or group must be within the candidate or group’s expenditure cap when aggregated with any other electoral expenditure incurred by the candidate or group.</p> <p>The caps are to be adjusted each year for inflation.<sup>26</sup></p>
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<sup>23</sup> Joint Standing Committee on Electoral Matters, *Inquiry into the impact of expenditure caps for local government election campaigns*, October 2018.

<sup>24</sup> *Electoral Funding Act 2018 (NSW)*, s 7.

<sup>25</sup> *Electoral Funding Act 2018 (NSW)*, s 28.

<sup>26</sup> *Electoral Funding Act 2018 (NSW)*, s 31. See also s 32 regarding the aggregation of electoral expenditure.



	<p>Election participants are required to disclose expenditure incurred during a capped local government expenditure period to the NSW Electoral Commission.<sup>27</sup></p> <p>The legislation specifies that it is unlawful for a party, group, candidate, third party campaigner or associated entity to incur electoral expenditure during the capped local government expenditure period if it exceeds the applicable cap on electoral expenditure.<sup>28</sup> The maximum penalty associated with an offence of contravening a cap on expenditure is 400 penalty units or imprisonment for 2 years, or both. The legislation also contains an offence for entering a scheme to circumvent expenditure restrictions, for which the maximum penalty is imprisonment for 10 years.<sup>29</sup></p>
<p><b>Tasmania</b></p>	<p>The Local Government (General) Regulations 2015 (Tas), made under the <i>Local Government Act 1993</i> (Tas), were amended in 2018 to introduce expenditure limits applying specifically to the purchase of advertising time on radio and television and newspaper space.<sup>30</sup> Further amendments later that year increased the relevant spending limits and extended their application to cover costs of all forms of electoral advertising.<sup>31</sup></p> <p>Under the legislation, ‘electoral advertising’ is defined to include any notice, sign or poster; any pamphlet or handbill; any how-to-vote card; any print medium; any broadcast by radio or television; and advertising on the Internet. The definition covers advertising that is either ‘directly or indirectly in respect of a campaign for an election by a candidate or intending candidate’.<sup>32</sup></p> <p>The ‘relevant period’ for which the advertising expenditure limits applies starts on the 30th day before the notice of election (which must be given on the 8<sup>th</sup> Saturday before the day on which polls close), and finishes on polling day (eg for the 2018 elections, the relevant period was from 9 August to 30 October 2018).<sup>33</sup></p> <p>The following advertising expenditure limits (indexed to CPI) apply:</p> <ul style="list-style-type: none"> <li>• for candidates in the municipal areas of Clarence, Glenorchy, Hobart, Kingborough or Launceston, \$16,000, or</li> <li>• for candidates in any other municipal area, \$10,000.<sup>34</sup></li> </ul> <p>For ‘joint advertising’, ‘a candidate is taken to have incurred the total time and space of, and expenditure involved in, advertising which promotes that candidate, in respect of an election, irrespective of whether or not that electoral advertising also promotes another candidate’.<sup>35</sup></p> <p>Candidates are required to declare their costs of electoral advertising in an ‘electoral advertising return’. Electoral advertising returns are also required from anyone who prints, publishes or broadcasts electoral advertising (eg media and publishers).<sup>36</sup></p>

<sup>27</sup> See *Electoral Funding Act 2018* (NSW), Part 3, Division 2.

<sup>28</sup> *Electoral Funding Act 2018* (NSW), s 33(2).

<sup>29</sup> *Electoral Funding Act 2018* (NSW), ss 143, 144.

<sup>30</sup> Local Government (General) Amendment Regulations 2018 (Tas).

<sup>31</sup> Local Government (General) Amendment Regulations 2018 (No. 2) (Tas).

<sup>32</sup> *Local Government Act 1993* (Tas), s 3.

<sup>33</sup> *Local Government Act 1993* (Tas), s 3.

<sup>34</sup> Local Government (General) Regulations 2015 (Tas), s 22A.

<sup>35</sup> Local Government (General) Regulations 2015, s 22(6)

<sup>36</sup> *Local Government Act 1993* (Tas), s 279.

