



January 2017

# Local Government Electoral (Transparency and Accountability in Local Government) and other Legislation Amendment Bill 2016

Submission by the  
Crime and Corruption Commission

## Introduction

The Crime and Corruption Commission (CCC) welcomes the opportunity to provide a submission on the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016 (the Bill) to the Infrastructure, Planning and Natural Resources Committee. The Bill was introduced into Parliament on 1 December 2016. The Committee has requested that submissions which inform its considerations of the Bill be provided by Monday 30 January 2017. The CCC has considered the Bill which contains 55 pages. The CCC has limited its submission to key matters directly related to those parts of the Bill which related to the CCC's recommendations from its public report *Transparency and Accountability in Local Government* (the Public Report).

The CCC notes that recommendation 1 from its Public Report has not been incorporated into this Bill. However we note that the explanatory notes to the Bill state that amendments will be required to the *Associations Incorporation Act 1981* and that this recommendation will be addressed in a subsequent Bill.

It is also noted that the government did not support recommendation 6 from its Public Report and consequently no change to the existing laws is being proposed with respect to this recommendation.

## Parts 2 and 4 of the Bill – Amendment of the *Associations Incorporation Act 1981* and Amendment of the *Local Government Electoral Act 2011*

Subject to the matters expressed below, the CCC supports the amendments to the *Associations Incorporation Act 1981* and the *Local Government Electoral Act 2011* proposed by Parts 2 and 4 of the Bill.

### Clauses 3 and 4

These clauses relate to recommendation 2 from the Public Report:

#### Recommendation 2

That the *Associations Incorporation Act 1981* be amended to make it clear that incorporated associations cannot be used to receive or hold electoral campaign funds which are intended to be applied for a members benefit.

The CCC is of the view that transparency in relation to the source of a candidate's funding for an election is critical so that the public can make an objective and informed decision about their vote at an election. Where funds are intended to be provided by a donor to a candidate the giving and receiving of those funds by the respective parties necessarily requires a visible transaction. The use of another entity, in some circumstances, can create confusion or uncertainty about the relationship between those parties and is not consistent with the stated purpose of the *Local Government Electoral Act 2011*.<sup>1</sup> As discussed in the Public Report, the CCC was of the view that this practice had the potential to reduce transparency in relation to the source and application of gifts provided to candidates at a local government election.

While the draft example will assist to clarify that the use of incorporated associations for the main purpose of receiving or holding gifts for a candidate in a local government election is not permitted under the *Associations Incorporation Act 1981*, the CCC is of the view that an additional subsection would be more instructive. For example a subsection which incorporated the text of the proposed example could be inserted after subsection (c)-

- (ca) is formed or carried on for the purpose of receiving or holding gifts within the meaning of the *Local Government Electoral Act 2011*, section 107 for use, directly or indirectly, by a member or person nominated by a member for a purpose relating to an election under that Act.

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<sup>1</sup> Section 3 Purpose of this Act – the purpose of this Act is to ensure the transparent conduct of elections of councillors of Queensland's local governments.

## Clauses 16 to 20, 23, 24 and 27

These clauses relate to recommendations 3 and 4 from the Public Report:

### Recommendation 3

That the Government consider amendment to disclosure time frames to make the disclosure of donations more contemporaneous with the receipt of the donation by the candidate and others required to make a disclosure.

### Recommendation 4

That the Government consider amendment to disclosure requirements in the *Local Government Electoral Act 2011* and the *Local Government Act 2009* to align the threshold obligations for reporting.

The CCC supports the implementation of a contemporaneous disclosure obligation and a new electronic system to facilitate improved transparency during future local government elections. The relevant clauses for candidates, groups and third parties require that they must give the electoral commission a return on or before the disclosure date. The disclosure date is defined in clause 11 as the day prescribed by regulation. It is not clear from the current draft Bill that the disclosure obligation will be a continuous obligation which will require real-time disclosure as opposed to disclosure just prior to the polling day. The CCC is of the view that the current Bill should be amended to make it clear that not only is reporting on gifts prior to polling day required, but that it must be done within a minimum time from when the gift is received. For example the disclosure date for a candidate could require the candidate to disclose the receipt of a gift within seven days from the receipt of the gift or in any event prior to polling day, whichever is the earlier. This will prevent candidates, groups and third parties waiting until the last minute to disclose the source/beneficiary of their funds.

The CCC supports amending the reporting thresholds for gifts to \$500 to make the reporting requirements internally uniform within the *Local Government Electoral Act 2011* and consistent with the reporting requirement in the *Local Government Act 2009* in relation to the councillor's register of interests. The CCC is of the view that the \$500 reporting threshold is reasonable for candidates and third parties in a local government election.

## Clauses 25 and 26

These clauses relate to recommendation 5 from the Public Report:

### Recommendation 5

That the government expand the regulation of donations to include the expenditure of donations and a requirement to account for unspent donations by either only using the funds for campaign purposes or transferring them to a registered charity.

The CCC supports the proposed changes to the legislation which will require candidates to account for unspent funds donated for the purpose of their campaign by either retaining the unspent funds in a dedicated account for the next election or donating the funds to a charity.

However, the CCC notes that the amendments do not include a requirement to account for how funds are spent by candidates, as this was not supported by the Government. The CCC noted during its previous investigation that the analysis of campaign expenditure was complicated where funds raised for an election were not all spent at the conclusion of the election and those funds were then spent on other activities for purposes not related to the election. The CCC formed the view that transparency would be improved if the

electoral return included details of how the funds donated were actually spent by the candidate, thus ensuring that all expenditure for a campaign was accounted for. Requiring the candidate to account for both the receipt and expenditure of funds — that is, to show both sides of the ledger — would enable the public to see that candidates are fully compliant with the rules around electoral donations and thus promote both transparency and public confidence.



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