	<p>If, during the relevant period, a person uses electoral advertising with a view to promoting or procuring the election of any candidate an election, a maximum fine of 100 penalty units (\$168,000) applies. If a court convicts a successful candidate of this offence, the court must declare their election void, unless the court is satisfied there are special circumstances that make it undesirable or inappropriate for it to make such a declaration.<sup>37</sup></p>
<p><b>New Zealand</b></p>	<p>Expenditure caps are a long-established feature of New Zealand’s political system both nationally and at the local government level.<sup>38</sup> Provisions governing the maximum allowable electoral expenses for local government elections are set out under the <i>Local Electoral Act 2001</i> (NZ).</p> <p>‘Electoral expenses’ are defined to include any expenses for advertising, radio or television broadcasting, electronic communications to the public (including operation of a website or other online communication), the production and distribution (including printing and postage costs) of print materials (notices, posters, pamphlets, handbills, billboards, etc), and the reasonable market value of materials applied in respect of any electoral activity that are provided free of charge or below market value. Voluntary labour is excluded.<sup>39</sup></p> <p>The expenditure caps apply to the period ‘beginning 3 months before the close of polling day and ending with the close of polling day’.<sup>40</sup></p> <p>Section 111 of the <i>Local Electoral Act 2001</i> (NZ) specifies that the total electoral expenses (inclusive of goods and services tax) of a candidate must not exceed:</p> <ul style="list-style-type: none"> <li>• \$3,500 for a local government area with a population up to 4,999</li> <li>• \$7,000 for a population from 5,000 to 9,999</li> <li>• \$14,000 for a population from 10,000 – 19,999</li> <li>• \$20,000 for a population from 20,000 to 39,999</li> <li>• \$30,000 for a population from 40,000 to 59,999</li> <li>• \$40,000 for a population from 60,000 to 79,999</li> <li>• \$50,000 for a population from 80,000 to 99,999</li> <li>• \$55,000 for a population from 100,000 to 150,000</li> <li>• \$60,000 for a population from 150,000 to 250,000</li> <li>• \$70,000 for a population from 250,000 to 1,000,000.</li> <li>• \$100,000 plus 50 cents for each elector for a population of 1,000,000 or more.<sup>41</sup></li> </ul> <p>If a candidate is a candidate for more than one election held at the same time, the total electoral expenses (inclusive of goods and services tax) of the candidate must not exceed the highest amount permitted of any one of the elections for which the person is a candidate.<sup>42</sup></p> <p>Where advertising promotes both the party vote and the election of a constituency candidate, apportionment must be calculated in proportion to the coverage provided to the party and the candidate.<sup>43</sup></p>

<sup>37</sup> *Local Government Act 1993* (Tas), s 278. For the 2019-20 financial year, the value of a penalty unit in Tasmania is \$168. See: Department of Justice, *Value of indexed amounts in legislation: Penalty Units and Other Penalties Act 1987*, webpage, [https://www.justice.tas.gov.au/about/legislation/value\\_of\\_indexed\\_units\\_in\\_legislation](https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation)

<sup>38</sup> Andrew Geddis, ‘Regulating the Funding of Election Campaigns in New Zealand: A Critical Overview’, *Otago Law Review*, vol 10, no. 4, 2004, p 590.

<sup>39</sup> *Local Electoral Act 2001* (NZ), s 104.

<sup>40</sup> *Local Electoral Act 2001* (NZ), s 104.

<sup>41</sup> *Local Electoral Act 2001* (NZ), s 111.

<sup>42</sup> *Local Electoral Act 2001* (NZ), s 111(2).

<sup>43</sup> *Local Electoral Act 2001* (NZ), s 112. See also: New Zealand Electoral Commission, *Apportioning elections expenses between party and candidate*, webpage, accessed December 2019, available at: <https://elections.nz/guidance-and-rules/for-parties/apportioning-election-expenses-between-party-and-candidate/>

	<p>All candidates are required to file a return of electoral donations and expenses.<sup>44</sup></p> <p>Where the applicable maximum amount of electoral expenses has been exceeded, the <i>Local Electoral Act 2001</i> (NZ) provides that a candidate or person commits an offence and is liable on conviction:</p> <ul style="list-style-type: none"> <li>• to a term of imprisonment not exceeding two years, or a fine not exceeding \$10,000, if he or she knew the payment was in excess of the relevant prescribed maximum amount, or</li> <li>• to a fine not exceeding \$5,000 in any other case, unless he or she proves that he or she took all reasonable steps to ensure that the electoral expenses did not exceed the relevant prescribed amount.<sup>45</sup></li> </ul>
<p><b>United Kingdom</b></p>	<p>In the UK, expenditure caps for local government elections are established under the <i>Representation of the People Act 1983</i> (UK).</p> <p>‘Election expenses’ include costs associated with advertising of any kind (whatever the medium used), unsolicited material addressed to electors, the transport of persons (eg hiring transport for a particular period), public meetings (eg hiring premises or the provision of goods, services or facilities at the premises), the services of an election agent, and administrative and accommodation costs (excluding the candidate’s sole or main residence).<sup>46</sup></p> <p>The ‘regulated period’ for which caps apply begins on the day after the day on which a person officially becomes a candidate and ends on polling day (the first Thursday in May). The earliest date when a person can officially become a candidate is the last date for publication of the notice of election (no later than 25 working days before polling day). After that point, it begins on the earlier of the date the candidate’s intention to stand is announced, or the date when nomination papers are submitted.<sup>47</sup></p> <p>The applicable caps for candidates are £740, plus 6p per local government elector in the ward registered to vote on the last day for publication of the notice of election in the ward in which the candidate is standing.<sup>48</sup></p> <p>Lower spending limits apply for ‘joint candidates’ – that is, candidates standing in the same ward who have the same election agent or use the same campaign rooms or publish joint material. Joint candidates are required to reduce their applicable spending limit by 25 per cent for two joint candidates, or by 33 per cent for three or more joint candidates.<sup>49</sup></p> <p>Third party campaigners, known in the UK as ‘local non-party campaigners’ under the UK legislation, can spend up to £50 plus 0.5p per elector during the regulated period on campaigning for or against a candidate in the ward.<sup>50</sup></p> <p>Candidates are required to send a spending and donations return to the local returning officer after the election.</p>

<sup>44</sup> *Local Electoral Act 2001* (NZ), s 112A.

<sup>45</sup> *Local Electoral Act 2001* (NZ), s 112AA.

<sup>46</sup> *Representation of the People Act 1983* (UK), Schedules 4 (Election Expenses at Certain Local Elections in England and Wales), 4A (Election Expenses), and 4B (Scottish local government elections: election expenses).

<sup>47</sup> Electoral Commission (UK), *Local elections in England May 2019, Guidance for candidates and agents: Part 3 of 6 – Spending and donations*, December 2018, pp 8-9; *Representation of the People Act 1983* (UK), s 37.

<sup>48</sup> Electoral Commission (UK), *Local elections in England May 2019, Guidance for candidates and agents: Part 3 of 6 – Spending and donations*, December 2018, p 6.

<sup>49</sup> *Representation of the People Act 1983* (UK), s 77.

<sup>50</sup> Electoral Commission (UK), *Local elections in England May 2019, Guidance for candidates and agents: Part 3 of 6 – Spending and donations*, December 2018, p 12.

	<p>Where any election expenses are incurred in excess of the specified maximum amount, the candidate or agent who incurred or authorised the incurring of the expenses and knew or ought reasonably to have known that the expenses would be incurred in excess of that maximum amount, 'shall be guilty of an illegal practice' and be liable to a fine of up to level 5 on the standard scale (£5,000).<sup>51</sup></p> <p>Additionally, if the candidate in question is successful at the election, their election shall be void and they may also be prohibited from holding the office of councillor of any local authority for a specified period.<sup>52</sup></p>
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<sup>51</sup> *Representation of the People Act 1983* (UK), s 76(1B), 169; *Criminal Justice Act 1982* (UK), s 37.

<sup>52</sup> *Representation of the People Act 1983* (UK), s 159.